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Law and Population in Senegal:
A Survey of Legislation

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A SURVEY OF LEGISLATION

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PREFACE

This monograph is a summary of legislation potentially affecting mortality, migration, and fertility in the Republic of Senegal. Primarily a reference work, it is intended to facilitate access to information concerning Senegalese legislation for persons interested in pursuing research on the role of law and these three critical demographic variables in Senegal or elsewhere. It refers principally to Senegalese legislation since independence in 1960 until July 1975. The authors have also taken account of significant legislation in the decade prior to independence and have attempted to include material concerning legislation changes since mid-1975. However, difficulties in obtaining recent legislation have prevented its systematic inclusion, and the authors intend to prepare for separate publication a supplement summarizing recent legislation changes.

Citation to legislation in this monograph refers, whenever possible, to two sets of legislative reports, one unofficial and the other official. The unofficial reports are the *Recueil de Législation et de Jurisprudence* (abbreviated RLJ), subsequently the *Recueil ASERJ* (abbreviated RASERJ), published since 1970 by the Association Sénégalaise d'Etudes et de Recherches Juridiques. The official source is the *Journal Officiel de la République du Sénégal* (formerly *Journal Officiel du Sénégal*; abbreviated JO, JOS, or JORS). Contrary to usual practice, the unofficial report is cited first in the text because of its generally wider availability. A number of important statutes and most of the codes in Senegal have also been separately

published by the Senegalese Imprimerie Nationale in Rufisque. Such separate publications are indicated in the footnotes. Citations to secondary sources are included in the text and comprise reference to the author, date of publication, and pages to which specific reference is made. Secondary sources to which reference is made in the text are listed in the bibliography. Unless otherwise noted, all translations are by the authors of this monograph.

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CHAPTER ONE

INTRODUCTION

A. Purpose and Scope

This monograph is a survey of legislation relating to the growth, distribution, and composition of population in the Republic of Senegal. Its principal purpose is to provide, in a reference format, a compendium of Senegalese legislation potentially affecting these three aspects of Senegalese demography. The monograph is therefore primarily doctrinal rather than sociological in orientation. We are, however, extremely conscious of the limitations of such a study and for this reason give occasional examples in the text to illustrate the implementation or operation of legislation in practice. Given the general purpose of the study, these examples are necessarily apt illustrations. We hope nonetheless that this compendium will serve as a useful point of departure for more sociologically oriented research by making Senegalese legislation on population more accessible to other researchers.

The significance and the controversial nature of population issues today (see Berelson 1975) require that we make explicit, if only in general terms, the theoretical bases of the monograph and the framework within which useful future research on law and population might be undertaken. One aspect of this framework concerns the identification of the factors influencing a country's demographic characteristics and the relative weight accorded to different demographic factors in development policy. Social and economic problems in underdeveloped countries are too frequently ascribed to overly rapid population growth (see Caldwell 1975, Uche 1976).

This viewpoint neglects the critical importance of a country's position in the world economy in influencing its overall strategy of development and its demographic characteristics. It often results in a failure to consider the fundamental reasons for choices of national policy and takes such features as the distribution of population as given rather than subjecting them to analysis (Amin 1974:23-28).

International as well as national economic, social, and political processes play an important role in shaping the growth, distribution, and composition of national populations. So far as many African countries, including Senegal, are concerned, these processes included the penetration of European capitalism during the colonial period and the creation of an economy oriented toward the production of raw materials for export, burden with a stagnant tertiary sector, and biased in favour of capital-intensive production techniques and light rather than heavy industry. Following Amin's (1973:172-175, see also Seidman 1974) characterization of underdevelopment, the structural features of Senegal's economy may be summarized as (a) extreme inequalities of production among different sectors, largely determining in turn the distribution of income; (b) external orientation, which inhibits the transmission of benefits of economic progress in certain sectors to the whole of the economy; and (c) domination by outside forces, shown in the form of international economic specialization and the dependent position of capital available for economic growth. While undoubtedly of real importance for Senegalese development, demographic factors as such are not, in our view, the most important aspects of social and

economic life to be considered in understanding the character of underdevelopment or assessing strategies for development in Senegal. As a study of population legislation, this monograph is therefore a compendium of laws relating to a dependent and secondary variable rather than a primary, independent one. Additional research placing this legislation squarely in its social and economic context is thus required if the role of law in population policy is to be adequately understood.

As many scholars (e.g. Amin 1972, Parkin 1975) have emphasized, however, the processes and characteristics of underdevelopment necessarily have demographic consequences and concomitants. Laws designed to effect, reflect, or symbolize particular development strategies frequently have indirect or direct consequences for population growth, distribution, or composition. In addition to migration, such matters as employment, nutrition and health, literacy and education, and the emancipation of women (see M.-A. Savané 1975) are especially important. Unfortunately, "little effort is made to tackle them in an integrated approach involving structural changes in the social, political and economic systems . . .; rather, attention is focussed unduly on one contributory factor, namely, the population issue" (Adepoju 1975: 466). Questions such as family planning, the control of migration, and employment must be considered in the context of an integrated development strategy designed to raise the standard of living of the mass of the population. If this study is to be useful as a reference work, it must therefore take account not only of legislation relevant to population growth but also that potentially affecting the distribution and composi-

tion of population. In order to do so, the monograph follows the emphasis suggested by Gregory and Piche (1976) in concentrating on legislation potentially concerning mortality, migration, and fertility. Placed in this broader perspective, this compendium may enhance the contribution of law and population studies to the analysis of certain fundamental issues in development policy. It may also supply a basis for further research on the way in which Senegalese government policies and views are reflected in legislation or enshrined in legal form.

A second, related aspect of the theoretical framework underlying this monograph concerns the relation of legislation to behaviour. Much of the rapidly increasing contemporary literature on law and population rests on oversimplified and untested assumptions about the relation of national law to society in underdeveloped countries. It largely ignores much of the current research in development studies. Its assumptions often reflect at best nothing more than logical conclusions from partial experience in rich countries or the values of particular groups within rich or poor countries. As students of law and development have belatedly recognized (cf. Trubek and Galanter 1974), they may serve to shield or mystify economic and political interests at odds with the values and interests of many people in underdeveloped countries. In addition, they deflect attention away from the real consequences, both direct and indirect, of law for behaviour in underdeveloped countries and away from the consideration of fundamental problems of development involving demographic variables. It is therefore important to emphasize that this monograph should be considered as a preliminary survey. It is an initial effort to compile current Senegalese

legislation potentially but not necessarily influencing the characteristics of Senegal's population.

This point deserves special emphasis, since the purpose of the monograph is not law reform but the provision of a basis for research. Especially in underdeveloped countries, legislation does not necessarily influence human behaviour simply because it is on the statute books. No deduction concerning the empirical effects of a law may be drawn from the mere existence of a statute. Moreover, legislation rarely if ever incarnates a single, agreed-upon set of policy goals, even during the period of drafting and enactment. In many instances the covert purposes or latent consequences of legislation are more significant in the long run than those openly expressed. Furthermore, the intended impact of legislation may be blunted, substantially transformed, or even nullified by the manner in which laws are administered or implemented. Laws which have a known effect in a given social, economic, and political context may have entirely different or unpredictable consequences when transplanted to a different context. Although commonplace in the sociology of law, these points are sometimes unduly neglected in studies on law and population, especially those devoted primarily to law reform. The actual social and economic consequences of legislation can only be understood by empirical research which gives particular attention to the characteristics of a country's population.

B. Senegal and its Population

Senegal occupies an area of approximately 196,722 square kilometers on the west coast of Africa. It is bordered by the Islamic Republic of Mauritania on the north, Mali on the east, and Guinea and Guine-Bissau on the south. Formerly part of the French colonial federation of French West Africa (A.O.F.), Senegal formed the Federation of Mali with the former French Sudan, now Mali, on January 17, 1959. With the failure of this political venture on August 20, 1960, the Republic of Senegal became legally independent by the adoption of its constitution on August 25, 1960 (see Foltz 1965; Gonidec 1958 II:437-442; Lampué 1969:188; Lavroff 1966:22-47).

The population of Senegal was estimated at 3,956,616 in a 1971 population sample survey (République du Sénégal 1974a:3), about 4,300,000 by a Dutch research team in 1975 (de Jonge et al. 1976:22), and approximately five million in the April 1976 census (on other studies, see Lacombe, Lamy, and Vaugelade 1975). Data from this last source was unavailable during the preparation of this monograph, so the following discussion is based on earlier available statistics. The 1971 total included approximately 47,000 non-Africans, primarily French and Lebano-Syrians. About 38% of the African population are Wolof; the balance includes Serer (19%), Toucouleur (13%), Peul (8%), Diola and related groups of the Casamance area (14%) and smaller percentages of Sarakole, Manding, Bambara, Bassari, and Coniagui (Diarra 1971:644-646, see also Verrière 1963, Metge 1966, Pélissier 1966).

On the whole, the Senegalese population is relatively young. The 1971 survey indicated that 51% of Senegalese were less

than 20 years old, 43% were aged 20 to 60, and only 6% were older than 60 years (République du Sénégal 1974a:6). The total population included 1,948,620 men and 2,007,996 women, grouped according to age as follows (République du Sénégal 1974a:43):

SENEGALESE POPULATION BY AGE AND SEX

<u>Age group</u>	<u>Men</u>	<u>Women</u>	<u>Total</u>
Less than 1 yr.	79,669	79,838	159,507
1-4	242,531	239,541	482,072
5-9	304,695	289,567	594,262
10-14	225,699	218,871	444,570
15-19	190,460	206,703	397,163
20-24	130,460	177,984	308,444
25-29	121,983	156,990	278,973
30-34	112,374	139,702	252,076
35-39	112,299	120,763	233,062
40-44	97,823	96,441	194,264
45-49	79,369	68,643	148,012
50-54	65,900	61,360	127,260
55-59	58,514	48,299	106,813
60-64	41,844	38,814	80,658
65-69	32,176	25,537	57,713
70-74	24,430	19,784	44,214
75-79	13,266	8,660	21,926
80 and over	14,993	10,470	25,463
Undetermined	135	29	164
<hr/>			
TOTAL	1,948,620	2,007,996	3,956,616

Though only approximations, these figures indicate generally the age and sex distribution of Senegal's population.

Men in Senegal tend generally to marry much later than women. Few men marry before age 25; only 2% remain unmarried after age 40. By contrast, the percentage of women unmarried after age 25 varies only between 0.5% and 2% depending on age category. On the whole, rural women marry earlier than do urban women. In the 10-14 age group, 5% of women in the Région du Fleuve and 8.6% of women in Sénégal Oriental are married. In the group from 15-19

years, 53.5% of all rural women are married as compared to 27% of urban women. Although more than 75% of Senegal's population are Muslim, only slightly more than 25% of men are polygynous, including 25% of urban men and 30% of rural men. More than 80% of polygynously-married men have two wives: those with three or more wives tend to be older peasants, wealthy traders, or Islamic notables (marabouts). The proportion of widowers and widows is relatively small, principally because of the incidence of polygyny (for men) and widow inheritance (for women) (République du Sénégal 1974b:1-4).

Senegal's birth rate is about average for West African countries at approximately 47 live births per year per 1000 people. Its mortality rate is about 25 per thousand, relatively low compared to other West African countries (République du Sénégal 1974d:13). These figures are only estimates, and the degree of error is unknown. Studies indicate that the average Senegalese woman in Dakar gives birth to six children (live births) during her reproductive period (Guitton 1973:53). In the mid-1960's the infant mortality rate varied from 85 per thousand in Dakar to 175 per thousand in rural areas (République du Sénégal 1965a I:28). A study of one rural zone found a mortality rate of 355 per thousand for ages 1-5 (Cantrelle and Leridon 1971:512). The average life expectancy has been estimated to be 41 years (L.Savané 1975:3). In view of the approximate nature of available statistics, it is not surprising that estimates of the annual rate of population growth vary widely. The First Development Plan of 1961-64 (République du Sénégal 1962b:6) estimated the annual growth rate at 2-2.5%. The first phase of the 1970 Demographic Survey (République du Sénégal 1971:9-10) estimated

a growth rate of 1.93%. The Fourth Plan (République du Sénégal 1974d:13) reported a rate of 2.2%, or a doubling of the population approximately every thirty years. More recent estimates (de Jonge et al.1976:22) place the growth rate at 2.6-2.9% per year.

The average population density is low at an estimated 19-20/km², but the population is very unevenly distributed. Three-fourths of the population inhabit a quarter of the total area, the coastal belt about 150 km wide comprising the major peanut-producing export area and the capital. Almost 80% of industrial enterprises, 66% of salaried employees, and 50% of all civil servants are concentrated in the Cap Vert area of Dakar, the capital (International Bank for Reconstruction and Development, 1974:51, Diarra 1971:649; see also Bugnicourt 1971 and Sommer 1975). The proportion of the population residing in urban areas, especially in Dakar, has increased steadily in recent years. At the time of the First Development Plan, an estimated 20% of the population resided in agglomerations of more than 2000 people (Verrière 1963:25). During the Second Plan period (1965-69) 971,000 people were classified as urban (cities larger than 10,000 people), 228,000 as semi-urban (between 2000 - 10,000 people), and 2,216,000 as rural (less than 2000 people) (République du Sénégal 1965a II:257). The Third Plan estimated the urban population as 30% of the total national population (République du Sénégal 1969b:8), as did the Fourth Plan (République du Sénégal 1974d:13). In contrast to the relatively high urban concentration, the rural population is widely dispersed, scattered among more than 12,000 villages averaging fewer than 200 inhabitants. The distribution of the population is reflected in the distribution

by population by region, shown in the following table (République du Sénégal 1974a:3):

DISTRIBUTION OF POPULATION BY REGION

<u>Region</u>	<u>July 1, 1971</u>	<u>Area in km2</u>	<u>Density per km2</u>
Cap-Vert	698,947	550	1270
Casamance	618,682	28,350	22
Diourbel	635,205	33,547	19
Fleuve	389,091	44,127	9
S.Oriental	245,148	59,602	4
Sine-Saloum	813,512	23,945	34
Thies	556,031	6,601	84
<hr/>			
TOTAL	3,956,616	196,722	20

The Senegalese population has always been a highly mobile one, and it was estimated in 1964 that 20% of the population had migrated at least once during their lifetime (Diarra 1971:653). But the increasing concentration in the Cap-Vert region is due largely to internal population movements induced by the Senegalese development strategy of export-oriented development. Many studies (e.g. David 1960; Diop 1965; Rocheteau 1973; O.R.S.T.O.M.1975a,b; de Jonge et al.1973, 1976; Benyoussef 1974) have been devoted to population movements in Senegal, and the veritable exodus of the most dynamic elements of Senegal's rural labour force into urban areas is well-known. Most migrants are males aged 20-25, though especially in the Sine-Saloum and the Casamance regions a high proportion of females leave rural villages in the dry season to seek urban employment. While these movements are essentially seasonal, some rural areas constituting labour pools for the urban export sector, migrants from rural to urban areas increasingly tend to remain in cities, especially Dakar. The capital city is growing at an estimated rate of

6% per year and at the time of the Fourth Plan included about 14% of the population (République du Sénégal 1974d:13).

According to the 1970-71 National Demographic Survey, the total active population included 1,170,300 persons, or more than 40% of the population over six years old. This group included 659,700 employed and 510,600 unemployed, including 489,400 who had previously been employed and 21,300 who had never been employed. Of the employed, 72.8% were in the primary sector, 7.3% in the secondary sector, and 19.9% in the tertiary sector. The high percentage of unemployed was partially explained by the timing of the survey, but statistics indicate a substantial degree of underemployment in the agricultural sector and a high proportion of urban unemployed. The study estimated the urban unemployed at 21% of the active urban population (République du Sénégal 1973:4,8,18,28,33; see also International Bank for Reconstruction and Development 1974:52-56). Other studies indicate an increase in urban unemployment, both visible and disguised, during the past decade (Amin 1971:46-48).

This trend has been accompanied by an apparent secular decline in the purchasing power of the peasantry (Amin 1971:49-50) and the maintenance of a highly unequal distribution of income (Dieng 1975; Amin 1971:48-49). A World Bank study reported that "[W]hile a farmer's cash income amounts to about CFAF 10,000-40,000 (200 CFA francs equal approximately one dollar) a year, salaries of the urban local population average about CFAF 250,000-300,000 and 2.0-2.5 million for expatriates. There are large discrepancies

in salaries paid in the modern sector. Minimums range from about CFAF 100,000 a year for an unskilled laborer to CFAF 275,000 for a skilled worker, and about CFAF 700,000 for a foreman. The minimum salary for an engineer amounts to about CFAF 900,000 a year; for a chief executive, CFAF 2.5-4.5 million" (International Bank for Reconstruction and Development 1974:56).

Population movements from as well as within Senegal are influenced by Senegal's development strategy and position of economic dependence. Emigration from Senegal has been largely to France. The number of Senegalese workers in France has been officially estimated to be from 20,000 to 25,000 (Costa 1967:426; M.Niang 1971: 14; Adams 1974), not including clandestine emigration (see e.g. N'Diaye 1970, Union Générale des Travailleurs Sénégalais en France 1970). Most such emigrants originate from the Senegal River Valley. Other population movements from Senegal are extremely difficult to estimate, although as many as 9500 are estimated to have emigrated to The Gambia, some for several years only (Diallo 1972:8,11).

Senegal was formerly the location of the capital of French West Africa and has always attracted a large non-Senegalese African population. As of 1962 about 128,000 non-Senegalese Africans resided in Senegal, most from the neighbouring countries of Mauritania, Mali, and Guinea (Costa 1967:426). An estimated 1000 Gambians immigrate annually to Senegal (Diallo 1972:9). Other historical sources of immigration to Senegal have been the Cap Verde Islands, whose residents in Senegal were estimated at 30,000 in 1972 (Andrade 1972), and Guiné-Bissau during its war for independence from

Portugal. Most nationals of these countries have returned to their homelands since the independence of the Cap Verde Islands and Guine-Bissau, respectively.

C. Organization of the Monograph

This brief sketch of the principal demographic characteristics of Senegal provides a background for the survey of Senegalese legislation concerning population. Chapter Two describes legislation which potentially most directly affects mortality. Chapter Three surveys legislation which most directly concerns migration. Legislation concerning fertility is discussed in Chapter Four. These topics necessarily overlap, since the same law may have numerous consequences. We have attempted to be as comprehensive as possible in our discussion, although gaps inevitably remain because of the vast range of legislation potentially relevant to demographic variables, difficulties in obtaining some of the most recent documents, our choice of emphasis, and the paucity of sociological research on Senegalese law. The monograph is intended as a preliminary compendium of legislation and as a basis for subsequent research on the relations between law, demographic characteristics, and development in Senegal. The authors of this compilation welcome any suggestions concerning omissions or emphasis.

CHAPTER TWO

LEGISLATION AFFECTING MORTALITY

This chapter surveys legislation which potentially affects the rate of infant mortality, the likelihood of death from disease or hunger, and life expectancy. It is evident that these questions are influenced by many aspects of a country's development policies, some of which are considered in this and subsequent chapters and others of which lie outside the scope of this monograph. This chapter is primarily concerned with health legislation, although it also considers the provision of food and preservation of the environment. Legislation on these subjects indicates government policy and may also be a means of effectuating policy, although, as previously mentioned, the extent to which it does so must be assessed on the basis of empirical research. This chapter considers legislation concerning (a) control of health facilities; (b) health insurance, medical assistance, and clinics; (c) medical professionals; (d) drugs and pharmaceuticals; (e) disease control; (f) food; and (g) environmental protection.

A. CONTROL OF HEALTH FACILITIES

Administrative responsibility for public health in Senegal rests primarily with the Direction of Public Health, one of the two central services of the Ministry of Public Health and Social Affairs (Snyder 1974). In 1964 the Direction

of Public Health¹ was entrusted with the supervision and coordination of all health establishments, public or private, and operation of all gratuitous health services; responsibility for public hygiene, including prophylactic measures against transmissible diseases, maternal and infant protection, and mass health education; and policing of health measures, including the control of pharmacies and pharmaceutical depots² and the control of the private practice of medicine. Its authority also included general responsibility for preparing or overseeing demographic studies, population statistics, and epidemiological reports. Within the Direction an Office for Technical Documentation was created to study questions related to public health, including population statistics and legislation. From 1967 to 1973 approximately 9% of the annual national budget was devoted to public health; between 61% and 66% of public health expenditure was for personnel (République du Sénégal 1975c:44).

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1. Décret no.64-805 du 3 decembre 1964 portant réorganisation du ministère de la santé publique et des affaires sociales (RLJ 1964, p.753; JORS 1964, p.1669); Décret no.65-576 du 6 septembre 1965 portant modification des articles 1 à 3 du décret no.610805 du 3 septembre 1964 portant réorganisation du ministère de la santé et des affaires sociales (RLJ 1965, p.536; JORS 1965, p.1119)
 2. Removed from the jurisdiction of the Ministry of Public Health in 1970 when a Central Pharmacy Service was created as a separate organization within the Ministry: Décret no.70-895 du 16 juillet 1970 modifiant le décret no.64-805 du 3 decembre 1964 portant réorganisation du Ministère de la Santé et des Affaires sociales, arts.1, 3 (RASERJ 1970, p.209; JORS 8 août 1970, p.775)

Except to the extent that federal organization within the former French West Africa has given way to national reorganization, Senegal has since independence largely retained the structure of control over medical facilities established during the colonial period. The country is now divided into medical regions, medical circumscriptions, and hospital complexes. Each medical region, corresponding to an administrative region, is placed under the direction of a regional head doctor responsible for the public health of the region. Each medical region is subdivided into medical circumscriptions under the direction of a chief medical officer of the circumscription.³ Public health facilities include stationary and mobile facilities. While the latter are designed to combat epidemics and endemic diseases, the former include hospitals, maternities, mother-child and other health centres, and dispensaries. Each region has at least one hospital, including a maternity wing, located at the regional capital. In 1973 Senegalese hospital services included 9 hospitals, 33 health centres, and 51 maternities (République du Sénégal 1974c:51-52). Dakar has three large hospitals: the Principal Hospital, founded in 1890, of which most patients are civil servants and private patients; the Le Dantec Hospital, built in 1912, a general hospital reserved for indigent patients; and the Fann Hospital founded in 1958 and devoted to specialized medical care. The Le Dantec and

3. Décret no.61-350 M.S.A.S. du 11 septembre 1961 fixant les attributions des médecins-chefs de régions médicales et de circonscriptions médicales (RLJ 1961, p.515; JORS 1961, p.1412)

Fann hospitals are attached to the Dakar University Hospital Centre⁴ and used for teaching purposes also. Senegalese hospitals are now regulated by the decree of November 4, 1974.⁵

Maternal and infant health facilities were established in 1960.⁶ Each regional capital is to have at least one primary centre for maternal and child health (P.M.I.), including a pre-natal and antenatal examination centre, a centre for medical consultation of health children, a vaccination service, a dietetic service, and a centre for maternal education. While eventually each population centre of 10,000 or more inhabitants is to be provided with these facilities, groupings of fewer than 10,000 inhabitants are to be served either by secondary health centres or by periodic visits of personnel from primary centres. In 1973 Senegal had 393 dispensaries, of which 43 were municipal and 60 were private (République du Sénégal 1974c:52).

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4. Décret no.62-0201 M.S.A.S. du 23 mai 1962 portant organisation du centre hospitalier et universitaire de Dakar (RLJ 1962, p.485; JORS 1962, p.999); Décret no.65-393 du 10 juin 1965 portant organisation du centre hospitalier universitaire de Dakar (JORS 1965, p.709); Décret no.67-285 du 15 mars 1967 relatif aux services du centre hospitalier universitaire de Dakar (RLJ 1967, p.310; JORS no.3883, 1967, p.523); Décret no.68-1326 du 19 décembre 1968 complétant le décret no.65-393 du 10 juin 1965 portant organisation du centre hospitalier universitaire de Dakar (JORS no.4005, 4 janvier 1969, p.15)
 5. Décret no.73-1082 du 4 novembre 1974 réglementant les formations hospitalières (JORS no.4392, 7 décembre 1974, p.1944), which replaced Décret no.61-216 M.S.A.S. du 31 mai 1961 portant règlement des formations hospitalières (RLJ 1961, p.254; JORS 1961, p.894) as amended by Décret no.62-0103 M.S.A.S. du 14 mars 1962 modifiant les articles 2 et 5 du décret no.61-216 du 31 mai 1961 portant réglementation des formations hospitalières (RLJ 1962, p.170; JORS 1962, p.591)
 6. Décret no.60-447 M.S.A.S. du 13 juillet 1960 organisant la protection maternelle et infantile au Sénégal (RLJ 1960, p.373; JORS 1960, p.759).

Non-State health services which, gratuitously or not, receive as clients children less than six years old or pregnant women must be authorized by the Ministry of Health and Social Affairs.⁷ In 1950 non-governmental health facilities included 11 Catholic mission dispensaries and two Red Cross dispensaries (Séré de Rivères 1953:62), and mission health facilities remain relatively important in rural areas today. Islamic marabouts and rural medical practitioners in many instances exercise, independently of the Government, many traditional methods of healing illness. A number of private clinics also exist in Senegal, including several which offer family planning and maternity services (Sene 1965, Rasenberg 1973). These clinics are subject to government administrative regulation and inspection.

B. HEALTH INSURANCE, MEDICAL ASSISTANCE, AND CLINICS

Health Insurance and Medical Assistance

Senegal does not have a scheme of health insurance for the entire population (sankalé 1969:386, 395). Private sector employees and civil servants each have a separately regulated system of social security and health protection.

For private sector employees governed by the Labour Code or the Merchant Marine Code, the 1973 Social Security Code⁸ (art.1)

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7. Décret no.60-247 M.S.A.S. du 13 juillet 1960 organisant la protection maternelle et infantile au Sénégal, art.14 (RLJ 1960, p.373; JORS 1960, p.759).
 8. Loi no.73-37 du 31 juillet 1973 portant Code de la Sécurité Sociale (JORS 1973, p.1565), published as a separate brochure at Rufisque, Imprimerie Nationale, 1973, and Erratum à la loi no.73-37 du 31 juillet 1973 portant Code de la sécurité sociale (JORS no.4420, 3 mai 1975, p.565). See also Décret no.72 163 du 29 février 1972 réglementant l'admission aux soins gratuits des bénéficiaires du Code des pensions militaires d'invalidité (JORS no.4213, 18 mars 1972, p.393)

provides for two types of medical assistance, administered by the Caisse de Sécurité Sociale (Guèye 1973:303). The first type is aid in kind through the Fonds d'action sanitaire, sociale et familiale, a fund of the Caisse de Sécurité Sociale which is financed by allocation to a separate budget of 4.025% of total technical expenses of the family allowance scheme. This activity of the Caisse was instituted with the family allowance scheme in 1955-56⁹ and continued under the Social Security Code, arts. 31-32. Concentrated especially on mother-child health care, aid in kind includes preventive and curative medical care for the employee, the employee's spouse or spouses, and children, as well as free pharmaceutical products and other goods and the services of medico-social centres. In practice, such aid is not restricted to employees covered by the Labour or Merchant Marine Code (Guèye 1973).

The second form of medical assistance available to private sector employees is insurance for work accidents and employment-related illness. The 1952 colonial Labour Code established technical committees to advise the labour inspectorate in each territory on questions relating to the hygiene and safety of workers and provided that employers were responsible for advising the labour inspectorate of any employment-related illness or accident in their enterprise.¹⁰ These provisions were continued by the 1961 Senegalese Labour Code (cf. arts.158-162). The 1952 Labour Code did not, however, provide

9. Arrêté no.7083 ITLS. SM du 5 décembre 1955, arts. 15, 16, 17 (JOS du 10 décembre 1955, p.1271); arrêté no.1329 ITLS du 27 février 1956 (JOS 1956)

10. Arts.133-134. Orders taken under this Title of the 1952 Labour Code are collected in Gouvernement Général de l'A.O.F. n.d.

for a uniform system of industrial accident insurance. Regulation of industrial accidents was left to individual territories, and different regulations applied to European and African workers. Insurance against accidents of employment was left to private insurance companies (Secrétariat Social d'Outre-mer 1953:202). Not until January 1, 1959, was insurance against accidents of employment and employment-related illness in the private sector assumed by a general employer-financed scheme, named the Caisse de Compensation des Prestations Familiales et des Accidents du Travail (see République du Sénégal 1965b:531). This scheme is now a branch of the general private sector social security scheme managed by the Caisse de Sécurité Sociale.

Under this scheme an employee injured during employment or a victim of an industrial accident is entitled to emergency first aid at the employer's expense (art.38) and to a daily benefit during the period of temporary incapacity or an annuity in case of permanent injury. In case of a fatal accident the annuity is payable to the decedent's surviving family. These benefits are paid by the Caisse de Sécurité Sociale, which also undertakes payment or reimbursement of expenses for medical treatment, readaptation, and professional retraining (art.58). If the accident is due to the employee's intentional or inexcusable fault, no daily benefits are paid, but part of the benefits normally payable to the employee are to be paid to the employee's dependents (art.61). Increased benefits are payable if the accident was caused by a fault of the employer or of the employer's agent; such increase is paid by the Caisse de Sécurité Sociale, which subsequently is reimbursed by

the employer concerned through mandatory additional contributions to the fund (art.63).

Since 1955 employers under the Labour Code have been required to provide for employees limited medical services including medical personnel and equipment.¹¹ The services required vary according to the number of employees, Senegalese enterprises being classified into five categories for this purpose.¹²

Civil servants benefit from health insurance as part of a social security scheme.¹³ This scheme does not cover non-civil servant husbands of female civil servants. Persons covered by the scheme are entitled to free medical consultation and care in medico-social centres and other non-hospital public health services as well as in authorized private clinics.¹⁴ Costs of hospital

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11. 1952 Labour Code, arts. 138-144; Arrêté général no.397 I.G.T.L.S. du 18 janvier 1955 (JOAOF no.2751, 29 janvier 1955, p.215); arrêté général no.398, 18 janvier 1955 (JOAOF no.2751, 29 janvier 1955, p.216); 1961 Labour Code, art.163. See also Loi no. 75-50 du 3 avril 1975 relative aux institutions de prévoyance sociale (JORS no.4419, 28 avril 1975, p.557)
 12. See Chambre de Commerce, d'Industrie et d'Artisanat de la Région du Cap-Vert 1974 for a discussion of medical regulations with respect to enterprises.
 13. Décret no.72-215 du 7 mars 1972 relatif à la Sécurité Sociale des fonctionnaires (JORS 1 avril 1972, p.508)
 14. See, e.g., Arrêté ministériel no.2325 du 11 mars 1974 portant autorisation de recevoir dans une clinique privée des épouses des fonctionnaires (JORS no.4349, 30 mars 1974, p.487)

examinations and care are borne 80% by the government and 20% by the patient. Coverage includes civil servants and "members of their family."

Hospital Insurance and Public Clinics

Treatment at public clinics and dispensaries in Senegal is free, although patients must pay for prescriptions. Private clinics establish their own fee scale. In 1968 standard fees were established for hospital treatment and for medical examination in public health facilities. Hospital care services were classified into three categories with different fees for each. Within each category two types of patients, civil servants and private individuals, are distinguished. In the first and second categories, the fees are lower for civil servants than for private individuals. The third category comprises two sub-categories, a general régime and a régime for low-salaried persons in the private sector. This last group includes persons earning less than twice the minimum wage (S.M.I.G.) who do not participate in a hospital insurance plan, applicable in the public and semi-public sector, which pays 4/5 of hospital costs. Fees for children are established according to the age of the child. Private individuals not covered by hospital insurance are, upon admission to a hospital, required to deposit a sum equal to the cost of ten days treatment. The fee for out-patient consultation in public hospitals is fixed at 500 CFAF per consultation, regardless of the status of the patient.¹⁵ However, the cost of hospital treatment for indigent patients is

15. Décret no.68-858 du 24 juillet 1968 portant modification des tarifs hospitaliers (RLJ 1968, p.218; JORS no.3980 du août 1968, p.981)

borne by the State.¹⁶ Upon admission to a hospital, a patient is assigned to one of four categories: (a) private individuals paying for their own treatment; (b) private sector salaried or wage employees, whose hospital costs are partly covered by insurance schemes under labour legislation; (c) civil servants and other public employees, also partly covered by hospital insurance; and (d) indigent patients. Except in an emergency, no person is, in principle, to be admitted to a hospital without an entry ticket stating who is to be responsible for payment.¹⁷

C. MEDICAL PROFESSIONALS

Education

Educational facilities for medical professionals in Senegal include the University of Dakar, heir of the school for African medical auxiliaries founded in 1918, and various schools and institutes, some of which are attached to the University of Dakar. These specialized institutes include those for social assistants,¹⁸ midwives,¹⁹ social welfare workers,²⁰

16. Loi no.62-29 du 16 mars 1962 mettant à la charge de l'Etat les dépenses d'hospitalisation des malades indigents précédemment assistés par les communes (RLJ 1962, p.176; JORS 1962, p.546)

17. Décret no.74-1082 du 4 novembre 1974 réglementant les formations hospitalières, arts. 25, 26 (JORS no.4392, 7 décembre 1974, p.1944)

18. Décret no.61-217 M.S.A.S. du 31 mai 1961 portant organisation de l'école des agents sanitaires (RLJ 1961, p.259; JORS 1961, p.896); Décret no.61-309 du 4 août 1961 modifiant et complétant le décret no. 61-217 M.S.A.S. du 31 mai 1961 portant organisation de l'école des agents sanitaires (RLJ 1961, p.473; JORS 1961, p.1282).

nurses,²¹ specialized nurses²² and specialists in applied tropical medicine.²³ Provision was also made for the admission of students to the Ecole Jamot²⁴ and for a specialist diploma in epidemic nursing.²⁵ In 1964 an Institute of Social Pediatrics was established at the University of Dakar, the purposes of which included the training of medical or para-medical personnel for work in preventive child medicine and the education of the public with respect to all matters concerning the pregnant woman and child.²⁶ An Institute of Public Health and appropriate diploma were created in

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19. Décret no.62-0137 M.S.A.S. du 3 avril 1962 portant réorganisation de l'école des sages-femmes (RLJ 1962, p.353; JORS 1962, p.666)
 20. Décret no.62-138 M.S.A.S. du 3 avril 1962 portant organisation de l'école des assistantes et assistants sociaux (RLJ 1962, p.360; JORS 1962, p.669)
 21. Décret no.62-0139 M.S.A.S. du 3 avril 1962 portant réorganisation de l'école des infirmières et infirmiers d'Etat (RLJ 1962 p.367; JORS 1962, p.671; Décret no.67-223 du 3 mars 1967 abrogeant et remplaçant l'article 19 du décret no.62-139 du 3 avril 1962 portant organisation de l'école des infirmiers et infirmières d'Etat (RLJ 1967, p.204; JORS 1967, p.441)
 22. Décret no.61-294 du 18 juillet 1961 portant réglementation du stage des infirmiers et infirmières spécialistes (RLJ 1961, p.459; JORS 1961, p.1231)
 23. Décret no.64-029 du 17 janvier 1964 relatif à l'Institut de médecine tropicale appliquée de l'Université de Dakar (RLJ 1964, p.60; JORS 1964, p.205; Décret no.64-188 du 6 mars 1964 portant création d'un diplôme de médecine tropicale appliquée à la faculté mixte de médecine et de pharmacie de l'Université de Dakar (RLJ 1964, p.144; JORS 1964, p.441)
 24. Décret no.61-020 du 11 janvier 1961 relative à l'admission des élèves infirmiers à l'école Jamot (RLJ 1961; p.42, JORS 1961, p.62)
 25. Décret no.61-021 du 11 janvier 1961 créant du brevet de spécialisation des infirmiers des grandes endémies (RLJ 1961, p.44; JORS 1961, p.63)
 26. Décret no.64-475 du 26 juin 1964 approuvant la création de l'"Institut de pédiatrie sociale" (RLJ 1964, p.419; JORS 1964, p.961)

1967.²⁷ Its basic purpose was "to teach the disciplines of public health and of sanitary and social welfare administration while adapting them to the training and the improvement of medical and paramedical personnel . . . who cooperate in Africa for the sanitary and social welfare of the population" (Décret 67-1232, art.2). In 1968 a Special Centre for the Teaching of Nursing Care was established at Dakar to train nurses, midwives, and social welfare workers from all French-speaking African countries.²⁸ In order to increase recruitment of health personnel, the Military Health Service School was established in Dakar to "insure the recruitment and training of doctors, pharmacists, and dental surgeons destined to serve in the Military Health Service, in the National Army, or by special assignment, in the Public Health Service." This school was attached pedagogically to other relevant specialized faculties and institutes at the University of Dakar.²⁹ Probably the most

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27. Décret no.67-1232 du 15 novembre 1967 relatif à l'Institut de santé publique de l'Université de Dakar (RLJ 1967, p.805; JORS no.3929 du 2 décembre 1967,p.1666); Décret no.67-1233 du 15 novembre 1967 instituant un diplôme de santé publique à la faculté mixte de médecine et de pharmacie de l'Université de Dakar (RLJ 1967, p.808; JORS no. 3929 du 2 décembre 1967, p.1667)
28. Décret no.68-552 du 14 mai 1968 portant création et organisation d'un centre d'enseignement spécial de soins infirmiers (RLJ 1968, p.140; JORS 1968, p.609)
29. Décret no.68-927 du 28 août 1968 portant création et organisation de l'école du service de santé militaire (RLJ 1968, p.264; JORS 1968,p.1114); Décret no.72-694 du 16 juin 1972 modifiant le décret no.68-927 du 28 août 1968 portant création et organisation d l'école du service de santé militaire (JORS, 8 juillet 1972, p.1100)

important teaching facility for doctors is the Centre Hospitalier et Universitaire de Dakar, which includes the Le Dantec Hospital and the specialized Fann Hospital and serves research and medical care as well as teaching purposes.³⁰

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30. Décret no.62-0201 M.S.A.S. du 23 mai 1962 portant organisation du centre hospitalier et universitaire de Dakar (RLJ 1962, p.485; JORS 1962, p.999); Décret no.62-0318 M.E.N.-CAB. du 16 août 1962 déterminant le mode d'affectation des services de soins, d'enseignement et de recherche au centre hospitalier et universitaire de Dakar (RLJ 1962, p.681; JORS 1962, p.1471); Décret no.65-061 du 4 février 1965 relatif au personnel enseignant et hospitalier du centre hospitalier universitaire de Dakar (RLJ 1965, p.115; JORS 1965, p.271); Décret no.65-393 du 10 juin 1965 portant organisation du Centre hospitalier Universitaire de Dakar (JORS 1965, p.709); Décret no.67-285 du 15 mars 1967 relatif aux services du centre hospitalier universitaire de Dakar (RLJ 1967, p.311; JORS no.3886, 1967, p.523); Arrêté interministériel no.9098 du 6 juillet 1967 fixant les conditions d'application de l'article 9 du décret no.65-061 du 4 février 1965 relatif au personnel enseignant et hospitalier du C.H.U. de Dakar (RLJ 1967, p.622; JORS no.3908, 22 juillet 1967, p.1097); Arrêté interministériel no.9099 C.H.U. du 6 juillet 1967 fixant les obligations de service des membres du personnel enseignant et hospitalier du C.H.U. de Dakar (RLJ 1967, p.623; JORS no.3908 du 22 juillet 1967, p.1097); Décret no.68-1326 du 19 décembre 1968 complétant le décret no.65-393 du 10 juin 1965 portant organisation du centre hospitalier universitaire de Dakar (JORS 1969, p.3); Arrêté interministériel no.4035 M.E.N.-M.S.P.A.S.-CAB.-C.T.-2 en date du 18 mars 1970 modifiant l'arrêté no.14332 M.E.N.-M.S.P.A.S.-C.H.U. du 6 novembre fixant les conditions d'application de l'article 9 du décret no.65-061 du 4 février 1965 en ce qui concerne la clientèle privée de certains membres du personnel enseignant et hospitalier du centre hospitalier universitaire de Dakar (RLJ 1970, p.102; JORS, 23 mai 1970, p.493); Décret no.72-693 du 16 juillet 1972 modifiant le décret no.67-285 du 15 mars 1967 relatif aux services du centre hospitalier universitaire de Dakar (JORS no.4329, 29 juillet 1972, p.1215); Erratum au décret no.72-693 du 16 juin 1972 modifiant le décret no.67-285 du 15 mars 1967 relatif aux services du centre hospitalier universitaire de Dakar (JORS no.4265, 9 décembre 1972, p.2030); Décret no.74-824 du 30 juillet 1974 abrogeant et remplaçant l'article 20 du décret no.65-061 du 4 février 1965 relatif aux personnel enseignant du centre hospitalier universitaire de Dakar (JORS no.4374, 24 août 1974, p.1358)

Licensing of Physicians and Surgeons

Absent special dispensation, in order to practice medicine in Senegal a person must (a) hold a Senegalese doctorat d'état in medicine or a foreign degree recognized as equivalent; (b) be of Senegalese nationality or a citizen of another country with which Senegal has signed an establishment agreement with respect to doctors and (c) be enrolled in the section or sections of the Senegalese Ordre des Médecins corresponding to the type of practice in which the doctor is engaged. In order to fulfill the second condition, foreign nationals must demonstrate a sufficient knowledge of the French language. Senegalese military doctors in active duty and foreign military doctors in Senegal as technical assistance personnel are not required to fulfill the third condition. By special derogation, foreign doctors not fulfilling the first and second conditions may, if they are entitled to practice in their country of origin, be permitted to practice in dispensaries, hospitals, and maternity wings managed by religious or other organizations; they may not engage in the private practice of medicine. Similar dispensation may be accorded to doctors employed under contract to provide medical services in commercial or industrial enterprises. In addition to fulfilling these conditions, a person intending to engage in the private practice of medicine in Senegal is required to obtain administrative authorization.³¹ Failure to comply with these regulations may result in

31. Loi no.66-69 du 4 juillet 1966 relative à l'exercice de la médecine et à l'Ordre des médecins, arts. 1, 2, 3, (RLJ 1966, p.665; JORS 1966, p.861)

sanction for malpractice. The few remaining "African doctors," medical assistants holding diplomas from the former Ecole Africaine de Dakar, are recognized as meeting the educational requirements (art.52).

Primary responsibility for licensing rests with the Ordre des Médecins.³² The Order, established as a financially autonomous legal entity, includes all doctors authorized to practice in Senegal, with the exceptions mentioned supra. The National Council of the Ordre des Médecins decides upon the qualifications and specialization of doctors (art.26, al.2). It considers requests for admission to practice after persons requesting admission have been found by administrative authorities to meet specified administrative requirements (art.31, art.3, al.2).

Regulation of Other Personnel

With the exception of training, the activities of other medical personnel are more loosely regulated than are the activities of doctors. Medical students, midwives, and nurses are exempt from prosecution for the illegal practice of medicine when under the supervision of doctors (Loi no.66-69, art.4, al.2) they engage in activities from which they are otherwise excluded. Statutory provision is made for a four-year internship in Dakar

32. See Loi no.66-69 and the Décret no.68-701 du 18 juin 1968 portant application de la loi no.66-69 du 4 juillet 1966 relative à l'exercice de la médecine et à l'Ordre des médecins (RLJ 1968, p.175; JORS no.3968, 29 juin 1968, p.739). Originally created by Loi no.60-04 du 3 mars 1960 portant création d'un établissement d'intérêt public dénommé "Ordre des médecins" (RLJ 1960, p.126)

hospitals for the training of medical students.³³ Medical students may, under the direction of interns and under the ultimate responsibility of qualified medical personnel, keep hospital records and perform minor medical tasks.³⁴ Most doctors, surgeons, pharmaceutical biochemists, and other hospital specialists are recruited by examination,³⁵ as are hospital assistants.³⁶ With respect to

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33. Décret no.72-642 du 29 mai 1972 relatif à l'internat en médecine des hôpitaux de Dakar (JORS no.4230, 17 juin 1972, p.978); Décret no.74-825 du 30 juillet 1974 abrogeant et remplaçant l'article 4 du décret no.72-642 du 29 mai 1972 relatif à l'internat en médecine des hôpitaux de Dakar (JORS no.4374, 24 août 1974, p.1359); Décret no.74-855 du 16 août 1974 modifiant et complétant le décret no.72-642 du 29 mars 1972 relatif à l'internat en médecine des hôpitaux de Dakar (JORS no.4377, 7 septembre 1974, p.1483). These statutes do not regulate the hospital activities of interns, specified by internal hospital regulations.
34. Décret no.70-1453 du 31 décembre 1970 relatif aux fonctions hospitalières des étudiants en médecine (RASERJ 1970, p.569; JORS, 13 février 1971, p.147)
35. Décret no.62-0175 M.S.A.S. du 9 mai 1962 relatif à la nomination de médecins, chirurgiens, pharmaciens-biochimistes et spécialistes des hôpitaux (RLJ 1962, p.422; JORS 1962, p.945); Annexe I au décret no.62-175 du 9 mai 1962 relatif à la nomination des médecins, chirurgiens, pharmaciens, biochimistes, et spécialistes des hôpitaux (RLJ 1965, p.1; JORS no.3724, 6 février 1965); Décret no.74-826 du 30 juillet 1974 fixant les conditions d'inscription sur la liste d'aptitude aux fonctions de maître de conférences agrégé médecin, chirurgien, spécialiste ou biologiste des hôpitaux (JORS no.4374, 24 août 1974, p.1359).
36. Décret no.62-176 M.S.A.S. du 9 mai 1962 relatif à la nomination des assistants des hôpitaux (RLJ 1962, p.427; JORS 1962, p.948); Annexe I au décret no.62-176 du 9 mai 1962 relatif à la nomination des assistants des hôpitaux (RLJ 1965, p.1; JORS no.3724, 6 février 1965); Annexe II au décret no.62-176 du 9 mai 1962 relatif à la nomination des assistants des hôpitaux (RLJ 1965, p.1; JORS 1962, p.948)

promotions, provision is made for automatic promotion within the public health service of doctors, pharmacists, and dentists,³⁷ while promotion of nurses and medical technicians is supervised by a special committee.³⁸ Diplomas of other medical technicians have been recognized for purposes of admission to the public health service.³⁹

All pharmacists practicing in Senegal, except for those in active duty in the Senegalese army or foreign military pharmacists serving as technical assistants, are required to belong to the national Ordre des Pharmaciens. The Order is responsible for admission to private practice and maintenance of professional standards. Recruitment to practice in the public service or under technical assistance agreements is by administrative decision.⁴⁰

Malpractice Regulations

Senegalese regulations governing medical malpractice, which are extremely detailed, are grouped in two statutes. The

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37. Décret no.71-110 du 8 février 1971 (JORS, 17 juillet 1971, p.701)
 38. Décret no.67-1090 du 30 septembre 1967 (JORS, 21 octobre 1971, p.1517)
 39. Arrête ministériel no.2077 M.S.A.S.-S.A.G.E.-S.P. en date du 15 février 1966 (RLJ 1966, p.167; JORS, 1966, p.276)
 40. Loi no.73-62 du 19 décembre 1973 portant création de l'Ordre de pharmaciens (JORS no.4333, 29 décembre 1973, p.2278); Décret no.74-139 du 11 février 1974 portant application de la loi no.73-62 du 19 décembre 1973 portant création de l'Ordre des pharmaciens (JORS no.4344, 9 mars 1974, p.344); Décret no.74-475 du 7 juin 1974 completant l'article 2 du décret no.74-139 du 11 février 1974 portant application de la loi no.73-62 du 19 décembre 1973 portant création de l'Ordre des pharmaciens (JORS no.4365, 6 juillet 1974, p.1046)

first establishes a code of medical deontology,⁴¹ while the second defines the illegal practice of medicine.⁴²

The code of deontology, or code of practice, applies to all doctors practicing in Senegal. Direct or indirect commercial advertising of medical practice is prohibited. The only information concerning practice which a doctor may use on prescriptions or in a directory are those which "facilitate his relations with patients," recognized professional qualifications, and titles and functions recognized as valid by the National Council of the Ordre des Médecins. No doctor may receive patients in places where medicines or medical apparatus are sold. Spreading within the medical profession information with respect to a diagnostic procedure or new treatment in order to promote its immediate use constitutes "reprehensible imprudence" if the doctor has not taken care to warn medical colleagues of potential dangers of the procedure or treatment; spreading such information among members of the public when the value and harmlessness of the treatment or procedure have not been proven constitutes negligence.

The basic law on the practice of medicine defines illegal practice. A person is engaged in the illegal practice of medicine (a) who, inter alia, "takes part, regularly or by general instructions, even in the presence of a doctor, in the establishment of a diagnosis or a treatment of real or alleged, congenital or

41. Décret no.67-147 du 10 février 1967 instituant le code de déontologie médicale (RLJ 1967, p.165)

42. Loi no.66-69 du 4 juillet 1966 relative à l'exercice de la médecine et à l'Ordre des médecins, arts. 4-11 (RLJ 1966, p.665; JORS 1966, p.861).

acquired illnesses or surgical operations, whether by personal acts, oral or written consultations, or by any other means," when such person does not hold the required qualifying degrees or is not otherwise authorized to practice; (b) who engages in these acts without having fulfilled the required citizenship conditions or having been exempted from such and authorized to practice; or (c) who, having been authorized to practice in a religious, commercial, or industrial establishment, practices medicine outside that establishment. These provisions do not apply to medical students, midwives, and nurses "to the extent that they are acting as aids to a medical doctor who places them near his patients and exercises control over them" (art.4). The illegal practice of medicine is punishable by a fine of 20,000 to 100,000 CFAF and imprisonment from one to six months, or of one of these penalties. In cases of recidivism, the sanction is doubled, imprisonment is mandatory, and the court may deprive the accused of specified civic and familial rights and confiscate any equipment used in such illegal practice (art.5). Practicing medicine without administrative authorization is, if the person has not committed acts specified in art.4, punishable by a fine of 20,000 to 100,000 francs. In case of recidivism, the court may bar the accused from the private practice of medicine in Senegal, either for two years or indefinitely (art.6). No person who does not fulfill the conditions for the practice of medicine may, by virtue of any agreement, receive all or part of the fees or benefits deriving from the professional activities of a doctor (art.7). As the supreme professional authority in medical matters, the Ordre des Médecins is

responsible for ensuring obedience and respect for professional duty and the rules of the Code of Deontology (art.15).

These restrictions severely limit the extent to which midwives and other suitably qualified medical personnel may legally perform many activities which, in the absence of a sufficient number of qualified doctors, they in fact perform regularly in Senegal (Whest-Allegre 1974). Consequently, a seminar on family health held in November 1974 in Dakar recommended inter alia that the code of deontology should be changed in order to permit midwives to carry out legally many practices which they now perform in fact because of the shortage of doctors. Such a reform would require modification of the present code of deontology taken from France, the preparation of a special code of deontology for midwives, and additional training for midwives in particular problems encountered in practice.

D. DRUGS AND PHARMACEUTICALS

In 1970 a Central Pharmacy Service was established as a separate administrative entity within the Ministry of Health and Social Affairs. It is responsible for (a) the distribution of drugs, pharmaceutical products, and medical or surgical material to the health services; (b) inspection of the pharmacies of public health units, licensed private pharmacies, drug wholesalers, and private stocklists of pharmaceutical products; (c) application of pharmaceutical legislation; and (d) application of international

agreements with respect to drugs. It comprises a distribution section, an inspection section, and a section for technical documentation and supervision.⁴³

Control of Production, Importation, and Distribution

Following generally the provisions of the French Public Health Code (C.S.P.:France 1968), in Senegal the distribution, whether gratuitous or by sale, of any drug or pharmaceutical product is conditional upon authorization by the Minister of Public Health and Social Affairs. Authorization may not be transferred and may be suspended or revoked. The request for such authorization must be submitted in four copies and be accompanied by a fee and four copies of a separate report from the manufacturer, an expert analytic report, a biological report, and a report on clinical tests of the product. The manufacturer must demonstrate the harmlessness of the product when used under normal conditions and for therapeutic purposes; give evidence with respect to the qualitative and quantitative analysis of the composition of the product; and show that the conditions of manufacture and especially the means of controlling purity and quality are such as to guarantee the quality of the product. However, products manufactured abroad, as are most drugs in Senegal, may be authorized for sale and distribution in Senegal if they are legally and in fact used in their country of origin and the above conditions concerning purity and

43. Décret no.70-895 du 16 juillet 1970 modifiant le décret no. 64-805 du 3 décembre 1964 portant réorganisation du Ministère de la Santé publique et des Affaires sociales, art.1 (RASERJ 1970, p.209; JORS, 8 août 1970, p.775)

and quality have been met. In the case of such products, the required dossier may, upon authorization of the Minister, be assembled from documents required by legislation in the country of origin. Products manufactured or 'conditioned' in Senegal must meet the above standards of purity and quality.⁴⁴

In addition to the requirement of administrative authorization, imported drugs and pharmaceutical products are subject to specific regulations. First, the required administrative fee varies according to the place of manufacture of the product, and products manufactured outside Senegal are subject to a fee of 125,000 CFAF, which must accompany the request for authorization to import or distribute. The fee for products manufactured in Senegal is 60,000 CFAF. For Senegalese products "à dénomination commune ou scientifique ou internationale figurant à la pharmacopée" the fee is 30,000 CFAF.⁴⁵

Secondly, the importation of pharmaceutical products is subject to a customs declaration indicating the nature and origin of the goods, the country from which the goods have come into Senegal, and the mode of transport, and to payment of applicable

44. Loi no.65-33 du 19 mai 1965 portant modification des dispositions du code de la santé publique relative à la préparation, à la vente et à la publicité des spécialités pharmaceutiques (RLJ 1965, p.296; JORS 1965, p.296; JORS 1965, p.637), modified by: Loi no.67-20 du 28 février 1967 reportant la date d'application de la loi no.65-33 du 19 mai 1965 portant modification des dispositions du Code de la santé publique relative à la preparation, à la vente et à la publicité des spécialités pharmaceutiques (RLJ 1967, p.302; JORS no.3888, 1967, p.578)

45. Arrêté interministériel no.831 M.S.P.A.S.-S.C.P.H.-M.F.A.E. en date du 26 janvier 1974 abrogeant et remplaçant l'arrête no. 16520 du 23 novembre 1968 fixant le montant des droits de visa pour les spécialités pharmaceutiques (JORS no.4340, 16 février 1974, p.208)

duties and taxes.⁴⁶ The purpose of the declaration is to establish the category of the goods for purposes of assessment of duties and taxes. Such duties, a major source of government revenue (International Bank for Reconstruction and Development 1974: 184-192) comprise duties of entry, including a fiscal duty (droit fiscal, D.F.) and a customs duty (droit de douane, D.D.), and other duties and taxes, which include a statistical duty (taxe de statistique, T.S.), a forfeit tax (taxe forfaitaire, T.F.), and a sales tax on imports (taxe sur le chiffre d'affaires, T.C.A.). For purposes of assessment of duties and taxes, imported materials are classified into categories in the Tarif Général des Douanes (République du Sénégal n.d.(a)). Medicines are defined for customs purposes as "(a) products which have been mixed for the purpose of therapeutic or prophylactic use [and] (b) unmixed products, suitable for the same purpose, in the form of doses or conditioned for retail sale for therapeutic or prophylactic use" (République du Sénégal n.d. (a): Ch.30). Subject to variation according to country of origin, pharmaceutical products and packaged medicines, admission of which have been authorized by the Minister of Public Health and Social Affairs and for which the requisite fee is paid, are subject to the following basic duties and taxes based on their normal price, calculated according to a given formula: D.F. 10%; D.D. 5%; T.S. 4%; T.F. 22%; and T.C.A. 13.5%. Medicines for sale by prescription and medical samples are in principle subject to the following, again

46. Loi no.74-48 du 18 juillet 1974 portant Code des Douanes, esp. arts.4, 5, 69, 88, 89 (JORS no.4375, 1974, p.1386) published as a separate brochure at Rufisque, Imprimerie Nationale. See also Chambre de Commerce, d'Industrie et d'Artisanat de la Région du Cap-Vert, 1972; 1974: 369-379.

with variation according to country of origin: D.F. 10%; D.D. 5%; T.S. 4%; T.F. 22%; and T.C.A. 13.5%. However, products originating from France, other member countries of the European Economic Community, members of the West African Customs Union, and Franc zone countries are exempt from customs duty (D.D.). In addition, samples of medicines and pharmaceutical products bearing the notation 'medical sample' and sent gratuitously by manufacturers to the Health Service or directly to doctors are exempt from fiscal duty (D.F.) and customs duty (D.D.) (République du Sénégal n.d. (a): Annexe II).

Finally, the importation of printed materials, including health-related materials, is subject to prior declaration to the Minister of Commerce, Industry, and Artisanal Activity.⁴⁷

In reaching a decision concerning the distribution of pharmaceutical products, the Minister of Public Health and Social Affairs must consult a commission including a representative of the Minister, a professor of the medical section of the Dakar University Faculty of Medicine and Pharmacy, three clinical experts, a director of the Laboratory for the Repression of Fraud, and a representative of the Direction du Contrôle économique. Reasons must be given if the request for authorization is refused. "Authorization may be refused when several pharmaceutical products of an identical or similar type are already on sale in Senegal and the introduction of the new product is adjudged to lead to no

47. Décret no.67-507 du 16 mai 1967 relatif à l'importation de certains produits imprimés, livres et brochures (RLJ 1967, p.405; JORS no.3897, 1967, p.813).

therapeutic or economic advantage" (Loi no.65-13, art.3). If, subsequent to the granting of authorization to distribute a product the Minister considers that use of the product is potentially dangerous to public health, he may, by reasoned decision, suspend the authorization and prohibit distribution of the product for a period of six months. Following that period, the product may, upon decision of the Minister in consultation with the commission, be definitively withdrawn from the market or, if not, its distribution may be continued. All decisions with respect to refusal of authorization, suspension, or withdrawal from the market may be appealed to a separate appeal commission.⁴⁸ However, a 1967 statute (Décret no.67-008, art.9) provided that pharmaceutical products legally on sale as of January 1, 1967, and included in a list to be established by the Minister in consultation with the commission were to continue to be distributed for sale. This list was subsequently established⁴⁹ and other products were added later.⁵⁰

48. Décret no.67-008 du 4 janvier 1967 relatif aux visas des spécialités pharmaceutiques (RLJ 1967, p.116; JORS 1967, p.99). See also Décret no.71-803 du 16 juillet 1971 complétant le décret no.67-008 du 4 janvier 1967 relatif aux visas des spécialités pharmaceutiques (JORS, 28 août 1971, p.805)

49. Arrêté ministériel no.1035 du 10 février 1972 fixant la liste des spécialités pharmaceutiques en vente effective au Sénégal avant le premier janvier 1967 et non soumises aux formalités de constitution de dossier de visa (JORS no.4214, 20 mars 1972, p.423); and Rectificatif au même (JORS no.4286, 31 mars 1973, p.810).

50. Arrêté ministériel no.2514 du 19 mars 1973 constatent l'accord du visa et portant autorisation d'admission et de débit au Sénégal de diverses spécialités pharmaceutiques (JORS no. 4287, 7 avril 1973, p.863)

Channels of Distribution

Two separate nationally organized channels for the distribution of pharmaceutical products exist in Senegal. The National Pharmaceutical Supply (Pharmacie Nationale d'Approvisionnement, formerly Service d'Approvisionnement Sanitaire) centralizes the purchasing and distribution of drugs within the public health service. The selection of drugs to be proposed to the Minister for authorization for use in public health services rests with an eight-member commission, which includes the Director of Public Health, the head of the Central Pharmacy Service (formerly the Pharmacy Section of the Direction of Public Health), the head of the National Pharmaceutical Supply, and the head of the Pharmacy at Le Dantec Hospital. Individual doctors in the public health service may however, acting through the head doctor of their region, request authorization to derogate from the use of drugs and other products so selected, proposed, and authorized.⁵¹ The National Pharmaceutical Supply maintains an annually revised list of drugs, pharmaceutical products, and medical equipment authorized for use in the public health services. Provision is made for the ordering of unlisted products of which the need is justified.⁵² Exceptional orders aside, orders for drugs and other products are aggregated twice yearly at the regional level of the public

51. Décret no.62-0108 M.S.A.S. du 15 mars 1962 créant une commission d'agrément de médicaments et matériel pharmaceutique utilisés dans les formations de la santé public (RLJ 1962, p.174; JORS 1962, p.581)

52. Arrêté ministériel, no.8402 M.S.A.S.-CAB.-C.T.M. 4 du 24 juin 1970 fixant les modalités de l'approvisionnement pharmaceutique des services et formations sanitaires (RASERJ 1970, p.179; JORS, 25 juillet, 1970, p.721)

health service and sent to the Bureau of Pharmacies for transmission to the National Pharmaceutical Supply.

The National Pharmaceutical Supply distributes drugs to the public health services, administrative services outside the jurisdiction of the Health Ministry, and certain institutions such as the Red Cross and private dispensaries. It also supplies narcotic drugs (stupéfiants) to public retail pharmacies. However, in cases of urgency, hospitals may order directly from licensed private wholesalers or manufacturing laboratories. In addition, certain products are prepared directly in hospitals or in the supplying pharmacy (Sankalé 1969:333-334).

In addition to the National Pharmaceutical Supply the major chain of distribution is the private pharmaceutical profession, including wholesalers, laboratories, retail pharmacists, and rural depositories. Wholesalers, of which two existed in Senegal in 1969 (Sankalé 1969:336), link pharmaceutical manufacturers with retail outlets. The French law of September 11, 1941, limited the number of retail pharmacists. In order to expand African access to the private pharmacy sector and increase the number of retail pharmacies, Senegal has increased the number of private pharmacies since independence, while retaining the principle of limitation of number and controlling their location.⁵³ Senegal now permits 96

53. Décret no.62-0286 M.S.A.S. du 20 juillet 1962 fixant provisoirement le nombre et la répartition des officines de pharmacie dans la République du Sénégal (RLJ 1962, p.572; JORS, 4 août 1962, p.1328); Décret no.66-188 du 16 mars 1966 fixant le nombre et la répartition des officines de pharmacie (RLJ 1966, p.230; JORS 1966, p.336); Décret no.72-022 du 11 janvier 1972 abrogeant et remplaçant l'article premier du décret no.66-188 du 16 mars 1966 fixant le nombre et la répartition des officines de pharmacie (JORS 1972, p.148); Décret no.75-416 en date du 16 avril 1975 fixant le nombre et la répartition des officines de pharmacie (JORS no.4422, 17 mai 1975, p.626)

licensed pharmacies.⁵⁴ Of these, 59, including 39 in Dakar, were in operation as of 1974.⁵⁵ Pharmacies in localities having more than a single pharmacy are required to arrange for a duty service (service de garde).⁵⁶

The establishment of rural depositories, usually run by private individuals with no pharmaceutical training, is subject to authorization by the Minister of Public Health. Such authorization, conditional upon the absence of a retail pharmacy in the locality, is personal and valid for a specified locality and a single depository. An applicant for such authorization must, if an individual, be a registered businessman of Senegalese nationality, aged 21 or more, and know how to read and write French, or, if a company, show that its agent managing the depository satisfies the conditions required of an individual applicant. The application must include inter alia a written undertaking by a private retail pharmacist to supply the outlet. Such outlets are authorized to obtain and retail only medicines and pharmaceutical products prepared and packaged under the responsibility of a qualified pharmacist established in Senegal and authorized pharmaceutical

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54. Décret no.75-416 en date du 16 avril 1975 fixant le nombre et la répartition des officines de pharmacie (JORS no.4422, 17 mai 1975, p.626)
55. Arrêté ministériel no.10716 M.S.P.A.S.-S.C.PH. en date du 19 septembre 1974 abrogeant et remplaçant l'arrête no.2946 M.S.P.A.S.-S.C.PH. du 27 mars 1974 [JORS no.4352, 20 avril 1974, p.593] fixant la location des officines sur le territoire du Sénégal (JORS no.4385, 26 octobre 1974, p.1750)
56. Décret no.61-366 M.S.A.S. du 21 septembre 1961 établissant un service de garde dans les localités où existent plusieurs officines de pharmacie (RLJ 1961, p.586; JORS 1961, p.1465); Décret no.61-404 M.S.A.S. du 24 octobre 1961 portant organisation des tours de garde dans les pharmacies (RLJ 1961; p.671; JORS 1961, p.1644)

or veterinary products from a Senegalese pharmacy, the latter on the express condition that such products are not injectible or among certain venemous substances specified by statute. They are prohibited from preparing or prescribing medicines and from selling alcohol. Infractions of these regulations noted by pharmacy inspectors may, in principle, be sanctioned by temporary or permanent closure of the outlet.⁵⁷ Although meritorious in principle, such outlets have in fact been frequently criticized as largely uncontrolled and bearing little relationship to the health and sanitary needs of rural people (see Sankalé 1969:336).

Labelling and Prescription

Pharmaceutical products must be labelled in French. The label must state the name of the product, which may be (a) a trade name, in which case the common name of the product must be printed under the trade name in easily legible letters, (b) the common name of the product, followed by the name of the manufacturer or his trademark, or (c) the scientific name of the product followed by the name of manufacturer or his trademark. If a common international name or designation for the product has been recommended by the World Health Organization, such name must be shown on the

57. Décret no.61-218 M.S.A.S. du 31 mai 1961 réglementant la création et la gérance des dépôts de médicaments (RLJ 1961, p.265; JORS 1961, p.898). See also Arrêté ministériel no. 9101 M.S.A.S.-S.P.-P.H. du 16 juin 1961 fixant le nombre et la répartition des dépôts de médicaments sur le territoire de la République du Sénégal (RLJ 1961, p.415; JORS 1961, p.1075). An example of such authorization is: Arrêté ministériel no.1189 en date du 14 février 1972 portant autorisation de créer et de gérer un dépôt de médicaments à Louga, Région de Diourbel (JORS no.4212, 11 mars 1972, p.375)

label. The label must also state the composition by active substance per dose of the product or the composition by active substance of the total contents of the package expressed in metric units; the pharmaceutical formula; the number of doses or the total weight or volume; the method of use; the date, if any, after which the product should no longer be used; the name and address of the manufacturer authorized to import or sell the product; the number of the authorization; and the number of the batch. Drugs for inoculation may be labelled with only the name of the product, the concentration, and the method of use if the package containing the drug is labelled with the required detailed information above.⁵⁸ Although not specified in legislation, these requirements apparently apply to all drugs and pharmaceutical products made available to the public, either gratuitously or by sale, through the public health services and licensed private pharmacies, outlets, and laboratories. It would be difficult to apply them to traditional medicines made available in unpackaged form directly to individuals often unable to read French. Such persons would in any case be little informed with respect to a drug by French language labels.

Prescriptions continue to be governed largely by the provisions of the French Public Health Code (C.S.P., France 1968). The French Code distinguishes among harmful substances (substances vénéneuses) according to whether they are destined for (1) commercial,

58. Décret no.67-007 du 4 janvier 1967 réglementant la présentation et la dénomination des spécialités pharmaceutiques (RLJ 1967, p.115; JORS 1967, p.99)

industrial, or agricultural use or (2) for medicine. Within each category the Code distinguishes among (A) toxic products, (B) narcotics, and (C) dangerous products. Products destined for medical use thus fall into three groups (C.S.P., art.R.5149), each of which is separately regulated by the Code. No pharmaceutical product may be distributed for human medical use except by pharmacists or by doctors legally authorized to furnish medicines to their patients (C.S.P., art.R.5171), except for authorized rural outlets previously mentioned. Pharmacists may deliver such medicines to the public only upon prescription (C.S.P., art.R.5173). They are required to maintain written records of prescriptions (C.S.P., art.R.5177). Detailed provisions govern toxic substances, narcotics, and dangerous substances and preparations containing any of these (C.S.P., arts. R.5178-R.5211).

Prices of pharmaceutical products are regulated.⁵⁹ However, especially since most drugs are imported, the price of drugs is high relative to the income of most people. The distribution of drugs and pharmaceutical products in public dispensaries is gratuitous for the indigent, although the extent of free distribution is severely limited by the amount of drugs available. Such distribution is consequently most frequently done on a day-by-day basis. Civil servants, salaried persons, and other private individuals obtain drugs by prescription. While medical consultation for the purpose of obtaining a prescription is free in the public health service, private consultations for this purpose are relatively expensive, costing from 800-100 CFAF in 1969 (Sankalé 1969:330).

59. Arrêté ministériel no.7614 M.F.A.E.-D.C.E.P. du 8 juin 1970 fixant le mode de calcul du prix de vente au public de certaines spécialités pharmaceutiques (RASERJ 1970, p.164; JORS, 4 juillet 1970, p.641)

E. DISEASE CONTROL

Epidemic and Endemic Disease

The control of epidemic and endemic diseases has long been a priority of medicine in Senegal (Snyder 1974), although effective action has been hampered by financial constraints, insufficient drugs and staff, and a lack of attention to nutrition, on which an adequate medical policy must necessarily rest. Senegal is divided into zones of mobile and prophylactic hygiene. Provision is made for periodic checks on diseases considered endemic with each sector. Periodic vaccination for small pox and yellow fever are, in principle, obligatory,⁶⁰ and the government has undertaken vaccination campaigns with varying success (International Bank for Reconstruction and Development 1974:61). Measures have been provided to prevent the outbreak of yellow fever.⁶¹ In 1973 the public health services undertook a major campaign of cholera vaccination to combat an epidemic in certain regions. Official reports indicate a decrease in the number of vaccinations, except for cholera, as a consequence of the efficacy of previous health campaigns (République du Sénégal 1974c:53). River blindness is largely contained to Sénégal Oriental, and the number of cases

60. Loi no.61-11 du 10 mars 1961 relative à la protection de la santé publique en matière de grandes endémies (RLJ 1961, p.134; JORS 1961, p.421). See also Sankalé 1969:131-154 and République du Sénégal 1974c:54-55.

61. Arrêté ministériel no.17615 M.S.A.S.-D.S.S. du 3 décembre 1965 TECH. fixant les mesures d'ordre général à appliquer en vue de prévenir l'éclosion de la fièvre jaune (JORS 1965, p.1549)

cured rose from 500 in 1961 to about 2500 in 1970 (International Bank for Reconstruction and Development 1974:61).

Beginning in the mid-1960's provision was made for the establishment of leper villages. Minor children and spouses of lepers were to be admitted as well as lepers themselves. Re-education and the cultivation of land were to be combined with treatment.⁶² Some leper villages have subsequently been established.⁶³ An agreement between Senegal and Malta in 1971 provided for the establishment of an institute of applied leprosy research.⁶⁴

Prostitution and Venereal Disease

Urbanization, migration, changes in family life, unemployment, tourism, and inadequate health facilities have contributed to an increase in prostitution and venereal disease, especially in

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62. Décret no.65-128 du 4 mars 1965 portant organisation des villages de lépreux (RLJ 1965, p.192; JORS 1965, p.371). Provision had previously been made for medical examination and schooling of children diagnosed as leprosy: Décret no. 60-168 M.E.S. du 21 juillet 1960 relatif à l'éviction scolaire des lépreux (RLJ 1960, p.174). Décret no.61-022 du 11 janvier 1961 relatif aux modalités de scolarisation des lépreux (RLJ 1961, p.45; JORS 1961, p.63)
63. E.g., at Koutal: Décret no.68-002 du 4 janvier 1968 portant création d'un village interrégional de lépreux à Koutal (RLJ 1968, p.1; JORS 1968, p.67)
64. Loi no.72-05 du 1 février 1972 autorisant le Président de la République à approuver l'accord entre l'Ordre souverain de Malte et la République du Sénégal concernant la création d'un Institut de Léprologie appliquée, signée à Paris le 9 juin 1971 (JORS no.4209, 19 février 1972, p.253)

urban areas. Regulation has concentrated on ancillary aspects of prostitution and the protection of minors, on the one hand, and on the control of venereal disease, on the other.

In Senegal, as in France (Stefani and Levasseur 1966 I: 101-102), prostitution as such is not illegal, but the Senegalese Criminal Code of 1965⁶⁵ sanctions indecent assault (arts.319-320) and pimping is punishable by imprisonment from one to three years and a fine of 250,000 to 2,500,000 francs. It is defined (Criminal Code, art.323) as:

- (a) aiding, assisting, or protecting in any way the prostitution of another or solicitation for the purpose of prostitution;
- (b) sharing in any way income from the prostitution of another or receiving subsidies from a person habitually engaging in prostitution;
- (c) knowingly living with a person who habitually engages in prostitution;
- (d) being unable to prove sufficient income corresponding to one's standard of living if one is in continuing relations with one or several persons engaging in prostitution;
- (e) hiring, training, or maintaining another person, whether of age or not and even with the consent of the other, for purposes of prostitution or making that person engage in prostitution or debauchery;
- (f) acting in any way as an intermediary between persons engaging in prostitution or debauchery and persons exploiting or remunerating the prostitution or debauchery;
- (g) by force, pressure, or any other means, obstructing the prevention, control, assistance, or re-education by qualified authorities of persons engaging in prostitution or in danger of prostitution.

65. Loi no.65-60 du 21 juillet 1965 portant Code pénal (crimes et délits) (JORS 1965, p.1009; also published as a separate brochure at Rufisque, Imprimerie Nationale, 1972)

Penalties are increased to imprisonment from two to five years and a fine of 300,000 to 4,000,000 francs in numerous instances, including (a) if the prostitute is a minor, (b) if force, threat, or abuse of authority is involved, and (c) if the pimp is a spouse, father, mother, or tutor of the prostitute (art.324, al.1).

These same penalties apply to a person habitually fostering or facilitating the debauchery or corruption of minors of either sex under the age of 21 years or engaging occasionally in the same acts with respect to a minor under the age of 16 years (art. 324, al.2). They also apply to a person who manages, owns, operates, or finances wholly or in part a brothel or a hotel, restaurant, club, or other establishment open to the public in which prostitution is practiced or in which clients for prostitution are solicited (art. 325, al.1). Such persons may be deprived of the license to operate the hotel, restaurant, or other establishment for a period of three months to five years and subjected to additional penalties such as deprivation of passport (art. 325, als.2, 3). Attempt is subject to the same penalties as completed delicts, and in all cases the person found guilty risks deprivation of specified civil and familial rights (art.327).

In 1962, prior to enactment of the Criminal Code, a campaign was initiated against venereal disease. Medical examination was made obligatory in certain cases, and doctors were given additional public duties in cases of venereal disease patients, including the duty of recommending urgent hospital treatment when deemed necessary. Mandatory hospital treatment upon public

order was provided in cases of patients who refused treatment.⁶⁶
A subsequent statute provided that any person having a venereal disease who refused treatment could be punished by either or both a fine of 3000-15,000 CFAF and imprisonment from ten days to three months.⁶⁷

Subsequent to enactment of the Criminal Code, a system of registration of prostitutes was established in order to control venereal diseases. Each person publicly engaging in prostitution was required to register with health authorities. A copy of each registration card was to be kept by the police. Failure to register was sanctioned by either or both imprisonment from one to three months and a fine of 20,000 to 100,000 francs and by mandatory registration. Prostitutes found to have venereal disease and refusing treatment were subject to either or both a fine of 20,000-100,000 CFAF and imprisonment from one to three months. Upon ceasing prostitution, a person could compel the administrative authorities to strike his or her name from the list of registered prostitutes.⁶⁸ The system of registration thus established

66. Décret no.62-0317 M.S.A.S. du 16 août 1962 organisant la lutte contre les maladies vénériennes (RLJ 1962, p.679; JORS 1962, p.1470)

67. Loi no.63-17 du 5 février 1963 portant répression des infractions au décret no.62-0317 du 16 août 1962 organisant la lutte contre les maladies vénériennes (RLJ 1963, p.100; JORS 1963, p.391)

68. Loi no.66-21 du 1 février 1966 relative à la lutte contre les maladies vénériennes et la prostitution (RLJ 1966, p.109; JORS 1966, p.152)

in 1966 was apparently not enforced until 1969, when a subsequent decree provided in detail for the establishment of a file for each prostitute, required that each prostitute undergo a bi-monthly medical examination, and authorized the issuance to each person publicly engaged in prostitution of a health booklet required to be presented to police authorities on demand. Provision was also made for procedures to be followed by persons ceasing prostitution and seeking withdrawal from the file.⁶⁹

In 1969 an article,⁷⁰ heralded as "a new weapon in our arsenal for combatting debauchery and venereal diseases" (L.Niang 1969:124), was added to the Criminal Code to provide that a minor aged less than 21 years engaging even occasionally in prostitution could, upon request by the minor's parents or by the ministère public, be summoned to appear before the juvenile court, which was authorized to apply protective measures under the Code of Criminal Procedure.⁷¹ Such measures include granting custody of the minor to a person other than the person then having custody of the minor or to any appropriate establishment or organization (Code of Criminal Procedure, art.597, al.1); eventual sanctions upon the parents, tutor, or guardian (art. 597, al.4);⁷² and,

69. Décret no.69-616 du 20 mai 1969 portant application de la loi no.66-21 du 1^{er} février 1966 relative à la lutte contre les maladies vénériennes et la prostitution (JORS no.4034, 7 juin 1969, p.682)

70. Loi no.69-27 du 23 avril 1969 complétant le Code pénal par un article 27 bis réprimant la prostitution des mineurs de 21 ans (JORS no.4027, 10 mai 1969, p.530)

71. Loi no.65-61 du 21 juillet 1965 portant Code de Procédure Pénale (JORS, 1965, p.1261; also published as a separate brochure at Rufisque, Imprimerie Nationale, 1972)

72. Loi no.69-71 du 30 octobre 1969

if such measures failed to prevent the minor from further engaging in prostitution, condemning the minor aged more than 13 years to one to three months' imprisonment, the only instance in which prostitution as such is subject to criminal sanctions (L.Niang 1969:124).

Other Programmes

Other health programmes are more diffuse in nature. In 1965 a National Committee for Social Action was established in order inter alia to serve as a consultative body to the Minister of Public Health with respect "to all problems relative to the development of the activity of the sanitary and educational social services in order to allow individuals, groups, and communities to meet their own needs, to resolve problems of adaptation to a society undergoing transformation, and through cooperation to improve their social and economic welfare."⁷³ Subsequently, the 1966 Urban Code included a series of prescriptions concerning the evacuation of water and human and animal waste.⁷⁴ Irregular disposal of waste was previously subject, in principle, to prosecution under the Code des Contraventions.⁷⁵ Generally speaking, such regulations

73. Décret no.65-290 du 30 avril 1965 portant création du Comité national pour l'action sociale (RLJ 1965, p.283; JORS 1965, p.585)

74. Décret no.66-1076 du 31 décembre 1966 portant Code de l'Urbanisme (Partie Réglementaire), arts. 173-188 (JORS no. 3871, 30 janvier 1967, p.141), published as a separate brochure at Rufisque, Imprimerie Nationale)

75. Décret no.65-557 du 21 juillet 1965 portant code des contraventions, art. 8, (JORS, 23 août 1965, p.954)

have proved to be extremely difficult to enforce in view of the inadequacy of urban housing and poverty.

Health education is included in the elementary school syllabus. Beginning in the first year of elementary education (C.E.1), children are taught the basic principles of personal hygiene, the importance of clean water and of proper disposal of human and animal waste, and causes and control of diseases such as malaria, intestinal diseases, tuberculosis, and leprosy. The stated purpose of such education is "to help the pupil and, through him or her, parents to prevent rather than cure illness."⁷⁶

F. FOOD

The main food crops in Senegal are millet, sorghum, and rice. Millet and sorghum accounted for approximately 70-80% of the total land area devoted to food production, which itself occupied approximately 55% of cultivated land in the late 1960's. They comprised about 55% of foodcrop production (International Bank for Reconstruction and Development 1974:142). However, by 1971 rice consumption exceeded the total consumption of millet and sorghum combined by about 40%. Since consumption of rice outstripped domestic production, imports of rice fluctuated from 168,000-335,000 tons per year between 1962-70 (International Bank for Reconstruction and Development 1974:143). The government has undertaken development projects in the Senegal River Valley and the Casamance Region partly to increase food production (see generally Diarassouba 1968; Schumacher 1975). The organization

76. Décret no.72-861, Annexe II (JORS no.4274, 1 février 1973, p.263)

and supervision of marketing structures for millet and peanuts, the organization and distribution of consumption goods of national importance, especially imported white rice, and the marketing of products collected by cooperative organizations and public development corporations is the responsibility of the National Office of Cooperation and Assistance for Development (ONCAD), a public corporation established in 1966.⁷⁷ Rice is distributed to retailers within the country according to a quota system.⁷⁸ Provisions were established in 1973 concerning the distribution of numerous other foodstuffs by the administration, local collectivities, and public corporations.⁷⁹

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77. Loi no.66-60 du 30 juin 1966 portant création de l'Office National de Coopération et d'Assistance pour le Développement (RLJ 1966, p.641; JORS 1966, p.856); loi no.71-62 du 2 novembre 1971 modifiant et complétant certaines dispositions de la loi no.66-60 du 30 juin 1966 portant création de l'Office National de Coopération et d'Assistance pour le Développement (O.N.C.A.D.), modifiée par la loi no. 67-46 du 12 octobre 1967 (RASERJ 1971, p.416; JORS, 27 novembre 1971, p.1250); Décret no.75-515 du 14 mai 1975 fixant les règles d'organisation et de fonctionnement de l'Office National de Coopération et d'Assistance pour le Développement (JORS no.4428, 14 juin 1975, p.777)
78. Décret no.67-862 du 19 juillet 1967 portant création de la Commission administrative de répartition de riz (RLJ 1967, p.653; JORS no.3911, 5 août 1967, p.1172)
79. Arrêté primatorial no.14846 P.M.-S.G.G.-Ec.-2 du 31 décembre 1973 portant approbation des cahiers de prescriptions communes applicables aux modes de fourniture de denrées alimentaires (JORS no.4341, 23 février 1974, p.225)

In principle all Senegalese villages outside the Cap Vert Region are required to establish reserve granaries of millet or rice to insure sufficient food during the difficult period preceding harvest. Responsibility for the organization and control of stocks at village level rests with the chief.⁸⁰ Although the history of such reserves may be traced to the establishment by the French colonial administration in 1910 of the forerunners of contemporary cooperatives (see Camboulivès 1967; Diarassouba 1968), organized reserves at village level are unknown in most of the country.

Statutes require administrative authorization for sale of certain food products and establish standards of quality. Administrative authorization is required for the preparation or transformation of products destined for human or animal consumption and for the wholesale or retail sale of such products. Failure to obtain authorization is subject to sanction by either or both imprisonment from three months to two years and a fine of 24,000 to 1,200,000 CFAF with increased penalties for systematic violations. If such sale results in the illness of one or more consumers, the sanction is mandatory imprisonment from six months to three years; if the violation results in the death of a consumer, imprisonment from two to ten years is mandatory; in both cases the fine is

80. Décret no.67-1020 du 13 septembre 1967 relatif à la constitution de réserves vivrières obligatoires (RLJ 1967, p.736; JORS no.3919, 30 septembre 1967, p.1427; Arrêté ministériel no.15670 M.E.R. du 23 octobre 1967 portant application du décret no.67-1020 relatif à la constitution des réserves vivrières obligatoires (RLJ 1967, p.772; JORS no.3926, 11 novembre 1967, p.1586)

120,000 to 2,400,000 CFAP. Fraud with respect to food or medical products, except for fresh fruit and vegetables, is severely sanctioned.⁸¹

Such administrative authorization is granted by the Minister in charge of commerce following analysis of samples of the product. Imported products falling within the regulation may be sold in Senegal if they are sold legally in their country of origin, if the country of origin is included on a list established by the Minister in charge of commerce after consultation with a control commission, and if the importer submits to the Minister an import declaration and samples of the product for laboratory analysis. Products regularly manufactured in or imported into Senegal as of July 1, 1968, were permitted to continue to be so manufactured, imported, and sold upon submission of a request for authorization or an import declaration by January 1, 1969, or, for products manufactured in Senegal, as long as the request for authorization to sell had not been denied.⁸²

Canned food products, including imports, must conform to

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81. Loi no.66-48 du 27 mai 1966 relative au contrôle des produits alimentaires et à la répression des fraudes (RLJ 1966, p.375; JORS 1966, p.703), modified by Loi no.71-09 du 21 janvier 1971 remplaçant l'article 23 de la loi no.66-48 du 27 mai relative en contrôle des produits alimentaires et à la répression des fraudes (JORS, 20 février 1971, p.157)
82. Décret no.68-507 du 7 mai 1968 réglementant le contrôle des produits destinés à l'alimentation humaine ou animale (RLJ 1968, p.113; JORS no.3962, 25 mai 1968, p.590)

certain labelling requirements.⁸³ Standards of quality for fruit and vegetables⁸⁴ and fish products⁸⁵ were enacted in 1969. Germicidal treatment is required for imported vegetables.⁸⁶ Other regulations concern the quality and condition of stored foodstuffs.⁸⁷ In 1968 a National Milk Committee was established inter alia to propose regulations concerning the sale of milk.⁸⁸ Detailed regulations subsequently provided for controlling the purity and quality of forms of milk and milk products.⁸⁹ Producers, distributors, wholesalers, and retailers of milk are subject to administrative

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83. Décret no.65-899 du 16 décembre 1965 relatif à la dénomination des conserves alimentaires (RLJ 1966, p.8; JORS 1966, p.7)
84. Décret no.65-888 du 16 décembre 1965 relatif au contrôle du conditionnement et de la commercialisation des produits maraichers et horticoles (RLJ 1965, p.6; JORS 1965, p.7)
85. Décret no.69-132 du 12 février 1969 relatif au contrôle des produits de la pêche (JORS no.4016, 1 mars 1969, p.256)
86. Arrêté ministériel no.14308 M.E.R. du 3 octobre 1968 (JORS, 4 novembre 1968, p.1359)
87. Arrêté ministériel no.14951 M.E.R. du 11 octobre 1968 (JORS, 4 novembre 1968, p.1359)
88. Décret no.68-340 du 29 mars 1968 portant création du Comité national du lait (RLJ 1968, p.106; JORS 1968, p.435)
89. Arrêté ministériel no.10209 M.F.A.E.-D.C.E. du 30 juillet 1970 fixant les modalités de délivrance du récépissé de déclaration et d'autorisation de fabrication, de distribution, de mise en vente des produits laitiers et les conditions d'immatriculation des ateliers de traitement du lait (RASERJ 1970, p.224; JORS, 22 août 1970, p.817)

authorization, as are enterprises for the treatment and preparation of milk for human consumption.⁹⁰ Standards have also been established for the refrigeration and inspection of meat.⁹¹

An Institute of Food Technology (I.T.A.) was established in 1963 to undertake and coordinate research concerning the treatment, transformation, consumption, and storage of food goods and products; to initiate the use of new local food resources, especially those derived from peanuts, fish, fruits and vegetables, meat, and milk; and to perfect and diffuse for general use prepared foods rich in protein, high in nutritional value, and adapted to the tastes, eating habits, and financial means of consumers.⁹²

90. Décret no.69-891 du 25 juillet 1969 réglementant le contrôle du lait et des produits laitiers destinés à la consommation humaine (JORS no.4062, 18 octobre 1969, p.1205)

91. Décret no.64-087 du 6 février 1964 rendant obligatoire le dépôt dans un entrepôt frigorifique des viandes destinées à la consommation (RLJ 1964, p.123; JORS 1964, p.289)

92. Loi no.63-11 du 5 février 1963 portant création de l'Institut de technologie alimentaire (RLJ 1963, p.87; JORS 1963, p.387); Décret no.64-425 du 4 juin 1964 portant organisation de l'Institut de technologie alimentaire (RLJ 1964, p.364; JORS 1964, p.855); Décret no.67-105 du 27 janvier 1967 portant réorganisation de l'Institut de technologie alimentaire (RLJ 1967, p.122; JORS 1967, p.233, 418 erratum); Erratum au décret no.67-105 du 27 janvier 1967 portant réorganisation de l'Institut de technologie alimentaire (JORS no.3875, 11 février 1967, p.233)

G. ENVIRONMENTAL PROTECTION

Numerous legislative measures including rural development, urban housing, and others, affect the protection and use of the environment. Most legislation specifically concerning environmental matters in Senegal has been oriented toward conservation. In 1968 a Consultative Commission on the Protection of the Environment and the Conservation of Natural Resources was established,⁹³ and a National Environment Commission was created in 1971.⁹⁴ Protection of the environment has been one of the purposes of national land use planning within the Direction of Land Management (Direction de l'Aménagement du Territoire), established within the Planning Ministry in the mid-1960's. The Direction is a research and technical advisory office. Its environmental activities have concentrated primarily on the 1964 National Domain Law on outlining a national land use plan, and on proposing means of protecting natural resources, preventing further desertification, developing a regionalization policy to control urban growth, preventing water pollution, and conserving plant and animal wildlife. These several aspects of environmental protection were included in proposals for a national land use policy circulated in 1972 (République du Sénégal 1972b). Research on the environment is now

93. Arrêté présidentiel no.6328 du 22 mai 1968 instituant une commission consultative de la nature et de la conservation des ressources naturelles (RLJ 1968, p.146; JORS no.3966, 15 juin 1966, p.602)

94. Arrêté ministériels nos.5068 et 5069 P.M.-M.D.R. du 30 avril 1971 (JORS, 17 juillet 1968, p.698), complété par Arrêté ministériel no.7693 P.M.-M.D.R. du 2 juillet 1971 (JORS, 1971)

being conducted under the auspices of the UN Institut Africain de Développement économique et de Planification in Dakar (e.g., Bugnicourt 1976), of which the environment research programme publishes the journal Environnement Africain/Environment in Africa.

Legislation concerning environmental protection includes land reform and related legislation designed partly to protect the soil by controlling land use and the distribution of population and other statutes concerning specific aspects of the environment. The most important land legislation is the 1964 Law on the National Domain.⁹⁵ It vested in the state development rights over the 95-98% of Senegal's land which had not been classified in the public domain, which was not registered or the ownership of which had not been entered at the Conservation des hypothèques, or which had not been registered in the name of a person other than the State. Land within the national domain was divided into four categories: urban zones, classified zones, pioneer zones, and

95. Loi no.64-46 du 17 juin 1964 relative au Domaine National (RLJ 1964, p.377; JORS 1964, p.905); Décret no.64-573 du 30 juillet 1964 fixant les conditions d'application de la loi no.64-46 du 17 juin 1964 relative au Domaine National (RLJ 1964, p.555; JORS 1964, p.1123; Décret no.64-574 du 30 juillet 1964 portant application de l'article 3 de la loi no. 64-46 du 17 juin 1964 relative au domaine national autorisant, à transitoire, l'immatriculation au nom des occupants avant réalisé une mise en valeur à caractère permanent (RLJ 1964, p.608; JORS 1964, p.1167); Décret no.66-858 du 7 novembre 1966 portant application de l'article 5 de la loi no.64-46 du 17 juin 1964 relative au domaine national et fixant les conditions de l'administration des terres du domaine national à vocation agricole situées dans les zones urbaines (RLJ 1966, p.867; JORS 1966, p.1518). These are conveniently reproduced with commentary in République du Sénégal 1970. See also Chabas 1965, M'Bengue 1965, Jouhaud 1966, République du Sénégal 1972b:105-112, Niang 1974b, and Faye and Niang 1976.

rural zones. Classified zones comprised forests and other protected land. Use of the former is regulated by the Forest Code (Snyder, 1970), which seeks to limit clearing, burning, cultivation, and other activities in classified forests.⁹⁶ Such controls have proved very difficult to enforce (see D. Cruise O'Brien 1971b: 222-226, Fall 1974). Under the National Domain Law the government has attempted very gradually to encourage migration from the heavily populated central peanut zone and to redistribute land in order to enhance its more effective use (see Faye and Niang 1976). It has also created several national parks in Senegal.

The Hunting Code⁹⁷ establishes a list of protected species which may not be hunted or of which hunting is restricted and specifies requirements for hunting. Pesticides for agricultural

96. Loi no.65-23 du 9 février 1965 portant Code forestier (partie législative) (JORS 1965, p.260), abrogated by Loi no.74-46 du 18 juillet 1974 portant Code forestier (partie Législative) (JORS no.4375, 1974, p.1381); Loi no.65-078 du 10 février 1965 portant code forestier (partie réglementaire) (JORS 1965, p.276).

97. Loi no.67-28 du 23 mai 1967 portant Code de la Chasse et de la Protection de la Faune (partie législative) (JORS 1967, p.796); Décret no.67-610 du 30 mai 1967 portant Code de la Chasse et de la Protection de la Faune (partie réglementaire) (JORS 1967, p.842), modifié par les décrets no.69-1375 du 10 décembre (JORS 1969, p.1557), et no.73-068 du 25 janvier 1973 (JORS no.4277, 1973, p.467). See also Décret no.73-372 du 20 avril 1973 fixant le montant des taxes et redevances en matière de chasse et de protection de la faune (JORS no.4294, 12 mai 1973, p.1074); Rectificatif (JORS no.4302, 30 juin 1973, p.1339)

or household use must be registered.⁹⁸ As a consequence of the Sahel drought Senegal restricted fishing in certain domestic waters⁹⁹ and participated in the creation of a permanent inter-African drought committee.¹⁰⁰ It has also ratified international agreements concerning the pollution of sea water by oil spillage¹⁰¹ and an inter-African agreement concerning the conservation of natural resources.¹⁰²

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98. Arrêté interministériel no.8322 du 7 août 1973 portant enregistrement des pesticides à usage agricole et ménager commercialisés au Sénégal et abrogeant l'arrêté no.10365 du 19 août 1971 portant interdiction de la vente des insecticides à base d'ester phosphorique (JORS no.4311, 25 août 1973, p.1671)
99. Arrêté ministériel no.6524 du 1 juillet réglementant la pêche aux filets trainants dans les eaux du Lac de Guiers (JORS no.4367, 20 juillet 1974, p.1144)
100. Loi no.74-07 du 22 avril 1973 autorisant le Président de la République à ratifier la convention portant création du Comité permanent inter-Etats de lutte contre la sécheresse dans le Sahel, adoptée à Ouagadougou le 12 septembre 1973 (JORS no.4355, 11 mai 1974, p.713)
101. Loi no.71-80 du 28 décembre 1971 autorisant le Président de la République à apporter l'adhésion du Sénégal à: (a) La Convention internationale sur l'intervention en haute mer en cas d'accident entraînant ou pouvant entraîner une pollution par les hydrocarbures, signée à Bruxelles, le 29 novembre 1969; (b) La Convention internationale sur la responsabilité civile pour les dommages dus à la pollution par les hydrocarbures, signée à Bruxelles, le 29 novembre 1969 (RASERJ 1971, p.488; JORS, 5 février 1972, p.180)
102. Loi no.71-66 du 30 novembre 1971 autorisant le Président de la République à ratifier la convention africaine pour la conservation de la nature et des ressources naturelles, signée à Alger, le 16 septembre 1968 (RASERJ 1971, p.456; JORS, 18 décembre 1971, p.1353)

H. CONCLUSION

As this survey of legislation suggests, Senegalese policies with respect to public health and related matters remain heavily influenced by the colonial legacy. This legacy is evident in the general orientation of public health services, professional organization, insurance schemes, and drug regulation. As a consequence, "[g]enerally speaking, the result of post-independence legal reforms concerning the organization of health services has been a rationalization of the centralized bureaucratic model established during the colonial period" (Snyder 1974:20). The policies expressed by and implemented within the framework of such legislative reforms have been relatively successful in improving the life expectancy and health conditions of many urban dwellers, although to some extent improvements have been nullified by massive immigration from rural areas to cities.

These policies have, however, been substantially less successful in meeting the health needs of rural people, who continue to compose the majority of the Senegalese population. The urban bias, common to many underdeveloped countries, which characterizes health care in Senegal derives not only from the proportion of urban residents but also from the predominance in urban areas of business and government personnel and infrastructure associated with the export sector. Health insurance schemes exist, for example, for private sector employees and for civil servants, while on the whole rural farmers are dependent upon family and kinship networks for financial assistance in matters of health.

The disadvantaged position of rural dwellers is increased by the primarily urban character of the medical profession, its professional orientation and controls on the practice of medicine, and the price, shortage, monopoly structure, and channels for distribution of drugs and pharmaceutical products. Only recently, with the establishment of the family health journal Famille et Développement, has a sustained effort been made to disseminate fairly widely information concerning public health except through elementary schools.

A final point which emerges from this survey is that Senegal lacks a comprehensive policy designed to reduce mortality. Such a policy must include public health measures designed to affect the living conditions of the mass of the population and also a coherent national plan concerning nutrition, land use, food production, and preservation of the natural and social environment. To date, Senegal's policies in these matters have emerged gradually and largely in an ad hoc fashion.

CHAPTER THREE

LEGISLATION AFFECTING MIGRATION

The distribution of population has been a continuing problem in Senegal at least since independence, and numerous studies have been devoted to internal migration. Recent research suggests the importance of political and administrative factors in influencing migration (Parkin 1975:3) and the necessity of understanding migratory phenomena in the framework of a country's specific development strategy and the international economic context (Amin 1974:28). Although a detailed exposition of the last two factors lies outside the scope of this monograph, Senegal's export-oriented development strategy, the structural characteristics of its economy, and the associated distribution of political and economic power supply the fundamental domestic influences upon migration in Senegal. The external orientation of cash agriculture and industry, the continuing dependence upon France and foreign domination of the economy, and the penetration of capitalism into rural areas have resulted in high rates of migration within Senegal and a substantial outflow of labour to other countries, particularly France. This pattern of population movement occurs within and is enhanced by a framework of extremely diverse legislation.

This chapter first discusses legislation concerning nationality. It then considers the civil registry system, one of the purposes of which is to provide an inventory of the location of people and major changes in their legal status. A following

brief section notes the relative lack of limitation on internal population movements. This lack of restrictions is among the aspects of Senegalese policy which facilitates the movement of population within a development strategy designed to provide relatively cheap labour to the largely foreign-dominated export section. Four subsequent sections of the chapter consider legislation which, together with the organization of public health, tends to enhance internal migration and to accentuate a maldistribution of population. These sections concern taxation, employment, housing, and education, respectively. The next section examines certain rural development policies designed partly to remedy this imbalance. Two final sections of the chapter consider immigration into Senegal and emigration from Senegal, respectively.

A. NATIONALITY

Like French law, Senegalese law (DeCottignies and de Biéville 1963, Zatzépine 1963, Thiam 1953) adopts nationality as a primary criterion of personal status. Attribution, acquisition, and loss of Senegalese nationality as well as conflicts and proof of nationality are regulated by Law no.61-10 of March 7, 1961,¹ and subsequent legislation. Senegalese nationality may be acquired by birth, by marriage or filiation, or by naturalization.²

Senegalese nationality is attributed by jus sanguinis to an individual born in Senegal of an ascendent, either father or mother, born in Senegal (art.1, al.1). Such filiation is to be proved by the laws and customs in force in Senegal (art.6, al.1), that is, by civil registry, supplementary judgments, or witness. In view of existing deficiencies of these modes of proof, a presumption of Senegalese nationality jure soli applies to any person who habitually resides in Senegal and who has been at all times in possession of Senegalese status, i.e., who continuously and publicly acts as a Senegalese national and has been continuously and publicly considered as such by the Senegalese authorities and population (art.1, als.2, 3). Senegalese nationality is attributed also to a legitimate child of a Senegalese father or to a legitimate child whose mother is Senegalese and whose father lacks nationality or is of unknown nationality (art.5(1)(2)).

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1. Loi no.61-10 du 7 mars 1961 déterminant la nationalité sénégalaise (RLJ 1961, p.103; JORS 1961, p.351,) to which citations by article refer.
 2. The general organization of this presentation of Senegalese nationality law is borrowed from Michel Alliot 1968-69:8-21.

Senegalese nationality may be otherwise attributed to a person by jus soli only if such nationality is not attributed on the basis of jus sanguinis. In addition to the presumption above, a newly born child found on Senegalese soil and of unknown parents is attributed Senegalese nationality on this basis. However, such a person ceases to be Senegalese if during minority his or her filiation is established with respect to a non-Senegalese and if the law of that parent's state attributes to the child the non-Senegalese nationality of the parent (art.3).

In specified instances nationality may be acquired after birth by marriage or filiation. Marriage does not affect the nationality of the husband, but a non-Senegalese woman who marries a Senegalese man acquires Senegalese nationality as of the celebration of the marriage. Such acquisition is subject to opposition by the Senegalese Government within a specified period.³ If her personal law permits her to retain her nationality, a woman may, prior to the celebration of the marriage, decline Senegalese nationality. A marriage celebrated according to customary law does not give rise to acquisition of Senegalese nationality unless the marriage is duly registered (art.7).

A legitimate child of a Senegalese mother and a non-Senegalese father may, between the ages of 18 and 21, opt for Senegalese nationality (art.8(1)). In addition, Senegalese

3. Loi no.70-31 du 13 octobre 1970 modifiant et complétant les articles 2, 7 et 22 de la loi no.61-10 du 7 mars 1961 déterminant la nationalité sénégalaise, art.2, (RASERJ 1970, p.248; JORS du 19 octobre 1970, p.1005). See L.Niang 1971a.

nationality is attributed to (a) a natural child whose parent with respect to whom the child's filiation is first established is Senegalese and (b) a natural child whose parent with respect to whom filiation is first established is without nationality or of unknown nationality and whose other parent, with respect to whom filiation is then established, is Senegalese (art.5(3)(4)). A natural child whose filiation is first established with respect to a non-Senegalese parent and then with respect to a Senegalese parent is permitted between the ages of 18 and 21 to opt for Senegalese nationality (art.8(2)). In addition, a natural child legitimated during minority acquires Senegalese nationality if the child's father is Senegalese, as does a child adopted under plenary adoption if the adopting father is Senegalese (art.9).⁴ In certain cases Senegalese nationality may also be acquired by an unmarried minor child whose surviving parent acquires Senegalese nationality (art.10).

Acquisition of Senegalese nationality by naturalization is permitted to a person who has habitually resided in Senegal for ten years. The required time period is reduced to five years for a non-Senegalese man married to a Senegalese woman, for persons who have rendered specified exceptional services to Senegal (art.11-12),

4. Loi 61-10, art.9, al.2, provides for this eventuality in the case of legitimated adoption, previously allowed under the French Civil Code, arts.368-370. While this 1961 provision has not been modified to take account of the revision of adoption by the Senegalese Family Code of 1972, the interpretation given in the text presumes that plenary adoption, but not limited adoption, would give rise to this effect. See Family Code, arts.241, 247.

or for persons having served for five years in the Senegal government administration or a Senegalese public organization.⁵

A person may retain Senegalese nationality even after voluntarily acquiring another nationality since, except in specified instances, loss of Senegalese nationality as a result of acquiring nationality of another State is conditional upon Government authorization (art.18). In addition, Senegalese nationality may be renounced (a), upon authorization by decree, by a Senegalese who acquires another nationality and requests renunciation of Senegalese nationality and (b) by a Senegalese woman who marries a foreign national and who, upon celebration of her marriage, renounces Senegalese nationality and is capable of acquiring the nationality of her spouse (arts.19, 20). Persons found guilty of political or other serious crimes or other behaviour prejudicial to the interests of Senegal may be deprived of Senegalese nationality by decree (art. 21). Such deprivation may be extended to the wife and minor children or a person deprived of Senegalese nationality if the wife and minor children were originally of foreign nationality. Persons having acquired nationality under so-called transitional provisions were not subject to deprivation of nationality under this provision.⁶

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5. Loi no.67-17 du 28 février 1967 modifiant les articles 12 et 16 de la loi no.61-10 du 7 mars 1961 déterminant la nationalité sénégalaise (RLJ 1967, p.297; JORS no.3888, 1967, p.577). This statute also provided for reduction of the time period during which a naturalized Senegalese was, under art.16 of the 1961 law, prohibited from employment in the Senegalese public service. See also Circulaire présidentielle no.104 du 14 juin 1967 relative à l'application de la loi no.67-17 du 28 février 1967, modifiant les articles 12 et 16 de la loi du 7 mars 1961 déterminant la nationalité sénégalaise (JORS no.3958 du 29 avril 1968, p.502)
6. Loi no.70-27 du 27 juin 1970 abrogeant et remplaçant l'article 21 de la loi no.61-10 du 7 mars 1961 déterminant la nationalité sénégalaise (RASERJ 1970, p.184; JORS du 18 juillet 1970, p.685)

The 1961 nationality law provided certain transitional measures, according to which members of the Government, deputies of the National Assembly, members of regional assemblies, and municipal councillors not attributed Senegalese nationality on the basis of jus sanguinis were entitled to opt for Senegalese nationality within a month of entry into force of the law if they had established a definitive domicile in Senegal (art.28). An option of Senegalese nationality, to be exercised within three months of the entry into force of the law, was also granted to (a) nationals of former French West Africa, former French Equatorial Africa, Togo, Cameroon, and Madagascar, (b) a person married to a Senegalese woman for at least five years, and (c) to nationals of States bordering Senegal, who had established definitive residence in Senegal (art.29, 30).

In 1962, Senegalese nationals over 15 years of age were required to have a national identity card valid for ten years in the first instance and subject to renewal.⁷ Replacing the previous identity card and granted upon presentation of a copy of the applicant's birth certificate or supplementary judgment replacing the birth certificate or of a certificate of Senegalese nationality, the card certified the Senegalese nationality of the holder.⁸

7. Loi no.62-14 du 20 février 1962 instituant une carte nationale d'identité (RLJ 1962, p.77; JORS 1962, p.377))

8. Décret no.62-075 M.INT.-AP.A. du 27 février 1962 portant fixation du modèle de la carte nationale d'identité, de son libellé, des conditions de sa délivrance et de son renouvellement (RLJ 1962, p.109; JORS 1962, p.470); Arrêté ministériel no.8853 M.INT.-CAB.-C.T. du 14 juin 1965 déterminant les modalités selon lesquelles est effectué l'échange des cartes d'identité délivrées antérieurement au 1 mai 1962 (RLJ 1965, p.394; JORS 1965, p.759)

Senegalese nationals abroad are required to register at the Senegalese embassy, consulate, or diplomatic mission of their country of residence.⁹ Changes in the family situation of Senegalese nationals abroad must also be registered. Legitimate children born outside Senegal of Senegalese nationals residing abroad must, in order to register, show a birth certificate and proof of the father's Senegalese nationality, while illegitimate children born outside Senegal of Senegalese nationals residing abroad must provide a birth certificate, a certificate of recognition by a Senegalese father or mother unless such recognition is provided by marginal notation in the birth certificate, and proof or declaration that prior to the recognition the child held no other nationality.¹⁰

Senegal has ratified the Protocol concerning the Acquisition of Nationality annexed to the Vienna Convention of April 18, 1961.¹¹

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9. Décret no.61-394 M.A.E. du 4 octobre 1961 portant institution et réglementation de l'immatriculation des ressortissants sénégalais (RLJ 1961, p.647; JORS 1961, p.1525)
 10. Arrêté ministériel no.3617 A.A.C.-C.D. du 2 mars 1962 fixant les détails d'application du décret no.61-394 du 4 octobre 1961 portant institution et réglementation de l'immatriculation des ressortissants sénégalais à l'étranger, arts. 4, 5 (RLJ 1962, p.136; JORS 1962, p.557)
 11. Loi no.61-60 du 28 septembre 1961 autorisant le Président de la République à ratifier la convention de Vienne du 18 avril 1961 sur les relations diplomatiques ainsi que le protocole annexe concernant l'acquisition de la nationalité (RLJ 1961, p.605; JORS 1961, p.1470)

B. THE CIVIL REGISTRY SYSTEM

Of laws concerning personal status, legislation establishing an état civil or civil registry¹² is administratively most thoroughly interwoven with distribution of population. Prior to Senegalese independence, French colonial authorities recognized the administrative importance of a civil registry system. In view of the practical impossibility of establishing in West Africa a system such as that in operation in France, they resorted to a number of devices designed to serve some of the purposes of a civil registry (Decottignies 1955). These administrative purposes were modified by the law of August 2, 1950, which, in France, provided for a general census of the population. As applied in the then colonies, the 1950 law broadened the conception of the purposes of a census, previously limited to a means of determining the tax base, and led to subsequent local legislation providing that the purpose of a census was to correct or to supplement the civil registry.¹³ The continued convergence of purpose of a civil registry system and the Senegalese census of the population, postponed from 1974 until 1976, was indicated by their being expressly

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12. The general model for the organization of civil registry system in Senegal is supplied by France, where "A person's état civil is the group of complex qualities or attributes by which he is principally characterized as a subject of capacities and rights--his nationality, age, parentage, adoption, emancipation, status in respect of marriage, subjection to interdiction and so forth. The actes de l'état civil are the official and therefore authentic records of such of those facts as the law requires to be recorded." (F.H. Lawson, A.E. Anton, and L. Neville Brown 1967:37)
13. See Decottignies 1955:74-76. The 1950 local statute is Arrêté Général no.4602 A.P. du 16 août 1950, réglementant l'état civil des personnes régies par les coutumes locales (JOAOF 1950, p.1306), modifié par AGG. no.8948 A.P. 1 du 8 décembre 1953 (JOAOF 1953, p.2105) et par AGG. no.92 A.P. du 8 janvier 1955 (JOAOF 1955, p.171), lui-même modifié par AGG. no.2994 A.P. du 21 avril 1955 (JOAOF 1955, p.811). The text as modified may be found in Courant 1953.

linked through the Ministry of the Interior. The civil registry system complements the census by permitting registration of vital statistics and providing information concerning population growth and distribution.

Prior to 1960 the civil registry system in Senegal was characterized by three factors. First, in most cases it was not unified. The duality of the system was congruent with the duality of civil status inherent in the existence of two hierarchical court systems (Diarra 1973:85-139; Chabas 1954, 1955). The Order of August 16, 1950, established a civil registry system for Africans then 'governed by customary law,' while allowing Africans residing in the communes of Dakar, Saint-Louis, and Rufisque to continue to register births and deaths in the European civil registry. Secondly, registration remained a matter of individual discretion. With several exceptions, Africans were permitted but not required to use the registry system. The principal exceptions were Africans employed in occupations ancillary to the colonial administration, such as the army, civil service, or provincial, cantonal, or village chieftainships, who were required as of 1933 to register births and deaths. Such registration was from 1950 also obligatory for Africans residing in or within a radius of ten kilometers of urban centres where a civil registry was located. Thirdly, registration was limited to a narrower range of acts than in France. Only births, deaths, and marriages could be registered: registration of adoption and of recognition of children was not permitted.

In 1961 Senegal established a unified civil registry system

in which registration of births, marriages, and deaths was mandatory.¹⁴ This system was revised in 1972 to take into account the reform of family law and is now based on Book I, Chapter IV, of the Family Code.¹⁵ Personal status is established and may be proved only by civil registry records. All births, marriages and deaths are required to be registered in legal form at either a principal or secondary registry (Family Code, arts. 29, 30, 31). A wide range of persons are entitled to register births and deaths (art. 51, al.2; art. 67, al.2.) Failing other registration, village chiefs or ward delegates are required to report births and deaths (arts. 51, al.3; art. 67, al.3), and are subject to a fine for failure to report (art. 33, al.2). The intervention of a civil registry official is obligatory in both types of marriage permitted under the Code (art. 60). Provision is also made for registration of recognition of natural children (art. 57) and plenary adoption and for marginal notation of limited adoption (art. 58).

Four types of sanctions are provided in an attempt to insure proper registration and to encourage registration. First, civil registry officials are liable for a civil fine in case of a failure, involuntary or voluntary, to maintain the registers properly (art. 50). Second, a person who knowingly makes false declarations with respect to the establishment of a birth certificate is

14. Loi no.61 55 du 23 juin 1961 tendant à la création d'un état civil unique et à sa réglementation (RLJ 1961, p.423; JORS 1961, p.1088)

15. Loi no.72-61 du 12 juin 1972 portant Code de la Famille (JORS du 12 août 1972, p.1295; also published as a separate brochure at Rufisque, Imprimerie Nationale, 1972)

punishable by two months to two years in prison and a fine of 20,000 to 100,000 francs (art. 59). Thirdly, the Criminal Code provides penalties for persons failing to report certain events to a civil registry official or for persons who otherwise obstruct the operation of the registry. For example, a person who hides an infant or who substitutes one infant for another is punishable by imprisonment of five to ten years (Criminal Code, art. 338). A person present at the delivery of a child who fails to declare the child's birth as required by the Family Code is punishable by imprisonment of one to six months and a fine of 20,000 to 75,000 francs (art. 339). The same penalty is to apply to a person who, having found a newly born infant, fails to notify the civil registry officer (art. 340, al.1). Finally, failure to comply with civil registry requirements may result in a person being deprived of a benefit to which he or she is otherwise entitled, since production of birth certificates, marriage certificates, or other documents are required for entitlement to family allowances, maternity benefits, and other welfare payments. The administrative structure and model forms for the civil registry system are established by legislation.¹⁶

16. With respect to the principal registry offices, see the legislation listed in République du Sénégal 1969a:261, n.1. With respect to secondary centres: Arrêté 4620 M. INT.-A.P.A. du 21 mars 1962 portant création des centres secondaires d'état-civil et désignant des officiers d'état civil (JORS 1962, p.600). Arrêté 7710 M. INT.-A.P.A. du 3 juin 1966 complétant l'arrêté 4620 M.INT.-A.P.A. du 21 mars 1962 (RLJ 1966, p.410; JORS, 1966, p.689); Arrêté 12725 M.INT.-A.P.A. du 5 septembre 1966 complétant l'arrêté 4620 M.INT.-A.P.A. du 21 mars 1962 (RLJ 1966, p.614; JORS 1966, p.1285); Arrêté 16264 M.INT.-A.P.A. du 22 novembre 1966 complétant l'arrêté 4620 M.INT.-A.P.A. du 21 mars 1962 (RLJ 1966, p.889; JORS 1966, p.1660). See also Décret no.72-1521 du 29 décembre 1972 fixant le modèle des registres et de certains formulaires de l'état civil (JORS no.4275 du 3 février 1973, p.336).

In spite of the provision of civil and criminal sanctions for failure to use the civil registry, the creation of an effective civil registry system in Senegal will undoubtedly be only gradual. In 1973 Senegal had 617 civil registry offices, including 120 principal centres in urban areas and 497 secondary centres in which school teachers fulfilled the functions of registry officials. Secondary centres operated normally only during the school year. On the average, only about 34% of all acts registered were notified to the central government. Registered acts accounted, in turn, for a relatively small proportion of all acts required to be declared. In 1973 an estimated 29% of all births and 13% of all deaths outside the Cap-Vert Region were declared to civil registry officials (République du Sénégal 1974c:7-14).

C. LIMITATIONS ON INTERNAL POPULATION MOVEMENT

Neither the registry system nor other legislation substantially inhibits internal population movements. The Constitution, art.11, provides that "All citizens of the Republic have the right to move and to establish residence freely within the territory of the Republic of Senegal. This right may be limited only by law." In principle, Senegalese nationals moving within Senegal are required to declare to local authorities changes of domicile which may then be noted on their national identification card.¹⁷ Immigrants are

17. Loi no.62-14 du 2 février 1962 instituant une carte nationale D'identité art. 4 (RLJ 1962, p.77; JORS 1962, p.377)

required to report changes of residence.¹⁸ The requirements are rarely observed in rural areas or by migrants, whose movements may be known primarily through tax records if at all.

D. TAXATION

The system of taxation in Senegal is complex (see Gautron and Rougevin-Baville 1970, International Bank for Reconstruction and Development 1974:165-230) and is inherited largely from France. Taxes include direct and indirect taxes. The numerous types of direct taxes may be divided into taxes on income and other taxes. Taxes on income include impôts cédulaires, in which income is taxed according to origin, and the general income tax. Senegal has four forms of impôts cédulaires: (a) tax on industrial and commercial profits (B.I.C.); (b) tax on income from non-commercial professions (B.N.C.); (c) tax on income from capital and other personal property (I.R.C.M.); and (d) tax on construction (propriétés bâties). The numerous forms of indirect tax may be classified as taxes on business transactions (taxe sur le chiffre d'affaires, T.C.A.), sales taxes, import and export taxes, and registry and stamp duties. Those most relevant to migration concern taxes which influence the location of enterprises, for they therefore determine the location of employment possibilities and influence the distribution, either permanent or temporary, of population.

18. Décret no.71-860 du 28 juillet 1971 relatif aux conditions d'admission, de séjour et d'établissement des étrangers, art.28 (RASERJ 1971, p.309; JORS, 28 août 1971, p.796)

In this respect the most important tax provisions are contained in the Investment Code, enacted in 1962 and revised in 1965 and 1972.¹⁹ The Code guarantees free repatriation of capital and earnings on capital to foreign investors and grants special advantages to certain types of enterprises. Individual or corporate enterprises, regardless of nationality, which are duly established in Senegal and exercise an agricultural, industrial, touristic, or research activity may qualify for tax benefits as a priority enterprise if they invest a minimum of 100 million francs over a three-year period or if, within the first year of operation, they create a minimum of 50 permanent jobs for Senegalese employees. Article 12 of the Investment Code provides as follows:

Apart from the advantages inherent in the common law tax and customs clauses, all or part of the following advantages may be granted to priority firms:

1) Exemption, for a period of three years, of dues and taxes levied on entry on material and equipment neither produced nor manufactured in Senegal the importing of which is essential to the implementation of the program accepted;

--exemption, for a period of five years from date of entry into force of the regime granted, of dues and taxes levied on entry on spare parts recognizable as appertaining to the equipment referred to in the previous paragraph;

2) Exemption of transfer duties on purchase of land and buildings situated in Senegal other than in the Cap-Vert region;

3) Exemption of tax on turnover the firms would have to pay arising from the transactions necessary to carry out the accepted program, or from transactions with firms regularly established in Senegal concluded for the same reasons;

19. Loi no.72-43 du 12 juin 1972 portant Code des Investissements (JORS no.4231, 1972, p.995, published as a separate brochure in French, English, German, and Arabic by Les Nouvelles Editions Africaines, Dakar, 1973 (English text quoted). See also Niane 1974; International Bank for Reconstruction and Development 1974:159-161, 202-205, 212-214

- 4) Granting of a reduced standard charge for imports of raw materials not produced in Senegal but necessary to run the firm;
- 5) Granting of exemption of fiscal tax in the same conditions;
- 6) Reduction or exemption of land, mining or forest dues;
- 7) Exemption of dues and taxes levied on exported products;
- 8) Partial protection against foreign imports, with the proviso of a guarantee of quality and price and taking into account conventions or agreements accepted by Senegal;
- 9) Expropriation for public utility reasons;
- 10) Transfer, rental or transfer of assets on building or land belonging to the State.

Additional tax benefits are provided for investments in tourism (art.13) and agriculture (art.14). Such benefits include exemption from the B.I.C. for five years from the first profits if the firm in question has most of its installations in the Cap-Vert region and for eight years if most of the firm's installations are outside the Cap-Vert region.

To the extent that incentives to invest outside the Dakar region are successful, tax benefits may contribute to a decrease in migration to the capital city and result in a more balanced distribution of population. As of 1972, however, such incentives for decentralization had not proved effective (République du Sénégal 1972b: 160-169). Moreover, despite incentives to encourage Senegalese enterprise, a World Bank study reported in 1974 that foreign investors were the recipients of most tax benefits and concluded that the costs to Senegal of such incentives outweighed their advantages (International Bank for Reconstruction and Development 1974:205, 212-214). Recently Senegal extended tax benefits to foreign industries in a

new project which sought to attract investment to the Dakar area. Opting for a change in development strategy from import substitution based on light industry to export manufacturing (Africa 1976a), Senegal established a trade and processing free zone at the Dakar port.²⁰ Enterprises which invested a minimum of 200 million CFAF and created at least 150 jobs for Senegalese are to benefit from complete exemption from duties on imported capital goods, raw materials, and finished or semi-finished products; freedom of capital transfers; exemption from export duties and taxes; advantageous rents; government grants in some instances; and cheap labour (see Anson-Meyer 1974:28-29, Africa 1976a, Jeune Afrique 1976).

E. EMPLOYMENT

Labour relations in Senegal have been the subject of extensive statutory regulation since the early 1950's. The 1952 colonial Labour Code, "one of the last monuments of assimilationist policy" (Pfeffermann 1968:94-95), provided the inspiration for the 1961 Senegal Labour Code and much other legislation with respect to labour protection and employment standards.

Following independence the Senegalese government inherited wage-determination mechanisms and policies adopted during the colonial period and patterned on those of metropolitan France (Pfeffermann 1968:116). A system of minimum wage rates (SMIG), introduced

20. Décret no.74-556 du 7 juin 1974 déclarant d'utilité publique le projet de création d'une zone franche industrielle à Dakar et désignant les immeubles nécessaires à la réalisation de la première tranche de ce projet (JORS no.4362, 22 juin 1974, p.922)

in Africa in 1925, was continued by the 1952 Labour Code and subsequently by Senegalese legislation. The legal minimum wage is payable to unskilled workers. Collective agreements in particular economic sectors may establish higher wage scales for the specific sectors covered by the agreements. The minimum wage includes not only basic salary but also payments in kind and various supplements. Elements of salary not considered in the determination of minimum wage rates may include indemnities, benefits, and payments in kind provided by the Labour Code and applicable collective agreements.

The Senegalese Labour Code²¹ provides that "for equal conditions of work, professional qualification, and productivity, salaries are equal for all workers regardless of origin, sex, age, or status" (art.104). This article has been interpreted to exempt workers less than 18 years old from the minimum wage requirement on the ground that the specified conditions in the case of such workers differ from those for other workers (Gonidec 1966:251-252). The minimum wage is established by decree following consultation of the National Consultative Council for Labour and Social Security (art. 109, al.1). The hourly minimum wage for industrial workers on a 40-hour week in Senegal has since 1963 to September 1974 increased as follows: January 1, 1963: 44 CFA; July 1, 1968: 50.60 CFA; August 1, 1973: 58.19 CFA; February 1, 1974: 66.91 CFA.²² In

21. See Code du Travail du Sénégal (Loi no.61-34 du 15 juin 1961, modifiée), mise à jour au premier juin 1974 par Charles F. Brun (Dakar, Librairie Clairafrique, 1974)

22 See Banque Centrale des Etats de l'Afrique de l'Ouest 1974. Legislation includes Décret no.61-291 P.C.-M.F.P.T.-D.T.L.S. due 18 juillet 1961 fixant les salaires minima interprofessionnels garantis (RLJ 1961, p.457) Décret no.68-742 du 1 juillet 1968 fixant les salaires minima interprofessionnels garantis (RLJ 1968, p.182) Décret no.74-201 du 5 mars 1974 fixant les salaires minima interprofessionnels garantis (JORS, no.4368, 25 mars 1974, p.461)

late 1974 the minimum wage was increased. Regulations distinguish employees in the agricultural sector from those in other sectors. In 1968, for example, the hourly wage for an agricultural labourer was fixed at 43.85 FCFA, while that for non-agricultural labourers was 50.60 FCFA. In the absence of collective agreements or in cases in which such agreements do not establish minimum wages for employees governed by them, the Labour Code empowers the Minister of Labour and Social Security, after consulting the National Consultative Council on Labour and Social Security, to establish professional categories or job classifications and corresponding minimum salaries (art.109, al.2).²³

The work week in enterprises under the Labour Code is limited to 40 hours per week, except for agriculture, for which a maximum number of hours per year is specified. Overtime pay must be paid for hours in excess of the legal minimum (art.134). Night work is regulated. Women and children are entitled to eleven consecutive hours of rest per day (art.135). Workers are entitled to paid holidays under specified conditions, and female employees are

23. The amount of legislation with respect to salaries of private and public sector employees in Senegal is immense. No useful purpose would be served by detailed references to such legislation here. A list of such legislation until 1970 may be found in République du Sénégal, 1972a. Much of the vast legislation with respect to working conditions in specific enterprises and types of employment is listed in République du Sénégal 1972. See also the Code du Travail du Senegal (Loi no.61-34 du 15 juin 1961, modifiée), mis à jour au premier juin 1974 par Charles F. Brun (Dakar, Librairie Clairafrique, 1974) for such legislation as of June 1974.

entitled to an additional day of vacation per year for each child aged less than 14 years who is registered in the civil registry. (art.143). Special regulations apply to day and seasonal workers.²⁴

Since 1967 the Ministry of Civil Service and Labour has been responsible for implementing government policy regarding the civil service, work and the labour force, and social security.²⁵ Among the administrative organs attached to the Direction du Travail et de la Sécurité Sociale²⁶ within this Ministry is the Service de la Main d'oeuvre established in 1962 to foster optimum organization of the labour market and full employment.²⁷ Its responsibilities

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24. Décret no.70-180 du 20 février 1970 fixant les conditions particulières d'emploi du travailleur journalier et du travailleur saisonnier (RASERJ 1970, p.27; JORS 1970, p.253); Circulaire no.00350 M.F.P.T.-C.A.B.-D.T.S.S. du 22 janvier 1971 relative à la mise en application de la réforme du régime d'emploi des travailleurs journaliers, intervenue en février 1970 9 JORS, 27 février 1971, p.197); Décret no.72-170 du 29 février 1972 abrogeant particulières d'emploi du travailleur journalier et du travailleur saisonnier (JORS 1972, p.406)
 25. Décret no.67-1105 du 6 octobre 1967 portant organisation du Ministère de la Fonction publique et du Travail (RLJ 1967, p.764; JORS no.3923 du 21 octobre 1967, p.1518) and Décret no.70-095 du 27 janvier 1970 modifiant le décret no.67-1105 du 6 octobre 1967 portant organisation du ministère de la Fonction publique et du Travail (RASERJ 1970, p.19; JO du 21 février 1970, p.204)
 26. Décret no.62-0116 P.C.-M.F.P.T.-D.T.S.S. du 21 mars 1962 fixant les modalités d'organisation et de fonctionnement des services du travail et de la sécurité sociale (RLJ 1962, p.200; JO 1962, p.610)
 27. Décret no.62-0146 P.C.-M.F.P.T.-D.T.S.S. du 11 avril 1962 organisant le service de la main-d'oeuvre (RLJ 1962, p.375; JO 1962, p.708). This service absorbed the analogous service established by arrêté local no.3440 du 5 juin 1954 (JO ref. not known). Its functions were specified in more detail by Arrêté ministériel no.7109 M.F.P.T.-D.T.S.S. du 24 avril 1962 relatif au fonctionnement du service de la main-d'oeuvre (RLJ 1962, p.399; JO 1962, p.841) and Arrêté ministériel no. 7600 M.F.P.T.-D.T.S.S.-T.M.O. du 22 mai 1963 modifiant l'arrêté no.7109 M.F.P.T.-D.T.S.S.-T.M.O. du 24 avril 1962 relatif au fonctionnement du service de la main-d'oeuvre, et portant institution de l'immatriculation, sous une série unique, de la main-d'oeuvre salarié (RLJ 1963, p.393; JO 1963, p.839), and were modified in 1967 by Décret no.67-1359 du 9 décembre 1967 abrogeant et remplaçant les articles 25 à 30 du décret no. 62-146 du 11 avril 1962 organisant le service de la main-d'oeuvre (RLJ 1967, p.849, JO no.3932 du 23 décembre 1967, p.1752)

include inter alia registering workers and issuing work permits, maintaining information on labour movement, and helping labourers to find suitable work and employers to find suitable workers. A central office and regional sub-offices were established. The Service de la Main-d'Oeuvre has sole authority for opening labour exchanges. The opening of any other employment office, whether for profit or not, and the advertising of available jobs without prior registration with the Service are prohibited. Certain enterprises and professions or, in given areas, all employers may be exempted from the administrative authorization required to hire workers.²⁸ Employers are required to report hiring, changes of address and family situation, and termination of employment of all workers except (a) those hired by the hour or by the day and (b) unskilled labourers in all branches of activity.²⁹ Requirements for pay slips were instituted in 1968.³⁰ The annual declaration by employers

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28. Loi no.65-66 du 19 juillet 1965 modifiant l'article 199 du Code du travail et instituant l'autorisation administrative préalable pour tout engagement de travailleurs (RLJ 1956, p.470; JO 1965, p.891). See Arrêté ministériel no.75 M.F.P.T.-D.T.S.S. du 4 janvier 1968 fixant, en application de l'article 99 nouveau du Code du Travail, la liste des départements, professions et états leasements, exemptes de l'obligation de l'autorisation administrative préalable pour tout engagement de travailleur (RLJ 1968, p.22; JO 1968, p.97)
29. Arrêté ministériel no.7301 M.F.P.T.-D.T.S.S.-T.M.O. du 17 mai 1963 déterminant les modalités des déclarations de mouvements de travailleurs (RLJ 1963, p.378; JORS 1963, p.835). See also Chambre de Commerce, d'Industrie et d'Artisanat de la Région du Cap-Vert 1974:49-51.
30. Arrêté ministériel no.973 M.F.P.T.-D.T.S.S. du 23 janvier 1968 portant institution d'un bulletin de paie et d'un registre des paiements (RLJ 1968, p.327)

of all employees except non-salaried family members or household help was made obligatory in 1962.³¹ Also attached to the Ministry of Civil Service and Labour was the Commission on Unemployment and Underemployment, established in 1961 to study unemployment and propose means of alleviating it.³² A national committee of government, employers, and workers on salary, price and employment policy was established in 1975.³³

In contrast to private sector employees under collective agreements, civil servants are regulated by the General Civil Service Act and legislation taken thereunder to govern specific groups of civil servants.³⁴ Other public employees are regulated by the

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31. Arrêté ministériel no.15822 M.F.P.T.-D.T.S.S.-T.M.O. du 19 septembre 1962 déterminant les modalités de la déclaration annuelle de la situation de la main-d'oeuvre (RLJ 1962, p.719; JO 1962, p.1698)
32. Décret no.61-245 P.C.M.-M.F.P.T.-D.T.L.S. du 9 juin 1961 portant institution d'une commission de chômage et du sous-emploi (RLJ 1961, p.381; JOS 1961, p.950)
33. Décret no.75-114 du 23 janvier 1975 portant création d'un comité national de concertation entre le Gouvernement, les employeurs et les travailleurs (JORS no.4404, 15 février 1975, p.184)
34. The general Act is Loi no.61-33 du 15 juin 1961 relative au statut général des fonctionnaires, op.cit., modified by: Loi no.65-12 du 4 février 1965 modifiant les articles 63, al.2 et 71 de la loi no.61-33 du 15 juin 1961 relative au statut général des fonctionnaires (RLJ 1965, p.111); Loi no.66-04 du 18 janvier 1966 modifiant l'article premier de la loi no. 61-33 du 15 juin 1961 relative au statut général des fonctionnaires (RLJ 1966, p.55; JO 1966, p.145); Loi no.66-05 du 18 janvier 1966 modifiant l'article 99 de la loi no.61-33 du 15 juin 1961 relative au statut général des fonctionnaires (RLJ 1966, p.55; JO 1966, p.145); Loi no.68-01 du 4 janvier 1968 modifiant les articles 22, 29, 43, 44 et 45 et abrogeant l'article 36 du statut général des fonctionnaires (RLJ 1966, p.55; JO 1968, p.43). Loi, no.71-31 du 12 mars 1971 (act as amended published separately at Rufisque, Imprimerie Nationale). Specific groups are regulated by separate statutes.

Labour Code and sometimes by specific statutes.³⁵ Certain other categories of employees, such as dockers,³⁶ domestics and other household help,³⁷ and workers employed by the day or the season,³⁸ are regulated by specific statutes.

Within these categories, expatriate employees, with specific exceptions, and employees of Senegalese nationality or habitually residing in Senegal, who are required by their employer to move from their habitual residence or place of recruitment for employment purposes, are entitled to have transportation expenses paid by the employer (Labour Code, art.150). The employer is responsible for the transportation expenses of the employee, the employee's spouse, and minor children residing with him. Expenses for baggage are also paid by the employer within limits usually specified by the applicable collective agreement.³⁹ The Labour Code, art.151, provides that

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35. Décret no.68-927 du 31 août 1968 modifiant l'article 19 de l'arrêté no.2630 du 29 avril 1954 fixant le statut des auxiliaires (RLJ 1968, p.286; JO no.3986, 14 septembre 1968, p.1126. Unlike civil servants, these employees are together with private sector employees subject to the Labour Code.
36. Décret no.70-181 du 20 février 1970 fixant les conditions particuliers d'emploi des dockers du port autonome de Dakar (RASERJ 1970, p.30; JO 1970, p. 254).
37. Arrêté ministériel no.974 M.F.P.T.-D.T.S.S. du 23 janvier 1968 déterminant les conditions générales d'emploi des domestiques et gens de maison (RASERJ 1970, p.173; JO 1968, p.594); Arrêté ministériel no.3006 M.F.P.T.E.-D.T.E.S.S. du 20 mars 1972 modifiant et complétant l'arrêté ministériel no.974 M.F.P.T.-D.T.S.S. du 23 janvier 1968 déterminant les conditions générales d'emploi des domestiques et gens de maison (JO du 8 avril 1972, p.551). See LeBrun 1972.
38. Décret no.70-180 du 20 février 1970 fixant les conditions particulières d'emploi du travailleur journalier et du travailleur saisonnier (RASERJ 1970, p.27; JO 1972, p.253); Circulaire no.00350 M.F.P.T.-C.A.N.-D.T.S.S. du 22 janvier 1971 relative à la mise en application de la réforme du régime d'emploi des travailleurs journaliers, intervenue en février 1970 (JO du 27 février 1971, p.197)
39. E.g., Convention Collective Fédérale des Industries Chimiques de l'Afrique Occidentale, 12 juillet 1958, Annexe II, art.8 (JOAOF no.2972 du 18 mai 1958, p.1426)

employment contracts or collective agreements may limit to twelve months the period during which the employer is responsible for transportation expenses of an employee and the employee's family.

Since independence Senegal has sought to meet its unemployment problems by a variety of measures, including rural animation and schemes involving youth and training camps and a national civic service for youth within military service.⁴⁰ A Public Works Office

40. Loi no.68-29 du 5 août 1968 instituant un service civique nationale (RLJ 1968, p.250; JORS no.3982 du 17 août 1968, p.1034, rectificatif JORS, 14 septembre 1968); Décret no.68-943 du 31 août 1968 fixant les conditions d'application de la loi no.68-29 du 24 juillet 1968, instituant un service civique national (RLJ 1968, p.275; JORS no.3986, 14 septembre 1968, p.1119). The major legislation concerning the predecessors of the 1968 scheme was: Décret no.59-282 S.E.J.S. du 26 novembre 1959 fixant les conditions d'organisation des chantiers des jeunes volontaires (RLJ 1959, p.199); Loi no.60-02 du 12 janvier 1960 portant création de camps de jeunesse (RLJ 1960, p.215); Décret no.60-35 S.E.J.S. du 26 janvier 1960 organisant le comité directeur des camps de jeunesse (RLJ 1960, p.235); Décret no.60-301 M.J.S. du 1 septembre 1960 fixant les conditions d'organisation des chantiers de jeunes volontaires (RLJ 1960, p.408; JORS 1960, p.915); Décret no.61-060 M.J.S. du 8 février 1961 fixant certaines obligations de camps de jeunesse (RLJ 1961, p.82; JORS 1961, p.258); Décret no.61-146 M.F. du 12 avril 1961 fixant les indemnités des directeurs et des directeurs adjoints des camps de jeunesse (RLJ 1961, p.205; JORS 1961, p.610). Décret no.61-222 M.T.F.P. du 31 mai 1961 fixant les obligations de l'Etat et des camps de jeunesse pour les accidents survenus dans les camps (RLJ 1961, p.272; JORS 1961, p.878); Décret no.62-019 M.J.S. du 23 janvier 1962 portant création et organisation de chantiers-écoles pour la jeunesse (RLJ 1962, p.44; JORS 1962, p.219); Décret no.62-0306 M.J.S. du 31 juillet 1962 modifiant le décret no.62-019 du 23 janvier 1962 portant création et organisation de chantiers-écoles pour la jeunesse (RLJ 1962, p.626; JORS 1962, p.1406); Décret no.65-21 du 9 février 1965 instituant un service civique national de la jeunesse (RLJ 1965, p.139; JORS, 6 mars 1965, p.260); Décret no.65-074 du 10 février 1965 fixant les conditions d'application du service civique national de la jeunesse (RLJ 1965, p.160; JORS 6 mars 1965, p.287)

was organized within the Public Works Ministry in 1967.⁴¹ Policies to date, however, have not assuaged the difficulties (see Costa 1967, Amin 1971:23-64, 185-195, 208-216). Noting that unemployment was growing more rapidly than the total labour force, the 1974 World Bank study concluded that "the solution to Senegal's employment problem necessitates a substantial increase in employment in the rural sector. If employment in that sector continues to increase much more slowly than total population, as a result of the heavy unabated migration to urban areas, the unemployment problem cannot be solved" (International Bank for Reconstruction and Development 1974:56).

Although this quoted observation confuses the issues of distribution and growth of population, it suggests the interrelationship between population movements, rural development policies, and a national strategy of export-oriented capitalist development, most recently evident in the Dakar free zone. This strategy depends on the provision of a supply of relatively cheap labour to the export sector. Labour legislation enhances this process by favouring the creation of a limited, fairly stable group of urban employees of enterprises to whom the Labour Code is effectively applied (see Pfeffermann 1968:95-97). As will be seen, only these workers are also eligible for government housing and payment of family allowances and other benefits. Many workers, even in the urban areas, fall outside the scope of protective legislation (see LeBrun and Gerry 1975). Unskilled peasant migrants, urban petty producers, and

41. Arrêté ministériel no.4756 M.T.P.U.T.-D.T.P. du 22 avril 1967 portant organisation de la Direction des Travaux publics (RLJ 1967, p.372; JORS no.3892, 1967, p.661)

many domestic employees in fact are relatively little affected in any direct way by labour legislation. Their movement to cities occurs within the framework of legislation which facilitates or permits urban concentration of enterprise and accords little priority to self-reliant rural development.

F. HOUSING

Legislation concerning housing potentially affects the movement of population in that the provision or availability of subsidized housing may constitute a factor which, among others, induces people to move from one part of the country to another or, once moved, to remain there in order to benefit, immediately or in the future, from available housing. Some housing benefits also vary according to family size and therefore potentially have indirect consequences for population growth. This section concentrates primarily on the provision of housing potentially bearing on population mobility, though variations in benefits according to family size are mentioned also. It considers the administrative and legal framework of urban housing policy, the provision of subsidized housing to specific groups of people, and public housing programmes.

An Urban Code in Senegal was first promulgated in 1964.⁴² In conjunction with the reorganization of the Office of Moderate Income Housing (OHLM) in 1966-67, the Urban Code was abrogated and

42. Loi no.64-60 du 25 juillet 1964 portant Code de l'urbanisme (RLJ 1964, p.535; JO 1964, p.1058)

replaced, and a detailed regulatory part of the Code was promulgated.⁴³ Both the 1964 and 1966 Codes had as their stated purpose "the creation, through national land use [planning], of a standard of living for the entire population which encourages its harmonious development in the physical, economic, cultural, and social domains" (art.1 of both codes). The primary purpose of the revised Urban Code, supplementary to the 1964 Law on the National Domain, was to give the government increased powers to control urban land use during the period of drafting, revision, and application of urban plans. An advisory National Urban Council and an urban council for each region were established. The National Urban Council included as members the Minister of Public Health and the Directors of Land Management, of the OHLM, and of the Société Immobilière du Cap-Vert (SICAP), a mixed public-private housing corporation. It was entrusted inter alia with responsibility for studying goals of urban land use, housing policy, and the adaptation of urban planning and architecture to social and cultural needs.

Urban land transactions continued, as since 1964, to be subject to administrative authorization. The revised Code provided in addition for the possibility of a temporary postponement of decisions on building applications, a general suspension of up to five years on the issuance of building permits, and partial or total bans on construction in specified zones for as long as fifteen

43. Loi no.66-49 du 27 mai 1966 abrogeant et remplaçant le code de l'urbanisme (RLJ 1966, p.383; JO 1966, p.705); Décret no. 66-1076 du 31 décembre 1966 portant Code de l'Urbanisme (partie réglementaire) (RLJ 1966, p.17; JO 1967, p.141)

years. Article 9 of the revised Code provided that no construction of any nature and no modification of any existing structure could be carried out in urban areas grouping more than 5,000 persons or in other designated areas without a building permit granted by administrative authority. All allotment procedures for residential, gardening, or industrial use was subject to urban master plans. Violations of these articles were to be punished by fines of 20,000 to 2 million francs and, in cases of recidivism, of imprisonment of one to six months. A judgment ordering demolition and removal of illegally constructed structures could be rendered executory nonobstant appeal; such demolition and removal was to be carried out by the party charged with violation of the statute or by the administration at the party's expense. Article 14 provided that:

In cases of extreme urgency, in cases of construction on land occupied without right or title, or in cases of constructions of flimsy material (constructions en matériaux précaires), the administration may as of right carry out at the expense of the party to be charged the demolition of the structures and restoration of the area to its former state after having submitted a written description of the structures to be demolished.

These provisions were aimed at facilitating administrative control over the growth of shantytowns.

The regulatory part of the Code provided in detail for the establishment of urban master plans (Titre II). Authorisation of allotment could be refused or granted subject to conditions if the allotment scheme might be hazardous to health or if the lots were of insufficient area. In urban zones and other designated areas construction for housing or other purposes was subject to

grant of administrative permit, which could be withheld if the location posed health problems. Article 106 provided inter alia that "authorization [to construct] must be refused if by their location, dimensions, or exterior construction the buildings or works to be built or modified are such as to jeopardize public health or safety." Other articles specified rules concerning the location of the land upon which construction was proposed (arts. 116-125); controls on construction (arts. 126-172), including building materials (arts. 138-139) and minimum area for dwellings (art.157); and sanitation regulations (arts.173-188).⁴⁴

Within this framework the Government has subsidized housing for certain sectors of the population, though soon after independence it moved to curtail housing and other privileges granted by the French during the colonial period first to expatriate and then to African government employees.⁴⁵ In 1961 the conditions of attribution and occupation of administrative housing as well as salary deductions for housing for government employees were revised by statute.⁴⁶ This statute established the principle that, with the exception of specified employees, the attribution of free housing or an

44. See also Décret no.72-1411 du 12 août 1972 (JORS, 6 janvier 1972 p.7) creating a surveillance committee responsible for controlling unauthorized building and land occupation in the Cap-Vert.

45. The basic legislation was Arrêté ministériel du 26 mai 1937 fixant les règles d'attribution des logements aux colonies (JOAOF 1937, p.729)

46. Décret no.61-125 P.C.G.-M.T.F.P.-CAB. du 23 mars 1961 portant réglementation des conditions d'attribution et d'occupation des logements administratifs (RLJ 1961, p.183; JOS, 1961, p.497)

equivalent housing allowance was not a matter of right for government employees. Whether or not employees were supplied housing by the Administration depended on the housing supply in the area of employment; persons (excepting those entitled to housing as of right) who owned housing within 25 kilometres of their assigned work or had received a loan for the construction of housing were not eligible for housing in any case. When demand exceeded supply in any given area, housing was to be allocated according to family situation, i.e. marital status and number of children, of the employees and the length of time during which the employees had not been housed in government housing. Salary deductions for housing were increased, advantages such as paid water, gas, electricity, and domestic servants were practically eliminated, and conditions with respect to furnishing and occupation of the housing were made more restrictive than had been the case prior to independence.

The number of government employees entitled to housing as of right was further restricted in 1963⁴⁷ to the members of the Government; Secretary-General of the Office of the Presidency; the First President and the Procurator General of the Supreme Court; the regional governors and their assistants; préfets, their assistants, and chefs d'arrondissement; government employees and magistrates employed by Senegal under bilateral and international technical assistance agreements; contractual agents of the government in cases in which the employer was obligated by the Labour Code to furnish housing; and certain other limited groups of

47. Décret no.63-346 bis du 5 juin 1963 portant réglementation des conditions d'attribution des logements administratifs (RLJ 1963, p.404; JO, 1963, p.830)

of government employees.⁴⁸ The housing indemnity payable to ministers and secretaries of state in case government housing was unavailable was reduced by a subsequent decree.⁴⁹ A separate decree also specified conditions for allocation of government housing to military personnel and provided that only children considered for family allowance purposes and residing with the family head were considered in calculating housing size or an equivalent indemnity.⁵⁰ Certain diplomatic and consular employees abroad were accorded free housing as of 1964.⁵¹ Military personnel serving for a period in addition

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- 48.- Conditions of occupation of government subsidized housing were regulated by Décret no.64-744 du 28 octobre 1964 fixant les conditions d'occupation des logements administratifs (RLJ 1964, p.738; JO 1964, p.1554). Other relevant legislation is: Décret no.65-090 du 15 février 1965 fixant les taux de retenues applicables aux fonctionnaires, magistrats et agents de l'Etat en service dans les différentes Regions autres que celle du Cap-Vert et bénéficiant d'un logement administratif (RLJ 1965, p.181; JO 1965, p.295); Arrêté interministériel no.8980 M.F.A.-S.G.-3-M.F.-D.B. du 17 juillet 1969 unifiant les taux de l'indemnité résidentielle de cherté de vie pour toutes les zones du territoire national
49. Décret no.63-850 du 23 décembre 1963 modifiant le décret no. 63-299 [sic] portant réglementation des conditions d'attribution des logements administratifs (RLJ 1963, p.975; JO 1964, p.62)
50. Décret no.63-527 M.F.A. du 17 juillet 1963 fixant les conditions d'attribution de logement aux militaires chefs de famille (RLJ 1963, p.693; JO 1963, p.1047). Cf. also Décret no.68-011 du 4 janvier 1968 fixant le taux de l'indemnité de logement attribuée aux militaires de la garde républicaine du Sénégal (RLJ 1968, p.17; JO 1968, p.79)
51. Décret no.64-715 du 15 octobre 1964 fixant les conditions de logement de certains fonctionnaires et agents de postes diplomatiques et consulaires (RLJ 1964, p.734; JO 1964, p.1530); Décret no.67-334 du 25 mars 1967 modifiant l'article premier du décret no.64-715 du 15 octobre 1964, fixant les conditions de logement de certains fonctionnaires et agents des postes diplomatiques et consulaires (RLJ 1967, p.314; JO no.3887, p.532)

to the legal requirement are entitled to housing under specified conditions, which vary according to rank. Persons entitled to such housing but for whom housing is not available receive a salary supplement for housing. Calculation of the supplement as well as the allocation of housing if available takes into account "the number of children . . . in fact living under the roof of the head of the family up to the limit of the number of children for whom family allowances may be received."⁵² Legislation has continued the policy of the French colonial administration in granting subsidized housing to certain categories of teaching personnel. Expatriates employed in the private sector are usually supplied housing as part of the employment contract (Seck 1970:102-103; R. Cruise O'Brien 1972:138), while free housing is also provided for foreign technical assistants.⁵³

52. The colonial authorizing legislation is Arrêté Général no.4162 S. ET. du 17 mai 1956, instituant une indemnité en faveur des instituteurs et moniteurs que ne bénéficient pas d'un logement administratif (JOAOF 1956, p.1013), which has been followed by: Décret no.59-86 M.E.C.-CAB. du 24 avril 1959 donnant droit à une certain catégorie du personnel de l'enseignement à la fourniture gratuite du logement, de l'ameublement, de l'eau, de l'éclairage et de la ventilation ou à une indemnité équivalent (RLJ 1959, p.164) and Arrêté interministériel no.14716 M.E.N.-D.T.-1 du 25 août 1962 fixant le montant de l'indemnité compensatrice de logement en faveur des instituteurs et des moniteurs qui ne bénéficient pas d'un logement administratif (RLJ 1962, p.701; JO, 15 septembre 1962, p.1514. See R. Cruise O'Brien 1971, 1972:168-173 for a description of technical assistance in education. The legal basis for technical assistance housing is Décret no.61-125 M.T.F.P.-C.A.B. du 23 mars 1961, art.12(1) (RLJ 1961, p.183; JOS 1961, p.497).

53. Décret no.70-1455 du 31 décembre 1970 fixant les conditions d'attribution de logements aux militaires chef de famille (RASERJ 1970, p.572; JORS 6 février 1971, p.110), modified by Décret no.73-545 du 12 juin 1973 abrogeant et remplaçant les articles 2, 6 et 8, premier alinéa du décret no.70-1455 du 31 décembre 1970 fixant les conditions d'attribution de logement aux militaires chefs de famille (JORS no.4303, 7 juillet 1973, p.1378)

These provisions touched only a small, privileged fraction of the population, even in urban areas, and the rapid growth of Senegal's urban population was accompanied by various broader housing programmes. Such programmes developed especially after World War II, but the possibility of low-cost housing was seriously considered as early as the 1920's. In 1926 the Office des Habitations économiques (O.H.E.) was established to encourage the construction of African housing in Dakar by means of financial guarantees and credit for construction and purchase respectively (Betts 1969: 7-8). However, this Office was a failure and not until the establishment of the Société Immobilière du Cap-Vert (SICAP) in 1949 was any substantial commitment made to housing assistance.

SICAP was established as a mixed public-private corporation with the mandate of improving housing conditions throughout the then French West Africa. In fact its role was to serve as an instrument of the AOF Government-General in attempting to resolve Dakar's housing crisis. Originally capitalized at 100 million CFA francs, in 1951 its capital of 412,900,000 francs, divided into 41,290 shares of 10,000 francs each, was based primarily on public investment. The Government-General held 38,947 shares worth 389,470,000 francs, and its participation in SICAP was comprised almost entirely of buildings located in Dakar and of a total value of 341,300,000 francs. Of the remaining 7% of SICAP shares, most were held by another public body, the Caisse centrale de coopération économique (Seck 1970:27).

The functions of SICAP today are first, to manage and maintain existing housing for government employees and, second, to construct new housing units. By June 1964 SICAP was managing

1,142 units (Seck 1970:105). Construction of new units has been financed by loans from the Caisse centrale de coopération économique and from the Banque nationale de développement du Sénégal; additional funds from the Government and the European Fonds d'aide et de coopération (FAC) are used for infrastructure, sewers, water, etc. Following the post-World War II building boom in Dakar (see R. Cruise O'Brien 1972:66-109) SICAP constructed 7441 units between 1955 and 1968 (Sommer 1972:65). By 1973 it had constructed a total of 8620 units, including 25,196 rooms, at a total cost of 7,971.9 million CFAF (République du Sénégal 1974c:119). These units are divided between rental housing (location simple) and housing available for purchase (location-vente). However, both rents and purchase prices have in the past been so high relative to the average monthly income as to exclude the majority of salaried workers. A 1962 study⁵⁴ showed that a middle class composing 22% of salaried employees occupied 82% of SICAP housing available for purchase. The overall policy of SICAP has more recently been characterized as "to provide housing for middle and upper-income salaried families in an attractive suburban setting" (Sommer 1975:458).

Responsibility for the construction of lower cost housing has therefore fallen since 1960 to the Office des Habitations à Loyer Modéré (OHLM), a financially autonomous public corporation

54. B. Odinet, Les aspects de la politique du logement à Dakar (Ministère du Plan, 1962), cited in Seck 1970:106-107.

established in 1959⁵⁵ along the lines of French legislation on moderate income housing. Funds derive from a 2% deduction from all public and private sector salaries and employer contributions of the same total amount.⁵⁶ Only employees whose salaries are subject to this deduction are eligible for OHLM housing to be allocated on the basis of their family situation, present housing condition, and length of employment with their present employer. Loans for the purchase of OHLM-constructed housing were for ten or fifteen years depending on the monthly income of the purchaser. Up to 20% of moderate income housing constructed by the OHLM could be rented

55. Décret no.59-095 du 11 mai 1959 déterminant les règles d'organisation et de fonctionnement de l'Office des Habitations à Loyer Modéré (official citation unavailable). This statute has been modified by Décret no.64-219 du 20 mars 1964 modifiant le décret no.59-095 du 11 mai 1959 déterminant les règles d'organisation et de fonctionnement de l'Office des Habitations à Loyer Modéré (RLJ 1964, p.157; JO 1964, p.509); Décret no.66-392 du 31 mai 1966 modifiant l'organisation et le fonctionnement de l'Office des Habitations à Loyer Modéré (RLJ 1966, p.404; JO 1966, p.69); Décret no.67-106 du 27 janvier 1967 fixant les règles d'organisation et de fonctionnement de l'Office des Habitations à Loyer Modéré (RLJ 1967, p.138); Loi no.73-36 du 16 juin 1973 relative à l'Office des Habitations à Loyer Modéré (O.H.L.M.) (JORS no.4302, 30 juin 1973, p.1324); Décret no.73-586 du 26 juin 1973 fixant les règles d'organisation et de fonctionnement de l'Office des habitations à loyer modéré (O.H.L.M.) (JORS no.4304, 14 juillet 1973, p.1426)

56. Loi no.60-9 du 11 janvier 1960 portant institution d'un prélèvement sur les salaires et une cotisation des employeurs pour l'aménagement de l'habitat (RLJ, 1960, p.216); Décret no.60-34 M.F. du 26 janvier 1960 fixant les modalités d'application de la loi no.60-9 du 11 janvier 1960 portant institution d'un prélèvement sur les salaires et une cotisation des employeurs pour l'amélioration de l'habitat (RLJ 1960, p.223); Décret no.60-109 M.F. du 9 mars 1960 pris en application des dispositions de l'article 2 de la loi no.60-9 du 11 janvier 1960 portant institution d'un prélèvement sur les salaires et une cotisation des employeurs pour l'amélioration de l'habitat (RLJ 1960, p.252)

rather than sold.⁵⁷ Unlike SICAP, whose activity is limited to Dakar, the O.H.L.M. constructs throughout Senegal. Every urban centre today has at least one OHLM housing complex. Following criticism that in the 1960's construction was based more on political and electoral considerations than on demand or need (Seck 1970:108), since 1970 O.H.L.M. housing in each region has been allocated according to public and private sector quotas determined in proportion to the demand for housing in each sector.⁵⁸ As of 1973, 50% of the total 7,615 OHLM units were located in the Capital region (République du Sénégal 1974c:120).

Despite the fact that the OHLM was established to provide low cost housing and thus cater to a demand for housing emanating from groups lower in income than those supplied by SICAP, several aspects of OHLM policy have restricted its efficacy in this respect.

57. Décret no.61-032 du 17 janvier 1961 déterminant les conditions d'attribution des logements de l'Office des Habitations à Loyer Modéré (RLJ 1960, p.73; JO 1961, p.104). Model sale and lease contracts were approved by Décret no.61-293 M.T.P.H.U. du 18 juillet 1961 portant approbation des contrats-types de vente et de location simple des logements de l'Office des Habitations à Loyer Modéré (RLJ 1960, p.459; JO 1961, p.1228). See also Décret no.62-0148 M.T.P.H.U. du 11 avril 1962 portant modification du décret no.61-032 du 17 janvier 1961 déterminant les conditions d'attribution des logements de l'Office des Habitations à Loyer Modéré et instituant des commissions régionales (RLJ 1962, p.386; JO 1962, p.715); Décret no. 62-0234 M.T.P.H.U.-C.U.H.-O.H.L.M. du 14 juin 1962 portant modification de la composition des commissions régionales d'attribution des logements de l'Office des Habitations à Loyer Modéré, instituées par décret no.62-0148 du 11 avril 1962 (RLJ 1962, p.516; JO 1962, p.1137); Decret no.64-219 du 20 mars 1964 modifiant le décret no.59-095 du 11 mai 1959 déterminant les règles d'organisation et de fonctionnement de l'Office des Habitations à Loyer Modéré (RLJ 1964, p.157; JO 1962, p.509)

58. Décret no.70-534 du 16 mai 1970 abrogeant et remplaçant l'article 3 du décret no.61-032 du 17 janvier 1961 déterminant les conditions d'attribution des logements de l'Office des Habitations à Loyer Modéré (RASERJ 1970, p.138; JO, 13 juin 1970, p.558)

First, access to OHLM housing is restricted to those whose incomes are subject to housing deductions. Secondly, construction has not always been predicated on effective demand, particularly in the early 1960's. Third, certain OHLM-sponsored projects, such as the apartments on the Allées du Centenaire in Dakar, have been criticized as catering to classes of the population which are most able to influence Senegal's political stability rather than to groups most in need of housing. And, fourth, at least until the mid-1960's "the policy of the OHLM has generally been to replace shantytowns by modern housing destined not for the former inhabitants of the displaced slums but for higher income groups, whose access to modern housing rapidly transforms into the same salaried middle class [occupying most SICAP housing]" (Seck 1970:109, also Sommer 1975:449-450). Only with the SICAP project in Grand Dakar, the OHLM renovation of the Dakar Medina and recent housing projects, has public housing policy been oriented toward the provision for former shantytown dwellers of modern housing located on the former slum sites.

The basic OHLM statute was reformed in 1973 to reorient the activities of the Office toward the construction of more low-cost housing, particularly through a site-and-service scheme known as the parcelles assainies.⁵⁹ Under this scheme, persons of low income were, individually or in groups, permitted to purchase, for cash or on credit, land 15 by 10 metres in dimension and allowed

59. Loi no.73-36 du 16 juin 1973 relative à l'Office des habitations à loyer modéré (O.H.L.M.) (JORS no.4302, 30 juin 1973, p.1324; Décret no.73-586 du 26 juin 1973 fixant les règles d'organisation et de fonctionnement de l'Office des habitations à loyer modéré (O.H.L.M.) (JORS no.4304, 14 juillet 1973, p.1426)

to construct on that land permanent housing (en dur) of their choice.⁶⁰ Basic infrastructure was to be constructed by the State through the O.H.L.M. The basic purposes of the scheme were to restrict uncontrolled urban growth due to migration, to provide housing for those unable to afford previous O.H.L.M. housing, and to improve housing conditions in certain areas in urban centres (Diouf 1974:20).

The OHLM is therefore essentially oriented toward the provision of urban housing, although in 1967⁶¹ its organization was revised to include the previously ineffective Bureau of Rural Housing (B.H.R.) (see Diouf 1974:24, 26). The B.H.R. was originally established in 1961.⁶² In 1966 its supporting Fund for the Improvement of Rural Housing⁶³ was transferred to the OHLM,⁶⁴ and a Rural Housing Division was created within the latter,⁶⁵ with responsibility for

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60. Arrêté ministériel no.6717 du 6 juillet 1973 portant approbation des contrats-types de vente des parcelles assainies par l'Office des habitations à loyer modéré et du statut-type des associations d'acquéreurs de parcelles assainies (JORS no.4306, 28 juillet 1973, p.1505)
 61. Décret no.67-106 du 27 janvier 1967 fixant les règles d'organisation et de fonctionnement de l'Office des Habitations à Loyer Modéré (RLJ 1967, p.138).
 62. Décret no.61-354 M.T.P.H.U. du 21 septembre 1961 portant création et organisation d'un bureau de l'habitat rural (RLJ 1961, p.557; JO 1961, p.1461)
 63. Established in 1959 by Décret no.59-093 du 11 mai 1959 déterminant les règles d'organisation et de fonctionnement du Fonds d'Amélioration de l'Habitat Rural
 64. Loi no.66-50 du 27 mai 1966 portant suppression du fonds d'amélioration de l'habitat rural (RLJ 1966, p.388; JO 1966, p.707)
 65. Décret no.66-392 du 31 mai 1966 modifiant l'organisation et le fonctionnement de l'Office des Habitations à Loyer Modéré (RLJ 1966, p.404; JO 1966, p.69)

research, regional technical assistance, measures to improve rural housing, and construction of rural family housing for rent or sale. The restructured O.H.L.M. was "entrusted with the construction in urban and in rural areas of housing for workers with modest resources". In urban areas access to O.H.L.M. housing continued to be restricted to "all the active population," that is, all families of which at least one member exercises an employment subject to deductions from income for the purpose of the Solidarity Fund for the improvement of housing.

G. EDUCATION

For at least the first decade after independence Senegal's educational system was closely patterned on that of France. Ill-adapted to the economic needs of the country as a whole, it "tended to bias children against manual work, particularly in agriculture, and influenced a high percentage of rural school children to leave the countryside and migrate to urban areas [thus contributing] substantially to the increasing number of urban unemployed" (International Bank for Reconstruction and Development 1974:58). Under a new Orientation Law in 1971,⁶⁶ major reforms were undertaken

66. Loi d'orientation de l'Education nationale no.71-36 du 3 juin 1971 (RASERJ 1971, p.243; JORS, 19 juin 1971, p.590)

with respect to education from 1971-72.⁶⁷ Consequent to these reforms the percentage of primary-school-age children in school is expected to increase to about 50% by the year 2000. As of 1973 the proportion of children aged 6-14 in school varied from 13% to 64.7% according to region. The proportion for boys (37%) was substantially higher than that for girls (21.9%) (République du Sénégal 1974c:21). The 1974 World Bank study reported a rate of illiteracy in French of about 85-90% (International Bank for Reconstruction and Development 1974:56).

Elementary education comprises a common stream of five years.⁶⁸ It is not compulsory, partly because of the limited number of schools and partly because of the dispersion of the rural population. Twenty percent of students successfully completing primary education are to have access to middle and secondary education.

67. Décret no.71-494 du 21 avril 1971 portant organisation du Ministère de l'Education nationale (JORS, 15 mai 1971, p.502); Décret no.71-1135 du 18 octobre 1971 relatif aux attributions et à l'organisation du Ministère de l'Enseignement technique et de la Formation professionnelle (JORS 1971, p.1124); Décret no.72-798 du 10 juillet 1972 portant délégation de certains pouvoirs ministériels aux directeurs du Ministère de l'Enseignement technique et de la Formation professionnelle (JORS no.4239, 29 juillet 1972, p.1211); Décret no.72-1394 en date du 6 décembre 1972 portant classification des établissements relevant de l'autorité du Ministre chargé de l'Enseignement technique et de la Formation professionnelle (JORS no.4268, 30 décembre 1972, p.2170); Décret no.73-355 du 18 avril 1973 portant répartition des établissements précédemment rattachés au Ministère de l'Enseignement technique et de la Formation professionnelle (JORS no.4292, 1973, p.1011); modifié par le décret no.73-670 du 20 juillet 1973 (JORS no.4309, 11 août 1973, p.1582)

68. Décret no.72-861 du 13 juillet 1972 portant organisation de l'enseignement primaire élémentaire (JORS no.4274, 1 février 1973, p.249)

Of these, two-thirds will be oriented toward a general stream at middle level and one-third toward a technical stream. The general stream includes a classical section and a modern section, each four years in length.⁶⁹ Students in the technical stream follow a four-year course in collèges d'enseignement moyen technique leading to technical, professional, or general secondary education.⁷⁰ Students from the general stream at middle level also have access to general secondary education, three years in length. At this level students are enrolled in lycées and divided into sections of classical and modern letters, mathematics and physical sciences, and physical and natural sciences.⁷¹ Those who successfully complete the baccalauréat in secondary school may accede to post-secondary institutions,⁷²

69. Décret no.72-863 du 13 juillet 1972 relatif à l'enseignement moyen général (JORS no.4274, 1 février 1973, p.279)

70. Décret no.72-1398 du 6 décembre 1972 portant statut des collèges d'enseignement moyen technique (JORS no.4286, 31 mars 1973, p.807). The organization of technical education is regulated by Arrêté interministériel no.15270 du 14 décembre 1971 portant classement en catégories des lycées techniques, écoles normales d'enseignement technique, et écoles nationales d'enseignement technique (JORS no.4209, 19 février 1972, p.276), rectificat: Arrêté interministériel no.9421 en date du 22 août 1972 (JORS no.4250, 30 septembre 1972, p.1566) and Décret no.72-1396 du 6 décembre 1972 portant statut des lycées techniques (JORS no.4268, 30 décembre 1972, p.2172)

71. Décret no.72-864 du 13 juillet 1972 relatif à l'enseignement secondaire général (JORS no.4274, 1 février 1973, p.298)

72. Décret no.72-1020 du 27 juillet 1972 relatif à l'orientation des bacheliers sénégalais en vue de leur admission dans les établissements d'enseignement supérieur et les établissements de formation de cadres moyens (JORS no.4254, 14 octobre 1972, p.1674)

including the University of Dakar and the Ecole Polytechnique established in 1973.⁷³

In addition to this stream, a number of adult education and occupational training programmes have been established.⁷⁴ Programmes for additional training and retraining of public and private sector employees are governed by 1972 legislation.⁷⁵

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73. Décret no.73-493 du 25 mai 1973 portant création de l'Ecole polytechnique (JORS no.4299, 16 juin 1973, p.1229); Décret no.74-1282 du 23 décembre 1974 fixant les conditions d'organisation et de fonctionnement de l'école polytechnique (JORS no.4398, 11 janvier 1975, p.22); Arrêté interministériel no. 2488 M.F.A.-C.A.B.-M.E.S. portant règlement intérieur de l'école polytechnique (JORS no.4411, 22 mars 1975, p.277)
74. Arrêté ministériel no.197 M.E.T.F.C.-D.E.T.O. du 5 janvier 1963 instituant un certificat d'aptitude professionnelle pour les ouvriers en bâtiments ruraux et les ouvriers en mécanique rurale (RLJ 1963, p.4; JORS 1963, p.63); Arrêté ministériel no.202 M.E.T.F.C.-T.E.T.O. du 5 janvier 1963 instituant un certificat d'aptitude professionnelle pour les mécaniciens d'entretien (RLJ 1963, p.4; JORS 1963, p.67); Arrêté ministériel no.3701 M.E.T.F.C.-D.P. du 19 mars 1963 instituant un certificat d'aptitude professionnelle horticole (RLJ 1963, p.205; JORS 1963, p.492); Décret no.66-145 du 25 février 1966 relatif au certificat d'aptitude professionnelle (RLJ 1966, p.172; JORS 1966, p.272); Décret no. 66-417 du 10 juin 1966 relatif à la création et à l'organisation du certificat d'aptitude à l'enseignement familial rural (RLJ 1966, p.123; JORS 1966, p.741); Décret no.68-945 du 31 août 1968 portant création de classes de formation rurale (RLJ 1968, p.280; JORS 1968, p.1153)
75. Décret no.72-1395 du 6 décembre 1972 portant statut général des établissements de perfectionnement, de promotion ou de reconversion (JORS no.4268, 30 décembre 1972, p.2170); Décret no.72-1397 du 6 décembre 1972 portant statut général des établissements d'enseignement supérieur professionnel court (JORS no.4268, 30 décembre 1972, p.2172); Décret no. 72-1399 du 6 décembre 1972 portant statut général des établissements d'enseignement secondaire professionnel (JORS no.4268, 30 décembre 1972, p.2173)

Various mass education schemes have been attempted since independence, including the organization in 1962 of a centre for research and production of means of mass education⁷⁶ and a pilot project in educational television in cooperation with UNESCO in 1964 (Fougeyrollas 1967:168-205). The government began several years ago an innovative project which includes but goes beyond literacy. Known as practical middle education (enseignement moyen pratique), it is designed for the 80% of primary school students not admitted to secondary school. It attempts to consolidate their earlier basic education to allow them to become productive members of the society and to reduce rural-to-urban migration. It is also to be open to persons with no formal schooling. Although especially directed at youth aged 12 to 16, the programme includes systematic recourse to older youth and adults in order to encourage communities to define their own educational priorities based upon local needs (see Direction de l'Enseignement Moyen Pratique 1975; LeBrun 1975).

Senegalese educational reforms are still in their early stages. Studies to date suggest, however, that the search for and the consequences of education remain a primary reason for individuals to migrate from rural areas to cities (de Jonge et al. 1976:14). It also remains to be seen whether, as has been argued (L. Savané 1975), piece-meal reforms of the educational system are likely to be inefficient or increase existing patterns of social stratification unless general policies of social justice and self-reliance development are undertaken.

76. Décret no.62-0237 M.I.R.P. du 21 juin 1962 transformant le centre audio-visuel en centre de recherche et de production pour l'information et l'éducation des masses (RIJ 1962, p.517; JORS 1962, p.1178)

H. RURAL DEVELOPMENT

Policies of self-reliance which are to contribute to reducing rural-to-urban migration entail the creation and support of agriculture as adequate sources of livelihood and rural life as viable for both young and old. The 1964 Law on the National Domain included among its manifest purposes the intensification of agriculture, provision of an adequate social and economic infrastructure for Senegal's dispersed villages, and encouragement to peasants to move from heavily populated areas to less congested zones. Some studies (Bouillet 1973:9) have contended that overpopulation relative to natural resources in certain regions, especially the Sine-Saloum, is a basic factor inhibiting improvement of agricultural techniques and increases in production. Organized migration and land improvement schemes and administrative reorganization of the countryside were among the alleviating measures proposed. Chief among the former were the project concerning the Senegal River Delta and the New Lands project in eastern Senegal.

In 1965 the Société d'aménagement et d'exploitation des terres du delta du fleuve Sénégal (S.A.E.D.) was established to improve technical infrastructure and land use in an area of 30,000 hectares in the Senegal River delta.⁷⁷ Long a source of emigration, especially to France, this region was substantially underpopulated by the early 1960's. Improving local agriculture and stemming

77. Loi no.65-01 du 20 janvier 1965 portant création de la Société d'Aménagement et d'Exploitation des Terres du Delta du Fleuve Sénégal (S.A.E.D.) (RLJ 1965, p.78; JORS 1965, p.138); Décret no.65-026 du 20 janvier 1965 fixant l'organisation et les conditions de fonctionnement de la Société d'Aménagement et d'Exploitation des Terres du Delta du Fleuve Sénégal (S.A.E.D.) (RLJ 1965, p.79; JORS 1965, p.152)

emigration therefore depended largely on attracting Toucouleur and Sarakolé from the river valley to the project. By 1972, however, Toucouleur constituted only 10% of those settled by the project; about 35% of project settlers were military veterans and others from Dakar (Sar 1975:7). However, if in the future the project is able to attract sufficient Valley residents to work in peasant cooperatives (see Diagne 1975), it may contribute toward the stabilization of population in the region. Its success depends also on whether rural farmers or international agro-business is the major beneficiary of projects to dam the Senegal River (see Africa 1976b).

A second major project with potentially great consequences for migration is the New Lands project, established in 1971 to encourage migration from the congested Sine-Saloum peanut zone to land designated for the project in the sparsely populated area in Eastern Senegal.⁷⁸ The immigrant families were to be provided basic infra-

78. Loi no.71-63 du 30 novembre 1971 relative à la création de la Société des Terres Neuves (JORS du 18 décembre 1971, p.1352); Décret no.72-044 du 25 janvier 1972 fixant les règles d'organisation et de fonctionnement de la Société des Terres Neuves (S.T.N.) (JORS no.4209, 19 février 1972, p.265). Land was allocated by Décret no.72-042 du 25 janvier 1972 portant mise en défense de premier degré de la zone pilote de l'opération "Terres-Neuves" de la Région du Sénégal oriental (arrondissements de Koussaner, de Maka et de Koupentoum) (JORS no. 4209, 19 février 1972, p.264); Décret no.72-043 du 25 janvier 1972 portant classement en zone pionnière des terres du domaine national situées dans les départements de Tambacounda, de Kédougou et de Bakel et portant mise en défense de deuxième degré (JORS no.4209, 19 février 1972, p.265); Décret no.72-045 du 25 janvier 1972 portant classement en zone pionnière des terres du domaine national situées dans les Régions du Sine-Saloum, département de Kaffrine (arrondissement de Koungheul), du Sénégal oriental, département de Tambacounda (arrondissement de Koupentoum) et portant mise en défense de deuxième degré (JORS no.4209, 19 février 1972, p.268); Décret no.72-071 du 1 février 1972 portant classement [sic] de la partie sud de la forêt de Malème Niani et affectation de la parcelle déclassée à la société Terres-Neuves (JORS no.4209, 19 février 1972, p.268)

structure by the Société des Terres Neuves (S.T.N.) and supplied agricultural equipment on credit, repayable over five years. After four years, 300 families were settled in the pilot project, and about 2000 families were to be resettled between 1976-1980. Official reports consider the project results as very encouraging thus far, but it is admitted, first, that resettlement has done little to date to decrease population density in the Sine-Saloum and, secondly, that resettled peasants have continued extensive cultivation with concentration on peanuts despite their contracts with the S.T.N. (Sar 1975, Tall 1975, Rocheteau 1973).

The major government effort thus far to alter its rural development strategy is embodied in its 1972 reform of local administrative⁷⁹ and supplementary legislation. The Loi no.72-25 of April 19, 1972,⁸⁰ provides for the establishment by decree of rural communities "constituted by a certain number of villages in the same area, united in solidarity based particularly on locality, sharing common interests, and capable of finding the necessary resources for their development" (art.1, al.1). The rural community is to be financially autonomous, endowed with legal personality, and managed by an elected rural council headed by a president. Members of the council are to range from 12 to 21 in number according to the population of the rural community. Two-thirds are to be elected by direct universal suffrage by adults whose principal residence is in

79. Loi no.72-02 du 1 février 1972 relative à l'organisation de l'administration territoriale (RASERJ 1972, p.60; JORS no. 4209, 19 février 1972, p.252)

80. Loi no.77-25 du 19 avril 1972 relative aux communautés rurales (JORS no.4224, 13 mai 1972, p.755)

the community. One-third are to be elected by the general assembly of the cooperative(s) in the area. Civil servants and employees of the State, of local collectivities, and of public corporations are not eligible for election (art.9(2)).

The rural council is entitled to deliberate on all matters within its legal competence, including inter alia (a) the means of exercise of all rights of land use within its area except the exploitation of mines and quarries, hunting and fishing rights, and the commercial exploitation of tree crops; (b) projects of management, allotment, and equipment of residential land; (c) the budget of the rural community; (d) local projects and community participation in such projects; (e) the nature and construction of enclosures and other means of protecting standing individual or collective crops; (f) the management and means of access and use of water sources; and (g) acquisition of land or moveable property and other investments. Its deliberations become executory only after approval by higher administrative authorities. The council is also entitled to give its opinion on all development projects concerning the rural community and to make recommendations concerning legislative measures which it deems useful for its purposes. Such opinions and recommendations are transmitted to the sub-prefect for possible action.

The council is to elect a president from among its directly elected members by absolute majority and in public election. Presidents of cooperatives, village chiefs, and members of the council not principally engaged in rural activities are ineligible for election. Both president and council are elected for a five-year term. The president is responsible for the administration of the

rural community, represents the sub-prefect in the community, is the officer of the civil registry, and is charged with the allocation of national domain land according to council decisions.

The budget of the community derives from local taxes and government credits. It is prepared by the sub-prefect, who is responsible for financial management of the community.

Subsequent legislation provided for the organization of councils at the arrondissement, departmental, and regional levels of administration except in the Cap-Vert Region.⁸¹ Each rural community is to be represented by two members in the arrondissement council, which also includes representatives of cooperatives designated by the prefect. The number of cooperative representatives is to be half of the number of elected representatives. The roles of administrative authorities (regional governor, prefect, sub-prefect, village chief) were specified by the Décret no.72-636 of May 29, 1972,⁸² which provided that the sub-prefect was responsible for overseeing the rural communities. These reforms were first applied in the Thiès region.⁸³ At the same time a rural tax was instituted

81. Loi no.72-27 du 26 mai 1972 relative aux conseils régionaux, aux conseils départementaux et aux conseils d'arrondissements (JORS no.4228, 3 juin 1972, p.903)

82. Décret no.72-636 du 29 mai 1972 relatif aux attributions des chefs de circonscriptions administratifs et chefs de village (JORS no.4230, 17 juin 1972, p.965)

83. Décret no.72-664 du 7 juin 1972 fixant la date d'entrée en vigueur dans la Région de Thiès de la loi no.72-02 du 1er février 1972 relative à l'organisation de l'administrative territoriale, de la loi no.72-25 du 19 avril 1972 relative aux communautés rurales et de la loi no.72-27 du 26 mai 1972 relative aux conseils régionaux, aux conseils départementaux et aux conseils d'arrondissements (JORS no.4231, 24 juin 1972, p.1008)

to replace the former head tax and to provide part of the income for rural councils,⁸⁴ and legislation defined the village as an administrative unit and required administrative authorization for the creation of new villages.⁸⁵ To cap the reform a National Council for Development of Local Collectivities was established to advise on necessary legislation and regulations, to study means of promoting rural development, and to oversee the implementation of the administrative reforms.⁸⁶

I. IMMIGRATION INTO SENEGAL

Prior to 1960 Senegal, as the site of the capital of French West Africa, had few limits on the movement into Senegal of nationals of other countries. Since independence immigration of foreigners into Senegal has been increasingly regulated by domestic statutes and international agreements. Unless exempted by statute, foreigners entering Senegal are required to be in possession of a return ticket to their country of origin or a ticket showing intention to leave Senegal or to deposit a sum of 30,000 CFAF, formerly reduced to

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84. Loi no.72-59 instituant une taxe rurale (JORS no.4232, 24 juin 1972, p.1043). See also Loi no. 74-24 relative au versement aux communautés rurales d'une portion de certains impôts directs perçus pour le compte de l'Etat (JORS no.4375, 26 août 1974, p.1373) and Décret no.74-842 du 9 août 1974 fixant les modalités de versement aux communautés rurales d'une portion de certains impôts directs perçus pour le compte de l'Etat (JORS no.4376, 31 août 1974, p.1442)
85. Décret no.73-703 relatif à la création et à l'organisation des villages (JORS no.4310, 18 août 1973, p.1630)
86. Décret no.73-724 portant création du Conseil national de développement des collectivités locales (JORS no.4310, 18 août 1973, p.1630)

5000 CFAF for persons from territories previously under Portuguese control. Those exempt from this requirement include diplomatic and consular personnel and their families; civil servants and other specified foreign employees remaining in Senegal for less than three months; nationals of countries bordering Senegal, Mali, Upper Volta, Ivory Coast, Dahomey, and Guinea who enter Senegal by land; and public officials and employees, religious personnel and their families, members of parliament and heads of State, and, under specified conditions, discharged military personnel of member countries of the French Community.⁸⁷

Enterprises established in Senegal or in France with a branch in Senegal were granted a blanket exemption from deposit on behalf of their regularly recruited employees and their families if the enterprise employed at least thirty regular employees in Senegal and was in satisfactory financial condition. Such exemption was renewable after three years and was annulled by any violation of regulations concerning recruitment of workers. Beginning in the

87. Décret no.60-240 P.C.G.-M.INT.-D.S.U. du 7 juillet 1960 fixant les conditions de versement, d'exemption, de remboursement du cautionnement de repatriement, de la délivrance des décisions d'agrément de caution et des cartes de circulation pour l'entrée et la sortie des personnes au Sénégal (RLJ 1960, p.352; JOS 1960, p.750); Décret no. 64-755 du 5 novembre modifiant le décret no.60-240 du 7 juillet 1960, fixant les conditions de versement, d'exemption, de remboursement du cautionnement de repatriement, de la délivrance des décisions d'agrément de caution et des cartes de circulation pour l'entrée et la sortie des personnes au Sénégal (RLJ 1964, p.742; JORS 1964, p.1571). Following the breakup of the Mali Federation, Malian nationals were made subject to other normal formalities for entry into Senegal, see Décret no.61-318 P.C.-M.INT.-D.S.U.-E. du 11 août 1961 réglementant les conditions d'admission au Sénégal des ressortissants de la République du Mali (RLJ 1961, p.492; JORS 1961, p.1290)

late 1960's, Senegalization of employment became an important political issue (Pfeffermann 1968:65-80; R. Cruise O'Brien 1972:133-162). Even in 1974 a Dakar Chamber of Commerce publication (Chambre de Commerce, d'Industrie et d'Artisanat de la Région du Cap-Vert 1974: 71-73) reported that employees from countries, including France and Morocco, with which Senegal had signed establishment agreements were generally assimilated to Senegalese workers for the purpose of restriction on foreign employment. The proportion of employees classified as foreign, i.e. from countries having no establishment agreement with Senegal, remained regulated by two 1956 Orders.⁸⁸ The proportion of foreign employees permitted varied according to the type of enterprise and the job classification.

A basis for the reform of the legal status of non-Senegalese nationals in Senegal was provided by the Law no.71-10 of January 25, 1971.⁸⁹ Unless otherwise provided by international agreements, no foreigner is to be admitted into Senegal without either an entry permit (autorisation de séjour) or an establishment permit (autorisation d'établissement). Non-immigrants may be granted an entry permit valid for up to four months. Immigrants, defined as non-Senegalese who intend to establish residence in Senegal, to engage in permanent commercial activity, or to practice a profession, are required to obtain an establishment permit. If the immigrant intends to engage in a salaried activity, he must show that he has satisfied

88. Arrêtés no.2.145 and 2.146 du 26 mars 1956 (JOS no.3029, 12 avril 1956, pp.362, 365)

89. Loi no.71-10 du 25 janvier 1971 relative aux conditions d'admission, de séjour et d'établissement des étrangers (RASERJ 1971, p.28; JORS, 20 février 1971, p.158)

any legal requirements with respect to foreign employees. Such establishment permits are granted for a fixed period of time, are revocable and renewable, and may be subject to condition. Expulsion or criminal sanctions are provided for violation of these regulations or of the conditions of entry into Senegal. Persons granted an establishment permit must apply for an identification card within fifteen days of the date of establishment; alien identification cards are valid for ten years; special cards are granted for immigrants permitted to practice a profession or engage in commercial, industrial, or artisanal activities.⁹⁰

Refugees pose a special problem in the context of the legal regulation of immigration. Refugees for purposes of Senegalese law are those non-Senegalese in Senegal who (a) fall under the mandate of the United Nations High Commission for Refugees or who are encompassed in the article 1 of the Geneva Convention of July 28, 1951, relative to the status of refugees, as supplemented by the UN General Assembly Protocol of December 16, 1966, and (b) are admitted to Senegal as refugees.⁹¹ Refugees may not be expelled from Senegal

90. Décret no.71-860 du 28 juillet 1971 relatif aux conditions d'admission, de séjour et d'établissement des étrangers, arts. 13, 16, 25 (RASERJ 1971, p.309; JORS, 28 août 1971, p.796). The form and contents of the alien identification card were provided by Arrêté no.11719 M.INT.-D.S.N.-B.E.M. du 15 septembre 1971 (JORS, 9 octobre 1971, p.1000)

91. Loi no.68-27 du 5 août 1968 portant statut des réfugiés, arts. 1, 3 (RLJ 1968, p.244; JORS no.3982, 17 août 1968, p.1032, rectific. JORS, 14 septembre 1968). See also Décret no.72-995 du 26 juillet 1972 ordonnant la publication de la Convention relative au statut des réfugiés, signée à Genève le 28 juillet 1951 (JORS, 2 septembre 1972, p.1434)

except for reasons of national security or public policy (ordre public) and particularly unless they are involved in national politics, if they engage in activities contrary to public policy, or if they are sentenced for serious criminal offenses. Absent a serious threat to national security, expulsion may only be ordered after consultation of a commission⁹² on refugees at the hearing of which the refugee is entitled to present a defense. If expulsion is ordered, the refugee is entitled to a reasonable time to seek admission to another country. For employment purposes, refugees are entitled to the same privileges as those foreign nationals with whose country Senegal has entered into the most favourable establishment agreements with respect to the employment in question. Refugees are entitled to the same rights and privileges as Senegalese nationals with respect to access to education, scholarships, labour law, and other social advantages (art.8). Senegal has ratified the Protocol on the status of refugees signed in New York on September 29, 1967.⁹³

Entry or immigration into Senegal is prohibited to citizens of Portugal or of South Africa.⁹⁴

92. See Décret no.72-939 du 25 juillet 1972 relatif à la commission prévue à l'article 3 de la loi no.68-27 du 5 août 1968 portant statut des réfugiés (JORS no.4247, 9 septembre 1972, p.1463)

93. Loi no.69-12 du 12 février 1969 autorisant le Président de la République à ratifier la protocole relatif au statut des réfugiés du 31 janvier 1967 signé à New-York le 29 septembre 1967 (RLJ 1969, p.83; JORS no.4018, 15 mars 1969, p.320), and Décret no.72-996 du 26 juillet 1972 ordonnant la publication du protocole relatif au statut des réfugiés du 31 janvier 1967, signé à New-York le 29 septembre 1967 (JORS no.4248, 16 septembre 1972, p.1485)

94. Décret no.63-536 du 27 juillet 1963 portant interdiction d'entrée et de séjour au Sénégal aux citoyens portugais et sud-africains (RLJ 1963, p.732; JORS 1963, p.1128)

J. EMIGRATION FROM SENEGAL

Emigration of Senegalese nationals is restricted by law.⁹⁵ A Senegalese citizen wishing to travel outside Senegal must, in addition to fulfilling health, passport, and embarkation formalities, obtain an exit permit and put up as a guarantee of return a sum of money to be set by administrative authorities. The monetary deposit may be replaced by a round-trip ticket if the stay abroad is less than one year, or by attestation by a registered bank guaranteeing the repatriation of the traveller if the latter is unable to pay return travel expenses. The following persons are exempt from the requirement of money deposit: members of the Government, deputies, and their families; diplomatic and consular personnel; magistrates, civil servants, other public employees, soldiers, and designated trainees with sufficient travel documents; sailors; and Senegalese travelling to countries bordering Senegal when the country of destination has signed with Senegal an establishment agreement. Members of the Government and deputies of the National Assembly may obtain, on request, an exit permit valid for an unlimited number of trips abroad during one year. The same facility is granted to Senegalese citizens habitually residing in arrondissements bordering Mauritania for travel to the border regions of Mauritania.⁹⁶ Senegalese seeking paid employment abroad must have an exit permit, a medical certificate,

95. Loi no.65-11 du 4 février 1965 sur la sortie due territoire national et l'émigration des citoyens sénégalais (RLJ 1965, p.108; JORS 1965, p.195, to which citations by article in this section refer unless otherwise noted.

96. Décret no.65-130 du 5 mars 1965 fixant les conditions d'application de la loi no.65-11 du 4 février 1965 sur la sortie du territoire national, arts.2, 3 (RLJ 1965, p.194; JORS 1965, p.363)

and employment contract. Transportation companies are forbidden to sell tickets for travel abroad to a Senegalese lacking the required documents. Absent prior authorization, it is illegal for any individual, association, or company to incite or aid, for remuneration or promise of payment, a Senegalese to leave Senegal for purposes of paid employment. Infractions are punishable by imprisonment of one to ten years and a fine of 120,000 to 1,200,000 francs or of one of these penalties; and recidivism within a year is punishable by double the fine together with imprisonment. Senegalese travelling, or attempting to travel, outside Senegal without an exit permit are punishable by imprisonment of one month to one year and a fine of 20,000 to 120,000 francs or one of these penalties, while other violations of this statute are punishable by imprisonment from one day to one month and a fine of 200-20,000 francs or one of these.⁹⁷ Nonetheless, clandestine and other emigration to France of Senegalese workers, closely linked with the disintegration of rural life (see Meillassoux 1975; LeBris, Rey and Samuel 1976), remains high.

In view of the numerous movements of people between Senegal and certain other countries, Senegal has concluded with specified countries agreements with respect to establishment or immigration. Senegal has ratified the General Agreement on establishment of the Union of African and Malagasy States and the related protocol, signed at Bangui on May 27, 1962, concerning movement of

97. Loi no.71-44 du 28 juillet 1971 abrogeant et remplaçant l'article 11 de la loi no.65-11 du 4 février 1965 sur la sortie du territoire et l'émigration des citoyens sénégalais (RASERJ 1971, p.297; 21 août 1971, p.774). See L. Niang 1971b.

persons.⁹⁸ In 1964 Senegal and France concluded an establishment agreement.⁹⁹ From 1966, Senegalese nationals holding a valid passport or national identity card were permitted to travel in The Gambia for three months or less without a visa; a temporary residence permit is required for a visit longer than three months. Dispensation of visa does not exempt Senegalese nationals from other Gambian entry, residence, or employment regulations.¹⁰⁰ Senegal has also concluded with Mauritania an agreement with respect to the establishment and employment of Senegalese nationals in Mauritania and Mauritanian nationals in Senegal.¹⁰¹

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98. Loi no.62-22 du 20 février 1962 autorisant la ratification de la Convention générale relative à la situation des personnes et aux conditions d'établissement des ressortissants des Etats de l'Union Africaine et Malgache (RLJ 1962, p.79; JORS 1962, p.379); Loi no.63-59 du 3 juillet 1963 autorisant le Président de la République à ratifier le protocole relatif à la circulation des personnes entre les Etats de l'union Africaine et Malgache (JORS no.3620 du 10 août 1963, p.1100); Décret no. 63-766 du 19 novembre 1963 portant ratification et publication des Conventions et Accords internationaux (RLJ 1963, p.874; JORS 1963, p.163)
99. Loi no.64-34 du 29 mai 1964 autorisant le Président de la République à approuver la convention signée le 21 janvier 1964, à Dakar entre le Sénégal et la République française et relative à la circulation des personnes (RLJ 1964, p.268; JORS 1964, p.789); Décret no.64-396 du mai 1964 portant approbation et ordonnant publication de la convention signée le 21 janvier 1964 à Dakar entre le Sénégal et la République française et relative à la circulation des personnes (RLJ 1964, p.279; JORS 1964, p.794)
100. Décret no.67-224 du 3 mars 1967 portant approbation et ordonnant la publication au Journal officiel de l'échange de lettres intervenue entre le Gouvernement de la République du Sénégal et le Gouvernement de Gambie les 15 février et 27 mai 1966 et relatif à la circulation des personnes (RLJ 1967, p.205; JORS 1967, p.433)
101. Loi no.73-63 du 19 décembre 1973 autorisant le Président de la République à ratifier l'accord entre le Gouvernement de la République islamique de Mauritanie et le Gouvernement de la République du Sénégal, relatif à l'emploi et au séjour en Mauritanie des travailleurs sénégalais et au Sénégal des travailleurs mauritaniens, signé le 8 octobre 1972 à Nouakchott (JORS no. 4333, 29 décembre 1973, p.2280)

K. CONCLUSION

This chapter has summarized Senegalese legislation which potentially affects migration. The question of whether or not policies enshrined in legislation directly induce migration can best be answered by empirical socio-legal research. For present purposes, however, it is sufficient to note that the legislation examined in this chapter supplies the general legal framework within which a high level of rural-to-urban migration occurs and that it constitutes the legal reflection of economic and social factors and an export-oriented development strategy which, as it has been implemented thus far, are the real determinants of migration.

Legislation places few direct controls on internal migration. Laws concerning taxation, employment, housing, and education have tended to permit or encourage the establishment of enterprises in urban areas, particularly in the Cap-Vert region, and to enhance the movement of people toward those areas in search of employment. The provision of housing, even that directed toward persons of low income, has been primarily oriented toward favoured groups in the population, including salaried employees of urban, largely foreign-owned enterprises. Educational policy, formerly geared to the production of an elite as in France, has contributed to migration. Study of the EMP programme is now required in order to evaluate its contribution to a more authentic, self-reliant rural development designed to provide a viable livelihood for the mass of the population.

Rural development projects to date have not proved particularly effective in stemming migration, although they have partially achieved other goals such as increases in production. In the long run the elaboration of a coherent development plan embodying a carefully planned rural development strategy based on a reorientation of political and economic priorities is required if such policies of population redistribution and stability are to succeed (Pradervand 1972-73 II:523-557). In the absence of such measures, current projects risk the reproduction of existing patterns of rural social stratification (see D. Cruise O'Brien 1971a), the accentuation of inequality, and the perpetuation of rural-to-urban migration. In most of Senegal, as in the Casamance (de Jonge et al. 1976), migration derives not from shortage of land but from the absence of real economic incentives for people to remain in rural areas and from the combination of economic, administrative, and other factors which tend to enhance migration. The export-oriented development strategy has been inimical to the establishment of many new village-level institutions (see Snyder 1977). Despite some changes, this policy is continued in the project for the free zone in Dakar, which promises cheap labour to enterprises. It remains to be seen whether the decentralization embodied in local administrative reforms will suffice to stem population movements without more fundamental changes in development policy.

CHAPTER FOUR

LEGISLATION AFFECTING FERTILITY

As noted in the Introduction, the 'population question' is all too frequently reduced to consideration of the growth of population, and consideration of its legal aspects is limited to laws affecting fertility. This monograph has attempted to place population legislation in a wider perspective, which treats fertility simply as one of the major three demographic variables potentially affected by law. The significance of fertility lies not only in its consequences for the rate of population growth. It is also closely related to the emancipation of women; improvement in the distribution of income; increases in employment, educational, and health opportunities; and other aspects of development strategy.

In Senegal, as in many underdeveloped countries, the high fertility rate results from a combination of institutional organization, economic pressures, and the high rate of infant mortality, compounded by social and cultural factors (see M.-A. Savané 1975: 373-375). Existing "pro-natalist attitudes derive from a view of life which is itself the product of frequently precarious economic conditions. Consequently, no change can occur in such attitudes unless the conditions which generated them are themselves radically transformed" (M.-A. Savané 1975:375). This point makes it evident that a wide range of factors, some discussed in previous chapters, influence fertility. This chapter discusses some of these factors as policy embodied in legislation. It considers legislation concerning the status of women; family law; family planning; children

and child welfare; taxation; public welfare; inheritance; and certain legislation concerning penal institutions and military service.

A. THE STATUS OF WOMEN

Generally speaking, women are subordinate to men in most aspects of Senegalese life, and their value has been reckoned first by reproductive capacity (M.-A. Savané 1975:374; Sapir 1976). Certain legislation since independence has been directed at improving the status of women. The principle of equality of the sexes is enshrined in the Senegalese Constitution (art.1, al.1; art.7, al.1). In 1968 Senegal participated in a UN study session of twenty-three countries which recommended to their governments measures to improve the status of women. These measures included the establishment of national commissions on the status of women, the provision of equal educational opportunities to men and women, creation of adult education courses for women, scholarships for girls whose lack of financial means would otherwise lead them to abandon formal education, the establishment or support by public authorities of family planning activities, and the creation of suitable organizations to enable African women to undertake research and writing on questions related to the status of women (Cycle d'Etudes 1969). Some of these proposals have been or are being implemented in Senegal.

In 1973 women comprised 39% of students at the primary level, 28.7% of students at secondary (excluding middle) level, and 18.3% of students enrolled at university level (République du

Sénégal 1974c:15, 24, 43). Centres for technical and occupational training for women have been established in Diourbel and Dakar; these centres are oriented toward urban and rural household management, child care, and secretarial employment.¹ Teachers for these centres are recruited through the Ecole Nationale d'Enseignement Technique Féminin established in 1965.² The Centre National de Formation de Monitrices d'Economie Familiale Rurale, established in 1967, trains women to work in rural areas spreading new techniques of domestic economy and household agriculture.³ Although growing steadily, the number of women in the professions remains extremely limited (see Barthel 1975).

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1. Décret no.62-090 M.E.T.F.C. du 7 mars 1962 relatif au centre d'enseignement technique et professionnel féminin de Diourbel (RLJ 1962, p.140; JORS 1962, p.539); Décret no.62-089 M.E.T.F.C. du 7 mars 1962 relatif au centre d'enseignement technique et professionnel féminin de Dakar (RLJ 1962, p.138; JORS 1962, p.538). Child care is recognized as a female activity even in the elementary school curriculum, cf. Décret no.72-861, Annexe II, "Programme des cinq premières années de l'enseignement primaire élémentaire," (JORS no.4274, 1 février 1973, at p.266)
 2. Décret no.65-649 du 24 septembre 1965 relatif à la création et à l'organisation de l'Ecole Normale d'Enseignement Technique Féminin (RLJ 1965, p.577; JORS 1965, p.1198), abrogated by Décret no.68-946 du 31 août 1968 relatif à la réorganisation de l'école normale d'enseignement technique féminin (RLJ 1968, p.282; JORS no.3986, 14 septembre 1968, p.1124), abrogated by Décret no.74-721 du 19 juillet 1974 relatif à l'organisation de l'école normale d'enseignement technique féminin (JORS no.4373, 17 août 1974, p.1315); Décret no.66-418 du 10 juin 1966 relatif à la création et à l'organisation du certificat d'aptitude à l'enseignement ménager et social, premier degré (RLJ 1966, p.422; JORS 1966, p.741)
 3. Décret no.67-855 du 19 juillet 1967 relatif à la création et à l'organisation du Centre national de formation de monitrices d'économie familiale rurale (RLJ 1967, p.649; JORS no.3909, 29 juillet 1967, p.1138). Cf. also Décret no.66-559 du 12 juillet 1966 relatif à la création et à l'organisation du certificat d'aptitude aux fonctions de monitrice d'économie familiale rurale (RLJ 1966, p.760; JORS 1966, p.930)

The provisions of the Family Code with respect to marriage, child support, and divorce are especially relevant to the status of women and are discussed in the following section. A married woman has full civil capacity (Family Code, art.371, al.1) and may, subject to art.375, al.4, of the Family Code, conclude any necessary contracts relative to household expenses. Unless she is a minor or otherwise incapable (Family Code, Book 5) a woman may conclude her own contracts.⁴ Subject to her husband's opposition, a married woman may exercise a profession separate from that of her husband; if the husband's opposition is not justified by the interests of the family, the wife may be authorized by the justice of the peace to continue her profession (Family Code, art.154). Under all matrimonial property regimes property acquired by the wife in the exercise of a separate profession constitutes, during the marriage, reserved goods subject to administration and disposal by the wife (Family Code, art.371, al.2).

Collective labour agreements are required by the Labour Code (art.85, al.1(7)) to specify means for application of the principle "equal pay for equal work" for women and children. Thus, for example, collective agreements for food industries and chemical industries provide that "for equal conditions of work, professional qualification, and productivity, salary is equal for all workers regardless of origin, sex, age, and status."⁵

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4. Loi no.63-62 du 10 juillet 1963 relative à la partie générale du Code des obligations civiles et commerciales, art.57(JORS 1963,p.120)
 5. Convention collective fédérale des industries alimentaires de l'Afrique occidentale du 19 juillet 1958, art. 38 (JOAOF no.2996 du 3 novembre 1958, p.1879), Arrêté d'extension no.899 du 31 janvier 1959 (JOAOF du 14 février 1959); Convention collective fédérale des industries chimiques de l'Afrique occidentale du 12 juillet 1958, art.38 (JOAOF no.2972 du 18 août 1958, p.1426), Arrêté d'extension no.900 du 31 janvier 1959 (JOAOF du 14 février 1959), both published as separate brochures at Dakar, Librairie Clairafrique

Few of these legislative provisions are implemented in much of Senegal, especially in rural areas. Social and economic relations between rural men and women are little influenced as yet by the Family Code. Empirical research in the Lower Casamance area suggests that, in fact, the position of women relative to men with respect to land is declining as a result of labour migration and the extension of the cash economy.⁶ Much legislation on sexual equality remains at best relevant only to middle-class urban residents.

B. MARRIAGE AND ITS INCIDENTS

Among the most important areas of legal reform in Senegal since 1960 is family law.⁷ The Senegalese Constitution (art.14) proclaims that:

Marriage and the family constitute the natural and moral basis of the human community. They are placed under the protection of the State.

The State and public collectivities have the social duty of overseeing the physical and moral health of the family.

6. F.G. Snyder, research notes on Diola land law, 1970-1975

7. The literature on Senegalese family law is vast. On various aspects, see Arrighi 1968; C.R.E.D.I.L.A. 1976; Faladé 1963; Kane 1972, 1974; M'Backé [now spelled MBacké] 1973, 1975; NDiaye 1975; M. Niang 1970, 1972, 1973, 1974a, n.d.; Opuku 1970; Samb 1974; Thomas 1968; Thoré 1964.

Family law in Senegal has been altered and now codified by two statutes, a 1967 law limiting expenditures for family ceremonies⁸ and the Family Code promulgated in 1972.⁹

Marriage

Marriage in Senegal typically has been and today in rural areas frequently is considered as an alliance between two families or kin groups rather than merely as a relationship between two individuals. An early study of marriage and divorce in a Dakar suburb (Thoré 1964) concluded that urban marriage practices, while changing, then differed relatively little in many cases from practices in rural areas. There were few inter-ethnic marriages, only rarely did persons of different religion marry, and no inter-caste marriages occurred among the sampled population. Frequently, the prospective bride was not consulted or asked to consent to the marriage, especially in the case of a first marriage. Marriage was a means of assuring, by procreation, the social continuity of a kin group and of extending rather than creating the family. Though now dated with respect to urban marriage, these conclusions remain more generally applicable to marriage in rural areas.

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8. Loi no.67-04 du 24 février 1967 tendant à réprimer les dépenses excessives à l'occasion des cérémonies familiales (RLJ 1967, p.191; JORS no.3879, 1 mars 1967, p.359)
 9. Loi no.72-61 du 12 juin 1972 portant Code de la Famille (JORS 12 août 1972, p.1295); also published as a separate brochure at Rufisque, Imprimerie Nationale, 1972. Unless otherwise indicated, citations to legislation by article in this section refer to the Family Code.

The Senegalese Family Code attempts, as did colonial legislation (Dobkin 1968), to accord to the State an important role in the formation and dissolution of marriage, in regulating the incidents of marriage, and in protecting the interests of the parties to and children of a marriage. Marriage is, according to the Family Code (art.100), the basis of the family. It may be preceded by an engagement. While parties may marry without having previously been engaged, engagement does not oblige the parties to marry (art.102). In order to become engaged, the parties must fulfill the substantive conditions required for marriage. In particular, each party must freely consent to the engagement independently of the consent of parents required in the case of a minor (art.103, al.1). The minimum age for engagement is one year less than that required for marriage (art.103, al.2). A man must be at least 19 years of age and a woman at least 15 years of age in order to be engaged.

In addition to the substantive requirements of consent and age, the Code provides certain formal requirements for engagement. The engagement agreement must take place before at least two witnesses for each party and one representative of each family. The fiancée may receive from the fiancé or his family according to usage, a gift in kind the maximum value of which is to be specified by law (art.104). The length of engagement is limited to one year. During this time the parties may visit each other in accordance with current usage and should conduct themselves in a reserved manner with respect to third persons; failure to meet either of these obligations constitutes a legitimate reason for breaking off the engagement (art.105). Contrary to current rural practices

of suitor service the Code provides that neither party has any obligation to feed, maintain, or help either the other party or members of the other party's family (art.106). Each party has the right unilaterally to break the engagement. However, if the fiancée breaks the engagement without adequate reason, she must return any gift she has received; if the breaking of the engagement without adequate reason is imputable to the fiancé, he cannot claim return of the gift. A party whose fiancée breaks the engagement without adequate reason may oppose the marriage of the fiancée until the gift is returned. Failure to return the gift constitutes an impediment to marriage. However, other expenses occasioned by an engagement are not required to be reimbursed (art.107).

The contracting of marriage is subject to substantive and formal requirements. Substantive requirements comprise, first, conditions common to both potential spouses. Each spouse, minor or not, must consent to the marriage (art.108, al.1). A minor less than 21 years old cannot contract marriage without the consent of the person exercising paternal authority (puissance paternelle) with respect to the minor. Such consent must be with respect to both of the future spouses and be given before the celebration of the marriage by declaration before a civil registry official, a justice of the peace, or a notary or orally at the marriage celebration (art.109, als.1, 2). Marriage is prohibited between any person and (a) that person's ascendants or those of his or her spouse, (b) that person's descendants or those of his or her spouse, and (c) descendants within the third degree of the person's ascendants or of those of his or her spouse. However, marriage is not

prohibited between brother-in-law and sister-in-law when the marriage thus linking them has been dissolved by death (art.110).

Other essential conditions of marriage operate with respect to only one of the potential spouses. Marriage must be contracted between a man and a woman, and the man must be at least 20 years of age and the woman at least 16 (art.111) unless dispensation is given by the President of the Republic. A person who, attempting to consummate a marriage celebrated according to customary law, has intercourse or attempts to have intercourse with a minor less than thirteen years old is punishable by imprisonment from two to five years or, if the minor is seriously wounded, suffers even temporary disability, or dies, by imprisonment from five to ten years; that person may also be deprived of certain civil and familial rights (Penal Code, art.300). A woman may not re-marry before the lapse of 300 days following the dissolution of her previous marriage, except that the waiting period may be limited to three months when the previous marriage has been dissolved by divorce or annulment and to four months and ten days when it has been dissolved by death of the husband. Delivery of a child terminates the waiting period (art.112). No woman may contract a second marriage before the dissolution of her previous marriage has been registered (art.113, al.1). Inversely, the Family Code provides that a man may not enter into a new marriage if he would then have the number of wives greater than that permitted by law, taking into account his choice of monogamous or polygamous marriage. The Penal Code provisions relating to bigamy have not been revised to take account of the Family Code revision of marriage law. The former provide that imprisonment

from six months to three years and a fine of 20,000 to 300,000 francs will be imposed on (a) a spouse married according to customary law who, prior to the dissolution of the customary marriage, contracts a new marriage according to the Civil Code; (b) a spouse married according to the Civil Code who, prior to the dissolution of that marriage, enters into a new marriage; or (c) a spouse married according to customary law who enters into a new marriage except as permitted by statutes applicable to the existing union (Penal Code, art.333).

For the numerous types of marriage allowed, for example, by Wolof customary law (see M. Niang n.d.:1-22), the Family Code substitutes two permitted forms of marriage. The parties may choose to have their marriage celebrated by a civil registry officer or simply to have their marriage registered by such an official or his delegate. Such registration is limited to marriages celebrated according to one of the customary laws officially recognized in Senegal (art.114, al.1).¹⁰ In either form the registry official may, if one of the parties does not speak French, call on the services of an interpreter literate in French to sign documents as a witness (art.114, al.2).

If the parties choose to have their marriage celebrated by a civil registry officer, several formalities must be observed. First, each party must personally submit to the registry official

10. Arrêté ministériel no.2591 M.J.-A.C.S. du 28 février 1961 fixant la liste des coutumes applicables sur le territoire de la République du Sénégal (RLJ 1961, p.102; JOS 1961, p.359)

a copy of his or her birth certificate dated within the past three months or, if it is impossible for the party to submit a birth certificate, an acte de notoriété from the justice of the peace for the birthplace or domicile of the party. The latter document must contain the testimony of three witnesses concerning the name, occupation, and domicile of the party intending to marry; those of the party's father and mother, if known by the witnesses; and the place and, to the extent possible, the date of the birth of the party as well as the reasons explaining the party's impossibility to submit a birth certificate. Both the witnesses and the justice of the peace must sign the document (art.115). Secondly, when these documents are submitted by the parties the registry official is required to ask each party if he or she has previously been married and, if so, to specify the date and form of the previous marriage and the reasons for its dissolution. The burden rests on a previously married party to show that the previous marriage does not constitute an impediment to the marriage being contemplated. In addition, the registry official must remind the parties that their marriage may not be celebrated without prior proof that the consent requirements have been satisfied. Finally, in order to prepare the acte de mariage, the registry official must (a) question the parties with respect to any dot (bridewealth payments) involved, (b) record the prospective husband's option as to monogamy or limited polygamy or indicate to the parties that, absent such an option at the time of or subsequent to the marriage, the man may take up to four wives, and (c) record the parties' option, if any, as to the matrimonial property regime they wish to follow, explaining that, absent such

option, the common law regime of separation of goods will apply. Questions and answers are to be recorded (art.116). A notice of the contemplated marriage must be posted for two weeks on the door of the registry office at the place of marriage and of that of the domicile of each party (art.117, als. 1,2). Elaborate restrictions govern the raising of objections to the marriage (arts.118-120).

The marriage is celebrated publicly at the registry office of the domicile or residence of one of the parties or, by authorisation of the justice of the peace, in another place (art.121). The parties must appear personally, each accompanied by a witness. A minor must provide evidence of the consent of the person exercising paternal authority over the minor (art.122). In the presence of the parties, the registry official completes the acte de mariage, noting in particular the amount paid and the remaining balance of any dot, and reads the document to the parties. Following the ceremony, the parties are pronounced married and the acte must be signed by the registry officer, the spouses, their consenting parents if present, and the witnesses. A copy of the acte is given to the wife, and a livret de famille (see Family Code, arts.80-85) is given to the husband (art.123). Notification of the marriage and of the husband's choice as to potential number of wives must be sent by the official celebrating the marriage to the registry office of the place of birth of each party in order that the marriage may be noted on the parties' respective birth certificates (art.124).

Similar formalities apply if the parties choose to marry according to customary law and simply register their marriage. One month in advance of the marriage the parties must give notification

of their intent to marry. If the marriage is to be celebrated in an urban area or another locality with a civil registry office, notification must be given to the registry officer. Otherwise, notice must be given to the village chief or another person, if any, designated by the nearest registry officer (art.125). The parties must appear personally before the appropriate official or chief and submit birth certificates or actes de notoriété (art.126). The formalities for advising the parties of their options, the publication requirement, procedures for raising oppositions to the marriage, and completion of marriage documents for this form of marriage do not differ substantially from those required in the case of marriages celebrated in the registry office (arts.127-131).

Regardless of the form of marriage, the intervention of a registry official or delegate is required for the celebration or registration noted in the marriage register (art.60). In both forms of marriage an acte de mariage must be drawn up specifying

- the name, occupation, date and place of birth, domicile and residence of each spouse,
- the name, occupation, and domicile of the mother and father of each spouse,
- the required consent or authorization in the case of a minor spouse,
- dispensation, if any, of the age or publication requirements,
- the option, if any, of monogamy or limited polygamy chosen by the husband,
- the agreement of the parties with respect to the payment of the dot,
- the parties' choice as to matrimonial regime,
- The names of any previous spouse or spouses of either of the parties,

- the parties' declaration to take each other as spouse and the pronouncement by the registry officer of their marriage, in cases in which the marriage is celebrated by the registry officer,
- the names, occupations, and domicile of each witness and of the interpreter, if any, any, as well as the fact that they have reached the age of majority (art.65).

Parties marrying under customary law must register their marriage within two months of its celebration (art.147). An unregistered marriage is valid, but the parties are not entitled to any family benefits otherwise due from the State, public collectivities, or public or private organizations. The spouses may, in addition, be subject to a fine of 3000-18,000 CFAF (art.146).

The Family Code permits three options with respect to rules governing marriage and, in two of the three instances, provides for common law rules to apply in the absence of an option by the relevant party or parties. These options concern the number of wives, the dot, and the matrimonial property regime to be followed during the marriage. The Code permits the husband to choose among three types of marriage: (a) polygamy, in which case the number of wives is limited to a maximum of four; (b) limited polygamy; and (c) monogamy. The residual, or common law, regime, which is that of polygamy, applies in the absence of an express option by the husband (art.133). The option of limited polygamy restricts to a total fewer than four the number of wives whom the husband is simultaneously permitted. Choice of either the option of limited polygamy or that of monogamy is definitive except that the husband may subsequently opt for a further limitation of the number of wives permitted in a limited polygamous marriage. With this

exception, the option binds the husband for the remainder of his life, even after the dissolution of the marriage on the occasion of which the option was made (art.134). Choice among these types of marriage may be made at the time of marriage or during the duration of the marriage and is subject to the husband's showing that the number of his wives at the time of the option does not surpass the number made explicit by or implied by his option (art.135, als. 1, 2). A man may not marry a greater number of wives than that permitted by law, including his option, if any, of monogamy or limited polygamy (art.113, al.2). One who does so is subject to sanctions for bigamy (Penal Code, art.333). Wives in a polygamous marriage are entitled to equal treatment with respect to conjugal rights (art.149). The Criminal Code (art.329, al.2) provides that usages tolerated by custom in polygamous marriages do not, in themselves, constitute adultery.

Marriage in Senegal has traditionally involved the transfer of prestations from the husband or his family to the family of the bride (see M. Niang 1973, Snyder 1973:328-342). The increasing use of cash as a matrimonial prestation during the colonial period led to numerous abuses, including the extraction by the fathers of potential brides of substantial sums of money from prospective suitors (see Robin 1947; Samb 1975). Local notables in Saint-Louis and in Dakar attempted to limit the amount of the dot by matrimonial pacts in 1930 and 1950, respectively (M. Niang 1973:89-90). Two colonial statutes, the Mandel decree of 1939 and the Jacquinet decree of September 14, 1951, also attempted, in vain, to control the abuses of the dot. The 1967 Senegalese law concerning excessive expenditures

for family ceremonies limited the amount of the dot to 3000 CFAF.¹¹ The Family Code provides that the payment of a dot in money or in kind, to be remitted wholly or in part by the prospective husband to the bride-to-be, shall, by agreement of the parties, be a substantive condition of the marriage. The dot is to be the exclusive property of the bride, and the marriage may not be concluded until the agreed portion of the dot has been paid to her. The acte de mariage must specify the amount of the dot, the portion payable prior to the marriage, and the portion received upon celebration of the marriage (art.132). When the spouses have agreed that part payment of the dot is a substantive requirement of their marriage, non-payment of the agreed portion may be a basis for relative nullity of the marriage (art.138(3)).

The Code provisions concerning the dot raise at least three problems. First, while the Code and the 1967 statute together limit the amount of the dot, they provide no means of evaluating matrimonial prestations paid in kind. Secondly, the texts do not deal with the problems potentially arising from the fact that matrimonial prestations not only may be paid by several persons within the groom's family but are paid to or divided among many persons within the family or clan of the bride rather than remaining in the hands of a particular individual. Such payments are therefore especially difficult to control. Thirdly, the Code does not

11. Loi no.67-04 du 24 février 1967 tendant à réprimer les dépenses excessives à l'occasion des cérémonies familiales, art.6, al.1, (RLJ 1967, p.191, JORS 1967, p.359)

expressly provide for the validity of a marriage in which the spouses have made no agreement with respect to the dot (M. Niang 1973:91-92).

The third option for which the Family Code provides is that with respect to matrimonial property (art.136). Under the Family Code, as according to Senegalese customary laws (cf. Kane, 1972; Snyder 1971, 1973:219-291), separation of property is the common law regime. Spouses may, however, choose among two other regimes (art.368: (a) the dotal regime (arts.384-388) and (b) the regime of participation in moveables and acquisitions (arts.389-395). The choice is made at the time of marriage by declaration to the registry official or his delegate and is specified in the acte de mariage. It is irrevocable and may not be voluntarily altered by the spouses during their marriage (art.370). Only the dotal regime or the regime of separation of property may be chosen if the husband has not opted for a monogamous marriage. In a polygamous marriage, the husband may not use the goods or acquisitions of one wife for the benefit of another wife (art.369).

The husband is the head of the family (art.152) and may choose the couple's residence (art.153, al.1). The wife may practice a profession subject to the opposition of the husband. If the husband opposes his wife's separate occupation but his opposition is found not to be justified by the interests of the family, the wife may be authorized by the justice of the peace to continue her occupation (art.154). Goods acquired by the wife during the exercise of her separate profession constitute reserved goods (biens réservés) administered by the wife and, regardless of the matrimonial

regime chosen by the spouses, subject to disposal by her according to the rules governing the regime of separation of property. Under the regime of participation in moveables and acquisitions, reserved goods fall, upon dissolution of the marriage, into the mass for division according to arts.393-394 of the Family Code. Whatever their matrimonial property regime, the spouses agree to be responsible for the expenses of the marriage and the education of their children, but these expenses remain primarily the responsibility of the husband (art.375).

Termination of Marriage

The Senegalese Family Code provides that a marriage may be terminated only by the death of a spouse or by divorce. It also provides for judicial separation (séparation de corps), which reduces the effects of the marriage without terminating it entirely. In addition, the Code provides grounds upon which a marriage, once celebrated, may be annulled. While these grounds, if successfully invoked, are in some cases considered to have prevented the conclusion of a valid marriage rather than as terminating a marriage validly concluded, they will be considered together with divorce and judicial separation in this section.

Two types of divorce are permitted by the Code: divorce by mutual consent of the parties which is registered by the justice of the peace, and divorce by judicial decision at the suit of one of the parties (art.157). With respect to the former, each spouse must freely consent to the divorce. The required consent must concern not only the dissolution of the marriage but also the

disposition of any property of the spouses and the situation of any children resulting from the marriage. Subject to considerations of public policy (ordre public) and bonnes moeurs, the spouses are free to agree as they see fit with respect to these matters. The disposition of children from the marriage and the fulfillment of parental obligations of child support, education, security, and morality are considered to fall within the domain of public policy (art.158).

Divorce by mutual consent must be judicially recognized. The spouses must, together and in person, present to the justice of the peace of their domicile, their request, orally or in writing, for recognition (constation) of the divorce together with their acte de mariage, their livret de famille, and the birth certificates and death certificates of any children resulting from the marriage (art.159). Together with this request must be presented an oral or written declaration specifying the disposition of the spouses' property and the situation of any children born from the marriage. The spouses' moveable and immoveable property must be inventoried and its disposition specified. The disposal of property omitted from the declaration is governed by the rules governing the matrimonial regime of the spouses. With respect to children born from the marriage, the declaration must specify the person accorded custody of the children and the person who is to exercise paternal authority (la puissance paternelle) with respect to the children. It must also specify the amount of any payments to be made by the other spouse for the education of the children (art.160). The justice of the peace is empowered to ask of the spouses any questions he may deem useful with respect to the division of property or the

support of any children. Upon his finding that the spouses have freely consented to the divorce and that their agreement is in accord with the law and considerations of public policy and bonnes mœurs, the justice of the peace immediately gives judgment recognizing the divorce. If he finds that the agreement of the parties is not in accord with the law, public policy, or bonnes mœurs, he may seek a modification of the agreement by the parties and, upon suitable modification, render judgment. Alternatively, he may set a date, within a month, for a future appearance by the parties. If he finds that the consent on one of the parties is not in accordance with the law, he must disallow the request for divorce (art. 161). The judgment recognizing the divorce must specify that the parties have freely consented to the divorce and that nothing in their agreement with respect to the disposition of property and child custody appears contrary to public policy or bonnes mœurs (art.162). The date and number of the judgment must be inscribed in the livret de famille and a copy of the judgment given to each party (art.163, al.1). The judgment of divorce by mutual consent dissolves the marriage and renders executory the agreement of the parties with respect to their property and the children of the marriage, subject to certain dispositions protecting the creditors of a spouse engaged in business (art.164).

Alternatively, an action for divorce may be brought by either spouse (art.165). The Code does not permit the husband to divorce his wife by unilateral repudiation as allowed by Islamic law. The grounds for divorce are limited to the following:

- declared absence of a spouse,
- adultery¹² of either spouse,
- condemnation of either spouse to a peine infamante, i.e. death or imprisonment for a long term,
- the husband's failure to support his wife,
- refusal of either spouse to fulfill agreements undertaken in view of the marriage,
- abandonment of the family or the conjugal home,
- mistreatment, physical violence or moral cruelty making life together impossible,
- medically established definitive sterility,
- serious and incurable illness of either spouse discovered during the marriage,
- incompatibility of temperament which makes the maintenance of the conjugal bond intolerable (art.166).

The justice of the peace before whom the action in divorce is brought may authorize the spouse requesting the divorce to maintain a separate residence and may also take any provisional measures he deems necessary to protect the interests of the children of the marriage (art.168, al.3). When the parties appear before him, he may, in the absence of their counsel, seek to reconcile the parties and, at his discretion, postpone any judgment for a period of not more than six months, renewable for a period of not more than one year. Such

12. Adultery, which is not precisely defined by the Criminal Code [Loi no.65-60 du 21 juillet 1965 portant Code pénal (crimes et délits) (JORS 1965, p.1009; published as a separate brochure at Rufisque, Imprimerie Nationale, 1972),] may only be denounced by the spouse of the adulterer (Criminal Code, art.329, al.1). The sanction, a fine of 20,000 to 100,000 francs, is imposed upon the spouse convicted of adultery and upon his or her partner in adultery (art.330, al.1; art.331, al.1). Adultery may be proved only by finding the couple in flagrante delicto or by confession, letters, or other writings by the adulterer (art.331, al.2)(see Diemé 1973). The murder by a spouse of the adulterer and his or her partner at the instance when the couple are found in flagrante delicto constitutes excusable homicide (art.312). Adultery of a spouse does not constitute sufficient reason for disavowing a child born during the marriage (Family Code, art.203, al.2).

postponement is not subject to appeal (art.169, als.1, 2). If the justice of the peace finds that a reconciliation is impossible, he may render judgment in the action or postpone judgment until a specified date. He may, in the interim, make any provisional orders he deems necessary to protect the interests of the children or of either spouse (art.170, al.3).

A judicial divorce dissolves the marriage and puts an end to the reciprocal obligations of the spouses and to the matrimonial regime (art.176, al.1). Other consequences of divorce will be discussed infra. If only one spouse is found to be in the wrong, the judge may grant the other spouse damages for any material and moral harm, including loss of support, caused by the dissolution of the marriage (art.179).

Like divorce, judicial separation may result from mutual consent of the spouses or from a judicial decision at the suit of either spouse. However, its consequences are more limited in that it merely terminates the spouses' obligation of cohabitation and imposes upon them the matrimonial regime of separation of property without affecting the other incidents of marriage (art.181). The substantive and formal requirements and the procedure with respect to separation by mutual consent are identical to those with respect to divorce by mutual consent (art.182). Separation by judicial decree may be demanded on the same grounds as those for divorce and according to the same procedure (art.183, al.2). A judicial separation is terminated by (a) recommencement of life together following reconciliation, (b) the death of either spouse, (c) divorce, either by mutual consent or granted judicially at the

request of either spouse on a new ground, or (d) the conversion of judicial separation into divorce granted by the judge at the request of either spouse after the judicial separation has been in effect for three years (art.185). Costs in a suit for conversion of the judgment for separation into a divorce decree are pronounced against the party against whom the judicial separation was originally granted (art.187, al.5).

In contrast to divorce and separation, the annulment of a marriage may be pronounced only by judicial decision (art.137, al.1). Following French law, the Family Code provides for two kinds of nullities, relative nullities and absolute nullities. A marriage may be pronounced relatively null on any of the following grounds: (a) defect (vice) of consent on the part of either spouse if the consent of that spouse was obtained by violence or given in error; (b) lack of parental consent; (c) non-payment of the part of the dot payable upon conclusion of the marriage when the spouses have agreed that such payment is a substantive condition to their marriage; (d) impotence of the husband; (e) serious and incurable illness rendering cohabitation harmful to the other spouse and when the ill spouse has knowingly dissimulated the illness at the time of the marriage (art.138). Concomittantly, an action to void the marriage may be brought only by (a) the spouse whose consent is defective; (b) when parental consent is lacking, by the person whose consent is required or by the spouse on whose behalf that consent is required; (c) by the woman in a case of non-payment of the required portion of the dot or in case of impotence of the husband; (d) a person whose spouse is afflicted with a serious incurable illness

(art.139). Such an action may not be brought (a) in cases of defective consent after the expiration of six months from the time when the defective consent was recognized or when the spouse whose consent was defective attained majority; (b) for lack of parental consent, when the marriage has been expressly or tacitly approved by the person whose consent was required, or when one year has expired after that person became aware of the marriage, or when the spouses have reached the age of 22 years without having opposed the marriage; and (c) in case of impotence of the husband or a hidden incurable illness, after the spouses have cohabited for one year (art.140).

A marriage may be judged to be absolutely null when (a) it has been contracted without the consent of either spouse; (b) the spouses are not of different sexes; (c) absent dispensation, the spouses are not of the required age; (d) the spouses are related within the prohibited degrees; (e) a previous marriage of the woman has not yet been dissolved; or (f) the husband is unable to enter into a new marriage by reason of his option of monogamy or limited polygamy or because he already has four wives (art.141). An action to declare the marriage absolutely null may be brought by a spouse, by any other person having an interest in the marriage, or, during the life of the two spouses, by the ministere public (art.142, al.1).

The Code prescribes no time limits within which such an action must be brought (art.142, al.2). However, no action may be brought on the ground of failure to meet the age requirement once the spouse concerned has attained the requisite age or once

the woman is pregnant (art.142, al.4). A marriage declared null is considered to be dissolved from the date of the judicial decision of annulment, but the annulment takes effect with respect to third parties only after certain formalities have been satisfied (art.144). If the two spouses are found to have acted in bad faith, the marriage is considered to have never taken place with respect to the parties inter se and with respect to third parties. However, if only one spouse is found to have acted in bad faith, only with respect to that spouse and his or her relations with third parties is the marriage deemed never to have taken place (art.145, als.1, 2, 3).

Alimony and Support

In the event of divorce, the spouse seeking and obtaining a divorce decree is entitled, at the discretion of the judge, to damages in compensation for loss of support. Such damages may, according to the discretion of the judge, be payable at once or by installments (art.179). When the husband has obtained a divorce on the ground of incompatibility of temperament or of his wife's incurable illness, his obligation to maintain his wife is transformed into an obligation to support (obligation alimentaire) (art. 178). The alimentary obligation continues for three months from the time of judgment in the case of divorce for incompatibility of temperament and for a maximum of three years in the case of divorce on the ground of incurable illness. It is terminated upon proof by the husband of lack of means or if the woman remarries before expiration of the respective time period (art.262, al.3). The husband is under the same obligation in the case of conversion of judicial separation into a divorce decree (art.187, al.3).

Remarriage after Termination

Upon dissolution of a marriage, each of the former spouses is free to enter into a new marriage. However, the former wife must observe the waiting period specified in article 112. This period begins to run from the date of the ordonnance de non conciliation except that, when the period is reduced to three months, it begins to run from the date on which the divorce decree is no longer subject to appeal (art.176, al.1). Thus, while the length of the waiting period is 300 days following the dissolution of the marriage, it is reduced to three months when the marriage is dissolved by divorce or separation and to four months and ten days when the marriage is dissolved by the death of the husband. If the woman is pregnant, the waiting period is terminated by her delivery (art.112). When divorce has been granted on the ground of the declared absence of one spouse, a new marriage of the other spouse is valid as against the absent spouse if that latter reappears (art.28).

Extended Family Obligations

While extended family obligations are generally more important in rural areas than in urban areas, they remain significant throughout many sectors of Senegalese society. Especially in rural areas, the extended family not only provides a framework within which the formation and dissolution of marriage take place but it also serves as a means of social security (see Gonidec 1967, Savané 1975:375). The 1967 expenditure statute and the Family Code have attempted, however, to limit its role and significance.

Recognizing the practical impossibility of abolishing customary and religious family ceremonies such as baptism, circumcision, communion, engagement, marriage, return from pilgrimages to Mecca, and funerals, the 1967 statute on family ceremonies attempted to establish limits to expenditures in money and in kind on each of these occasions (art.1, al.2). Two examples will suffice. On the occasion of an engagement, prestations or gifts in kind to the fiancée, and implicitly, to her kin, are limited to a value of 5000 CFAF. Expenditure for the engagement ceremony is also restricted to 5000 CFAF. Any other gifts or prestations, in money or in kind, relating to the engagement are prohibited, regardless of the identity of the donor or the beneficiary (art.5). On the occasion of marriage, the dot is limited to a total of 3000 CFAF whether payable immediately or by installments. Expenditures for the marriage ceremony, the celebration, the gifts to the fiancée, to members of her family, and to friends are limited to 15000 CFAF, not including expenses of the engagement and the dot (art.6, als.1,2). Calculation of expenditures on ceremonial occasions shall take into account expenditures by the head of each family and the organizer of the ceremony and any other interested party and also any expenditures by kin or friends, including expenditures for food and drink (art.9, al.1). Administrative authorities, village chiefs, and heads of village wards are entrusted with responsibility for reporting violations of the statute; violations may also be reported to the police by any citizen (art.11). The statute provides a fine from 20,000 CFAF to 500,000 CFAF for, in the two examples given supra, (a) those who spent or knowingly contributed to

expenditures in excess of the legal maximum or who, by negligence or insufficient care, permitted such expenditures and (b) those who made, solicited, or accepted a prohibited offer, gift, or prestation (art.12(2), (3)). This statute has been notoriously difficult to enforce (M. Niang 1972:74-75). Samb (1974) describes the 1973 marriage of a teacher "who went into debt and exhausted all his savings put aside for years and contracted a marriage which led him to spend the sum of 312,620 F CFA, not including the related expenditures by the parents of the two spouses for praise-singers and other social parasites" (Samb 1974:100).

In a further attempt to preserve customary practices while restricting their economic consequences, the Family Code establishes an alimentary obligation with respect to certain kin and limits it with respect to others. Unlike the French Civil Code provisions, in Senegal the obligation includes only food (art.267). In addition to an alimentary obligation between spouses and with respect to children, the code provides that the "alimentary obligation resulting from kinship is reciprocal." Between legitimate kin, it exists in the direct line without limitation of degree. In the collateral line, it exists between brother and sister having the same father or mother and between first cousins but not between a person and the descendants of his or her collaterals. Adoption creates an alimentary obligation between the adopted person and his or her adopted parents (art.263). These provisions, which transform into an obligation under national law customary legal and moral duties gradually disappearing in urban areas, have been considered among the most important innovations of the Family

Code (M. Niang 1972:98) but criticized as contradicting the Code's general encouragement of the nuclear family (MBacké 1975:32). The alimentary obligation is, however, limited to instances in which (a) the person claiming the benefit of the obligation is unable to meet his or her own needs by work and (b) the person sought to be charged with the obligation has sufficient resources to furnish the food (art.261). No reciprocal alimentary obligation exists between a person and descendants of that person's spouse other than descendants (or ascendants?: see MBacké 1975:32) of the first degree. Even this latter obligation ceases, except with respect to children born from the marriage, upon divorce or death of the spouse (art.264).

Since the Family Code entered into force only in early 1973, it remains to be implemented in many rural areas. The overwhelming majority of court decisions concerning the Code from 1973 to mid-1975 were rendered in Dakar (see C.R.E.D.I.L.A. 1976). Greater recourse to the civil registry system with respect to marriage and divorce in rural areas is encouraged by the insistence of courts and local administration officials that parties present required documents before having recourse to official agencies to settle disputes arising from the relationship. If substantially implemented, however, the Code provides the legal basis for the improvement of the status of women. It also reflects a decision of policy not to break radically with existing practice while at the same time adopting the nuclear family as the ideal toward which social changes should tend. At the moment this ideal is realized only in a small number of cases, even in urban areas.

C. FAMILY PLANNING

Family planning may help to reduce foetal and infant mortality. By allowing women greater control of their reproductive capacity, it may contribute to the improvement of their health, status, and access to employment. Together with sex education, it may increase the capacity of young people to be "sexually responsible citizens . . . , to develop their potential and to live free from emotional disturbance and the dread of the future" (Savané 1975:379). By making possible couples' choices as to the number and spacing of their children, it may enhance the quality of family life. It can contribute most effectively to these purposes if combined with education concerning health, sex, and nutrition.

Contraception

As in other countries (for Mali, see Laplante and Soumaré 1974), measures to influence the number and spacing of births have long been employed in Senegal (see Guitton 1973:54-58, Bopp 1973). Until recently no national policy concerning contraception or family planning generally had been announced by the government, and "population growth was generally regarded as a stimulus to economic growth" (International Bank for Reconstruction and Development 1974:50). Senegal did not participate in or adhere to the declaration of the UN Conference on Human Rights in Teheran in May 1968, which proclaimed that "parents have a basic human right to determine freely and responsibly the number and spacing of their children" (quoted in Lee 1972:316).

Nonetheless, Senegal was among the first African countries to have a private association affiliated with the International Planned Parenthood Federation. The association provided contraceptives to a private centre, the existence of which was tolerated by the government then (1970) opposed to family planning. Internal dissension and government pressure contributed to the dissolution of this association after a year of existence (M.-A. Savané 1975:376).

Since 1965, however, family planning information and contraceptives have been available in private clinics, including one financed by the Pathfinder Fund in Boston (see Whest-Allegre 1974:14,16). Charges for consultations or family planning services in private clinics were generally high. Between 1971 and 1973 the American Friends Service Committee (Quakers) distributed copies of popular works on contraception and organized talks, film shows, and informal discussions (see M.-A. Savané 1975:376). The decision to seek family planning advice rested largely with individual patients and depended upon their financial means. Physicians and midwives gave advice on birth spacing and family planning according to their own beliefs. Integration of family planning into the public health structure was advocated by individual physicians, but no systematic services or information on family planning existed in public hospitals or dispensaries. In 1973 the defunct private association was replaced by the Association Sénégalaise pour le Bien-Etre de la Famille (ASBEF). Its creation was announced by the Senegalese Minister of Public Health during a seminar on population and the mass media organized in Dakar with the aid of the International Planned Parenthood Federation (IPPF News, June 1974, p.2).

The formation of this association preceded a shift in Senegal's official policy on family planning in the face of problems in education, housing, and employment (International Bank for Reconstruction and Development 1974:50-51). At a recent congress of the ruling Senegalese party (now PS [Parti Socialiste du Sénégal], formerly UPS [Union Progressiste Sénégalaise]), Président Léopold Senghor announced the creation of a national family planning programme. The programme is to be financed by the United States Agency for International Development (USAID) and staffed by midwives trained in Senegal and the United States. The establishment of a pilot centre in the Dakar Medina is to be followed by the creation of regional centres. Legislation regulating this programme was not yet available during the preparation of this monograph. The remainder of this section therefore summarizes legislation immediately prior to the change in government policy. Since it could not take the legislative consequences, if any, of these changes into account, the past tense is employed in much of the section.

As in many other French speaking countries, the sole legislation regarding contraception was the Law of July 31, 1920.¹³ Though ineffective in preventing the dissemination of contraceptive information or products in France and eventually reformed there (see Doublet and de Villedary 1973:12-22), it was continued in force in Senegal by virtue of the reception provision of the 1960 Constitution, art.70, which provided that "[i]nsofar as they are not contrary to the

13. Loi réprimant la provocation à l'avortement et à la propagande anticonceptionnelle (J.O.R.F. du 1^{er} août 1920; Lois annotées ou lois, décrets, ordonnances, avis du Conseil d'Etat, etc. avec Notes historiques, de concordance et de jurisprudence, nouvelle série, 5^{ème} volume, 1921-1925, II.-1923-1924, pp.1624-1628 (Paris, Sirey). See also Mossuz 1966.

present Constitution, the laws and regulations currently in force shall remain in force as long as they have not been modified or abrogated."¹⁴ With respect to contraception, it provided for the punishment by one to six months' imprisonment and a fine of 100 to 5000 francs of any person who by specified means described, divulged, or offered to reveal measures designed to prevent pregnancy or who facilitated the use of contraceptive measures. The prohibited means comprised (a) speech in a public place or at a public meeting; (b) sale, placement for sale, or offer, whether or not public, or exposing, exhibiting by poster, or distributing in public channels or in public places, or by home distribution, or by sending under wrapper or in an open or sealed envelope, or through the mails or through any agency for distribution or transport of books, printed matter, advertisements, posters, drawings, pictures, or emblems; and (c) by advertising in medical or alleged medical offices. The statute provided that persons who engaged in contraceptive or anti-natalist propaganda were to be similarly punished. Prior to the reform of French law in 1967, the 1920 statute was in France interpreted "in practice as forbidding the sale and dissemination of contraceptive products, even in the absence of publicity or encouragement of their use", although the "mere use of contraceptive procedures did not come under the ban of the law" (Doublet and de Villedary 1973:12).

Although this statute remained on the books, it was relatively ineffective in achieving its original natalist purposes and was of dubious importance or irrelevant in other respects. A product

14. Loi no.60-045 portant revision de la Constitution de la République du Sénégal, reprinted in République du Sénégal 1962a: 23-42

of the colonial period designed for metropolitan France and introduced in the then colonies (see Wolf 1973), it ignored so-called traditional methods of birth spacing and contraception and the differing social, economic and cultural context of Senegal. Moreover, as in France, pharmacies were permitted to sell male condoms as a means of protection against venereal disease and oral contraceptives were available for health reasons by medical prescription. The statute was not enforced against private clinics or doctors who provided family planning services, inserted IUD's, and distributed oral contraceptives to patients able to pay a general fee for consultation and service. Hence one consequence of the statute was that persons able to afford private consultation or medical prescriptions had access to contraceptives and family planning advice, while those treated in public dispensaries or public hospitals did not. Furthermore, the statute ignored the lack of popular motivation to use contraceptives in any event. The lack of motivation derived from the high infant mortality rate, the economic, social security, and cultural roles of children in Senegalese society, lack of education concerning bodily functions and the operation of contraceptive devices, the foreign origin of contraceptives other than traditional ones, religious reasons deriving from Islam or Catholicism, and cultural reticence concerning medical consultations generally.

The limited use of contraceptives was accentuated by the fact that contraceptives, as most drugs and pharmaceutical products, are imported from France, although one private clinic obtained contraceptive devices gratuitously from the Pathfinder Fund in the United States. As imports, contraceptives were subject to duty as

as pharmaceutical products or as rubber products. Within Chapter 30 of the Tarif Général des Douanes, oral contraceptives were classified as medicines and subject to duties previously described unless sent as gratuitous samples. Under the Tarif Général des Douanes (chapter 40, section 40.12), condoms were subject to the following duties and taxes: D.F. 15%, D.D. 5% (subject to exemption depending on country of origin), T.S. 4%, T.F. 22%, and T.C.A. 13.5%. For the same country of origin condoms were subject to higher duties and taxes than were oral contraceptives.

Abortion

The French law of 1920 concerned abortion as well as contraception. The abortion sections were revised in France by the Decree-Law of July 19, 1939, art.82. Two statutes revised its abortion provisions in Senegal: the Code of Medical Deontology and the Criminal Code.

The Code of Medical Deontology¹⁵ provided:

A therapeutic abortion may be performed only if it is the only available means of saving the life of the mother.

When the mother's life is seriously endangered and its protection requires recourse to surgery or the use of medicine to interrupt the pregnancy, the presiding doctor or surgeon is obligated to seek the advice of two consulting doctors, including one from a list of experts established by the court, who after examination and discussion shall affirm in writing that the life of the mother can be saved only by such surgery or medicine.

15. Décret no.67-147 du 10 février 1967 instituant le code de déontologie médicale, art.35 (RLJ 1967, p.165; JORS 1967, p.321)

One of the copies of the examination report shall be given to the patient, and two other copies shall be retained by the consulting doctors.

In addition, a statement of the medical decision, in which the name of the patient is not to be specified, must be sent by registered letter to the President of the Ordre des Médecins.

When a therapeutic abortion is recommended, the doctor must comply with the wishes of the patient if, when duly informed, she refuses an abortion. An exception may be made to this rule only in cases of extreme urgency and when the patient is incapable of giving consent.

If by reason of his convictions the doctor considers that he is unable to advise the practice of abortion, he may withdraw from the case and entrust the care of the patient to a suitably qualified colleague.

The abortion sections of the French law of 1920 were revised in Senegal by the 1965 Criminal Code.¹⁶ Article 305 of the Code provided as follows:¹⁷

Any person who causes or attempts to cause an abortion of a pregnant woman, regardless of her consent, by means of food, beverages, prescriptions, manipulations, force, or by any other means whatsoever, shall be punished by imprisonment from one to five years and by fine of 20,000 to 100,000 francs.

Imprisonment shall be from five to ten years and the fine from 50,000 to 500,000 francs if it is proven that the perpetrator habitually performs the acts referred to in the preceding section.

A woman who has performed or attempted to perform an abortion on herself, or has agreed to use means indicated or prescribed to her for that purpose, shall be punished by imprisonment from six months to two years and a fine from 20,000 to 100,000 francs.

16. Loi no.65-60 du 21 juillet 1965 portant Code pénal (crimes et délits) (JORS no.3767 du 6 septembre 1965, p.1009; published as a separate brochure at Rufisque, Imprimerie Nationale, 1972)

17. This translation largely follows that in Mueller 1960:109-110, which the Senegalese provision follows almost verbatim.

Physicians, pharmacists, and any other person practicing a medical or para-medical profession as well as medical students, pharmacy students or pharmacy employees, herbalists, trussmakers, or sellers of surgery equipment who have indicated, aided, or used means of causing an abortion, shall be sentenced to the punishment provided for in the first and second paragraphs of this Article.

Furthermore, conviction shall entail the complete ineligibility or loss of right of practicing their profession for not less than five years.

Any person who violates the prohibition of exercising his profession as provided in the preceding paragraph shall be punished by imprisonment for no less than six months nor more than two years and by a fine of 100,000 to 500,000 francs, or by either punishment.

Suspension of sentence may not be granted when the convicted person is among the persons specified in the fourth paragraph of this Article.

This article follows the French Criminal Code, art.317, practically verbatim. It differs mainly in that (a) the Senegalese provision does not include abortion or attempted abortion of a woman not pregnant but merely supposed to be so; (b) it revises the monetary fines to take into account Senegalese currency; and (c) unlike the French Code, it provides (al.7) that suspended sentence may not be granted if the convicted person falls within enumerated professions.

In practice, the abortion provisions were not regularly enforced. Abortions were discreetly performed in private clinics. They were also performed all too often by 'back-door' abortionists catering to persons of low income. At least one reader (Dieng 1974) of Dakar's daily paper wrote that "the percentage of clandestine abortions among unmarried girls is legion". The cost of abortion

was reputed to vary upwards from \$300. in 1975, which restricted medically safe abortions to those able to afford private clinics in Dakar or abroad.

Artificial Insemination

Artificial insemination was not illegal as such, though it gave rise to legal questions by reason of being otherwise characterized by the law (compare Finlay and Glasbeek 1973:91). The Senegalese Penal Code does not specifically define adultery. In other African penal codes (Mangin 1967:594-595) and the French Penal Code, arts.336-339, commission of adultery requires the act of sexual intercourse. Artificial insemination, using the semen of the husband (A.I.H.) or the semen of a donor (A.I.D.), or both, would not be included (but see Interview with Professor Paul Correa 1975:20). Artificial insemination as such would therefore not be a ground for divorce under the Family Code, art.166, although medically established definitive sterility is a ground for divorce. A child born as a result of artificial insemination is filiated to the mother and, if insemination is by A.I.H. the child would also be filiated to the father and therefore legitimate. If a child is born by A.I.D. of the mother, it would be presumed legitimate with respect to the father subject to disavowal by the father (arts.191; 203, al.1). It has been proposed in France that disavowal under the Civil Code, art.312, from which art.203, al.1 of the Senegalese Family Code is virtually copied verbatim, should be interpreted to exclude disavowal of a child on the ground that the child was conceived through artificial insemination of the mother (see Carbonnier 1969:215).

Sterilization

Voluntary sterilization for contraceptive purposes is rare in Senegal, being employed only rarely by women with very large families. On the contrary, male impotence and female sterility are sources of shame, particularly in rural areas. Consultations to remedy sterility account for as high as nine-tenths of maternal care consultations at some clinics in Dakar and are the focus of ritual and medical attention in rural areas. Female sterility has been treated by physicians in Senegal for perhaps thirty years; medical consultation for male impotence have been frequent only with the past decade (see Interview with Professor Paul Correa 1973).

Voluntary sterilization is not specifically regulated by law. As in many jurisdictions (Stepan and Kellogg 1973:13-25), it would appear to fall within the definition of intentional serious bodily injury under the Criminal Code. Article 294 (al.2) of the Criminal Code provides that any person who voluntarily wounds, harms, or commits with respect to another person any other act of force resulting inter alia in mutilation, amputation, loss of the use of a member, or other permanent infirmity shall be punished by imprisonment from five to ten years and by a fine of 20,000-200,000 CFAF. Some Islamic scholars in Senegal consider sterilization as mutilation (see Bopp 1975:c.18). Male sterilization may also be considered to constitute castration. The latter is punishable by forced labour for ten to twenty years or, if death results from the castration, by death (Criminal Code, art.304). If provoked by violent outrage to public morals, the castration is considered as excusable homicide or wounding and the sentence reduced (arts.313-314). No specific

legal provision specifies whether consent of the 'victim' would constitute a defense. In view of the relatively strong influence of French legal doctrine in Senegal, such consent to sterilization would probably not exculpate the surgeon (compare Stepan and Kellogg 1973:18-19, Doublet and de Villedary 1973:22-23).

D. CHILDREN AND CHILD WELFARE

Regulation of family planning must be viewed together with legislation concerning children and child welfare. The Constitution (art.15) provides as follows:

Parents have the natural right and the duty to bring up their children. In this task they are supported by the State and public collectivities.

Youth are protected by the State and public collectivities against exploitation and moral abandonment.

Filiation

Marriage is the basis of the legitimacy of children (Family Code, art.155, al.1) although children born of a marriage subsequently annuled retain their status as filiated or legitimate children despite dissolution of the marriage (art.145, al.4).

The Family Code provides that a child is legitimate whose filiation has been duly established with respect to a father and a mother married or reputed married at the time of the birth of the

child. A natural child is one whose filiation is duly established with respect to either the father or the mother but who was conceived at a time when the father and the mother were not married to each other (art.219).

Maternal filiation results from delivery of the child (art. 189). Indication of the name of the mother on the child's birth certificate establishes filiation of the child with respect to the mother. However, the woman whose name appears on the birth certificate may contest the child's filiation if she has not in fact given birth to the child. Conversely, a child may be recognized by the mother even though the mother's name is not indicated on the child's birth certificate (art.190). A child is presumed to be the child of the husband of the child's mother if the child is born at least 180 days after the celebration of the couple's marriage or within 300 days of the dissolution of that marriage, subject to disavowal by the presumed father (art.191). The presumed father may not, however, disavow the child (a) if, before the marriage, he was aware of his prospective spouse's pregnancy; (b) if he was present when the birth certificate was drawn up and the certificate was signed by him or includes a declaration to the effect that he did not know how to sign; or (c) if the child is still-born (art.192, al.1). Absent a presumption of paternity, a father may recognize the child (art.193).

The Family Code provides procedures for proving, establishing, and contesting filiation (arts.197-214). Legal proceedings to establish paternal filiation are prohibited if the child is not presumed to be born from the marriage of the child's mother or is

or is not voluntarily recognized by the father (art.196), except when the supposed father has baptized the child or given the child a name (art.211, al.1). Contrary to previous dispositions of Islamic-based law (see M'Backé 1973:39), an illegitimate child may be legitimated either by the subsequent marriage of the child's parents after the filiation of the child with respect to each has been established or by recognition by the father after the marriage, even though paternal filiation has not been established (art.194). The child of an incestuous union may not be recognized by its father, except when marriage of the parents is no longer prohibited under art.110 of the Family Code (art.195).

An important innovation of the Family Code with respect to the entitlement of illegitimate children to support is the action in indication of paternity (action en indication de paternité) permitted by article 215. Unlike judicial declaration of paternity outside marriage allowed under French law (Civil Code, art.340 (Lawson, Anton, and Neville Brown 1967:75)), judicial decision indicating paternity under article 215 of the Senegalese Family Code does not establish paternal filiation with respect to the child but obliges the person indicated as father to furnish food for the child (art.215). Indication of paternity may be declared (a) in the case of abduction or rape; (b) in the case of seduction, abuse of authority, or promise of marriage or engagement; (c) where proof rests on an unequivocal written admission of paternity by the alleged father; (d) where the alleged father and the mother were living in 'notorious concubinage' during the presumed period of conception; and (e) where the alleged father has provided like a father for the support and education of the

child (art.216).¹⁸ The action must be brought against the designated father or his heirs by the child within his or her minority or within one year of reaching majority; or, during the child's minority, by the child's mother; or, if the mother is deceased, incapable, or presumed absent, by the person having custody of the child (art.218, al.2, 5)(see Tribunal 1974). It must be brought within two years of the birth of the child or, in certain cases, within two years of the time when the mother and designated father ceases to provide for the child's support and education (art.218, al.3, 4).

Support

By reason of their marriage, the spouses have the duty to feed, maintain, bring up, and educate any children from the marriage (Family Code, art.155, al.2). The means of fulfilling the obligation to bring up children are regulated by Book 6, Chapter 1, of the Family Code, establishing rules applicable to both spouses with respect to matrimonial property regimes (art.155, al.2). In order to fulfill these obligations parents may exercise, with respect to their children, rights pursuant to parental authority governed by Book 5, Title 1, Chapter 1, of the Family Code (art.156).

During the marriage, the alimentary obligation between parents and children is part of the legitimate expenses of the marriage (art.262, al.1). Illegitimate children whose filiation is regularly established have, with respect to the parent or parents

18. These grounds are the same as those upon which an action for judicial declaration of paternity outside marriage may be brought under the French Civil Code, art.340, al.1

in relation to whom filiation is established, the same rights and the same alimentary obligation as do legitimate children. Adoption creates an alimentary obligation between adopter and adoptee. The alimentary obligation exists only between a spouse and the first-degree ascendants of the other spouse. This obligation ceases upon divorce or death of the other spouse even though children of the marriage survive (art. 264). A judicial decision indicating paternity (d'indication de paternité) gives rise to an alimentary obligation on the part of the father with respect to the child (art.265). A person who is proved to have failed, for more than two months, to comply with a court order for support payments to a spouse, ascendants, or descendants may be punished by imprisonment of three months to one year and a fine of 20,000-250,000 FCFA and risks deprivation of civil and familial rights (Criminal Code, art.351).

In Book Six, Chapter One, the Family Code provides that, under all matrimonial regimes, the spouses mutually accept, inter se and with respect to third parties, responsibility for the maintenance and education of children resulting from the marriage. Principal responsibility rests on the husband. The spouses are presumed, without accounting, to have contributed to these expenses. Each spouse is empowered to make contracts relative to marital obligations, and the other spouse is jointly liable for debts resulting from such contracts unless expenses contracted for are manifestly unreasonable in view of the standard of living of the household or are contracted in bad faith (art.375). If a spouse fails seriously to fulfill his or her duty to contribute to the expenses of the marriage, thereby imperiling the interests of the family, the other spouse may seek

a court order prescribing any urgent measures required by the interests of the family, including restraining the derelict spouse from disposing, without the consent of the other spouse, of his or her moveable property (art.376). Alternatively, if either spouse fails to fulfill the obligation to make a reasonable contribution to the expenses of the marriage, the other spouse may be authorized to attach a part, proportional to the plaintiff's needs, of the wages or other earnings of his or her consort (art.375, al.3; Code of Civil Procedure,¹⁹ art.593).

In order to fulfill their obligations with respect to minor children, that is, children under the age of 21 (art.276), husband and wife are jointly vested with parental authority (puissance paternelle) with respect to their legitimate children. A natural child whose filiation with respect to both parents is established at birth is assimilated to the status of a legitimate child for the purpose of attribution of parental authority. A child whose filiation is established only with respect to the mother is entrusted to the authority of the mother; upon subsequent recognition of the child by the father, the justice of the peace may, if required by the interests of the child, transfer parental authority to the father. A child whose filiation is established with respect to neither parent is put in tutorship (art.281). The exercise of parental authority comprises the support and education of the child, the right to establish the child's residence, and the right of correction (arts. 283, 284, 285). It also includes the right to administer the child's

19. Décret no.64-572 du 30 juillet 1964 portant Code de Procédure Civile (RLJ 1964, p.72; 1964, p.117; published as a separate brochure at Rufisque, Imprimerie Nationale, 1964)

property, income from which is to be used exclusively for the child's support and education. Property resulting from the child's separate employment, property given or left by will to the child on the express condition that it shall be exempt from such administration, and property inherited by the child and from the succession of which the child's father or mother have been excluded, are excepted from the right to administer deriving from parental authority (art.286).

During the marriage, this authority is exercised by the father as head of the family. However, decisions taken by the father contrary to the interests of a child or of the family as a whole may be, at the request of the mother, modified or altered by the justice of the peace of the domicile of the child (art.277, als.1, 2). Absent a contrary decision by the justice of the peace, parental authority vests in the mother alone (a) with respect to rights lost by the father when all or part of the rights deriving from his parental authority have been removed from him (cf. arts.296-299); (b) when, because of his incapacity or absence or any other reason, the father is no longer head of the family; (c) if the father is adjudged to have abandoned the family; and (d) if the father delegates parental authority to her (art.277, al.3). If the spouses reside separately in the absence of a judicial separation decree, the justice of the peace may, in the interests of the child and upon the request of the mother or the ministère public, authorize the mother to exercise parental authority with respect to the child; such authorization terminates upon reunion of the spouses, judicial separation, or divorce (art.277, al.4).

In the case of divorce by mutual consent, the interests of children from the marriage are deemed to be a question of public policy (ordre public)(art.158, al.3). The agreement of the parties with respect to their children, including custody, the exercise of parental authority, and any support payments, must be specified in the request for divorce (art.160) and in the judgment granting the divorce by mutual consent (art.162). In the case of a suit for divorce, the court may, pending judicial decision, authorize any temporary measures it deems necessary to protect the interests of the children of the marriage (art.168, al.3). After hearing the parties and prior to judicial decision, the court may, at its discretion, make orders with respect to the temporary custody of the children, parental visiting rights, child support, and any other temporary measures necessary to protect the interests of the children and obtain any further necessary information with respect to the care, custody, and education of the children (art.170, als. 3, 4). The judgment authorizing divorce by mutual consent or granting divorce or judicial separation specifies the person, either a parent or, if necessary, a third person, to whom custody of the children is granted and visiting rights of the other spouse or the spouses. Regardless of the person granted custody of the children, both the father and mother are required, in proportion to their resources, to contribute to the maintenance and the education of the children (art.278).

If a marriage is dissolved by the death of either spouse, the surviving spouse is vested with parental authority over the child and with the administration of the child's property. A widow

may, however, request to be discharged from this responsibility, and if required by the interests of the child, any relative may, especially in the case of remarriage by the widow, request that the conditions of custody, support, and education of the child be ordered by the court (art.279, al.1). Upon the death of the spouse granted custody following divorce or judicial separation, parental authority with respect to the child vests in the surviving parent, unless such authority has, for cause, been removed from that parent. However, the judge may, at the request of any interested relative and if warranted by the interests of the child, grant custody to any other person (art.279, al.2). After the death of both parents, parental authority with respect to the child is exercised by the tutor (art. 280, al.1).

Protection from Cruelty and Abuse

Legal protection of children from cruelty and abuse rests upon the Family Code and the Criminal Code. The Family Code provides that a father, mother, or any person invested with parental authority over a child may be deprived of such authority. Deprivation of parental authority may be mandatory or by court order. Parental authority is mandatorily removed from a father, a mother, or other person exercising such authority who is (a) adjudged to have provoked his or her own children to debauchery; (b) twice adjudged to have provoked a minor to deabuchery; (c) sentenced for a crime, or for a delict punishable by imprisonment for more than five years, committed on the person of his or her own child; or (d) twice adjudged to have committed a delict with respect to his

or her child. In such cases, the mandatory removal of parental authority applies with respect to all attributes of parental authority and with respect to all children over whom the condemned person exercises such authority. In addition, the court may, by special decision, deprive the condemned person of his or her alimentary right with respect to his or her children and deprive the person of parental authority with respect to his or her children as yet unborn (art.296).

A person exercising parental authority with respect to a child may by court order be deprived of such authority if, by ill treatment, notorious conduct, or lack of care or guidance on their part, the person endangers the health, safety, or morals of the child. An action to obtain such a court order may be brought only by the ministère public of the domicile of the person exercising parental authority. The court may order any temporary measures it deems necessary with respect to the custody and education of the child (art.297, als.1, 2, 3). The court may also order "educative assistance" provided by articles 593-607 of the Code of Civil Procedure, in which case expenses of supporting the child must be borne by the person(s) exercising parental authority and those from whom the child is entitled to receive food. If such a person practices a profession or is employed in the public or private sector, the notification by the court to the person's employer automatically acts as an attachment order with respect to that person's income so as to permit direct payment of any expenses specified in the court order. The order may also grant custody of the child to another person or organization with the consequence that family allowance payments with respect to the child are paid directly to the person having custody of the child (Family Code, art.293).

Infanticide, defined as the murder or assassination of a newly born infant (Criminal Code, art.285), is punishable by death (Criminal Code, art.287). Any person who wilfully injures or strikes a child less than 15 years of age, or who wilfully deprives the child of food or care to the extent that the child's health is endangered, or who commits with respect to the child any other violent acts, minor violence excepted, shall be punished by imprisonment of one to five years and a fine of 25,000-200,000 CFAF. If illness or total incapacity to work more than 20 days results from these acts, or if the acts result from premeditation or vengeance, the sanction is imprisonment for three to seven years and a fine of 50,000-250,000 CFAF. If the guilty persons are the child's father, mother, or other ascendants, or any other person having parental authority over the child, the term of imprisonment is increased to five to ten years. The guilty party may, in addition, be deprived of specified civil or familial rights for a period of five to ten years from the date of the sentence (Criminal Code, art. 298). Penalties are increased if the child is mutilated or permanently deprived of the use of a member or otherwise permanently injured (Criminal Code, art.299). For numerous crimes and delicts the Criminal Code provides increased penalties if the victim is a minor.

Molestation of a child of either sex aged less than 13 years is punishable by imprisonment of 2-5 years and, if committed by a person having authority over the minor, by 5 years in prison, even though the minor is older than 13 years (Criminal Code, art.319). Kidnapping of a minor, by force or fraud, is punishable by forced labour for five to ten years (Criminal Code, art.346). If the

minor is less than fifteen years old, or, regardless of the age of the child, if the kidnapper collects or seeks to collect a ransom, the penalty is forced labour in perpetuity unless, prior to the sentence, the minor is found alive, in which case the penalty is reduced to forced labour for five to ten years (Criminal Code, art. 347, als.1, 2, 3). Kidnapping which results in the death of the kidnapped minor is punishable by death (Criminal Code, art.347, al.4). Kidnapping or attempted kidnapping of a minor without force or fraud is punishable by imprisonment from two to five years and a fine of 20,000 to 200,000 francs. If a minor so kidnapped marries the kidnapper, the latter may not be brought to trial except upon complaint by the persons capable of demanding annulment of the marriage; no sentence may be given before annulment of the marriage (Criminal Code, art.348). Any person who, even without force or fraud, kidnaps or removes a minor from the person to whom, following a temporary court order or a judicial decision, custody of the minor has been granted, may be punished by imprisonment from two months to two years and by a fine from 20,000 to 200,000 francs (Criminal Code, art.349, al.1).

Rape, normally punishable by imprisonment from five to ten years, is sanctioned by ten years' imprisonment if the victim is less than 13 years old (Criminal Code, art.320, als.1, 2), or if the person found guilty (a) is an ascendent of the victim, (b) has parental or tutorial authority over the victim, (c) is entrusted with the education of the victim, (d) is a civil servant or religious authority, or (e) accomplished the act with the help of one or several other persons (Criminal Code, art.321). Attempted rape is considered as

rape if completion of the crime is prevented only by circumstances independent of the will of the accused (Criminal Code, art.2). A suspended sentence may not be granted in the case of rape (Criminal Code, art.322).

Child Labour

Child labour is regulated, first, by a series of statutes with respect to vagrancy and related activities and, secondly, by provisions of the Labour Code governing the employment of children.

In 1964 begging by minors under 18 years of age was prohibited by a statute²⁰ directed particularly against soliciting gratuitous help for which nothing appreciable was offered in exchange, presenting for public compassion wounds or congenital or accidental deformities, or engaging in unauthorized solicitation. Such minors were forbidden to engage in public commercial or professional activity outside the normal execution of a contract for labour or regular apprenticeship. Violators were to be remitted to the custody of their parents or guardians. The statute provided that these last were to be subject to a fine not exceeding 8000 francs and imprisonment not exceeding ten days and that such penalties were applicable to "persons to whom the parents or tutor has entrusted the children for education or for any moral, religious, academic, or professional training whatsoever". In 1966 street merchants and others selling

20. Décret no.64-088 M.J.-A.C.S. du 6 février 1964 interdisant la mendicité sous toutes les formes aux mineurs de 18 ans et portant interdiction de certaines activités à leur encontre (RLJ 1964, p.123; JO 1964, p.283)

industrial, food, and artisanal goods were made subject to administrative permit.²¹ Local authorities invested with police powers were subsequently authorized to enact local regulations concerning such merchants, car washers, and shoeshine boys²² and providing inter alia for age conditions. In 1968 the exercise of these activities and all public activities not forming part of an apprenticeship or an employment contract were made subject to prior administrative authorization.²³

In the absence of special authorization by the Minister of Labour and Social Security, no person aged less than 14 years may be employed, even as an apprentice, in any enterprise (Labour Code, art.140, al.1). Types of work and categories of enterprises in which the employment of youth is prohibited together with the relevant age limits within which such prohibitions apply are to be provided by ministerial order. The Labour Inspector may, and must at the request of the employee, require medical examination of employed minors to ascertain that their work does not exceed their physical capacity. If work which the minor is required to perform

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21. Décret no.66-540 du 9 juillet 1966 réglementant la vente sur la voie et dans les lieux publics (RLJ 1966, p.706; JORS 1966, p.926)
 22. Loi no.67-52 du 29 novembre 1967 relative à la réglementation des activités qui s'exercent sur la voie et dans les lieux publics (RLJ 1967, p.817; JORS no.3930 du 9 décembre 1967, p.1689). See N'Dir 1968.
 23. Décret no.68-664 du 10 juin 1964 réglementant les activités qui s'exercent sur la voie et dans les lieux publics (RLJ 1968, p.158; JORS no.3967 du 22 juin 1968, p.676)

exceeds his or her physical capacity, the employee must be given suitable work; if such is not possible, the employment contract must be terminated with payment of the "warning indemnity" (see Labour Code, art.49) to the employee (art.141). Employed minors must have eleven consecutive hours' rest between daily periods of work. Employment of minors at night (10 p.m. to 5 a.m.) remains governed by the Washington agreements rendered applicable in Senegal by the decrees of December 28, 1937 (art.136). Under these agreements the employment at night of minors aged less than 18 years is prohibited except in enterprises in which only members of the same family are employed. However, this prohibition does not apply to night employment of minors aged 16 or more who are employed in specified industries operating day and night, including iron and steel plants, glass factories, paper mills, and sugar refineries.²⁴ Collective agreements are required to specify the means by which the principle of "equal pay for equal work" for minors is to be applied; they may, but are not required to, set forth particular conditions governing the employment of minors in enterprises to which the agreement applies. The instances in which housing for minor female employees not living en famille must be furnished and the standards of such housing are to be established by decree (art.109, al.1). No person less than 21 years of age may be employed as an apprentice (art.66); this last, among other provisions, is widely disregarded.

24. The relevant sections of the Washington agreements are set forth in Secretariat Social d'Outre-Mer 1953:180-182.

Care of Orphans

Senegalese law with respect to orphans comprises the sections of the Family Code concerning the alimentary obligation, tutorship, and adoption. The alimentary obligation resulting from kinship is reciprocal and exists without limitation of degree in the direct line but does not extend to descendants of collaterals (art.263, al.1). No alimentary obligation exists between a person and descendants of the first degree of a spouse (art.264). The vesting of parental authority with respect to a child of a marriage dissolved by the death of one parent (art.279) has already been discussed. After the death of both parents of a child, parental authority with respect to that child is exercised by the tutor, who is responsible for the child's care, custody, and education. Maintenance of the child is to be provided by the child's income, if any, and by those relatives, whether by blood or marriage, of the child who have an alimentary obligation toward the child; decisions concerning the child's future must be submitted to the family council (art.280). A maintenance allowance of 2000 CFAF per month per child is payable to the person or charitable institution having custody of an indigent, fatherless or abandoned child.²⁵ Upon reappearance of a child's parent, declared absent or disappeared, the child ceases to be governed by tutorship or legal administration. If the surviving spouse has divorced and remarried and the new marriage is valid as against the returned former spouse, custody of the child is decided by the court on the basis of the best interests of the child (art.28, al.3).

25. Décret no.69-1054 du 23 septembre 1968 instituant une allocation d'entretien des mineurs indigents orphelins de pères ou abandonnés (JORS no.4061, 11 octobre 1969, p.1188)

The Family Code provides for two forms of adoption, plenary adoption and limited adoption. Neither may occur without sufficient reason and unless adoption benefits the adopted person (art.223, al.2). Plenary adoption may be requested (a) jointly, after five years of marriage, by two spouses validly married and not separated and at least one of whom is at least 30 years old; (b) by a spouse with respect to the children of his or her consort; and (c) by any unmarried person over 35 years old (art.224). Absent dispensation by the President of the Republic, the adopter must have no children or legitimate descendants as of the date of the request; in the case of adoption by two spouses jointly or adoption by one spouse of the children of the other, the spouses must not yet have had any children from their marriage. The existence of adopted children or children born after the adoption does not constitute a bar to adoption (art.226). The adoptee must be an unemancipated minor living with the adopter(s) for at least one year (art.228) and may be either (a) a child for the adoption of whom consent has validly been given by the child's mother and father or family council or (b) a child declared abandoned (art.229). The adopter must be at least 15 years older than the adoptee except that, if the proposed adoptee is the child of the spouse of the adopter, the age difference is reduced to 10 years (art.225). The surviving parents or parent or, absent a surviving parent, the family council of the adoptee must consent to the adoption and may do so by entrusting the child to a specialized public agency or authorized adoption bureau (art.230). A child over 15 years of age must personally consent to his or her adoption (art.231). Such consent must be given in duly prescribed form (art.232). If refusal by

one parent to consent risks compromising the morality, health, or education of the child and the other parent consents or is deceased or unknown, the proposed adopter may request the court to authorize the adoption. A similar procedure is permitted in the case of analogous refusal by a family council to consent to the adoption (art.233). Placement of a child for adoption must be authorized by the court of first instance (art.234) and bars restitution of the child to his or her family of origin or any declaration of filiation or recognition by that family (art.235, al.1). Upon adoption, the adoptee becomes a member of the adopter's family and ceases to be a member of his or her family of origin except with respect to certain impediments to marriage (art.241). The adopted child takes the surname of the adopter or, in the cases of adoption by two spouses, the name of the husband. However, children of the husband who are adopted by the wife retain the surname of their father (art.6, al.1). In the family of the adopter, the adoptee has the same rights and obligations as a legitimate child of the adopter (art.242). Plenary adoption is irrevocable (art.243).

No age requirements are imposed in the case of limited adoption except that an adoptee over 15 years of age must consent personally to the adoption (art.244). The adopter may stipulate that limited adoption does not give rise to any right of inheritance between the adopter and the adoptee and his or her descendants. The persons whose consent is required for the adoption must expressly consent to this condition (art.245, al.2). If consent is given to such a condition, the adoptee and his or her descendants have no right to inherit from the adopter; if the adoptee dies without

descendents, any property of the adoptee is inherited within the adoptee's family of origin. The adopter may, however, make bequests or legacies to the adoptee (art.250). Absent such a condition, the adoptee and descendents enjoy the same rights of inheritance with respect to the adopter(s) as do legitimate children (art.251). Under this form of adoption, the adoptee remains a member of his or her family of origin with full rights therein, including rights of inheritance (art.247, al.1). The adoptee takes the surname of the adopter, which is added to the adoptee's existing name; the court may, however, decide, in the interests of the child, that the surname of the adopter is to be substituted for the adoptee's existing name (art.6, al.2). Impediments to marriage between the adoptee and his or her family of origin continue to apply. Marriage is also prohibited between (a) the adopter and the adoptee and his or her descendents; (b) the adoptee and the spouse of the adopter and, conversely, the adopter and the spouse of the adoptee; (c) adopted children of the same adopter; and (d) the adoptee and children of the adopter (art.248). Limited adoption may be revoked, for "grave reasons", by order of the court (art.253).

In both forms of adoption, the adopter exercises parental authority with respect to the adoptee. In the case of adoption by two spouses, parental authority vests in them jointly and is exercised in the same manner as with respect to legitimate children (art.282). Adoption establishes an alimentary obligation between adopter and adoptee. In plenary adoption, the alimentary obligation extends to other relatives to the same extent as in the case of legitimate children. Under limited adoption the obligation

exists only between adopter and adoptee but, if this obligation cannot be fulfilled, the adoptee may claim food from his or her family of origin (art.263).

Public Guardians

In Senegalese as in French law the institution of tutorship provides a form of public guardian for children. An unemancipated minor is a minor who has not been emancipated, as of right, by marriage or voluntarily emancipated by the father, the mother, or the family council once the minor has reached the age of 18 (Family Code, art.335)(compare M.Niang 1974a). An unemancipated minor is provided with a tutor in the following instances:

- (a) for legitimate children, if the father and mother are both deceased, have been removed from parental authority, are incapable or absent, or have been adjudged to have abandoned the family;
- (b) for illegitimate children, if filiation has not been established with respect to either parent;
- (c) for any child, if legal administration of the child's property has been converted into tutorship (tutelle) or upon the death, removal from parental authority, incapacity, absence, etc. of the only person able, by law or by delegation, to exercise parental authority with respect to the child (art.305).

Tutorship (tutelle) involves the family council, the tutor, and the supervising guardian (subrogé tuteur).

The family council is composed of four members, including the supervisory guardian but not including the tutor or the juge des

tutelles, designated by the juge des tutelles for the duration of the tutorship. Members are chosen, in priority, among those related by blood or marriage to the child's father or mother, in such a manner as to leave neither the paternal nor the maternal line unrepresented and taking into account the interest of each person in the child. The judge may, however, name any other person having a special interest in the child (art.311). Attendance at meetings, normally called by the judge (art.312), is compulsory, representation being allowed only with a limited circle of relatives (art.313, al.1). No decisions may be taken unless half of the members are present. The judge presides and may vote to break a tie (art.314, als.1, 2). The powers and duties of the family council include (a) power of appointing a tutor if none has been named by testamentary disposition or if the person named does not accept or ceases to exercise the responsibility (art.310); (b) power of naming a principal tutor and an assistant tutor to manage certain property if required by the amount or dispersal of the property to be administered (art.317); (c) power to name, from among its members, the subrogé tuteur or supervising guardian (art.318, al.1); (d) removing the tutor in certain cases (art.310, al.3); (e) approving all major acts by the tutor with respect to the ward's property (arts.329, 330); and (f) consenting to the ward's marriage or emancipation, if the child has no living ascendants (art.337).

Normally the right to choose a tutor by testamentary disposition belongs to the last surviving parent, either mother or father. The tutor thus designated is not bound to accept the responsibility of tutorship (art.309). The tutor is not remunerated for his or her functions (art.319, als.1, 2), which remain personal

to the tutor and are not transmissible to the tutor's heirs or open to participation by the spouse of the tutor (art.320). The duties of the tutor include acting for the ward when by reason of minority, the ward is legally incapable of acting on his or her own behalf and administering the property of the ward subject to the supervision of the family council, the subrogé tuteur, and the court.

The subrogé tuteur appointed concurrently with the tutor is responsible for watching over the administration by the tutor of the property of the ward and informing the juge des tutelles of any dereliction of duty on the part of the tutor (art.318). The supervisory guardian is normally named from the line, paternal or maternal, other than that of the tutor. As in the case of the tutor, the functions of the supervisory guardian are not remunerated and are personal in character (arts.319, 320).

Abandonment of Children

Abandonment of the family or of the conjugal home is a ground for divorce (Family Code, art.166). It is also punishable by imprisonment from three months to a year and a fine of 20,000-250,000 francs in the instances of:

- (a) a father or mother who, without serious reason, abandons the family residence for more than two months and thus avoids fulfilling all or part of his or her moral or material obligations deriving from parental authority or legal tutorship; the two months' period may be broken by the person's return to the household which manifests definitive intention to resume family life;

- (b) a husband who, without serious reason, intentionally abandons, for more than two months, his wife whom he knows to be pregnant;
- (c) a father and mother who, by ill treatment, habitual drunkenness or notorious conduct, or failure to furnish necessary care or guidance, endanger the health, safety, or morals of one, several, or all of their children. (Criminal Code, art.350, al.1)

In addition, such person risks being deprived of specified civil and familial rights (Criminal Code, art.351, al.3).

A child, found by an individual or charitable organization and uncared for by his or her parents for a year or more, may be judicially declared abandoned unless a parent undertakes care of the child and the court finds such undertaking to be in accordance with the interests of the child. Upon declaration of abandonment, the court may delegate parental authority (puissance paternelle) with respect to the child to a person interested in the child's welfare, a specialized public organization, or an authorized adoption agency (Family Code, art.294, als.1, 4). A person who exposes or abandons, in a solitary place, an infant or a person incapable, by reason of his or her physical or mental condition, of protecting himself or herself is punishable by imprisonment from one to three years and a fine of 20,000-200,000 CFAF (Criminal Code, art.341). If a child is abandoned by an ascendent or any other person having authority over or custody of the child, the sanction is increased to imprisonment from two to five years and a fine of 20,000-400,000 CFAF (Criminal Code, art.342). Increased penalties are provided if abandonment or exposure results in illness or total incapacity (Criminal Code, art.343). Somewhat lighter penalties are provided

if the abandonment occurs in a public rather than in a solitary area (Criminal Code, arts.344, 345). Parents having abandoned a child may, and in some cases must, be deprived of parental authority with respect to some or all of their children (Family Code, arts.295, al. 3; 296; 297).

Any person finding a newly born child is required to declare the finding to the officier de l'état civil of the place where the child is found (Family Code, art.55, al.1). Failure to notify the registry official of a found child is punishable by imprisonment from one to six months and a fine of 20,000-75,000 CFAF, unless the finder consents to assume custody of the child (Criminal Code, art. 340). The registry official completes a provisional birth certificate for the child and notifies the justice of the peace of the finding of the child and of any temporary measures taken to safeguard the child's health (Family Code, art.55, als.2, 3). The justice of the peace may modify these arrangements and notify the president of the juvenile court, who may make orders with respect to the custody and protection of the child (art.295, als.1, 2).

E. TAXATION

The tax system in Senegal permits tax benefits which generally increase with family size, although such benefits usually accrue particularly to those with relatively high incomes. Individuals subject to the tax on industrial and commercial

profits (B.I.C.) are granted reductions in tax payable according to the number of children in the care of the taxpayer.²⁶ In order to entitle a taxpayer to deductions, a child must be the minor or invalid child of the taxpayer or a minor or invalid child residing with the taxpayer and for whose subsistence the latter is wholly responsible. Deductions are in the amount of 10% of tax due for the first child, 20% for the second, and 30% for each subsequent child up to and including the sixth child. Deductions are limited respectively to 3000 CFAF, 6000 CFAF and 9000 CFAF. The first 100,000 CFAF of taxable profits are exempt; the next 50,000 CFAF is taxed at a rate of 10%; and taxable income above 150,000 CFAF is taxed at a flat rate of 20%. Tax liability is consequently eliminated for taxpayers at the following levels of taxable profits and children, respectively: below 130,000 CFAF: 1 child; below 170,000 CFAF: 2 children; below 215,000 CFAF: 3 children; below 260,000 CFAF: 4 children; below 310,000 CFAF: 5 children; below 350,000 CFAF: 6 children (International Bank for Reconstruction and Development 1974:171). The same deductions apply to the tax on income from non-commercial professions (B.N.C.).²⁷

A general income tax (I.G.R.), the bases of which were established during the colonial period, applies to all income from

26. Code des impôts sur les revenus de Afrique occidentale Française, arts.22, 64 (Rufisque, Imprimerie du Gouvernement Général, 1953)

27. Code des impôts sur les revenus de l'Afrique occidentale française, arts.32, 64 (Rufisque, Imprimerie du Gouvernement Général, 1953)

all sources except that expressly exempted from tax.²⁸ The latter includes income of diplomatic and consular officials and of persons whose income does not exceed the minimum taxable income of 100,000 CFAF per share. Industrial accident benefits and family allowance benefits are exempt from tax. The general income tax is calculated according to the family quotient system used in France. According to this system, the total income of a person is divided into a number of parts based on the family responsibilities of the taxpayer. A

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28. The evolution of income taxation in Senegal may be traced in the following: Code des impôts sur les revenus de l'Afrique occidentale française (Rufisque, Imprimerie du Gouvernement Général, 1953); Délibération no.57-084 du 27 décembre 1957 (see Gautron and Rougevin-Baville 1970:393); Arrêté 1962 S.G.C. du 19 février 1959 rendant exécutoire la délibération 59-11 du 26 janvier 1959 de l'assemblée constituante portant modification du code des impôts sur le revenu (RLJ 1959, p.125); Ordonnance no.59-02 du 31 mars 1959 portant modification du code des impôts sur le revenu (RLJ 1959, p.154); Loi no.61-21 du 10 mars 1961 modifiant le code des impôts sur le revenu (RLJ 1961, p.155; JORS 1961, p.431); Loi no.62-40 du 6 juin 1962 modifiant la délibération 57-084 du 27 décembre 1957 portant codification des impôts sur le revenu (RLJ 1962, p.501; JORS 1962, p.1047); Loi no. 65-45 du 25 juin 1965 modifiant certaines dispositions de la délibération 57-084 du 27 décembre 1957 portant codification des impôts sur le revenu (RLJ 1965, p.401; JORS 1965, p.783); Loi no.66-28 du 25 mai 1966 modifiant l'article 27 du code des impôts sur le revenu (RLJ 1966, p.282; JORS 1966, p.609); Loi no.67-03 du 30 janvier 1967 modifiant certaines dispositions du code des impôts sur le revenu (RLJ 1967, p.148; JORS 1967, p.166); Loi no.69-04 modifiant certaines dispositions de la délibération no.57-084 du 27 décembre 1957 portant codification des impôts sur le revenu (JORS no.4009, 18 janvier 1969, p.72); Loi no.69-61 du 30 octobre 1969 portant intégration de l'impôt du minimum fiscal dans le régime de la retenue à la source (JORS no.4066, 8 novembre 1969, p.1317); Loi no.69-62 du 30 octobre 1969 modifiant et complétant certaines dispositions du Code des impôts sur le revenu (JORS no.4066, 8 novembre 1969, p.1318); and Loi no.72-49 du 12 juin 1972 modifiant certaines dispositions de la délibération no.57-084 portant codification des impôts sur le revenu (JORS, 24 juin 1972, p.1038)

single person counts as one part, a couple without children as two, and for each child in the taxpayer's care one-half part is allowed up to a maximum of five parts. Each part is taxed separately according to a progressive scale, and the total tax is the assessment calculated for one part multiplied times the number of parts (based on Doublet et de Villedary 1973:58). The tax decreases with the size of the family up to a maximum of ten children. However, tax abatements decrease as the number of children increases, since each new child counts only as one-half part. In addition to its potential consequence for fertility, this means of taxation "may entail a substantial alleviation of the IGR burden, especially at high income levels, by reducing the actual impact of the progressive rate structure" (International Bank for Reconstruction and Development 1974:178, see also Doublet and de Villedary 1973:58). It has been severely criticized as ill-adapted to Senegal, primarily because of its potential affects on population growth (International Bank for Reconstruction and Development 1973:51, 168, 178-179, 219).

Impôts forfaitaires are fixed in amount and are employed as means of taxing those people exempt from income and many other direct taxes. In Senegal they include the minimum fiscal tax (impôt du minimum fiscal)²⁹ payable by every person over 14 years of age in

29. Loi no.69-02 du 15 janvier 1969 portant réforme de l'impôt du minimum fiscal (JORS no.4009, 18 janvier 1969, p.71); Loi no. 69-57 du 30 octobre 1969 instituant une taxe représentative de l'impôt du minimum fiscal (JORS no.4066, 8 novembre 1969, p.1315); Loi no. 69-58 du 30 octobre 1969 modifiant certaines dispositions de la loi no.69-02 du 15 janvier 1969 portant réforme de l'impôt du minimum fiscal (JORS no.4066, 8 novembre 1969, p.1317); Loi no.69-61 portant intégration de l'impôt général sur le revenu, de la taxe complémentaire y afférente et de la taxe représentative de l'impôt du minimum fiscal dans le régime de la retenue à la source (JORS no.4066, 8 novembre 1969, p.1317)

given income categories. The minimum fiscal tax is, in the case of a married couple, imposed on the husband but payable on behalf of himself, of each wife, salaried or not, and of each unemployed child over 14 years old; employed children over 14 years of age are personally taxed. A married woman, regardless of income, is taxable in the same category as her husband if he is in a higher tax bracket. The following persons are exempt from the minimum fiscal tax: indigent persons; soldiers and subordinate officers during the legal duration of their military service; children regularly enrolled in an educational institution and considered as under the care of their parents within the meaning of the general income tax rules; injured war veterans and victims of labour accidents whose degree of invalidity is 50% or greater, and the wives and children of these; injured war veterans and victims of labour accidents whose degree of invalidity is less than 50% if, except for their pension, they lack sufficient means to provide for the needs of themselves and their family, such exemption including their wives and children; persons who were in the care of a person deceased as a result of industrial accident and who are, for that reason, entitled to a pension; persons with sleeping sickness or Hansen's disease who follow a regular course of treatment for their illness; and blind persons.³⁰ In 1972, a rural tax (taxe rurale) was instituted to provide funds for rural communities.³¹ Exemptions are the same

30. Loi no.69-02 du 15 janvier 1969 portant réforme de l'impôt du minimum fiscal, arts.2, 3 (JORS No.4009, 18 janvier 1969, p.71)

31. Loi no.72-59 du 12 juin 1972 instituant une taxe rurale (JORS no.4232, 24 juin 1972, p.1043); Décret no.72-69 du 16 juin 1972 (JORS, 8 juillet 1972, p.1110); Arrêté ministériel no.3853 D.C.P.T.-P.M. du 2 mai 1973 fixant les modalités de recouvrement de la taxe rurale instituée par la loi no.72-59 du 12 juin 1972 (JORS no.4295, 19 mai 1973, p.1087). See also Loi no.74-24 du 18 juillet 1974 relative au versement aux communautés rurales d'une portion de certains impôts directs perçus pour le compte de l'état (JORS no.4375, 26 août 1974, p.1373)

as for the minimum fiscal tax.

Other taxes are not subject to deductions according to family size. Employer contributions to pension schemes up to 6% of income and family allowances, family assistance payments, and supplements to salary by reason of the family responsibility of the employee are excluded from the tax base of the employer for purposes of the development tax, established in 1962.³² A portion of the taxe forfaitaire on imports is used to finance family allowance payments.³³

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32. Loi no.62-39 du 6 juin 1962 instituant une taxe de développement (RLJ 1962, p.495; JORS 1962, p.1045); Loi no.63-45 du 12 juin 1963 modifiant la loi no.62-39 du 6 juin 1962 instituant une taxe de développement (RLJ 1963, p.442; JORS 1963, p.828); Loi no.65-38 du 22 mai 1965 modifiant la loi no.62-39 du 6 juin 1962, instituant une taxe de développement (RLJ 1965, p.378; JORS 1965, p.538); Loi no.69-07 du 5 janvier 1969 modifiant certaines dispositions de la loi no 62-39 du 6 juin 1962 modifiée instituant une taxe de développement (JORS no.4009, 18 janvier 1969, p.78); Loi no.69-60 du 30 octobre 1969 modifiant certaines dispositions de la loi no.62-39 du 6 juin 1962 modifiée, instituant une taxe de développement (JORS no.4066, 8 novembre 1969, p.1317); Loi no.72-51 du 12 juin 1972 modifiant certaines dispositions de la loi no.62-39 du 6 juin; 1962 modifiée instituant une taxe de développement (JORS 24, juin 1972, p.1040)
33. Loi no.66-57 du 30 juin 1966 majorant le nombre des centimes additionnels à la taxe forfaitaire représentative de la taxe des transactions à l'importation et fixant l'affectation du produit de ces centimes supplémentaires au financement des prestations familiales servies par la caisse de prestations familiales et des accidents du travail (RLJ 1966, p.482; JORS 1966, p.772)

F. PUBLIC WELFARE

Generally similar policies concerning fertility underlie much social legislation in Senegal, which, as elsewhere, has historically developed in close relation to labour law. The Labour Code of December 15, 1952, for France's then Overseas Territories provided the basis of subsequent public welfare law. Beginning in 1955 a series of gubernatorial decrees established various social welfare schemes, including family, prenatal, and maternity allowances, cast in the mould of metropolitan French legislation (see Gonidec 1960:539-545; Berg 1959:235-236; Aubin 1954). Separate schemes applied to salaried workers and civil servants. They were modified in the late 1950's and have been further altered by post-independence legal reforms. Reforms in the case of salaried workers culminated in the 1973 Code of Social Security.³⁴ Civil servants today benefit from a separate family allowance scheme under which payments are "substantially higher than those in the private sector" (Gautron and Rougevin-Baville 1970:237).³⁵

Family Allowances

Despite modifications of detail, the system of family allowances (prestations familiales) in Senegal remains essentially

34. Loi no.73-37 du 31 juillet 1973 portant Code de la Sécurité Sociale, periodically published as modified as a separate brochure at Rufisque, Imprimerie Nationale, 1973.

35. Loi no.61-33 du 15 juin 1961 relative au statut général des fonctionnaires (RLJ 1961, p.282; JOS 1961, p.913), art.27. For statistics concerning benefits payable in the private sector and the civil service as of 1969, and a list of the pre-1960 statutes concerning the civil service scheme, see Salaires, soldes et traitements au Sénégal 1969:113-117.

that established in 1955-56. The 1952 Labour Code, art.237, authorized the heads of individual territories in the then French West Africa to establish by executive order, after consultation with Consultative Labour Committees³⁶ and the Territorial Assemblies, family allowance schemes for workers to whom the Labour Code applied and also to set up compensation funds for the disbursement of these allowances. Order no.7083 I.T.L.S.-S.M. of December 5, 1955³⁷ established a system of family allowances for salaried workers in Senegal. The compensation fund was established and regulated by Order no.7132 I.T.L.S.-S.M. of December 29, 1955, and by Order no.1329 I.T.L.S.-S.M. of February 27, 1956. A number of alterations

36. The following are basic regulations: Ordonnance no.59-3 du 3 juin 1959 portant institution d'organismes consultatifs du travail (RLJ 1960, p.29); Décret no.59-203 M.T.F.P. du 14 août 1959 relatif à l'organisation et au fonctionnement de la commission consultatif du travail et de la sécurité sociale de la République du Sénégal (RLJ 1960, p.184); Loi no.59-57 du 24 octobre 1959 portant ratification de l'ordonnance no.59-3 du 3 juin 1959 portant institution d'organismes consultatifs du travail (RLJ 1960, p.44); Décret no.59-59 M.F.P.T.S.S. du 3 juin 1959 pris en application de l'ordonnance no.59-3 du 3 juin 1959 et relatif à l'organisation et au fonctionnement du conseil supérieur du travail et de la sécurité sociale (RLJ 1960, p.32); Décret no.61-452 M.F.P.T.-D.T.L.S. du 29 novembre 1961 fixant les conditions d'organisation et de fonctionnement du conseil consultatif national du travail et de la sécurité sociale, de sa commission permanente et de ses deux sous-commissions (RLJ 1961, p.706; JO 1961, p.1806); Arrêté ministériel no.17398 M.F.P.T.-D.T.L.S.-T.M.O. du 9 décembre 1961 fixant la repartition des représentants des employeurs et des représentants des travailleurs au conseil consultatif national du travail et de la sécurité sociale (RLJ 1961, p.712; JO 1961, p.1860). These last two were taken under the 1961 Labour Code, arts.181-184.

37. JOS, 10 décembre 1955, p.1271

of detail were effected by subsequent legislation³⁸ prior to the enactment of the 1973 Social Security Code.

The Social Security Code provides for a social security scheme for workers employed under the Labour Code and the Merchant Marine Code. This scheme includes a branch for family allowances, a branch for the compensation and prevention of industrial accidents and other professional illnesses, and any other branches which may ultimately be established for the benefit of these same employees (art.1). Management of the scheme is entrusted to a public corporation,

38. Arrêté no.424 M.T.A.S. du 14 janvier 1959 modifiant le règlement intérieur de la caisse de compensation des prestations familiales du Sénégal (RLJ 1959, p.100); Arrêté no.425 M.T.A.S. du 14 janvier 1959 modifiant l'arrêté no.7083 I.T.L.S.-S.M. du 5 décembre 1955 portant institution d'un régime de prestations familiales au profit des travailleurs salairiés du Sénégal (RLJ, 1960, p.101); Loi-ordonnance du 1 décembre 1959 portant contribution du Budget de la Fédération du Mali au financement des prestations familiales servies dans chacun des Etats de la Fédération (J.O. Mali no.38 du 26 décembre, 1959, p.462; Recueil 1959, p.157. Décret no.60-134 S.G. du 23 mars 1960 modifiant les arrêtés no.7083 I.T.L.S.-S.M. du 5 décembre 1955 portant institution d'un régime de prestations familiales au profit des travailleurs salariés du Sénégal et no.1329 I.T.L.S.-S.M. du 27 février 1956 fixant le règlement intérieur de la caisse de compensation des prestations familiales du Sénégal (RLJ, 1960, p.300); Décret no.60-135 M.T.F.P. du 23 mars 1960 modifiant l'arrêté no.7132 I.T.L.S.-S.M. du 29 décembre 1955, modifié, portant organisation et fonctionnement de la caisse de compensation des prestations familiales du Sénégal (RLJ, 1960, p.301); Décret no.61-10 du 4 janvier 1961 modifiant les dispositions de l'article 8 de l'arrêté no.312 S.E.T. du 14 janvier 1952 (RLJ, 1961, p.34; JORS 1961, p.9). Arrêté ministériel no.7643 M.F.P.T.-D.T.S.S. du 2 mai 1962 portant modification des arrêtés nos.7632 I.T.L.S.-S.M. et 2147 I.T.T.-S.M. des 29 décembre 1955 et 29 mars 1956 fixant l'organisation, le fonctionnement et les règles relatives aux opérations financières et comptables de la caisse de compensation des prestations familiales et des accidents du travail (RLJ, 1962, p.416; JORS 1962, p.847); Décret no.62-0190 M.F.P.T.-D.T.S.S. du 17 mai 1962 déterminant le mode de placement et le taux d'intérêt des fonds de réserve et des fonds disponibles de la caisse de compensation des prestations familiales et des accidents du travail (RLJ 1962, p.450; JORS 1962, p.930)

the Caisse de Sécurité Sociale, originally created in 1955 (see Guèye 1973). Most persons employed in agriculture, the permanently unemployed, and many seasonal and day labourers fall outside the scheme, although the latter group includes an increasing proportion of the labour force (République du Sénégal 1974c:57). Also excluded are many petty producers in the 'informal sector' of the urban economy (see LeBrun 1973, Gerry 1974, LeBrun and Gerry 1975). Only a minority of the active population, primarily in urban foreign-owned industries, is entitled to family allowance benefits.

Family allowance benefits are payable to salaried workers under the Labour or Merchant Marine Codes who have in their care one or more children residing in Senegal and registered in the civil registry, or to such Senegalese workers employed in another country for a period of six months, renewable once, or to Senegalese workers enrolled in a training programme in another country (art.3). Entitlement to family allowance benefits is conditional upon the worker's having been employed for three consecutive months and a minimal period of 18 days or 120 hours in a month; such time may be carried over a period of two or three months in employment "having by nature an intermittent or irregular schedule of work" (art.8). A male worker is deemed to have a child "in his care" when he assumes in a general and permanent manner responsibility for housing, feeding, clothing, and educating the child. The scheme discriminates against female workers in that a female worker is considered to have such a child in her care for family allowance purposes only when her spouse does not have a paid employment (art.6).

Benefits are payable for children in the following categories: (a) children issued from a marriage of the worker on condition that the children are registered in the civil registry and that the marriage was celebrated or recorded (constaté) by a civil registry officer; (b) children who have been adopted according to law; (c) children of an unmarried salaried woman with respect to whom the natural filiation of the children has been established by recognition or by judgment according to law; and (d) children whose natural filiation with respect to a married worker and his spouse has been established according to law (art.7). In order to obtain family allowance benefits an employee must complete and submit a printed form, together with identification papers from the civil registry, to the Caisse de Sécurité Sociale (art.12).

Family allowance benefits (prestations familiales), broadly construed, comprise family allowances in its narrow sense(allocations familiales), prenatal allowances, maternity allowances, daily maternity benefits, and prestations in kind. Family allowance payments, taken in their narrow sense, are payable for each child between the ages of two and fifteen years in the care of an eligible employee.³⁹ In specified cases, the age limit is raised to eighteen. The employee must show the following documents for each child, depending on the applicable circumstances of schooling or employment of the child: copy of birth certificate, certificate of support, certificate of medical examination or enrollment in school for children aged 2 to 14; school enrollment certificate for children aged 15

39. Erratum à la loi no.73-37 du 31 juillet 1973 portant Code de la Sécurité sociale (JORS no.4420, 3 mai 1975, p.565)

to 21; apprenticeship contract for children aged 14 to 18; medical certificate proving infirmity or incurable illness for children aged 14 to 21 inflicted with an infirmity or incurable illness. Children benefitting from complete support under a scholarship scheme do not entitle a parent for family allowance payments on their behalf (Social Security Code, art.22). Allowances are paid retrospectively and at intervals not more than three months, commencing with the first day of the month following the second birthday of the child (art.23). All branches of the family allowance scheme are financed by mandatory employer contributions (art.132-157) (see Chambre de Commerce, d'Industrie et d'Artisanat de la Région du Cap-Vert 1974:93-106).

In 1965 Senegal concluded several bilateral agreements with respect to family allowances. A convention with Mali on May 13, 1965 coordinated application of each state's legislation on family allowances and labour accidents and illnesses.⁴⁰ Senegal has concluded with France periodic conventions coordinating the application of social security legislation. The 1965 Convention provided that salaried workers, or persons assimilated to salaried workers, were to be subject to the legislation of the country in which they were employed, unless their habitual residence was in the other state and the period of employment away from the state

40. Loi no.66-12 du 18 janvier 1966 autorisant le Président de la République à ratifier les conventions relatives aux prestations familiales et aux accidents du travail conclues entre la République du Mali et la République du Sénégal le 13 mai 1965 (RLJ 1966, p.68; JO 1966, p.150); Décret 66-781 du 15 octobre 1966 ordonnant la publication des conventions signées entre la République du Sénégal et la République du Mali (RLJ 1966, p.853; JO 1966, p.1417)

of residence was less than three years; technical assistants, career diplomats, and certain other persons were excepted from this provision. Assuming that they fulfilled the conditions determining application of family allowance legislation, workers who were salaried or assimilated to salaried status were allowed to claim family allowances for their dependent children who, whether legitimate, recognised, or adopted, resided in the country other than that in which the worker was employed. Such payments were to be made by the competent institution of the country in which the children resided.⁴¹

Maternity Leaves and Benefits

The Social Security Code provides for three types of maternity benefits: prenatal allowances (arts.15-17), maternity

41. Décret no.66-747 du 11 octobre 1966 ordonnant la publication au Journal officiel des conventions, accords et protocoles relatifs à la sécurité sociale, signés le 5 mars 1965, à Dakar, entre le Gouvernement de la République française et le Gouvernement de la République du Sénégal (RLJ 1966, p.827; JO 1966, p.1411) arts.3, 4, 12, 13, 15; cf. also Décret no.66-182 du 15 mars 1966 portant approbation de la convention générale sur la sécurité sociale, des accords complémentaires et protocoles annexes signés le 5 mars 1965 à Dakar, entre le Gouvernement de la République française et le Gouvernement de la République du Sénégal (RLJ 1966, p.181; JO 1966, p.408); Loi no.66-11 du 18 janvier 1966 autorisant le Président de la République à approuver la convention générale, les accords complémentaires et protocoles annexes signés le 5 mars 1965, à Dakar, entre la République française et la République du Sénégal et relatif à la sécurité sociale (RLJ 1966, p.68; JO 1966, p.149); Errata aux accords franco-sénégalais de sécurité sociale publiés au Journal officiel no.3854 du 5 novembre 1966 (RLJ 1966, p.865; JO 1966, p.1690); see also Loi no.75-33 du 3 avril 1975 autorisant le Président de la République à ratifier l'accord complémentaire relatif au régime de sécurité sociale des marins entre le Gouvernement de la République française et le Gouvernement de la République du Sénégal, signé à Paris le 20 mars 1974, ainsi que les arrangements administratifs et échanges de lettre y annexés (JORS no.4419, 28 avril 1975, p.554); Loi no.75-49 du 3 avril 1974 autorisant le Président de la République à ratifier, ainsi que ses annexes, la convention entre la République du Sénégal et la République française sur la sécurité sociale, signé à Paris le 29 mars 1974 (JORS no. 4419, 28 avril 1975, p.557)

allowances (arts.18-20) and daily benefits during and immediately after childbirth (arts.24-30).

Prenatal allowances may be obtained by the wife of a paid employee under the Labour Code, an unmarried paid female employee, and a salaried woman whose husband has no paid employment. Such allowances are payable from the date on which the pregnancy is declared until the date of birth of the child. The woman must declare her pregnancy by medical certificate to the Caisse de Sécurité Sociale and is required to undergo periodic medical examinations. Such examinations are noted in a booklet issued by the Caisse, and benefits paid upon presentation of the stamped booklet.

Following the birth of the child, the mother is entitled to maternity benefits from the date of birth until the child's second birthday. Such benefits are payable periodically upon presentation of the child's birth certificate and of a stamped section of the booklet issued for the purpose of showing that the child has been medically examined at specified periods. Failure to have the child examined as required entails loss of the maternity benefit for that period. In the case of multiple births, the mother is entitled to separate maternity benefits for each child.

The Labour Code provides that a woman whose pregnancy has been medically established or is apparent is entitled to leave her employment without prior warning and without being responsible for any payment for breach of the employment contract. In order to give birth to the child, she may suspend work for fourteen consecutive weeks, including eight weeks following delivery or longer

in the case of illness resulting from pregnancy or childbirth. The woman's employer may suspend her contract for 4 weeks prior to the presumed date of delivery and 6 weeks following delivery, but the employer may not fire the employee during this period. During the fifteen months following delivery, the mother is entitled to a maximum of one hour per working day in order to nurse the child (arts.138, 139). During the congé de maternité of 14 weeks, the employee is entitled to daily maternity benefits. Such benefits are payable periodically upon presentation of employment, medical, and other documents. The daily benefit is equivalent to one-half of the daily wage received by the employee when last paid. The employee is subsequently entitled to one supplementary day of vacation per year for each child less than 14 years old and registered in the civil registry (art.143).

Retirement Benefits

Schemes for retirement benefits in Senegal were for many years the responsibility of private organizations, but recently the legislative basis was provided for the unification of private sector schemes and affiliation of employers and workers to a retirement scheme was made obligatory. Formerly management of retirement schemes in the private sector lay with the Institution de prévoyance et de retraite de l'Afrique occidentale (IPRAO). IPRAO was established by an avenant of March 27, 1958, under the procedure (see Secrétariat Social d'outre-Mer 1953:216) permitted under article 76 of the 1952 Labour Code (1961 Code, arts.84-90) for extending arbitration awards beyond the parties either to the industry concerned

or to all private employers in Senegal.⁴² An executive order of November 26, 1952, extended IPRAO to all private employers in Senegal then bound by collective agreements.⁴³ Government control of IPRAO was very limited, IPRAO being essentially a private retirement scheme administered by a National Council composed of representatives each from unions and from employers' organizations. It was managed by a private organization, the Association pour la gestion des régimes collectifs de retraites d'outre-mer (AGROM) which comprises the major retirement plans in France.⁴⁴ One consequence of this relative autonomy from the Senegalese government was IPRAO's continued federal structure despite the demise of French West Africa and the Mali Federation, though in fact most workers covered by IPRAO are Senegalese.⁴⁵ Initially IPRAO was restricted to private sector employees, but in 1962 the benefits of IPRAO were extended to non-civil service public sector employees and the management

42. JOAOF, numéro spécial 2948 du 29 avril 1959, p.803

43. Arrêté général no.9682 du novembre 1958 (JOAOF du 13 décembre 1958, p.2180)

44. See Seck, 1970:27, who lists as members of AGROM the Caisse nationale de prévoyance in France and four nationalized insurance companies in France, l'urbaine-vie, la Nationale-vie, la Compagnie d'assurance générales sur la vie, and l'Union-vie. The extent of government participation and control is discussed in République du Sénégal 1965b:532-533.

45. In 1963, 84.5% of the enterprises and 74.6% of the workers covered were Senegalese, see Seck, 1970:27. See also République du Sénégal 1965b:531

of the pension scheme thus established was entrusted to IPRAO.⁴⁶
Pursuant to an agreement of June 22, 1962, between Senegal and
IPRAO employee and employer contributions were paid into IPRAO.⁴⁷

IPRAO regulations fixed the basic pension contribution at
a maximum of 9% of the employee's remuneration, of which 60% is pay-
able by the employer and 40% by the employee. Fifty-five is the
normal age of retirement. Employees may request retirement at
age 50, in which case the retirement benefit is reduced by 5% per
year. The amount of the benefit is calculated on a point system
based on length of employment. The total number of points allocated
to an employee is increased by 10% for each child still under the
care of the employee at the time of retirement and as long as the
child remains in the employee's care up to the age of 18. Such
increases by reason of family responsibilities are limited to a
total of 30% of the employee's total points.

Recent legislation establishes common standards to which
all private sector schemes must now adhere.⁴⁸ It requires

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46. Loi no.62-45 du 13 juin 1962 instituant un régime de retraites
au profit des personnels non fonctionnaires de l'Etat, des
collectivités locales, des établissements publics, des sociétés
d'Etat et des sociétés d'économie mixte (RLJ 1962, p.507; JO
1962, p.1049). Cf. Gautron and Rougevin-Baville, 1970:208-250
47. Décret no.62-0242 P.C.M.-M.F.P.T.-CAB.-B.E. du 22 juin 1962
pris pour l'application de la loi no.62-45 du 13 juin 1962
instituant un régime de retraites au profit des personnels
non fonctionnaires de l'Etat, des collectivités locales,
des établissements publics, des sociétés d'Etat et des
sociétés d'économie mixte (RLJ 1962, p.522; JO 1962, p.1169)
48. Loi no.75-50 relative aux institutions de prévoyance sociale
(JORS no.4419, 28 avril 1975, p.557)

authorization by the Minister of Labour and Social Security of retirement schemes and provides for uniform benefits for each category of workers. Pursuant to this statute, subsequent legislation rendered mandatory the affiliation of all employers and employees to a retirement scheme and established regulations for a unified retirement scheme applicable to all workers under the Labour Code except expatriate employees affiliated to other retirement schemes.⁴⁹

In contrast to the relative continuity of private sector schemes, the administrative framework of the civil service pension scheme has been reformed several times since its establishment. In 1961 a General Pension Scheme was established to provide pension and retirement benefits for civil service employees.⁵⁰ It was replaced in 1964 by the General Civil and Military Retirement Pension Scheme, which included military personnel as well as civil servants.⁵¹

49. Décret no.75-455 du 24 avril 1975 rendant obligatoire pour tous les employeurs et pour tous les travailleurs l'affiliation à un régime de retraite (JORS no.4422, 17 mai 1975, p.627)

50. Loi no.61-36 du 15 juin 1961 relative au régime général des pensions (RLJ 1961, p.304; JOS 1961, p.920)

51. Loi 64-24 du 27 janvier 1964 relative au régime général des pensions civiles et militaires de retraite (RLJ 1964, p.89; JO 1964, p.372) See also Loi no.69-23 du 25 février 1969 modifiant les articles 94, alinéa premier, 98, 99 et 100 de la loi no.64-24 du 27 janvier 1964 relative au régime général des pensions civiles et militaires de retraite (JORS no.4018, mars 15, 1969, p.321); Loi no.73-01 du 20 janvier 1973 complétant la loi no.64-24 du 27 janvier 1964 relative au régime général des pensions civiles et militaires de retraite (JORS no.4273, 27 janvier 1973, p.241); and Loi no.74-25 du 18 juillet 1974 abrogeant et remplaçant l'alinéa premier de l'article 80 de la loi no.64-24 du 27 janvier 1964 relative au régime général des pensions civiles et militaires de retraite (JORS no.4375 26 août 1974, p.1373); Erratum à la loi no.64-24 du 27 janvier relative au régime général des pensions civiles et militaires de retraite (JORS no.4405, 22 février 1975, p.216)

A National Retirement Fund was created in 1961 as a separate, non-budget account within the Senegal Treasury and received funds deriving from salary deductions and contributions from State, municipal, and other public employers as well as eventual contributions from the national budget.⁵² A Pension Bureau, established in 1961 within the Ministry of Finance, managed the civil service pension scheme then in force and disbursed monies due under this scheme from the National Retirement Fund; it was responsible also for the disbursement of life annuities and other payments to non-civil service contractual employees of the administration.⁵³ After the establishment of the General Civil Service and Military Pension Scheme in 1964, the Pension Bureau was expanded and reorganized as the National Pension Service under the authority of the Ministry of Civil Service and Labour. The new service assumed responsibility for managing and administering the scheme.⁵⁴ Operating rules for the National Retirement Fund were specified in 1966.⁵⁵

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52. Loi no.61-04 du 14 janvier 1961 créant un fonds national des retraites (RLJ 1961, p.53; JOS 1961, p.113); Décret no.66-518 du 30 juin 1966 fixant les règles de fonctionnement du compte spécial du trésor 'Fonds national des retraites' (RLJ 1966, p.652)
53. Décret no.61-090 M.F. du 7 mars 1961 portant création de la sous-direction des pensions (RLJ 1961, p.115; JOS 1961, p.400)
54. Décret no.64-852 du 23 décembre 1964 portant organisation du service national des pensions (RLJ 1965, p.64; JO 1965, p.69). Life annuities payable to contractual employees of the government were revised by Décret no.60-137 M.F.-D.F.-2 du 12 décembre 1960 portant réévaluation des rentes viagères des contractuels de la République du Sénégal (RLJ 1960, p.685; JOS 1960, p.1360)
55. Décret no.66-518 du 30 juin 1966 fixant les règles de fonctionnement du compte spécial du trésor Fonds National de Retraites: (RLJ 1966, p.652; JO 1966, p.899)

Five per cent of basic salary is deducted for the employee's pension contribution while the administration as employer contributes an amount equal to 15% of the employee's basic salary (art.81).⁵⁶ For civil servants rights to full pension based on length of service of thirty years, reduced to twenty-five years for employees who have served at least fifteen years active service in particularly dangerous or tiring positions specified by decree (art.4).

Right to proportional pensions may be acquired by several means, including fifteen years of service; under the 1961 scheme female civil servants did not qualify for proportional pension unless they were married or had children (Loi no.61-36, art.6). The age requirement for full pension is reduced in the case of female civil servants by one year for each duly registered child (art.7(3)). Female civil servants are also granted a service premium of one year for each duly registered child up to a maximum of eight years [six years maximum under the 1961 Law, art.9], although the premium may not reduce by more than one-fifth the length of service normally required in order to qualify for full pension (art.10). In calculating the value of the pension, pensions for length of service and disability pensions are within specified limits automatically increased by 10% if the employee has brought up at least three children from birth until age sixteen and by an additional 5% per child in excess of three children; all legitimate and illegitimate but recognized children and a maximum of two adopted

56. In the cases of teaching personnel these percentages are also applied to a special indemnity of 20% of basic salary provided for by the Ordonnance no.60-29 du 12 octobre 1960 and the Décret no.62-0174 P.C. du 10 mai 1962 complétant les dispositions de l'ordonnance no.60-29 du 12 octobre 1960 (RLJ 1962, p.435; JO 1962, p.878), see Loi no.66-06 du 18 janvier 1966 modifiant les articles 28, 80 et 81 de la loi no.64-24 du 27 janvier 1964 relative au régime général des pensions civiles et initiales de retraités (RLJ 1966, p.56; JO 1966, p.145)

children are counted for this purpose.⁵⁷ The right of a female civil servant to proportional pension accrues immediately if the employee is the mother of three or more children either living or deceased in war.

In 1967 the Code of Military Disability Pensions, which provided in detail for disability benefits for military personnel,⁵⁸ specified the payment of a supplementary benefit equal to 1/15 of pension for each legitimate child, born or expected, of persons suffering from less than 85% permanent or temporary disability (art.41). This supplement was to be paid for each child until the child reached the age of twenty years (art.42, al.3), but could not be combined with family allowance payments received on behalf of the child unless the child was incapacitated or otherwise unable to work (art.43). Decisions concerning claims under the Code of Military Disability Pensions are taken by a special commission established in 1970.⁵⁹

57. Under the 1961 Law, art.15(IV) illegitimate, recognized children and adopted children were considered together up to a maximum of two.

58. Loi no.67-42 du 30 juin 1967 portant Code des Pensions militaires et d'invalidité (RLJ 1967, p.540; JORS 1967, p.1015). Cf. also Décret no.70-1173 du 19 octobre 1970 fixant un guide-barème pour la classification des infirmités (RASERJ 1970, p.297; JO du 6 mai 1961) and Décret no.70-1267 du 20 novembre 1970 fixant les équivalences de grades pour le calcul des prestations en matière de pensions militaires d'invalidité (RASERJ 1970, p.525; JO du 26 décembre 1970, p.1258). The Loi no.72-45 du 12 juin 1972 JORS no.4232, 24 juin 1972, p.1033) made numerous changes to the Code of Military Disability Pensions.

59. Décret no.70-1269 du 20 novembre 1970 portant création d'un centre spécial de réforme et organisation de la commission de réforme (RASERJ 1970, p.532; JO du 26 décembre 1970, p.1244)

The 1965 establishment agreement between Senegal and France provided in its Protocol Number 1 for the granting of non-contributory old-age benefits to Senegalese nationals resident in France.⁶⁰

Death Benefits to Survivors

Under the Family Code a widow is entitled to food and lodging at the expense of her late husband's estate for a period of 300 days following the death. The support obligation ceases if the widow remarries during this period (art.262, al.4).

A surviving spouse of an employee covered by the IPRAO scheme is entitled to a maximum of 50% of the pension to which the employee was entitled or would have been entitled, assuming that the marriage occurred at least two years before the death of the employee. Such benefits cease after remarriage of the spouse of the deceased. A widow may claim pension benefits at age 50. However, if she has in her care at least two children under 18 years, she may

60. Loi no.66/11 du 18 janvier 1966 autorisant le Président de la République à approuver la convention générale, les accords complémentaires et protocoles annexes signés le 5 mars 1965, à Dakar, entre la République française et la République du Sénégal et relatifs à la sécurité sociale (RLJ 1966, p.68; JO 1966, p.149); Décret no.66-182 du 15 mars 1966 portant approbation de la Convention générale sur la sécurité sociale, des accords complémentaires et protocoles annexes signés le 5 mars 1965 à Dakar, entre le Gouvernement de la République française et le Gouvernement de la République du Sénégal (RLJ 1966, p.181; JO 1966, p.408); Décret no.66-747 du 11 octobre 1966 ordonnant la publication au Journal officiel des conventions, accords et protocoles relatifs à sécurité sociale, signés le 5 mars 1965, à Dakar, entre le Gouvernement de la République française et le Gouvernement de la République du Sénégal (RLJ 1966, p.827; JO 1966, p.1411)

claim benefits immediately upon the death of her husband. Surviving husbands are entitled to pension benefits deriving from the employment of their deceased spouse only after the normal age of retirement unless the surviving husband is totally incapacitated. Under specified conditions, orphans are entitled to 20% each of the pension to which their contributing parent was or would have been entitled. If the number of orphans exceeds five, the allocation of each is proportionately reduced.⁶¹

Subject to specified conditions, a widow of a civil servant is entitled to a pension equal in value to 50% of the value of the pension to which her husband would have been entitled. Each minor child and each disabled child is entitled to a pension equal in value to 10% of the pension to which the child's father would have been entitled subject to the condition that the total pension allocated to widow and children may not exceed the total pension to which the deceased would have been entitled. Similar provisions are made in the case of surviving husband and children of a deceased female civil servant. In the case of polygynous households the pension is allocated to the family and divided in equal per stirpes shares. Suspension of pension rights is reduced from full to partial if the employee has a wife or minor children such that during the period of suspension the wife or minor children are entitled to 50% of the pension or disability annuity to which the husband would have been entitled.

61. See I.P.R.A.O. n.d., arts.8, 14, 16-19, 22-24; I.P.R.A.O.1973; Avis relatif à l'extension d'une décision de commission mixte inter-professionnelle concernant l'indemnité de départ à la retraite (JORS no.4343, 2 mars 1974, p.315)

Survivors of civil servants are entitled in addition to a lump sum payment equal to the last annual salary of the deceased. If the deceased leaves a widow and children, the widow receives one-third of the sum and the remainder is divided equally among the legitimate, recognized, or adopted children of the deceased under the age of 21 or permanently incapacitated. The spouse takes the entire amount in the absence of children. Widows of a polygynous marriage take equal shares of the one-third or of the entire sum, depending on the existence of children. Each orphan is entitled to receive an additional supplement of 20,000 FCFA.⁶²

Death benefits to survivors of persons under the Labour Code or the Merchant Marine are also provided by the Code of Social Security (arts. 58, 60, 80, 82, 84, 87, 88, 93). In the case of industrial accident resulting in death, the Caisse de Sécurité Sociale reimburses survivors of the victim for funeral expenses. Survivors are also entitled to a life annuity based on the annual income of the deceased. The surviving spouse is entitled to a life annuity based on the annual income of the deceased. The surviving spouse is entitled to a life annuity equivalent annually to 30% of the deceased's annual salary, assuming that the surviving spouse was neither divorced nor separated from the victim. Surviving spouses of a polygynous marriage share equally in the annuity. Children formerly under the care of the deceased and other descendants of the deceased are entitled to an annual annuity equal to 15% of the annual salary of the victim if there is one surviving child, 30% if two

62. Décret no.64-767 du 16 novembre 1964 portant réglementation de l'attribution des secours après décès (RLJ 1964, p.747; JORS 1964, p.1627)

children survive the deceased, and 40% in the case of three surviving children plus an additional 10% for each subsequent surviving child. Surviving ascendants of the deceased are entitled to an annual annuity equal to 10% of the victim's annual salary. In no case may the total annuities payable annually exceed 85% of the annual salary of the deceased; the principle of proportional reduction is applied should total annuities payable exceed that amount. A surviving spouse without children who remarries ceases to be entitled to annuity payments to which she would otherwise have been entitled as a result of the death of her or his late spouse, but is entitled to claim a reduced lump sum payment.

G. INHERITANCE

In contrast to the diversity of inheritance practices in rural Senegal (Chabas 1965; LeRoy and Niang n.d.:140-143; LeRoy 1970: 193-199; Snyder 1973:247-290; Lampué 1972), the Family Code of 1972 establishes the essential, unified rules with respect to the distribution of decedents' property. It provides for legacies and disposition by will and permits two types of intestate succession. Certain general dispositions govern both forms of intestate succession. Thus, a child conceived but not yet born may inherit if born alive (art. 399, al.2). Any person upon whom succession devolves has the option of accepting the inheritance, of accepting it with benefit of inventory, or renouncing it (art.410). Except for its general dispositions aside, the Code provides for different rules of intestate succession according to whether the deceased was or was not a Muslim, that is, was among "those persons who, during their life, either

expressly or by their behaviour, made manifest without doubt their desire to see their property devolved according to the rules of Islamic law" (art.571).

Islamic succession (see Chabas 1956; Ouane 1958:29-36; Mathurin 1972) recognizes two general categories of heirs: legitimate heirs and universal heirs or asaba (art.572). Legitimate heirs are those entitled to a fixed share of the succession. Such heirs include the deceased's father, any paternal ascendants, uterine brother, and surviving husband; and daughter, son's daughter, son's son's daughter, mother, maternal or paternal grandparents, full or half sister, and widow. Universal heirs are so called because in the absence of other heirs they succeed to the totality of the goods of the deceased while legitimate heirs take only a fixed share. Certain persons belong to both categories of heirs and succeed in either or both, according to the nature of other heirs present. A legitimate heir of high priority excludes completely from the succession all legitimate heirs of lower priority. The succession devolves first upon legitimate heirs, who, within the rules of exclusion by category, take the parts reserved for them; if part of the succession remains or in the absence of legitimate heirs, the remainder or the whole of the succession, respectively, passes to the universal heirs in order of priority (art.596). Certain persons may never be totally excluded from the succession: the deceased's father, mother, son, daughter, surviving husband, or widow (art.588). If competing universal heirs are not all of the same sex, a male is entitled to double the share of a female (art.637, al.1). An inheritance practice which has been criticized as

contributing to the high birth rate (M.-A. Savané 1975:374-375) is thus perpetuated.

With respect to Muslim inheritance the Family Code largely follows Islamic law of the Maliki school. Recognition by a Muslim father of a natural child **confers** upon the child no rights of inheritance with respect to the father (art.220, al.2). The natural child is, however, absent contrary written disposition by the de cujas, presumed entitled to a legacy worth a share equal to that to which he or she would have been entitled if the child were legitimate (art. 220, al.2). A natural child inherits, however, from his or her mother and the latter's parents, who, reciprocally, may inherit from the child (art.642). Natural children who have been legally recognized by their father but to whose recognition the father's spouse or spouses have not assented are, in competition, with a legitimate child, incapable of receiving by inter vivos gift or by bequest more than half of the share of a legitimate child or, if the deceased had no legitimate children, more than half of the share to which the natural child would have been entitled had he or she been legitimate. Such incapacity may be invoked only by the heirs of the donor or testator (art.673). If the father entitled to disavow presumed paternity of the child dies before disavowing the child but during the permitted period for disavowal, the father's heirs have a period of two months from the death of the presumed father within which to contest the filiation of the child (art.204, al.2).

In the case in which the deceased was not a Muslim and leaves no will, succession is governed by the common law régime. Derived from the French law of succession (Alliot 1972), this régime

provides for five categories of heirs: children and other legitimate descendants, father and mother, brothers and sisters, ascendants other than immediate parents, and other collaterals. In principle, the existence of heirs in a category of higher priority excludes heirs in categories of lower priority. Legitimate children, or by representation their legitimate descendants, inherit in equal shares from either father or mother (art.520). The existence of children excludes other heirs except for the surviving spouse. In the absence of legitimate descendants of the deceased, one-half of the succession devolves on the father and mother of the deceased and the other half on his or her legitimate brothers and sisters or their legitimate descendants (art.523). Their parents' share is divided by head; if only one parent survives, that parent takes the entire share. A similar division occurs in the case of the siblings' share (art.524). If neither the father nor the mother of the deceased is living, the entire inheritance devolves upon the legitimate descendants (art.524). Absent siblings or descendants of siblings of the deceased, the inheritance is divided equally between the deceased's ascendants in the paternal line and the deceased's ascendants in the maternal line. Hence the father and mother, if living, of the deceased each take the share of their respective line, and in their absence such share is taken by the nearest living ascendant in that line. Should no ascendants be living in one line, the entire property of the deceased is taken by the other line (art.525). Finally, if the deceased leaves no descendants, ascendants, brothers or sisters, or descendants of these last, one-half of the succession devolves upon other collaterals in the paternal line of the deceased and the other half upon other collaterals in the deceased's maternal line (art.526) to the sixth degree (art.527, al.1).

The share to which the surviving spouse of the deceased is entitled depends upon the identity of other heirs. If the deceased leaves legitimate children or descendants of legitimate children, the surviving spouse or each of the surviving spouses is entitled to a share equal to that of a legitimate child, such share not to exceed a quarter of the succession (art.530). If the deceased leaves no legitimate descendants but leaves other legitimate heirs as above, the surviving spouse is entitled to one-half of the succession (art.531). Absent legitimate descendants and other heirs within the entitled degrees, the entire succession devolves upon the surviving spouse (art.532).

The Family Code provides for succession by natural children, adulterine children, and children resulting from incest as well as for the rights of adopted children. A natural child recognized by his or her father or mother and children whose maternal filiation is legally established are entitled to succeed their father and mother under the same conditions as a legitimate child would be entitled to succeed (art.533, al.1). The sole exception is that, if a child is born outside marriage and is subsequently recognized by a parent who is a party to a marriage existing at the time of recognition, such recognition must, to be fully effective, receive the acquiescence of the spouse or spouse of the child's parent. In the absence of such acquiescence, the child is, in competition with a legitimate child or legitimate children, entitled only to half the share of a legitimate child or, should the deceased leave no legitimate children, only to half of the share to which the child would have been entitled were he or she legitimate (art.534). Natural children whose birth results from incest and whose filiation

has been legally established are entitled to the same rights of succession as other natural children (art.535). Plenary adoption confers upon the adoptee the rights of succession of a legitimate child of the adoptor (art.539). In case of limited adoption, the adoptee retains all rights of succession in his family of origin and, except as otherwise specified, is also entitled, in the family of the adoptor, to the rights of succession of a legitimate child of the adoptor (art.540).

The reserve portion in case of testate succession amounts to two-thirds of the estate (art.504). Legitimate children, the surviving spouse, father and mother, natural children, and legitimate brothers and sisters of the deceased are reserve heirs (art.565) in proportion to their respective rights under intestate succession (art. 566).

With respect to Islamic succession the Family Code largely follows existing law except in the assimilation of natural to legitimate children. It represents a substantial break with rural practices so far as other systems of succession are concerned. Among several non-Islamic subgroups of the rural Diola in the Casamance Region, sibling links are stronger than relations between spouses with respect to property. Marriage exists primarily to ensure reproduction and filiation of children within the lineage and as a form of labour cooperation; even after marriage, each spouse's primary loyalties are to his or lineage of origin. In such circumstances spouses, even though Christian, never inherit from each other but from members of their own lineage, such as parents or siblings. In addition, succession is, empirically, less a matter of applying

specified rules than a strategy for maintaining property within the lineage in any given situation. For example, even though sons may be entitled to inherit in equal shares the property of their deceased father, the de facto heirs may be those who remain in the village; and migrant or out-marrying siblings may be excluded. Furthermore, in some areas of the Casamance succession is homogeneous, that is, sons inherit from their father while daughters inherit from their mother. Finally, in most rural communities obligatory funeral prestations, whether in cattle, rice, or land, are due to matrilineal relatives of the deceased and thus fall automatically outside the property to be inherited. These practices, which lie at the basis of the economic and social organization of particular communities, contradict the provisions of the Family Code. They make it difficult to predict the extent to which the Code will be applied or the time span required for its succession provisions to enter into common practice.

H. MILITARY SERVICE AND PENAL INSTITUTIONS

Certain regulations concerning military service or penal institutions may affect fertility by restricting sexual access of personnel or prisoners or by criteria of eligibility for service which take account of family size. All male Senegalese citizens between the ages of 20 and 60 and meeting requirements of physical capacity are required to fulfill obligations of national military service. Such obligations comprise a total of five years of active

duty and availability for call-up and 20 years of reserve status.⁶³ These obligations are further subdivided into 18 months of active service, three and one-half years of availability for active duty, 15 years of first or priority reserve status, and 5 years of secondary reserve status. Military service fulfilled by civil servants and employees in government organizations, either prior or subsequent to the admission to government service, is considered as equivalent to government employment in the calculation of length of service for purposes of promotion and pension.⁶⁴ Provision is made for certain special cases. First, the following persons are exempted from military service obligations: (a) a son who is the sole supporter of his widowed mother or a grandson who is the sole supporter of his widowed grandmother; (b) an orphan who is responsible for the care of young or invalid brothers or sisters; (c) a son who is the sole supporter of his father who is blind, aged, or incapable of caring for himself; (d) any man whose brother died in military service or who has been retired from service by reason of a wound or infirmity due to military service. Secondly, students may request and are entitled to be granted a temporary exemption from military service obligations in order to terminate their studies. This exemption may be withdrawn or suspended.⁶⁵ Third, fathers of three or more

63. Loi no.70-23 du 6 juin 1970 portant organisation générale de la défense nationale, arts.19-21 (RASERJ 1970, p.158; JORS, 27 juin 1970, p.605)

64. However, such time of service may count only as military service and not as both military service and civil employment. Décret no.67-217 du 1 mars 1967 modifiant le décret no.61-379 du 26 septembre 1967 fixant les règles relatives au recrutement de l'armée, art.2 (RLJ 1967, p.202; JORS 1967, p.437)

65. Décret no.68-944 du 31 août 1968 complétant l'article 32 du décret no.61-379 du 26 septembre 1961 fixant les règles relatives au recrutement de l'Armée (RLJ 1968, p.280; JORS no. 3986, 14 septembre 1968, p.1121)

children and who are on reserve status are classified in low priority categories for purposes of mobilization. A father of seven or more children is permanently exempted from military service obligations from the date of birth of the seventh child.⁶⁶

Military personnel in the armed forces marry only under specified conditions. Marriage with a Senegalese woman must be authorized by the Minister for the Armed forces if the prospective husband is an officer in the army, navy, or air force; by the Army Chief of Staff if the prospective husband is a subordinate officer in the army, navy, or air force; by the Director of the Gendarmerie if the prospective husband is a subordinate officer in the Gendarmerie or by the commanding officer, if the prospective husband is an entitled man. Marriage with a non-Senegalese woman must be authorized by the Minister for the Armed Forces regardless of the rank of the prospective husband.⁶⁷

Under the provisions (art.697, al.2; art.698, al.1) of the Code of Criminal Procedure legislation has been enacted to determine visiting rights of prisoners and the organization and internal regulations of penal institutions.

66. Décret no.61-379 M.D.N. du 26 septembre 1961 fixant les règles relatives au recrutement de l'armée, arts.2, 5, 19, 32, 47 (RLJ 1961, p.587; JORS 1961, p.1487)

67. Loi no.71-24 du 6 mars 1971 relative à l'exercice des droits civiques et des libertés publiques pour les personnels militaires des Forces armées, les assujettis au service de défense et au service civique, art. unique (4) (RASERJ 1971, p.126; JORS, 22 mars 1971, p.300); Décret no.73-469 du 21 mai 1973 abrogeant et remplaçant l'article 1 du décret no.63-446 du 3 juillet 1963 fixant les conditions dans lesquelles les militaires des forces armées pouvant être autorisés à contracter mariage (JORS no.4298, 9 juin 1973, p.1192), Erratum (JORS no.4303, 7 juillet 1973, p.1378)

The general organization and regulation of penal institutions were established in 1966.⁶⁸ Each institution was required to provide separate sections for men and women so as to prevent any communication between them. Where conditions did not permit prisoners to be kept separated, prison authorities were entrusted with the responsibility of seeing that promiscuity did not lead to "unfortunate consequences". Pregnant women were, during the last two months of their pregnancy, to be placed in a separate section where they were to remain until two months following delivery and were permitted to care for their children less than three years old. Certain prisoners were to be granted permission to leave the prison for a maximum of twelve hours during the day on Sundays and holidays. Permits to visit prisoners subject to preventive detention were subject to judicial authorization. Except for service personnel and lawyers, any person wishing to visit a prisoner was required to have a permit granted either by judicial authorities in the case of accused persons or by administrative authorities in the case of persons serving a sentence. Absent special authorization, such permits were to be granted only to near relatives of the prisoner. Ordinary visits are restricted to one-half hour per week between 8:00-11:00 a.m. and 2:00-4:00 p.m. on Sundays and must take place in the presence of a guard. Visits to political prisoners (détenus politiques) may occur at other hours fixed by prison authorities and take place in the presence of prison personnel (art.154, als.1, 2).

68. Décret no.66-1081 du 31 décembre 1966 portant organisation et régime des établissements pénitentiaires (RLJ 1967, p.85; JORS 1967, p.44)

Certain persons may be deprived of the rights to receive visits of any person except a lawyer (art.117).

In 1967⁶⁹ visits to prisoners were restricted further. Visits were to take place in the prison parlor and were (except for visits by the prisoner's attorney) limited to one-half hour per week on Sundays and holidays between 8:00-11:00 a.m. and 1:00-6:00 p.m.; visitors were required to show proof of identity; a guard was allowed but not required to be present; and the prisoner and visitor were to be separated by a screen. By special authorization prisoners were allowed to receive additional visits or to receive visits in a room without a separating screen. Ill prisoners were permitted to receive visitors in the infirmary or place of hospitalization.

69. Arrêté ministériel no.8683 M. INT.-CAB.-CT. du 29 juin 1967 portant règlement intérieur des établissements pénitentiaires (RLJ 1967, p.516; JORS no.3909, 29 juillet 1967, p.1114).

I. CONCLUSION

This chapter has surveyed a wide range of legislation which potentially affects fertility. Laws concerning education, employment, and income may alter the status of women by changing attitudes toward women, the definition of the role of women in society, and the economic subordination of women. They may affect fertility by postponing the age of marriage, enhancing women's choice concerning their role, and creating possibilities of self-fulfillment alternative or additional to childbirth. Family law reforms may also enhance the status of women by the requirements of age and consent to engagement and marriage, and by directly strengthening the legal position of women relative to men. Legislation concerning family planning, which has undergone a recent shift in Senegal within the past several years, now potentially offers greater access to family planning and birth spacing services. Such services, integrated within the national health system, may contribute to an improvement in the health of mothers and children and possibly to a decline in the birth rate over the long term. Taxation and welfare benefits in Senegal have been criticized as pro-natalist and therefore contradictory to measures designed to reduce population growth. Whether in fact such measures have this effect remains nonetheless an open question in the absence of empirical research, especially in view of the limited segment of the population eligible for the benefits.

However, "it is above all the evolution of such key variables as public health, education, employment, women's emancipation, the distribution of income and social benefits which is responsible

for any drop in the birth-rate" (M.-A. Savané 1975:373). The range of factors which potentially influence fertility is therefore even wider than those considered in this chapter, and their interaction and precise influences are complex and often unknown. What is clear, nonetheless, is that fertility needs to be understood in its social and economic context and that consideration of the reasons for and possible means for reducing fertility must occur within the discussion of the development strategy as a whole. Although it is frequently more expedient to treat fertility as a primary object of action and to direct legal attention mainly to legislation concerning fertility, such an approach neglects the more fundamental issues of development policy. Such issues as employment, education, health, nutrition, and income distribution are more critical areas for reform in enhancing the likelihood that a development strategy may improve the well-being of the mass of the population.

CHAPTER FIVE

CONCLUSION

This monograph has summarized Senegalese legislation which potentially affects mortality, migration, and fertility. Since the study is intended primarily as a reference work, its conclusion may be relatively brief.

In matters of public health, Senegal has generally retained the organization and orientation of health services established during the colonial period. Despite their achievements, these services remain biased in favour of urban dwellers, even though most Senegalese reside in rural areas. The extent to which rural areas are disadvantaged is evident also in the distribution of medical personnel, channels for the distribution of drugs, and other aspects of public health which potentially influence mortality. To date, Senegal lacks a comprehensive policy concerning mass nutrition, a fundamental basis for the improvement of living standards for most Senegalese.

The urban bias of health services, common to many countries, is consistent with policies inherent in legislation potentially influencing migration. Few controls on internal population movements exist, and numerous aspects of Senegalese development policy reinforce the existing pattern of rural-to-urban migration. Migration is enhanced, for example, by the investment code, housing, education, and employment possibilities. Previous rural development programmes, undercut by other aspects of a capitalist export-oriented development policy, have been relatively ineffective. It remains to be seen whether the recent administrative reforms, educational reforms such

as the EMP, and plans to develop the Senegal River Valley will be sufficient to provide a viable life for rural peasants and hinder migration without more fundamental changes in development strategy.

Although many studies of law and population accord primacy to family planning in population policy, this monograph considered family planning laws as one of the many aspects of legislation which affect the status of women and the quality of family life. In our view, the importance of family planning and birth spacing lies in its contribution to the improvement of women's position in society, maternal and child health, and the general conditions of life which in the long run influence the capacity of people to determine the number and spacing of their children. Senegal has recently altered its policy concerning family planning. Reforms concerning the health services, sex education, and the status of women are essential if these other changes of policy are to contribute most effectively to the improvement of living conditions for the mass of the population.

From the survey of legislation, it is evident that many laws are likely to affect more than one of the demographic variables on which discussion has concentrated. Some of these relationships have been made explicit in the text, but for the most part we have left to the reader or to other research the task of drawing social and economic conclusions from the survey of legislation. We have perhaps been unduly hesitant in making inferences concerning the behavioural effects of legislation. We hope, however, that this reluctance may be justified by the relative lack or inadequacy of socio-legal research in Senegal, our scepticism as to the validity of the assumptions concerning law's relation to

behaviour in many studies of law and population, and a desire to avoid adding to an already lengthy study intended as a basis for further research.

Nonetheless it is evident, if only at a fairly abstract level, that the legislation summarized in this monograph is intimately intertwined with an export-oriented development strategy based largely upon dependence upon foreign capital. The consequences of dependence could be traced in its reflection in many aspects of legislation concerning mortality, migration, and fertility. Analysis of the way in which legislation actually affects these demographic variables should, in our view, pay careful attention to the effects of an overall development strategy on Senegal's demographic characteristics. Proposals for further research need to consider the effects of that strategy as an important factor underlying the findings of research or influencing the efficacy of possible reforms. We hope that this monograph may be useful as a work of reference for research in this direction.

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