

Women's Reproductive Rights in Senegal: A Shadow Report

www.reproductiverights.org

WOMEN'S REPRODUCTIVE RIGHTS IN SENEGAL:
A SHADOW REPORT

Published by:
The Center for Reproductive Law and Policy
120 Wall Street
New York, NY 10005
USA

© 2001 The Center for Reproductive Law and Policy
(CRLP)

Any part of this report may be copied, translated, or adapted with permission from CRLP, provided that the parts copied are distributed free or at cost (not for profit), and CRLP and the respective author(s) are acknowledged. Any commercial reproduction requires prior written permission from CRLP. The authors would appreciate receiving a copy of any materials in which information from this report used.

WOMEN'S REPRODUCTIVE RIGHTS IN SENEGAL: A SHADOW REPORT

Laws and Policies Affecting Women's Reproductive Lives Implementation, Enforcement, and the Reality of Women's Reproductive Lives

TABLE OF CONTENTS

	Page
Introduction	1
Principal Points of Concern	3
A. Women's Reproductive Health Rights (Articles 10, 12, and 15(1)(b))	6
1. Introduction	6
2. Access to Reproductive Health Care, Including Family Planning and Safe Motherhood	6
3. Abortion	11
4. HIV/AIDS and Other Sexually Transmissible Infections (STIs)	13
B. Family Protection and Assistance (Article 10)	14
1. Introduction	14
2. Marriage	14
3. Divorce	17
C. Sexual and Physical Violence Against Women, Particularly Minors (Articles 10(3) and 12)	19
1. Introduction	19
2. Sexual Violence	19
3. Female Circumcision/Female Genital Mutilation (FC/FGM)	23
D. The Right to Education (Articles 12, 13, 14, and 15)	24
1. Introduction	24
2. Access to Education Without Discrimination	25
3. Access to Sexual Education	26
E. The Right to Equitable and Favorable Working Conditions (Articles 6, 7, and 10)	26
1. Introduction	26
2. The Right to Work Without Discrimination	27
3. Maternity Leave and the Protection of Pregnant Women	28
4. Sexual Harassment	28

Introduction

The purpose of this report is to supplement, or “shadow,” the periodic report of the government of Senegal to the Committee on Economic, Social and Cultural Rights (hereinafter, the Committee) during its 26th session. The report has been compiled and written by the Center for Reproductive Law and Policy (CRLP) and Groupe de recherche femmes et lois au Sénégal (GREFELS).

Non-governmental organizations (NGOs) such as CRLP and GREFELS can play an essential role in providing the Committee with credible, reliable, and independent information about the legal status of women and their real-life situations as well as about the efforts governments have made to comply with the International Covenant on Economic, Social and Cultural Rights (hereinafter the ICESCR). In addition, if the Committee's recommendations can be based firmly on women's actual life experiences, NGOs can use them to put pressure on their governments to promulgate or implement necessary legal and political changes.

Discrimination against women is widespread in all societies. This discrimination violates numerous human rights and calls for urgent action. This report focuses mainly on women's reproductive rights, the laws and policies connected to these rights, and the realities that affect these rights in Senegal. The provisions of Articles 2(2) and 3 guarantee all persons the rights set forth in the ICESCR without discrimination. In all aspects of daily life, women are faced with issues related to sexuality, reproductive health, and equality between the sexes. Women's reproductive rights, therefore, form an integral part of the Committee's mandate.

As was stated at the United Nations International Conference on Population and Development held in Cairo in 1994 and at the United Nations Fourth World Conference on Women held in Beijing in 1995, reproductive rights “embrace certain human rights already recognized in national laws, international human rights documents, and other consensus documents,” including the ICESCR. Paragraph I.18 of the 1993 World Conference on Human Rights states that “the human rights of women and the girl-child are an inalienable, integral, and indivisible part of universal human rights.” Paragraph II.41 also recognizes “the importance of the enjoyment by women of the highest standard of physical and mental health throughout their lifespan ... [as well as] a woman's right to accessible and adequate health care and to the widest range of family planning services, as well as equal access to education at all levels.” Reproductive rights are of crucial importance to women's health and equality, and it is therefore essential that states parties' commitment to ensuring them receive serious attention.

This report links fundamental reproductive rights issues to the pertinent clauses of the ICESCR. Each issue is divided into two distinct sections. The first, shaded section deals with the relevant laws and policies in Senegal, linking them to the corresponding clauses in the ICESCR. The information in the first section is drawn mainly from the chapter on Senegal in a report entitled *Women of the World: Laws and Policies Affecting Their Reproductive Lives—Francophone Africa*, edited by CRLP and GREFELS. This report is one in a series of reports that covers various regions of the world. The second section focuses on the implementation and enforcement of laws and policies—in other words, on the reality of women's lives. GREFELS provided most of the information in this section.

This report was coordinated and edited by Laura Katzive and Sophie Lescure of CRLP and by Fatou Sow of GREFELS. Invaluable research and editing assistance was provided by Rokhaya Cissé for GREFELS and Andrea Lipps, Lilian Sepúlveda, and Marina Fooksman for CRLP.

August 2001

Principal Points of Concern

1. Access to Reproductive Health Care, Family Planning, and Abortion (Articles 10, 12, and 15(1)(b) of the ICESCR)

Despite the concerted efforts of the government, NGOs and the international community, the maternal mortality rate in Senegal is unacceptably high at over 500 maternal deaths per 100,000 live births. The elevated maternal mortality rate is attributable not only to a weak health care infrastructure, but also to a range of social and cultural forces that deny women enjoyment of the right to health throughout their lifecycles. Early marriage and childbearing, female circumcision/female genital mutilation (FC/FGM), and the widely held view that childbirth is a woman's duty are all factors that contribute to the risk of maternal death. The government of Senegal should take all necessary measures to guarantee women's right to safe motherhood.

Induced abortion is illegal and is punishable by imprisonment and fines. Therapeutic abortion is permitted by the Code of Medical Ethics, but is not recognized explicitly in the Penal Code. Senegal has retained these repressive laws in spite of a high incidence of clandestine abortion, which contributes to the elevated rate of maternal mortality, particularly among adolescents. The government should take action to liberalize Senegal's restrictive abortion law.

2. HIV/AIDS and Sexually Transmissible Infections (STIs) (Article 12 of the ICESCR)

According to the most recent United Nations Program on AIDS (UNAIDS) report, at the end of 1999 Senegal had an estimated 79,000 HIV-positive adults, representing a prevalence rate of 1.77%. Among the HIV-positive adults, an estimated 40,000 were women. There were an estimated 3,300 HIV-positive children, and 29,023 AIDS orphans under the age of 15.

A recent study found that fewer than 30% of women and men indicated an awareness that the public sector provided condoms and only 19% of women knew that they could obtain condoms at pharmacies. It is essential that the government of Senegal take sustained action to raise awareness about prevention of HIV/AIDS and other STIs, including through sexual education programs in public schools.

3. Marriage (Article 10 of the ICESCR)

Senegal's Family Code sets the minimum age for first marriage for girls at 16 and for men at 20. This age difference is a violation of the right of adolescent girls to non-discrimination on the basis of sex. The government should establish a gender-neutral minimum age of marriage and ensure strict enforcement of this law.

Even though the age of first marriage among girls is rising in urban areas where girls have access to education, it is still low. Adolescent girls do not have the maturity required to begin marriage and childbearing. It is difficult for them to refuse the spouse chosen by their families in a culture in which marriage gives individuals social status. Few young women, whether illiterate or educated, enjoy the financial autonomy needed to negotiate a better position in the marriage. The situation is compounded by the social obligation to assume the reproductive functions and domestic tasks that fall to women

once they are married. The government of Senegal should continue to work toward stopping the practice of early marriage, which violates the rights of adolescents.

4. Sexual and Physical Violence against Women, Including Minors (Articles 10(3) and 12 of the ICESCR)

Domestic violence, both physical and mental, is a common occurrence. According to a recent study, it is not only prevalent, but is accepted as normal behavior. It is crucial that the government of Senegal take action through law enforcement and public education to put an end to this practice.

5. Female Circumcision/Female Genital Mutilation (FC/FGM) (Articles 10(3) and 12 of the ICESCR)

Since 1999, FC/FGM has been prohibited by law in Senegal. According to a report by UNICEF, the general FC/FGM prevalence rate in Senegal is 20%. However, prevalence varies according to region and ethnic group. The prevalence is 60% in Casamance and varies between 80% and 100% among the Peul and the Toucouleur ethnic groups. To fight effectively against this practice, the government of Senegal should take steps to enable women and adolescents to have greater control over their bodies and sexuality.

6. Right to Education (Articles 12, 13, 14, and 15 of the ICESCR)

For the 1999-2000 school year, girls accounted for 50.94% of preschool enrollment; 46% of primary school enrollment; 39.71% of middle school enrollment; and 37.97% of general high school enrollment. Women account for only 18% of enrollment in higher education. In general, the higher the level of education, the lower the proportion of women. The government of Senegal should continue to undertake campaigns to raise public awareness about the importance of keeping girls in school.

The policies developed by the Ministry of National Education in the area of sexuality education are limited. Meanwhile, studies show that adolescents lead active sexual lives at a fairly early age, with little to prepare them for its challenges. It is crucial that the government of Senegal reinforce sexual education programs in public schools.

7. The Right to Equitable and Favorable Working Conditions (Articles 6, 7, and 10 of the ICESCR)

Women's contribution to the economy is in many cases not recognized, quantified, or compensated. Many women are engaged in unpaid agricultural or domestic work. The government of Senegal should ensure all women access to the education, training, and other resources that are prerequisites for remunerated participation in the economy.

While sexual harassment has been a crime since 1999, the practice persists in the workplace and in the provision of government services. Given the precariousness of women's position in the workplace, women have generally not reported cases of harassment for fear of harming their own reputations or losing their jobs. The government of Senegal should ensure strict enforcement of the law against sexual harassment.

A. Women's Reproductive Health Rights (Articles 10, 12, and 15(1)(b) of the ICESCR)

1. Introduction

Article 12 protects the right of all persons to enjoy the highest attainable standard of physical and mental health. This article is complemented by Article 15(1)(b), which grants all persons the right to benefit from the advances of scientific research and its applications. Under this provision, women are entitled to enjoy advances in research in the reproductive health field. Article 10 grants special protection to pregnant women before and after delivery as well as to adolescents and children.

These provisions require governments to make reproductive health, family planning, and safe motherhood services and information accessible to women. The Committee on Economic, Social and Cultural Rights, in its General Comment on the right to the highest attainable standard of health, notes that Article 12(2)(a), relating to the reduction of the stillbirth and infant mortality rates and to the healthy development of the child, “may be understood as requiring measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, pre- and postnatal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information.”¹ The Committee defines “reproductive health” as “the freedom to decide if and when to reproduce and the right to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of [one's] choice as well as the right of access to appropriate health-care services that will, for example, enable women to go safely through pregnancy and childbirth.”² Article 12(2)(c) on the prevention, treatment, and control of disease, “requires the establishment of prevention and education programmes for ... sexually transmitted diseases, in particular HIV/AIDS, and those adversely affecting sexual and reproductive health ... ”³

2. Access to Reproductive Health Care, Including Family Planning and Safe Motherhood

Laws and Policies⁴

Health Policy

Senegal's National Health Policy aims both to achieve greater community involvement in the management of primary health care and to promote educational and preventive health care activities.⁵ Since 1989, with the adoption of a National Health Policy Declaration,⁶ Senegal has worked to decentralize health care delivery systems by reorganizing health care services in 45 districts, with an emphasis on integrating programs and promoting community participation. These reforms were intended both to improve health care coverage throughout the country, especially for mothers and children, and to manage population growth.⁷

In 1995, a revised Policy Declaration was adopted with new priorities for health and social welfare—priorities that indicate the government's willingness to take socioeconomic context into account in policy development. Moreover, the 1995 Declaration shows a willingness to incorporate the recommendations of the 1994 International Conference on Population and Development (ICPD), particularly in the area of reproductive health.⁸ The government proposes to subsidize more fully the health care of individuals, respond more effectively to the specific needs of various beneficiary

groups (e.g., adolescents/youth, women, elderly, men), and respect the reproductive rights of individuals.⁹

In response to the recommendations of the ICPD, in March 1997 the government established a National Reproductive Health Program (1997-2001). The program's main objective is to promote reproductive health by reducing morbidity and mortality, and by improving overall well-being.¹⁰ It targets the health care needs of mothers and children, youth, the elderly, and men.¹¹

Specific program objectives include, *inter alia*, providing quality prenatal care to 80% of pregnant women; increasing assisted childbirth to 80% and ensuring that 50% of women who give birth have quality postnatal care; increasing contraceptive prevalence to 20% with a mean annual progression of 3%; reducing the rate of spontaneous and induced abortion by 50%; increasing responsible sexual behavior among men and women by 50%; maintaining the HIV prevalence rate below a threshold of 2.5%; reducing the incidence of STIs by 50%; ensuring the coverage of medical and psychosocial costs for at least 60% of persons infected with HIV, as well as those with AIDS; reducing FC/FGM by 50%; reducing the various forms of violence against women, adolescents, and young girls by 50%; reducing the incidence of early and/or unwanted pregnancy in young women and adolescents ages 10 to 24 years by 25%; providing accessible services to meet the needs of seniors; and ensuring the management and organizational efficiency of these services.¹²

Population Policy

In 1988, Senegal adopted a Population Policy Declaration to address the country's economic, health, and demographic concerns. This policy aims to decrease fertility; reduce mortality in all its forms; and geographically redistribute the population in order to improve the quality of life. General goals include the following:¹³

- reducing both the fertility and population growth rates by adopting appropriate measures;
- improving the quality of life in all regions by providing better coverage of basic needs in terms of food and nutrition, health, social welfare, housing, education, training, and the environment, as well as information and cultural and leisure activities;
- improving expertise in the field of population sciences through training.

Family Planning Policy

The French Law of July 31, 1920, which prohibited incitement to abortion and contraceptive propaganda, was repealed by Law No. 80/49 of December 24, 1980. In 1996, the government adopted a Family Planning Policy Declaration that pledges to provide the following:

- contraceptive services to aid couples and individuals in spacing births and preventing early, late, and unwanted pregnancies;
- services to prevent STIs/HIV/AIDS, infertility, and sterility;
- Information, Education, and Communication (IEC) services, including family life education.¹⁴

The National Family Planning Program (PNPF) carries out these objectives through three channels: the Child Survival/Family Planning Project; the PNPF Support Project; and the support section of the Mother and Child Health/Family Planning Program of the Human Resource Development Project (HRDP).¹⁵

To further its goals in the area of family planning, the government has designed and published national reference guides titled “Norms and Standards for the Provision of Family Planning Services in Senegal” and “Family Planning Service Provisions.” These documents describe the rights of patients who use family planning services and present the needs of service providers.

Reality

Senegal's long-standing commitment to upholding internationally recognized women's rights, particularly reproductive rights, is reflected in its national policies in the area of reproductive health. In implementing these policies, the government has had the support of several donor countries and international organizations. The World Bank's HRDP targets the needs of young people and women, promotes health, and provides institutional support for implementing the population policy. The United States Agency for International Development (USAID) supports a child survival project. The United Nations Population Fund (UNFPA) provides support to a Women and Development Program and a family planning program. It is also cooperating with the United Nations Educational, Scientific, and Cultural Organization (UNESCO) on a teaching program linked to population matters.

At the national level, complementing the work of various ministries (such as the ministries of Health, Education, and the Family), NGOs have participated at different levels to elaborate on and implement the National Family Planning Program. For example, the Senegalese Association for Family Welfare (ASBEF) offers quality services and IEC activities. Family Health (SANFAM) engages in similar activities, but in the semi-public and private sectors, notably in private companies. The Senegalese Association for Family Advancement (ASPF) specializes in natural family planning. ASRADEC conducts IEC programs in rural areas. SANFAM and ASBEF have begun community-based condom distribution campaigns. Finally, the National Social Marketing Program organizes the sale of condoms in the private sector. A variety of women's groups and associations have also organized health training sessions, with special emphasis on reproductive health.

Despite all of these initiatives, women's reproductive health in Senegal remains precarious. The need for continued concerted action is reflected in the country's alarming levels of maternal mortality and morbidity. From 1979-1992, the maternal mortality rate was reported at 510 deaths per 100,000 live births. This rate is 21% higher than that reported for the period from 1979-1985, which was 460 deaths for the same number of live births. The rate of 510 deaths is an average number that varies across regions.¹⁶ These figures remain shockingly high, while the figures for disease are dropping around the world, and women everywhere, even in Africa and in Senegal, are living longer. In fact, the medical risks surrounding pregnancy seem to be socially accepted in virtually all African cultures, including Senegal. Pregnancy is looked upon as an illness. In announcing a birth, it is common to say that the mother “came out of it alive.” Childbirth is a trial that puts the life of the woman on the line. This translates into a certain resignation if her life is lost.

There is general awareness of the medical causes of maternal mortality and morbidity (including hemorrhages, infections, anemia, cardiovascular and kidney problems, and the

various complications of abortion) and the impact of women's material living conditions on their health. However, relatively little attention is paid to the ideological and cultural factors that affect women's reproductive lives—the community and policy constraints on their overall health and reproductive well-being.

Mother and Child Protection programs, as their name indicates, address the health of mothers, not women's broader health needs. Women's health begins at birth. A person's chances of survival and good health depend upon the conditions in which he or she lives, which are so often determined by gender. It is commonly believed in Senegal that a male infant needs to be breastfed longer (18 to 24 months) than a female infant. It is true that the mortality rate is higher for boys under age five than for girls.¹⁷ Later in life, economic and social resources are most likely to be invested in boys.

An analysis of the causes of maternal mortality reveals that there can be no “safe motherhood” without “safe womanhood.” Women's status plays a crucial role in this respect. Safe womanhood requires women's full enjoyment of their reproductive rights. This is not yet the case, despite Senegal's ratification of international conventions.

The medical attention that is provided during early childhood decreases considerably when girls hit adolescence. Yet this is precisely the point at which girls' bodies undergo the metamorphosis that prepares them for puberty and fertility. Neglect of adolescent girls' health is all the more harmful as girls are exposed to the risks of early sexual relations, pregnancy, and childbirth in a cultural context that authorizes marriage at a very young age. The average age of first marriage, legally set at 16, varies between 15 and 19. It can, however, be as low as 12 or 13 years among certain ethnic groups in rural areas.¹⁸ In the past, marriages were not necessarily consummated before the young girl reached a certain level of maturity. As migration patterns erode social norms, this is no longer always the case.

The adolescent fertility rate is also on the rise. It accounts for 9% of all reported pregnancies. From 1992 to 1993, 22% of girls between the ages of 15 and 19 were pregnant or already had a child.¹⁹ While adolescents all run the same biological risks linked to early pregnancy regardless of matrimonial status, social factors put some young women at greater risk. Young single mothers have less social protection than young wed mothers. Parental and societal disapproval can lead a young single mother to deny her pregnancy, hide it, and avoid medical check-ups, with the consequent risk to both mother and child. Others may attempt to terminate the pregnancy, as indicated by the climbing rate of clandestine induced abortions (resorting to *Nivaquine* or unqualified practitioners).

Motherhood remains a social, moral, and religious obligation for Muslims and Christians. The “desire” for motherhood is for many women more of a sense of “obligation” to reproduce. Motherhood is still seen as a natural role that women are conditioned to play. At the same time, this reproductive function, along with women’s bodies and sexuality, is socially controlled by cultural rules including: the requirement to undergo FC/FGM, virginity as a moral value, marriage as a social prescription, marital duty, polygamy as a matrimonial norm, the social obligation of motherhood, the persistence of sororate and levirate marriages, and widowhood rituals.

Senegalese women of childbearing age are particularly affected by poor living conditions, including precarious and unhygienic living quarters, illness and malnutrition, water problems, and communicable diseases. Domestic tasks linked to raising the family, as well as income-producing tasks such as agriculture and handcrafts, are particularly onerous and create a burden on women’s health. Many women suffer chronic fatigue and back pain from long hours of working in the home and in the fields.

The lack of health care structures and qualified personnel is, in large part, at the heart of Senegal’s high rates of maternal mortality and morbidity. The health care structures themselves lack equipment and staff, and charge relatively high fees for treatment. Most women are not examined by a certified doctor, and many must travel exhausting distances to reach the nearest dispensary. Access to quality care is still an expensive luxury that eludes most women. Contraception use is relatively low, estimated at 11% for all methods combined and at 7% for modern methods.²⁰ Use of contraceptives often depends upon the spouse’s formal or tacit agreement.

The government’s policy of decentralizing health care services has had its own negative impact on women’s enjoyment of their right to health, as detailed in a recent study by the National Network for Social Policy Research (RRPS).²¹ The decentralization policy was adopted to remedy the high concentration of health care services in major urban areas. Since 1996,²² Senegal has been divided into administrative regions (there are currently 10) with some political and financial autonomy.

With regard to the health policy, the RRPS report sees an overall coherence of the health system, but notes that each medical structure works almost in isolation, carrying out its policy without taking into account the needs, capacities and actions of other centers, when coordinated efforts and sharing certain human, material and financial resources would prevent waste and rationalize the system. In addition, there is confusion in the division of responsibilities among the various local authorities and lack of clarity regarding the appropriate distribution of health care funds. Finally, measures for ensuring local participation in the management of health care services have not had their desired effect. Local health committees that have been set up to advise and monitor health providers have been less than representative, and female participation is particularly weak. The committees have been less engaged in overseeing health care delivery than in collecting revenue and managing funds. RRPS questions their organizational viability and social legitimacy.²³

3. Abortion

Laws and Policies

Article 305 of the Penal Code prohibits abortion without expressly defining the offense. It reads as follows: "Whosoever, by food, drink, medicine, violence, or by any other means, procures an abortion of a pregnant woman, whether or not with her consent, will be punished with a prison term of one to five years and a fine of 20,000 (U.S.\$31.84) to 100,000 CFA francs (U.S.\$159.19)."²⁴

The woman who procures her own abortion, or who has consented to the use of the means administered for that purpose, will be punished with a prison term of six months to two years and a fine of 20,000 (U.S.\$31.84) to 100,000 francs (U.S.\$159.19).²⁵

If physicians, pharmacists, students, herbalists, or surgical instruments merchants provide information about abortion methods, they will be subject to a similar sentence, in addition to a five-year suspension of their professional license.²⁶

According to the Code of Medical Ethics, therapeutic abortion is the only permitted means of terminating a pregnancy. An abortion is regarded as "therapeutic" if the woman's health is in danger or if there is a likelihood of fetal abnormalities.

Although Law No. 80-49 of December 24, 1980, repealed the 1933 decree imposing in Senegal the 1920 French Law prohibiting incitement to abortion and contraceptive propaganda, restrictions on information relating to abortion continue. The 1980 law inserted a new Article 305b in the Penal Code that states: "Anyone who incites someone to commit the offense of abortion, either through speech or in public meetings, or who offers to sell or provide it free of charge ... or displays, posts, or distributes in public places ... books, advertisements, or other printed matter related to abortion, even if this incitement has no effect, will be punished by six months to three years imprisonment and/or a fine of 50,000 (U.S.\$79.59) to 1,000,000 CFA francs (U.S.\$1,591.88)."

The 1997-2001 Plan of Action for Women, adopted by the Ministry of the Family, addresses maternal deaths caused by unsafe abortion. It calls for raising awareness about the risks of clandestine abortion and recommends psychosocial and medical care for women who have undergone abortions. It calls upon the government to carry out studies on abortion and its socioeconomic consequences, and to train referral and counseling agents to assist women who have unwanted pregnancies or who have undergone abortions.²⁷

Reality

Senegal has retained its repressive abortion laws, despite the rise in clandestine abortions performed in all sectors, and despite their contribution to high rates of maternal mortality, particularly among young women. Notwithstanding the dangers of unsafe abortion and the fact that therapeutic abortion has support in both the Code of Medical Ethics and Islamic Law, there is little open debate on the subject. Not only is the law repressive, but religious leaders oppose abortion, although it is widely practiced. Some members of the donor community, such as USAID, reinforce this silence on the subject of abortion. Following a decision by U.S. President George W. Bush, USAID refuses to

finance NGOs that use their own, non-U.S. funds to engage in abortion related speech, including abortion counseling, public education, and lobbying for abortion law reform. In addition, religious leaders put women further at risk by discouraging the use of contraception. The Catholic Church condemns non-natural contraception, including the use of condoms, and recommends abstinence. Islam makes allowances for contraception, but only to preserve the woman's health. This is the position put forth by Muslim leaders when UNFPA, for example, organizes seminars to promote reproductive health programs aimed at the Muslim community.²⁸

There has been a noticeable increase in reports of infanticide committed by women in distress. They are typically young women who have hidden their pregnancy for fear of family reprisals or the wives of emigrants who have "done wrong" in their husband's absence. Public opinion relayed, if not incited,²⁹ by the press judges them very negatively, calling them "child killers," and the law punishes them severely.

There have been no reported cases of medical personnel convicted for abortion. Abortion remains a problem that women must face alone, making it that much more crucial that they are permitted to control their sexuality and fertility.

4. HIV/AIDS and Other Sexually Transmissible Infections (STIs)

Laws and Policies

There are no laws regarding HIV/AIDS in Senegal. Nor are there laws regarding STIs.

In 1990, the government implemented a National AIDS Prevention Program (PNLS), intended primarily to reduce the prevalence of HIV/AIDS and to manage STIs. The National Reproductive Health Program also contains specific objectives for HIV/AIDS. One of its principal objectives is to maintain the HIV prevalence rate below 2.5% between 1997 and 2001.³⁰

Reality

According to the most recent UNAIDS report, at the end of 1999 Senegal had an estimated 79,000 HIV-positive adults, representing a prevalence rate of 1.77%. Among the HIV-positive adults, an estimated 40,000 were women. There were an estimated 3,300 HIV-positive children, and 29,023 AIDS orphans.³¹

Senegal, following a colonial policy of establishing health care services, implemented early a series of measures to prevent STIs. The official recognition of prostitution has made it possible to monitor prostitutes regularly with the use of a health care visit log (*carnet sanitaire*). This STI monitoring has laid the groundwork for a more organized approach to HIV/AIDS.

Nevertheless, findings show that sexual behaviors are not risk-free. Sexual relations outside of marriage are very frequent, early, unstable, and poorly protected. According

to a recent study, 23% of non-single women and 79% of non-single men between the ages of 15 and 49, living in Dakar, had their first sexual relations before marriage.³² This is confirmed by the gap between the median age at first sexual relations (17) and the median age at first marriage (18). The sociocultural aspects of sexuality—including unprotected sexual relations, the obligations of spousal duty, the difficulty of imposing condom use on one's partner, polygamy, levirate and sororate practices, and occasional prostitution—further add to the risk of spreading STIs, including HIV/AIDS.³³

Given these risks and the magnitude of the AIDS crisis throughout the world and in Africa, government officials and a number of non-governmental and even religious women's groups are waging awareness campaigns aimed at enabling women to prevent STIs. The first condom advertisements on Senegalese television and radio made this clear. But there is still a lot of work needed to educate and sensitize the sexually active population, particularly those who are at a higher risk of infection, namely young people and the illiterate. Data from a recent *Demographic and Health Survey* indicate that the general population has knowledge of STIs, but also that men are better informed than women. This degree of information is not as high for AIDS, for which the means of transmission is not well known. Condom use has still not spread, despite the media campaigns.³⁴ Fewer than 30% of women and men indicated an awareness of the public sector providing condoms, and only 19% of women knew that they could obtain condoms at pharmacies.³⁵

From the approaches taken so far, it is clear that authorities do not see that preventing HIV/AIDS means ensuring women's control over their bodies and sexuality. There is no message being sent to this effect. Women's fidelity is still the only tacit requirement.

B. Family Protection and Assistance (Article 10)

1. Introduction

Article 10 provides for the protection of the family, the mother, and the child. It includes the right to enter freely into marriage. In many countries, including Senegal, however, the minimum age for marriage is low, and sometimes marriage is entered into without the free consent of one of the two spouses—most often the woman. This discriminatory practice violates the rights of women acknowledged in the ICESCR.

The early age at which the law or custom allows girls to marry in many cultures puts them at a disadvantage when it comes to school enrollment. As a result of the traditional distribution of family roles, young married women often sacrifice their education for domestic tasks and devote themselves to motherhood.³⁶

2. Marriage

Laws and Policies

A new constitution was adopted in March 2000, and it includes provisions that protect the family and strengthen some of women's rights.³⁷ Article 14 of the 1992 Constitution stipulated that “marriage and the family constitute the natural and moral basis of the

human community. They are placed under the protection of the state.” This became Article 17 of the new Constitution.³⁸

The new Constitution also incorporates principles that already prevailed in the Family Code. Article 18 of the new Constitution reinforces the requirement of consent to marriage by specifying that “forced marriage is a violation of individual freedom.” It is prohibited and punished under the conditions stipulated by law.³⁹ Article 19 states that a woman, like her husband, “has the right to own her own property. She has the right to personally manage her property.”⁴⁰ Article 15 gives women, like men, “the right to access land ownership under the conditions stipulated by law.”⁴¹

The Senegalese Family Code governs marriage laws. The legal age of marriage is 16 for women and 20 for men.⁴² The type of marriage entered into is governed by the so-called Options System. There are three possible alternatives: monogamy; limited polygamy (which restricts the number of wives); and polygamy that allows men to have up to four wives.⁴³ If a man does not choose one of the options, the type of marriage defaults to polygamy.⁴⁴ The option of monogamy or limited polygamy is irrevocable and binds the husband for the rest of his life, even if the marriage during which it was chosen is dissolved.⁴⁵

With respect to the marriage contract, the system of separation of property generally applies. However, the spouses may choose either community property or a settlement in trust.⁴⁶ If no choice is made, the marriage defaults to the system of separation of property.⁴⁷ In polygamous marriages, the husband cannot use the income of one wife for the benefit of other wives.⁴⁸

In accordance with Article 132 of the Family Code, the spouses may agree that the dowry will be a condition of the marriage. However, the dowry may not exceed the maximum value specified by law.⁴⁹ The dowry is the property of the woman, who may dispose of it as she sees fit.⁵⁰ Property acquired by the wife through a profession separate from that of her husband constitutes reserved property that she administers and of which she may dispose according to the rules of separate estates, regardless of the marriage system.⁵¹

To accommodate the role of religion and custom, Senegalese law recognizes marriages that are entered into in accordance with civil law and traditional registered marriages.⁵² Decree No. 25-91 provides the list of applicable customs in Senegal.⁵³ Article 830 of the Family Code, even though it stipulates the repeal of general and local customs as of its effective date,⁵⁴ nevertheless makes an exception for those customs relative to traditional marriage rites. Senegal recognizes “animistic” and “fetishistic” customs under which marriages may be traditionally celebrated.⁵⁵

The concept of paternal rights is specified in the Family Code, which affirms that paternal rights belongs jointly to the father and mother, but is exercised during the marriage by the father, as head of the family.⁵⁶

Reality

Several of the Family Code provisions mentioned here violate the rights of women. Still, the Family Code enables women to protect themselves against certain outright violations of the law, insofar as they are sufficiently informed to invoke it. Many African countries do not have a Family Code, or reject such codes in favor of the Sharia (Islamic law). One of the fundamental advantages of the Family Code is its secularity, which makes it possible to revise it without drawing religious controversy.

Even though the age of first marriage among girls is rising (to between 18 and 19 years old), particularly in urban areas where girls have access to education, it is still low.⁵⁷ Adolescent girls do not have the maturity required to begin marriage and childbearing. It is difficult for them to refuse the spouse chosen by their families in a culture in which marriage gives individuals social status. It is just as difficult for them to make up their own minds about whom to marry, given their youth and lack of experience. Finally, few young women, whether illiterate or educated, enjoy the financial autonomy needed to negotiate a better position in the marriage. The situation is compounded by the social obligation to assume the reproductive functions and domestic tasks that fall to women once they are married.

In Senegal, marriage is universal.⁵⁸ The Family Code has attempted to reconcile rules of various cultures: local, Islamic, and Western. It is unfortunate that the code describes the original African customs that the people call *aada* (tradition) and *baaxu maam* (tradition of the ancestors)⁵⁹ as “fetishistic” and “animist.” The people still practice these customs to a great extent, either fully or partially.

A dowry, which is “customary,” is in fact given in all cases. It is a condition of marriage in Islam and is therefore a practice that the Family Code has had to regulate. A dowry is not a condition for the Church, but Wolof, Sereer, or Joola Christian communities continue to observe the practice, as do so-called “animist” communities. The dowry is part of a series of negotiations leading to marriage. To lessen the cost of dowries and their impact on households, the state formulated a set of provisions in 1967, with the support of certain prominent local leaders, including those of Saint-Louis.⁶⁰ The provisions used fines in an attempt to regulate and control a number of family ceremonies including dowries, wedding costs, baptisms, and funerals. The amount of the dowry was set according to whether the bride is single (a virgin), divorced, or widowed. The result has been a few police interventions at some noisy ceremonies, but, generally speaking, the rules have never been formally observed.

Separation of property is still the rule, except in Christian marriages. All traditional Senegalese cultures have made separation of property the most common regime.⁶¹ In the Muslim part of the country, for more than 90% of the population, the Koranic law of separation of property is commonly applied. Women submit to this law willingly out of fear of polygamy, in order to pass their property down to their heirs and to prevent other wives from enjoying their property through their spouse. The same is true for men, although for other reasons. The property they acquire in the form of salary and other revenue is always seen as personal income, which their wives are not entitled to share, manage, or be informed about. The domestic work performed by women is still not seen as a contribution to the household, despite the Family Code's provision to the contrary.

The Options System for marriage is still in effect. Polygamy is rooted in the culture and reinforced by Muslim religion. Many Senegalese refuse to opt for monogamy as a precaution. Its irreversible nature is off-putting. Taking a second wife is seen as easier than getting a divorce, and many women prefer the social “security” that the marriage community provides.

To ensure compliance with the law, it would be necessary for all marriages in Senegal to be celebrated, recorded, or made official by the civil state. While Christians are forced to obtain civil authorization before obtaining the blessings of the Church, this is not always the case for Muslims. Regardless of the law, many Muslims still see religious marriage as the only valid ceremony, since the Koran is built on both faith and law. The civil ceremony is not a symbol of marital commitment. It is just an administrative formality required by the state, community councils, and public and private organizations

to access family benefits. Most Senegalese do not bother to fulfill this requirement. It is only carried out in urban areas by a minority of individuals from a certain social class. In some cases, marriages are registered only upon the death of one of the spouses for inheritance purpose.

The notion of paternal rights that figures in the Family Code has not been modified by the new Constitution and remains an obstacle to equality between men and women, insofar as men are considered *a priori* the head of the family. Women only become head of the family by default. Several studies nevertheless show that the number of African families supported and led by women, with or without the presence of a spouse, is on the rise. It is estimated at 20% of households.⁶² On January 26, 2001, during a “women speak out” meeting, the *Siggil Jigeen* network confronted the government on the need for women to have parental rights, because “[U]nder the legislation, working women may not collect family allowance; declare their children or husband as dependents for budget charges; declare their children as dependents for the transportation allocation; leave capital or a pension to their children and inheritors in the event of death; benefit from tax reductions; or declare their children as dependents for retirement pension calculations, because they are not recognized when it comes to fiscal matters.”⁶³ Furthermore, women may not take legal responsibility for their children unless their father renounces his authority before the administration, which is an unfair and humiliating situation for both parents.

3. Divorce

Laws and Policies

No-fault divorce is recognized so long as it is certified by a justice of the peace, or by a judicial ruling dissolving the marriage at the request of one of the spouses.⁶⁴ In addition to no-fault divorce, the law recognizes 10 causes of fault-based divorce, including the following: declared absence of one of the spouses; adultery committed by one of the spouses; sentencing of one of the spouses for a defamatory penalty; failure of the husband to support the wife; refusal by one of the spouses to fulfill his or her obligations under the marriage contract; desertion of the home or family; serious cruelty; sterility; incurable disease; and incompatibility.⁶⁵

The obligation to provide support exists only if the person claiming the support can prove vital need based on income, or if the sued person has sufficient resources to provide the support.⁶⁶

In the event of irreconcilable differences between spouses, if there are children, the judge may assign any qualified person to gather information about the physical and psychological situation of the family. Such a qualified person may also be required to give an opinion relative to the assignment of custody.⁶⁷ The judge alone has discretion to determine the best interests of the child.

The decree or certification of the divorce or legal separation determines the custody of each of the children born to the marriage, which may be given to either of the parents or, if necessary, to a third party. The person who is awarded custody exercises paternal authority over the children and their belongings. The court also specifies the terms of

visitation for the non-custodial parent.⁶⁸ According to the law, the judge must take only the interests of the child into consideration in assigning custody.

Reality

The Family Code is a legal tool that lets Senegalese women present their cases to the courts. That is, in fact, one of its most important contributions to women's empowerment. Divorce is what brings women before the courts the most. Women initially sought the court's intervention less in order to divorce than to obtain child support to feed the family when their spouses defaulted on their responsibility. Several women's associations, with the support of the international donor community, waged awareness campaigns on women's rights and the availability of the law to protect these rights. Such a campaign was needed to counter the traditional condemnation of women who "drag the father of their children before the courts."

Like marriage, divorce in the African tradition involves more parties than the two spouses. Insofar as a marriage is a complex structure of family and social ties, with discriminatory rules, "the breakup of a marriage is always presented as the collapse of a complex construction, a collapse that may not take place until all those who participated in constructing the marriage-building have had a hand in trying to patch the cracks."⁶⁹ Koranic tradition in no way changes these conciliation requirements. This means that for a woman, a marriage that has been arranged by her family, with a close cousin or a distant relation, cannot be broken up without her facing the very family members who secured the marriage for her in the first place. Since these family ties make the breakup undesirable for all concerned, the undertaking is possible but difficult. Women are at yet another disadvantage, since men have an alternative to divorce. They can take another wife.

Still, having recourse to divorce proceedings ruled by a judge according to law can only increase women's independence when it comes to negotiating a separation. This is true despite judges' tendency to hand down decisions reflecting patriarchal values very similar to those of the family. In addition to the provisions of the law, judges are often influenced by Muslim law, which regulates the daily life of Senegalese family matters. Either rule can be used for child custody and maintenance cases. The fact that more women judges sit in family courts is helping to change the climate.

Civil divorce, regrettably, is a privilege reserved for urban women. The court, the lawyers and legal fees, the use of French, and the fear of family condemnation are enough to intimidate many illiterate or rural women. Awareness campaigns are needed to make the judicial system more familiar, and to teach women to use this system to protect their rights.

C. Sexual and Physical Violence Against Women, Particularly Minors (Articles 10(3) and 12)

1. Introduction

Article 10(3) requires states parties to take all appropriate steps to protect children and adolescents. This article, combined with Article 12, protects children and adolescents against all forms of physical abuse and violence. In the same way, Articles 10 and 12

encompass protections for women prohibiting all forms of sexual and/or physical violence. Thus, when women, whether they are minors or of majority age, are victims of sexual abuse, domestic violence, or female circumcision/female genital mutilation (FC/FGM), their rights under these provisions are violated.

The Committee on Economic, Social, and Cultural Rights has expressed its concern over the problem of violence against women. It has noted that violence against women, both within and outside the family, has serious effects on a woman's physical and mental health.⁷⁰ It strongly advises states parties to adopt effective measures to combat violence against women. It also has expressed its view that FC/FGM is a degrading and dangerous practice that is incompatible with women's rights, particularly their right to health.⁷¹

2. Sexual Violence

Laws and Policies

Rape

The Penal Code expressly prohibits rape.⁷² Law No. 06-99, which was adopted by the National Assembly on January 16, 1999, modifies Article 320 of the Penal Code. This amended article defines rape as "any act of sexual penetration, of any nature whatsoever, which has been perpetrated against another person by means of violence, force, threat, or surprise." It is noteworthy that under this definition, the victim of a rape can be either a woman or a man.

Whoever is guilty of rape will be punished by five to 10 years' imprisonment. If it results in mutilation or permanent injury, or if the rape was committed by sequestration or by a group of people, the sentence will be 10 to 20 years' imprisonment. If it results in death, the perpetrators will be guilty of murder.⁷³ If the rape was committed against a child under the age of 13, or against a person who is particularly vulnerable because of her pregnancy, age, or health, the perpetrator will receive the maximum sentence.⁷⁴

If the rape is committed by a child's older relatives, teachers, or paid servants, or by officials or ministers of a religion, the sentence will be 10 years of imprisonment.⁷⁵

Likewise, whoever commits or attempts to commit sexual assault by use of force against individuals of either sex will be punished by five to 10 years of imprisonment.⁷⁶ If either offense is committed against a child under the age of 13, or against a person who is particularly vulnerable because of her pregnancy, age, or health, the perpetrator will receive the maximum sentence.⁷⁷

Domestic Violence

Article 297 bis of the Penal Code, amended in January 1999 by Law No. 06-99, punishes domestic violence by an imprisonment of one to five years and a fine of 50,000 (U.S.\$79.59) to 500,000 CFA francs (U.S.\$795.94) if an illness or complete inability to work for more than 20 days has resulted from this violence. If the violence does not result in an illness or complete inability to work for more than 20 days, the perpetrator will be liable for a fine of 30,000 (U.S.\$47.76) to 150,000 CFA francs (U.S.\$238.78), and an imprisonment of one to five years.⁷⁸

By contrast, there are no laws regarding rape in a domestic relationship.

Kidnapping or Abduction of a Minor

The Penal Code protects against the kidnapping or abduction of a minor.⁷⁹ It provides that “whoever, by fraud or violence, kidnaps or abducts minors ... will be liable to forced labor.”⁸⁰ If the kidnapped or abducted minor is under the age of 15, the perpetrator will be liable for forced labor for life. However, the perpetrator will be liable for forced labor for five to 10 years if the minor is found alive before the judgment is handed down. The abduction will carry the death penalty if the minor is found dead.⁸¹

“Whoever, without fraud or violence, kidnaps or abducts, or attempts to kidnap or abduct a minor under the age of 18 years, will be liable to two to five years imprisonment and to a fine of 20,000 (U.S.\$31.84) to 200,000 CFA francs (U.S.\$318.38). If a perpetrator subsequently marries a minor after kidnapping or abducting her, he can only be brought to court by persons who would be authorized to request the annulment of the marriage. The perpetrator can be found guilty only after the marriage has been annulled.”⁸²

Pedophilia

Law No. 06-99 of January 16, 1999, punishes pedophilia and the holding of meetings of a sexual nature involving a minor. The amended Article 320b provides that “any gesture, touch, caress, pornographic manipulation, or use of images or sounds for sexual purposes that is practiced on a child of either sex under the age of 16, will constitute an act of pedophilia, and will carry a prison sentence of five to 10 years.” If the offense has been committed by an older relative of the child, or by any person who exercises authority over the minor, the sentence will be increased.⁸³

Incest

Even though incest *per se* is not defined in the Penal Code, Article 319, ¶ 2 states that “any act of indecent assault, which has been committed by a child’s relatives, or by any person who exercises authority over the victim, even if the child is over the age of 13, will carry the maximum sentence.”⁸⁴

Reality

One of the most important achievements of feminist organizations over the last 10 years is having lifted the taboo on discussing violence against women, particularly sexual violence. When the *Yeewu-Yewwi* association was created in the late 1980s, condemnation of violence against women was just beginning. Women and Society organized the first meeting devoted specifically to violence against women in 1991. The meeting was greeted with general indifference.

The issue of domestic violence was brought to national attention with the case of Doki Niassé, which arose in 1993, in Kaolack, a trading village 200 km from Dakar. This young woman died following a violent altercation with her husband. The latter was never pursued by the police. It was only after a march by the “ordinary” women in her neighborhood that he was put in jail. Women’s associations took up the case and made it an issue of public discussion. The media fostered a heated debate that divided Senegalese public opinion. Women were collectively accused of introducing a feminist debate on the issue, even though much of the population (including women) tolerated domestic violence. It was even argued that the Koran authorized the husband to punish his wife for disobedience. At the trial three years later, the case was dismissed because the forensic evidence did not prove that the beating was the cause of death. The Doki Niassé case was, without a doubt, the first known case of violence against women brought before the Senegalese courts. The instruction and judicial procedure for the case were poorly carried out, but the case was the catalyst for a series of press campaigns

opposing violence against women. The Astou Mbengue Ciss case reignited the debate in 1996. The victim went on her own initiative to the women's associations, which supported her in a legal battle against her husband, a retired military man. The ensuing campaign gave rise to other accusations and gave the authorities a better understanding of the extent of the problem in Senegal.

In 1996, the Research Group on Women and Laws in Senegal (GREFELS) began the first study undertaken by a group engaged in the campaign against violence against women in Senegal. The idea for the study, entitled *Violence Against Women (1997)*,⁸⁵ came from reports in the daily papers, which, for a few years already, had been reporting regularly on violent attacks, murders, rape cases (often involving children), incest, and sexual harassment. The frequency of these incidents raised the question of whether violence against women was on the rise or whether media coverage of such events had simply improved. It could even have been the result of a change of attitude on the part of women who, less resigned, no longer hesitated to press charges. The survey covered women victims of violence, police bureaus, courts and tribunals, some hospitals, and centers targeting young girls and adolescents. More recently, the Advancement of Women's Rights and Empowerment unit of the Canadian Centre for International Studies and Cooperation (CECI) also conducted a study called *Domestic Violence in the Dakar and Kaolack Regions (May 2000)*.⁸⁶ Like the GREFELS report, this more specific study showed the magnitude of violence and, above all, its general acceptance in public opinion. Beating one's wife, one's child, or anyone with whom one has petty or serious disputes is considered "normal." The reports recommend programs aimed at sensitizing the general public, particularly women and young people, and government officials.

The United Nations Development Fund for Women (UNIFEM) has supported women's organizations in waging public awareness campaigns and initiatives to sensitize officials.⁸⁷ It has organized more specific seminars aimed at doctors, magistrates, and law enforcement officials on providing medical, legal, and psychological assistance to the victims of violence.⁸⁸ It also set up a tribunal on violence, like the one held in Vienna in 1993, which was a major success. All of these activities on the part of women's movements, NGOs, and international organizations have managed to bring about a revision of the Penal Code, the amendments to which are described above. Even if there is still no law against marital rape, domestic violence is definitely recognized and condemned.

The number of pedophilia, incest, and rape cases involving minors has not necessarily risen. Rather, such cases are increasingly reported in the media, whereas they used to be kept secret within the family. They can occur anywhere: at home, at public school, at Koranic school, in the street, or at the market. Not only have these cases been revealed to the general public, but the authorities have also cracked down on the most serious cases. Once again, campaigns have been aimed at protecting children and adolescents. Centers where adolescents can go to talk and be listened to have been set up in two neighborhoods. In order to sensitize the government and the public on the issues of rape and pedophilia, the *Siggil Jigeen* Network held a march on July 31st, 2001, Pan-African Women's Day, to demand greater criminal accountability. Today, the network is demanding that perpetrators be tried in criminal assizes court. It also tries to raise families' awareness with regard to pressing charges for sexual abuse. This is important, since perpetrators may propose traditional compensation by offering to marry the victim, marginalized by her lost honor. We need only recall the case of a 65 year-old polygamist, with four wives and 22 children, who raped an eight-year-old girl. When scandal broke out, he offered to marry the girl and give her a house. It took significant pressure by local women's groups for the child's family to refuse the "compensation."

3. Female Circumcision/Female Genital Mutilation (FC/FGM)

Laws and Policies

The National Reproductive Health Program seeks to reduce FC/FGM by 50%.⁸⁹ Recently, the National Assembly enacted Law No. 06-99 of January 16, 1999, which adds Article 299 bis to the Penal Code. According to the terms of this article, “whosoever violates or attempts to violate the integrity of the genital organs of a female person by total or partial ablation of one or several of the organ’s parts, by infibulation, by desensitization, or by any other means, will be punished with imprisonment of six months to five years.”⁹⁰

“The maximum penalty will be imposed when these sexual mutilations are performed or abetted by a member of the medical or paramedical corps ... When they result in death, the penalty shall be hard labor for life ... Any person who, through gifts, promises, influences, threats, intimidation, abuse of authority or of power, provokes these sexual mutilations or gives instructions for their commission shall be punished with the same penalties.”⁹¹

Reality

According to a report by UNICEF, the general FC/FGM prevalence rate in Senegal is 20%. However, prevalence varies according to region and ethnic group. The prevalence is 60% in Casamance and varies between 80% and 100% among the Peul and the Toucouleur ethnic groups.⁹²

The debate on FC/FGM took a very long time to gain exposure within civil society and in the media. In Senegal, the book by Awa Thiam, *Negresses Speak*, which came out in 1978, was explosive. It denounced excision as a form of mutilation, to the great displeasure of intellectuals, who dismissed the book as feminist. FC/FGM has only become a subject of protest after years of awareness-raising, and it is still treated as one issue in a general discussion of women’s health. It has been incorporated into “practices affecting the health of the mother and the child,” along the same lines as early marriage and pregnancy, force-feeding, tattooing, and other practices. Campaigns to lead providers to lay down their knives have received a great deal of media attention. But laying down knives without giving women control over their sexuality does not solve the problem. Only the association founded by Awa Thiam, Women and Society, a member of the International Committee Against Sexual Mutilation (CASM), engages in the discourse of women’s right to sexual freedom when it comes to FC/FGM.

We know that mutilation has consequences that are not merely physical. The act itself symbolizes control over women’s bodies and their sexuality, which are seen as threatening in the societies that practice FC/FGM. There has been talk of the need to find another symbol to mark young girls’ transition to womanhood that could replace excision. There have also been calls to find a new form of subsistence for former

providers of FC/FGM. This sidesteps the issue of women's ownership of their own bodies, and even the abolition of excision as "a founding act of our modernity."⁹³ What new identity symbol is in store for girls?

When the criminal law was approved by vote in January 1999, a large sector of the population from across social strata thought that it would never be applied. However, three months after the vote, the Senegalese press reported charges brought by a resident of Tambacounda, in the South of Senegal, against his wife and his mother-in-law, who circumcised their baby girl behind his back and against his orders. It was a first victory for the women's movement. In fact, the police heard the charges and locked up the accused. That was another victory, because justice was jump-started. It is hard to say whether fewer cases of FC/FGM occur in Senegal today, but at least a law exists for those who refuse to undergo the practice.

D. The Right to Education (Articles 12, 13, 14, and 15)

1. Introduction

Articles 13 and 14 protect children's rights to compulsory primary education, free of charge for everyone. Article 15 recognizes the importance of access to information and materials from diverse sources. Article 12, when read together with these articles, establishes the link between education, the right not to be subject to discriminatory treatment based on gender, and the right to health education.

The Committee on Children's Rights has noted that girls represent two-thirds of the 100 million children worldwide who have not had a basic education, and that the literacy rate of female adolescents is much lower than that of male adolescents.⁹⁴ The Committee on Economic, Social, and Cultural Rights has recognized children's right to education and training that permits integration into the socio-economic mainstream. It has also called upon governments to take all the necessary steps to guarantee girls' access to education.⁹⁵

2. Access to Education Without Discrimination

Laws and Policies

Article 22 of the Constitution stipulates that "all children, both boys and girls, throughout the national territory, have the right to have access to school."⁹⁶ There is a voluntary government policy aimed at developing programs to enroll and keep girls in school. These programs are implemented with the assistance of UNICEF and NGOs. The National Action Plan for Women has developed programs specifically for the education of girls, with a special focus on literacy.

Reality

The 1997-2001 Action Plan for Women presents the education and training of women, as well as schooling for girls, as key areas for women's advancement as workers, as citizens, and simply as human beings. A number of initiatives have been undertaken to reduce the education gap between men and women, and between people in urban and rural areas. While there have been some positive results in the 40 years since independence, education and training are still a priority, particularly in the context of structural adjustment programs and the disengagement of the state. Budget allocations for this sector have dropped, and the economic crisis has exacerbated sociocultural barriers to education.

State-funded education promotion objectives in the context of the Human Resources Development Project (HRDP) have received support from the World Bank, the African Development Bank, and various bilateral cooperation agreements (France, Germany, etc.). Several projects have thus been undertaken, including the girls' schooling project (SCOFI); the project to support women's advancement groups (PAGPF); the women's component of the HRDP; the women's priority literacy project (PAPF); the Plan of Action support program (PAPA); the informal education for development project (PENFD); and the project to support new schools (PAEN).

SCOFI, which receives special support from UNICEF, has caught the public's attention by leading massive campaigns. It is still too early for an in-depth assessment of results. This being said, the now-disaggregated data of the National Ministry of Education reveal that significant progress has been made. For the 1999-2000 school year, girls accounted for 50.94% of preschool enrollment; 46% of primary school enrollment; 39.71% of middle school enrollment; and 37.97% of general high school enrollment. Women only account for 18% of enrollment in higher education. While they are underrepresented at most levels of education, discrepancies are starting to fade, even disappear, in the youngest generation. Specialization choices still reflect gender biases. Girls continue to go into traditionally feminine fields. In industrial technical high school, they represent only 7.13% of enrollment.⁹⁷

The difference in boys' and girls' enrollment reflects gender inequality, which impedes girls' access to school. Efforts to put girls in school are often thwarted by the difficulty of keeping them there. Given the Constitution's guarantee of equality in access to education, it should no longer be possible to use tradition as an excuse to tie girls exclusively to domestic tasks. Girls are not out of the woods, however, until school becomes mandatory through the end of adolescence. It will require political will on the part of the state to achieve this.

3. Access to Sexual Education

Laws and Policies

The policies developed by the Ministry of National Education in the area of sexuality education are limited. Sexuality education is not a specific subject in high school curricula.

Reality

While the configuration and functions of the male and female genital organs are featured in the biology curriculum, issues linked to human reproduction are generally taught in morals or home economics classes, depending on the school. Discussions in this context deal with sexuality, STIs, fertility, contraception, and relationships between boys and girls. In fact, these issues are placed under the rubric of population and development. “The Government of Senegal has opted for intense awareness-raising among the youngest generation, in order to give them a developed sense of population problems at a very young age, so as to change the reflexes, attitudes, and behavior of the adults they will be tomorrow.”⁹⁸ In the absence of structured education on sexual life, students are directed toward population issues linked to families, health, migration, and the environment. Meanwhile, all surveys show that adolescents lead active sexual lives at a fairly early age, without anything to prepare them for its challenges. Medical centers are still very reluctant to welcome adolescents.

E. The Right to Equitable and Favorable Working Conditions (Articles 6, 7, and 10)

1. Introduction

Article 6 guarantees the right of every person to work freely and to choose or accept employment freely, and Article 7 establishes the minimum conditions in which this work should be carried out. Article 10 protects the rights of working women before and after pregnancy.

Consequently, these provisions guarantee women access to employment without discrimination and to protection during pregnancy. The Committee on Economic, Social, and Cultural Rights has strongly advised states parties to the International Covenant to adopt all the necessary measures to guarantee women equality of treatment in employment.⁹⁹

2. The Right to Work Without Discrimination

Laws and Policies

The 2000 Constitution provides in Article 25 that “any discrimination between men and women with regard to employment, wages, and taxes is prohibited unless based on the nature of the work or of the benefits provided.” Article 7 guarantees rural women “the right to improvement of their living conditions and access to health and well-being.”¹⁰⁰

The first article of the Labor Code states that “any person who is hired to carry out his professional activity, in exchange for compensation, under the management and authority of another natural person or legal entity, whether public or private, is considered a worker as defined in the introduction, regardless of gender and nationality.”¹⁰¹

Reality

The law has had little effect on practice. Sex discrimination continues to exclude and marginalize women. This has been highlighted by the *Siggil Jigeen* Network, which reminds the government that “[t]he bulk of women’s work, paid or unpaid, has an economic impact, even though their contribution is rarely noticed or fully quantified. If it were recognized for what it is, and it benefited from corresponding support, the returns would counterbalance all of the supposed costs ... An example of this is the unpaid agricultural work performed by women. The inequality between men and women cuts off prospects and prevents mutual profit from being gained.”¹⁰² Discrimination is made more insidious by the fact that it is not based on law so much as socio-political and cultural constraints, such as domestic overwork linked to women’s reproductive function; lack of education, training, and information; and limited access to natural, material, and financial resources.

3. Maternity Leave and the Protection of Pregnant Women

Laws and Policies

The law recognizes that a work contract may be temporarily suspended during a pregnant woman’s rest period. The Labor Code¹⁰³ and the National Interprofessional Collective Agreement¹⁰⁴ stipulate that, during maternity leave, a woman working for a company must be compensated according to legal and regulatory provisions. Consequently, the Social Security Code specifies that a salaried woman has the right to maternity benefits while on maternity leave and to a suspended work contract for 14 weeks, including six weeks before delivery and eight weeks afterward.¹⁰⁵

Maternity leave may be extended for three weeks if there is a medically proven inability to return to work. The employer is required to rehire the woman worker after her maternity leave, since the work contract was only suspended. Finally, the Labor Code stipulates that, “for a period of 15 months after the birth of the child, the mother has the right to a rest period for nursing.”¹⁰⁶ The total length of these rest periods may not exceed one hour per day of work.

Reality

In matters of social security, several types of discrimination, with their origins in the concept of paternal rights, should be noted. First, a working woman cannot receive reimbursement if her husband and children are ill. Second, a working woman is not allowed a deduction for her children in matters of income tax; she is considered single with respect to determining the number of shares for calculating income tax. Third, family allowance is paid to the father in his capacity as head of the family. A mother may collect it only under exceptional circumstances.¹⁰⁷

4. Sexual Harassment

Laws and Policies

Law No. 06-99, which was adopted by the National Assembly on January 16, 1999, punishes sexual harassment committed by a person who has abused his authority. Article 319b states that “Anyone who abuses his authority by harassing another through orders, gestures, threats, words, writing, or force, in order to obtain sexual favors, will be liable to a sentence of six months to three years of prison without possibility of parole, and to a fine of 50,000 (U.S.\$79.59) to 500,000 CFA francs (U.S.\$795.94). If the victim is under 16 years of age, the perpetrator will receive the maximum sentence.”

Reality

While a law on sexual harassment exists, it has yet to be applied in a significant way. Many women are loath to report the harassment they suffer, out of fear of ruining their reputations or losing their jobs. The first sexual harassment case brought before the courts in 1998 was a failure, and above all deeply humiliating for the complainant, whose lawsuit was dismissed. Job insecurity and the feminization of poverty have become so acute that women pay in cash and in sexual favors for services such as getting hired, being promoted, or receiving some form of public benefit (customs when importing merchandise at the border, various types of attestation, etc.).

- ¹ Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000) on the Right to the Highest Attainable Standard of Health, para. 14, 11/08/2000, E/C.12/2/2000/4 (citations omitted).
- ² *Id.* note 12.
- ³ *Id.* para. 16.
- ⁴ All direct translations of laws and polices are provided by the authors of this report.
- ⁵ MINISTERE DE LA SANTE ET DE L'ACTION SOCIALE, DIRECTION DE L'HYGIENE ET DE LA SANTE PUBLIQUE, PROGRAMME NATIONAL EN SANTE DE LA REPRODUCTION, 1997-2001, at 3 (March 1997) [hereinafter PROGRAMME NATIONAL EN SANTE DE LA REPRODUCTION].
- ⁶ *Id.*
- ⁷ MINISTERE DE L'ÉCONOMIE, DES FINANCES ET DU PLAN, IXE PLAN D'ORIENTATION POUR LE DEVELOPPEMENT ÉCONOMIQUE ET SOCIAL, 1996-2001, at 39 (February 1997) [hereinafter IXE PLAN D'ORIENTATION]; Act No. 97-06 relative to the approval of the Orientation Plan for Economic and Social Development, 1996-2001 (9th Plan).
- ⁸ UNITED NATIONS FUND FOR POPULATION ACTIVITIES (UNFPA), REPORT ON THE INTERNATIONAL CONFERENCE ON POPULATION AND DEVELOPMENT, A/CONF.171/13 (October 18, 1994).
- ⁹ PROGRAMME NATIONAL EN SANTE DE LA REPRODUCTION, *supra* note 5, at 3.
- ¹⁰ *Id.*, at 25.
- ¹¹ *Id.*, at 5-6.
- ¹² *Id.*, at 25-56.
- ¹³ MINISTERE DE L'ÉCONOMIE, DES FINANCES ET DU PLAN, DIRECTION DE LA PLANIFICATION, DECLARATION DE LA POLITIQUE DE POPULATION, at 10-11 (April 1998).
- ¹⁴ MINISTERE DE LA SANTE ET DE L'ACTION SOCIALE, PROGRAMME NATIONAL DE PLANIFICATION FAMILIALE, POLITIQUE ET NORMES DES SERVICES DE PLANIFICATION FAMILIALE AU SENEGAL, at 3 (1996).
- ¹⁵ PROGRAMME NATIONAL EN SANTE DE LA REPRODUCTION, *supra* note 5, at 7.
- ¹⁶ ENQUETE DEMOGRAPHIQUE ET DE SANTE AU SENEGAL (EDS-II), at 138 (1992-1993) [hereinafter EDS-II].
- ¹⁷ *Id.*, at 128.
- ¹⁸ SOW F., ET AL., PNUD, LES SENEGALAISES EN CHIFFRES 18 (2000) [hereinafter LES SENEGALAISES EN CHIFFRES].
- ¹⁹ *Id.*, at 41.
- ²⁰ ENQUETE DEMOGRAPHIQUE ET DE SANTE AU SENEGAL (EDS-III), at 40 (1997) [hereinafter EDS-III].
- ²¹ Ly E. H. et AL., CRDI, DIAGNOSTIC DES POLITIQUES SOCIALES AU SENEGAL, ETUDES ET TRAVAUX DE RESEAU DE RECHERCHE SUR LES POLITIQUES SOCIALES EN AFRIQUE DE L'OUEST ET DU CENTRE 1 (1999). [hereinafter DIAGNOSTIC DES POLITIQUES SOCIALES AU SENEGAL].
- ²² The regionalization policy was suspended following the elections in April 2001. The new government proposes to split the country into 30 provinces along the lines of ancient pre-colonial divisions.
- ²³ DIAGNOSTIC DES POLITIQUES SOCIALES AU SENEGAL, *supra* note 21, at 22.
- ²⁴ PENAL CODE, art. 305, ¶ 1.
- ²⁵ *Id.*, ¶ 3.
- ²⁶ *Id.*, ¶ 4.
- ²⁷ MINISTERE DE LA FAMILLE, PLAN D'ACTION DE LA FEMME, at 92-98 (1997-2001) (referring to the recommendations regarding women's and girls' health, including reproductive health, sexual health, and family planning).
- ²⁸ In the 1990's FNUAP organized a series of seminars aimed at sensitizing and educating various groups (including religious, womens, and administrative authorities) about issues regarding sexuality and fertility as related to family planning campaigns, FC/FGM and AIDS.
- ²⁹ Journalists, who are mostly men, are concerned about men's responsibility in infanticide cases. They may not recognize the child, or leave their wives alone during long migration periods.
- ³⁰ PROGRAMME NATIONAL EN SANTE DE LA REPRODUCTION, *supra* note 5, at 25.

- 31 UNAIDS, RAPPORT SUR L'ÉPIDÉMIE MONDIALE DU VIH/SIDA at 3 (1999) [hereinafter UNAIDS].
32 LES SENEGALAISES EN CHIFFRES, *supra* note 18, at 53.
33 *Id.*
34 EDS-III, *supra* note 20, at 137.
35 *Id.* at 137.
36 UNICEF, IMPLEMENTATION HANDBOOK FOR THE CONVENTION ON THE RIGHTS OF THE CHILD 611,
et seq. (1998) [hereinafter IMPLEMENTATION HANDBOOK].
37 SY D., FALL M., SAMB M., CENTRE DE RECHERCHE, D'ÉTUDE ET DE DOCUMENTATION SUR LES
INSTITUTIONS ET LES LEGISLATIONS AFRICAINES (CREDILA), LA CONSTITUTION : QUOI DE NEUF ?
(2000).
38 CONST. DU SENEGAL, TITRE II, art. 17.
39 *Id.*, TITRE II, art. 18.
40 *Id.*, TITRE II, art. 19.
41 *Id.*, TITRE II, art. 15.
42 FAMILY CODE, art. 111.
43 *Id.*, art. 133.
44 *Id.*
45 *Id.*, art. 134.
46 *Id.*, art. 368.
47 *Id.*
48 *Id.*, art. 369.
49 *Id.*, art. 132.
50 *Id.*
51 *Id.*, art. 371.
52 *Id.*, art. 114.
53 Decree No. 25-91 of February 23, 1991 specifying the list of applicable customs in Senegal, Official
Gazette of March 18, 1961, at 359 *et Seq.*
54 First of January 1973.
55 Decree No. 25-91 of February 23, 1991, *supra* note 53.
56 *Id.*, art. 277.
57 VALERIE DELAUNEY, CENTRE FRANÇAIS SUR LA POPULATION ET LE DEVELOPPEMENT (CEPED),
L'ENTREE EN VIE FECONDE: EXPRESSION DEMOGRAPHIQUE DES MUTATIONS SOCIO-ECONOMIQUES
D'UN MILIEU RURAL SENEGALAIS 50 (1994).
58 LES SENEGALAISES EN CHIFFRES, *supra* note 18, at 15.
59 In Wolof.
60 This is not a law, but rather an attempt on the part of the government to regulate incurred expenses
that result from family ceremonies. The measure has never been able to be applied because it lacks
legitimacy.
61 Cf. various articles in LA CIVILISATION DE LA FEMME DANS LA TRADITION AFRICAINE, Actes du
Colloque d'Abidjan (1972), Présence Africaine, Paris, 1975.
62 LES SENEGALAISES EN CHIFFRES, *supra* note 18, at 20.
63 SIGGIL JIGEEN NETWORK, FORUM DU CICES, LES FEMMES SE FONT ENTENDRE (2001) [hereinafter
LES FEMMES SE FONT ENTENDRE].
64 FAMILY CODE, art. 157.
65 *Id.*, art. 166.
66 *Id.*, art. 261.
67 *Id.*, art. 170.
68 *Id.*, art. 278.
69 KAÑJI S., CAMARA F K., L'UNION MATRIMONIALE DANS LA TRADITION DES PEUPLES NOIRS 204
(2000).
70 Committee on Economic, Social and Cultural Rights: for example, El Salvador, 05/28/96,
E/C.12/Add.4; Dominican Republic, 12/12/97, E/C.12/Add.16; Israel, 04/12/98, E/C.12/1/Add.35.

- 71 *Id.*, for example, Nigeria, 05/13/98, E/C.12/Add.23; Gambia, 5/31/94, E/C.12/1994/9; Guinea,
05/28/96, E/C.12/1/Add.5.
- 72 PENAL CODE, art. 320.
- 73 *Id.*, art. 320 amended.
- 74 *Id.*
- 75 *Id.*, art. 321.
- 76 *Id.*, art. 320.
- 77 *Id.*, art. 320 amended.
- 78 *Id.*, art. 297 bis.
- 79 *Id.*, arts. 346-349.
- 80 *Id.*, art. 346.
- 81 *Id.*, art. 347.
- 82 *Id.*, art. 348.
- 83 *Id.*, art. 329 bis, amended.
- 84 *Id.*, art. 319, ¶ 2.
- 85 CODOU BOP, GROUPE DE RECHERCHE SUR LES FEMMES ET LES LOIS AU SENEGAL
(GREFELS)/RESEAU INTERNATIONAL DES FEMMES SOUS LOIS MUSULMANES (WLUML), LES
VIOLENCES A L'ENCONTRE DES FEMMES (1997).
- 86 J. CABRAL-NDIONE, RAPPORT DE SYNTHESE CECI/PDPF EN PARTENARIAT AVEC L'ACDI, ETUDE
SUR LES VIOLENCES CONJUGALES DANS LES REGIONS DE DAKAR ET KAOLACK 141 (2000).
- 87 UNIFEM, *Campagne africaine contre les violences faites aux femmes : Brise le silence. Dis non à
la violence*, BULLETIN D'INFORMATION DE L'UNIFEM, Dakar, at 4, April 1999.
- 88 UNIFEM & COOPERATION FRANÇAISE, VIOLENCES FAITES AUX FEMMES : LA PLACE ET LE ROLE DU
MEDECIN 7 (1999).
- 89 PROGRAMME NATIONAL EN SANTE DE LA REPRODUCTION, *supra* note 5, at 25.
- 90 PENAL CODE, art. 299 bis, amended.
- 91 *Id.*
- 92 GOUVERNEMENT DU SENEGAL ET UNICEF, ANALYSE DE LA SITUATION DE L'ENFANT ET DE LA
FEMME AU SENEGAL 175 (1995).
- 93 "The abolition of female genital mutilation is a founding act of our modernity." These were the
words of Deputy Abdourahim Agne, speaker for the Socialist Party, speaking in session at the
National Assembly. Session parlementaire sur l'excision, Dakar, février 1999.
- 94 IMPLEMENTATION HANDBOOK, *supra* note 36, at 375.
- 95 Committee on Economic, Social, and Cultural Rights: for example, Algeria, 12/28/95, E/C.12/1995;
Dominican Republic, 12/12/97, E/C.12/1/Add.16.1; Libyan Arab Jamahiriya, 05/16/97,
E/C.12/1/Add.15.
- 96 CONST. DU SENEGAL, TITRE II, art. 22.
- 97 MINISTERE DE L'EDUCATION NATIONALE, DONNEES STATISTIQUES POUR L'ANNEE 1999-2000 2
(2000).
- 98 MINISTERE DE L'EDUCATION NATIONALE, MINISTERE DE L'ÉCONOMIE, DES FINANCES ET DU
PNUAP, PROJET D'EDUCATION A LA VIE ET EN MATIERE DE POPULATION, PROGRAMME
PEDAGOGIQUE POUR L'EDUCATION A LA VIE FAMILIALE ET EN MATIERE DE POPULATION 1 (1998).
- 99 Committee on Economic, Social, and Cultural Rights: for example, Israel,
12/04/98.E/C.12/1/Add.27; Nigeria, 5/13/98, E/C.12/Add.23.
- 100 CONST. DU SENEGAL, TITRE II, arts. 20, 25, 7.
- 101 LABOR CODE, art. 1.
- 102 LES FEMMES SE FONT ENTENDRE, *supra* note 63, at 9.
- 103 LABOR CODE, art. 138, ¶ 6.
- 104 National Interprofessional Collective Agreement, art. 26.
- 105 SOCIAL SECURITY CODE, art. 24.
- 106 LABOR CODE, art. 139.
- 107 SOCIAL SECURITY CODE, and General Civil Service Statutes.