IMPLEMENTATION OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS BY THE REPUBLIC OF SENEGAL

3rd, 4th, 5th, 6th and 7th periodic reports, in application of article **62** of the African Charter on Human and Peoples' Rights (ACHPR)

The African Charter on Human and Peoples' Rights came into force on October 21, 1986, after the 15th instrument of ratification had been deposited, in accordance with its article 47.

The Republic of Senegal ratified the Charter by virtue of law n° 82-04 of June 15, 1982. This accession to the Charter, as well as to other international instruments developed in the area of human rights bears witness to the desire of the public authorities of our country to make it a land where the rule of law supersedes all other laws. It must be emphasised here that this choice, along with a multiparty system, freedom of expression and the dynamism of the private press constitute the foundation of a long process, which culminated in the transfer of power at the highest level of the State when President Abdoulaye Wade took up office.

Senegal has always been in the forefront of the battle for human rights. The following may be cited as examples of this:

- It was the first country to ratify the Treaty of Rome setting up the International Criminal Court.

- The Committee of experts appointed to draw up the initial draft of the African Charter on Human and Peoples' Rights was chaired by our compatriot, Kéba Mbaye, who also chaired the session of the United Nations Human Rights Commission in 1978.

- The former President of the Constitutional Court and the Senegalese Human Rights Committee, and current Minister of State, Minister of Sports, Mr. Youssoupha Ndiaye was a member of the African Commission on Human and Peoples' Rights for more than 10 years, and chaired the Commission from 1997 to 1999.

When the Senegalese State acceded to international sovereignty, however, it needed to build a strong, united nation. The de facto single party system that was in place from 1960 to 1974, followed by a limited multiparty system with three, then four leanings (liberal, socialist, communist and conservative), were in line with this requirement of young nations.

From 1981, the change at the highest level of the State made it possible to set up a fully multiparty system. As a result, to this date **71 political parties** have been legally constituted in the country.

The Senegalese democratic system has also registered other significant achievements since 1992. The voting age was lowered from 21 to 18 years, the duration and the numbers of presidential terms of office have been limited to five (5) years, renewable once, a National Election Observatory has been set up to monitor and check that elections are run properly. Furthermore, any election disputes now fall within the purview of judicial authorities.

Finally, a policy of gradual decentralisation has been set up, thus giving greater responsibility to people, who can now take charge of their economic, social and cultural development at the local level.

The population of Senegal was estimated at 9,800,000 inhabitants in 2001. This will increase to roughly 17,000,000 in 2020. The main characteristic of this population is that it is very unevenly distributed throughout the country. It is also extremely young, with a rapid growth rate, as shown by the following indicators.

- Population density in urban areas: 45.1% in 2001
- Population density in rural areas: 54.9 % in 2001
- Average density: 48 inhabitants per km^2 in 2001
- The annual growth rate of the population is 2.8 %. This means that the population doubles every 26 years.
- The population of Senegal can be broken down into three age groups:
    - Under 20 years of age 58 %
    - 20 to 59 years of age 37 %
    - 60 years and above 5 %
- Life expectancy at birth is 51.3 years for men and 53 years for women.
- Infant mortality before the age of 1 was at 145 for every 1000 live births in 1999
- Infant mortality from 0 to 4 years was 68 per 1000.
- Maternal mortality rate is at 510 deaths for 100 000 births in rural areas.
- The fertility rate dropped from 6.6 in 1988 to 5.7 in 1999.
- Irreversible celibacy rate is at 0.5 %
- Duration between births is 33 months.
- The average age for a first marriage is 16.6 years
- The average distance to be travelled for access to a health service is 9.3 km in rural areas and 1.5 km in Dakar.
- The rate of access to safe drinking water is 73.6 %.
- The rate of access to sanitation is 27 %.

As stipulated in the first article of the Charter, accession to the Charter by a member state constitutes a commitment to adopt legislative or other measures to ensure its implementation. In drafting this periodic report, therefore, it is appropriate to begin by referring to the legal, political and institutional framework that has been established, before relating the actual implementation measures and then responding to the questions that were raised by the Commission following the last report by Senegal.

PART ONE: AN ENABLING POLITICAL CONTEXT AND LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE IMPLEMENTATION OF THE CHARTER

A. The political context:

It may be recalled that upon attaining international sovereignty, the Republic of Senegal immediately drafted a constitution in 1960, which took into account the recognition, guarantee and protection of fundamental human rights.

Consideration of the institutional act of January 22, 2001 shows four basic underlying principles: **dignity, equality, freedom, and individual rights.**

Dignity is enshrined in the fact that the human being is considered sacred. The Constitution recognises this sacred character and declares it inviolable, while placing an obligation upon the state to respect and protect it. We can also place under this heading the individual's right to life, to security, to the free development of his or her personality, to integrity of his or her person, and in particular to protection from physical mutilation.

Under the same chapter we may include the right to honour and esteem, the secrecy of correspondence and the inviolability of the home.

Equality is the natural consequence of the rejection of all forms of distinction or discrimination. The Constitution considers this an inalienable and inviolable right that is guaranteed by it and by other existing texts.

To this end, it states the following:

- All human beings are equal before the law.
- Men and women are equal.
- In Senegal, there shall exist no form of subjection nor privilege due to a one's place of birth, one's person or one's family.

In addition, the Constitution forbids all acts of racial, ethnic or religious discrimination, as well as any regionalist propaganda that may endanger the security of the State.

Freedom of the individual or the group goes hand in hand with free will and is a source of creativity. It is the backbone of civil, political, economic, social and cultural rights. For this reason, the authors of the Constitution did not limit themselves to a simple reference. They have carefully identified the freedoms, prior to enumerating them in the various provisions of the constitution that recognise those freedoms. We may note in particular, freedom of culture, freedom of religion, freedom of thought, freedom of trade unions, the freedom to do business, freedom of marriage, freedom of

conscience, freedom of opinion, freedom of association, freedom of the press, freedom of assembly, freedom to hold demonstrations and the freedom of movement.

Finally, there is the concept of **"rights"**, the prerogative that the society accords to each individual to act or to refrain from acting. As a subjective right, it is personal and only belongs to the one who claims it and who benefits from the sanction if his or her right is violated.

There are many, varying subjective rights that have been set out in detail in the Constitution. These are: the right to education, the right to learn to read and write, the right to property, the right to work, the right to health and to a healthy environment. Others are: the right to information, the right to express and disseminate one's opinions, the right to set up an economic group, the right to move and reside in one's country or abroad, the right of a family to raise its children, the right to seek employment, the right to hold strikes, the right to vote or be voted, the right of to exercise power and access to all public services.

The general legal framework represented by the Constitution also includes a whole battery of provisions intended to protect vulnerable groups like women and children.

Concerning women, their equality with men before the law is reaffirmed, alongside their right to own land and their right to improve their conditions of life, particularly for women in the rural areas. In marriage, women are given the right to give their consent, and forced marriages are banned and punished. Married women have the right to own assets that are different from the assets of their husband and the right to manage their own assets personally. No discrimination may be made between men and women as far as employment, salaries and taxes are concerned.

Children enjoy the guarantee of the State to provide them with education. The right of access to schools is accorded to all children, as well as the right of young people to be protected from exploitation, moral decay, and delinquency by the State. In addition to this legal provision that is included in the Constitution, there are a number of legislative and regulatory measures intended to fulfil the international commitments made by the Republic of Senegal in the area of protection of fundamental human rights. Our country is a party to the following:

- 20 United Nations Agreements and Conventions
- 35 ILO Conventions
- One UNESCO Convention
- Four Humanitarian law conventions
- Three OAU legal instruments

Alongside the general legal framework described above, an institutional framework has been set up, with different structures in charge of implementing the above-mentioned international commitments at national level.

B. Legal and institutional framework

Senegal attained independence on 4 April 1960. From the outset, the country's first leader opted for the **supremacy of law,** both as the basis for organising public institutions and in the area of human rights protection. This fundamental option was expressed first of all in the choice of a republican state and also by the principle of the separation of powers among the Executive, the Legislative and the Judicial arms of government.

Over time, the first public institutions that were set up have developed and adapted to the various options that have served as a basis for succeeding political regimes.

EXECUTIVE POWER

- From 1960 to 1962, the executive arm of government was made up of a President of the Republic and a Chairman of the Council, who was the Head of Government. They were in charge of defining national policy and its implementation respectively.

- **From 1962 to 1970,** instead the system comprising two heads, the President of the Republic, who was also Head of Government, and thus sole master aboard in running the affairs of the State, held executive power.

- **From 1970 to 1983,** executive power was once again in the hands of two people; the President of the Republic, who defined national policy, and the Prime Minister, who implemented this policy.

- From 1983 when the first presidential elections, following the departure of President Senghor were held, until 1985, executive power was once again held by one person, with the repeal of the post of Prime Minister leaving the President of the Republic once again sole master aboard.

- From 1991 to 2001, executive power was once again two-headed with the return of a Prime Minister alongside the President of the Republic.

Since January 22, 2001, executive power has remained two-headed, but in a rationalised manner, with the Prime Minister reporting to both the President of the Republic and the National Assembly.

LEGISLATIVE POWER

From 1960 to 1998, legislative power, the trustee of national sovereignty, comprised only the National Assembly, made up of first 60, then 80 members elected by universal suffrage. Its task was to pass laws.

Between 1998 and 2001, legislative power was held for the first time by two houses, the National Assembly, with 140 members, and a Senate of 60 senators. The task of the two houses was to pass laws and supervise government action.

From May 2001, a single house, the National Assembly, whose membership had been reduced to 120, once again held legislative power with the same tasks as in the past.

JUDICIAL POWER

- **From 1960 to 1992,** The Supreme Court and courts and tribunals exercised judicial power. The Supreme Court had full powers and simultaneously played the roles attributed to the Constitutional Council, the Conflicts Tribunal, the Council of State, the Court of Appeal and the State Audit Office.

- **From 1992 to 1998,** judicial power underwent a major reform, with the abolition of the Supreme Court in 1992 and the creation of the Constitutional Council, the Council of State, the Court of Appeal and the State Audit Office.

These high jurisdictions have full powers in the areas respectively attributed to them by organic laws. Members of the Constitutional Council are appointed directly by the President of the republic for a non-renewable term of office of six years. Members of the Council of State and the Court of Appeal are appointed by the President of the Republic after consultation with the Higher Council of Magistrates.

Starting from 1998 judicial power was strengthened with the creation of a State Audit Office with powers to rule on the management of public accountants. Certain members of this body are appointed by the President after consultation with the Higher Council of the State Audit Office.

INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

THE OMBUDSMAN

This institution was created in 1991. It is an independent administrative authority that is appointed by decree for a non-renewable term of office of six years. The general mission of this institution is to serve as a mediator between the Administration and citizens, in cases of violations of their rights due to a malfunctioning of the public service.

THE SENEGALESE HUMAN RIGHTS COMMITTEE

The committee was set up by law n° 97-04 of March 10, 1997, as an independent institution within the office of the President of the Republic.

Its object is to ensure the representation of all the various forces of civil society who are involved in the promotion and protection of human rights. Its missions are as follows:

- To provide views and recommendations on all issues related to human rights, particularly concerning the amendment of existing laws, regulations and administrative practices in this area.

- To draw the attention of public authorities to cases of human rights violations and, if necessary, suggest measures to bring an end to them.

- To provide knowledge about human rights by raising awareness within public opinion through information, education, the media, conferences and all other appropriate means.

- To ensure dialogue among the forces of civil society who are involved in the promotion and protection of human rights and carry out appropriate action whenever infringements of these rights are noted or brought to its knowledge by the Authority.

- Finally, it gives its views on all reports or documents to be presented to the United Nations or any other competent regional institutions on human rights. It ensures that Senegal fulfils the obligations placed upon it by virtue of the international conventions to which it is a party.

THE HIGHER COUNCIL ON AUDIOVISUALS

This body is the result of a long process of evolution. It started out as the High Council on Radio and Television, created by decree n° 91-537 of May 25, 1991 and reconfirmed by law n° 92-57 of September 3, 1992. In a process of prospective reflection about its future, it appeared necessary to strengthen the powers of this body, as a result of the changes in the democratic system of Senegal, to allow it to have jurisdiction over all audiovisual media, whatever their legal status.

Thus, on March 2, 1998, law n° 98/09 was passed, defining the new missions of the Higher Council on Audiovisuals which, according to the text, would "replace the Higher Council on Radio and Television to ensure objectivity and pluralism in information; free and healthy competition among the audiovisual media; and assist pubic authorities in applying the prerogatives conferred upon them by the Constitution and the laws and regulations of the Republic. Alongside the powers relating to the regulation the audiovisual environment, the Higher Council on Audiovisuals shall continue to carry out all the missions that had previously been attributed to the Higher Council on Radio and Television, particularly those linked to maintaining a balance in the handling of information transmitted by political parties and civil society organisations, taking into account the different political, economic, social and cultural components of the country. "

THE INTER-MINISTERIAL COMMISSION ON HUMAN RIGHTS AND PEACE

The commission was created by decree n° 2001-275 of April 10, 2001, and is made up of representatives of all ministerial departments dealing with human rights issues.

It is under the authority of the Prime Minister, is chaired by the Government Secretary General and ensures coordination of all government action in the area of human rights.

It examines the periodic reports of Senegal to the appropriate international human rights bodies.

THE COMMISSION ON HUMAN RIGHTS AND PEACE

This is the new name of the former Human Rights Office. It was established by decree n° 2001-259 of 2 April 2001 and is under the office of the President. It receives the claims of all individuals or legal entities in matters of human rights and international humanitarian law. It investigates such claims and makes proposals to the President concerning follow-up action.

The Commission on Human Rights and Peace also serves as the permanent secretariat of the Inter-ministerial Commission on Human Rights and Peace, and in this capacity, it keeps an updated record of reports submitted or to be submitted. It ensures that administrations implement the recommendations made by international bodies after having examined the periodic reports.

THE MINISTER COMMISSIONER FOR HUMAN RIGHTS

He is appointed to that office by decree and comes directly under the President. He is the highest moral authority in the hierarchy of institutions in charge of promoting and protecting human rights and is charged by the President to represent him before foreign governments, international governmental organisations and non-governmental organisations. The Minister Commissioner assists and advises the President in defining human rights policy, as well as in monitoring specific treaties, charters and conventions in this area.

NON-GOVERNMENTAL ORGANISATIONS AND TRADE UNIONS

There are 11,112 associations in Senegal, of which, 242 are trade unions.

These associations constitute a very credible counter-balance for the promotion and protection of human rights. By their membership and their objectives, they bring together men and women of good will who work hard in this area. They maintain permanent ties with national populations, serving as true alert bodies and pressure groups in cases of human rights violations.

As regards the general legal framework, a number of mechanisms have been set up to enhance efforts made in human rights promotion. Among them are:

- Introduction of civic education classes in all school programmes;
- Creation of a human rights prize as part of the administrative action;
- Introduction of the teaching of human rights in schools curricula, national training centres such as security forces' training schools;
- Popularisation of human rights through the Senegalese Human Rights Committee and NGOs, through conferences and seminars and the public media.

This review of the legal, political and institutional framework makes it easier to refer to the measures taken by Senegal to comply with the relevant provisions of the Charter.

PART TWO: MEASURES ADOPTED AT NATIONAL LEVEL TO IMPLEMENT THE CHARTER

In implementing the Charter in Senegal, reference is made to the Constitution, to laws passed to ensure its enforcement and to regulatory measures.

ARTICLE 2: ENJOYMENT WITHOUT DISCRIMINATION OF THE RIGHTS AND FREEDOMS RECOGNISED BY THE CHARTER

The public authorities have attached particular importance to the fight against all forms of discrimination that could endanger the very balance of the nation.

Several provisions of the Constitution bear on this, starting with the preamble, which refers to two international conventions on the subject. It also explicitly mentions access **"to positions of government without discrimination"** as well as **"the rejection and elimination of all forms of injustice, inequality and discrimination."**

Article 5 **aims at "prohibiting and punishing any act of racial, ethnic or religious discrimination, as well as any regionalist propaganda that could endanger the security of the state of the integrity of the territory of the Republic."**

After ratifying the Convention on the elimination of all forms of racial discrimination, the legislative authority adopted law n° 81-77 of December 10, 1981 on the repression of all acts of racial, ethnic or religious discrimination.

This law amended the criminal code and added to it an article 283 (a), which reads: **"ethnic or religious discrimination consists of any form of distinction, exclusion, restriction or preference based on race, colour, ancestry, national or ethnic origin, or religion, and whose aim is to destroy or compromise the recognition, enjoyment or the exercise in conditions of equality of fundamental human rights and freedoms in the political, economic, social, cultural or any other fields of public life."**

This text includes the expression **"discrimination based on religion"**, which does not appear in the definition given by the first article of the Convention. This can be explained in the specific case of Senegal as a precautionary measure, for the reasons cited above.

It must also be pointed out that associations, be they political, trade union, cultural or other, are prohibited from using racial, ethnic or religious discrimination as their basis (law n° 65-40 amended by law n° 79-03 of January 4, 1979). As part of the desire to ensure the respect of the rights recognised by the Constitution, the same law 81-77 adds an article 166(a) to the criminal code. It reads, **"any administrative or legal agent, any elected official or any agent of public groups, any agent or employee of the state, of public establishments, of national companies, of mixed capital companies or legal entities that benefit from the financial support of the public authority who refuses to allow an individual or a legal entity their rights, for no legitimate reason, and as a result of racial, ethnic or religious discrimination shall be sentenced to a term of imprisonment between three months and two years and to pay a fine between 10 000 and 2 000 000 francs."**

ARTICLE 3: EQUALITY BEFORE THE LAW

National unity is based on cultural values; that is the common will to share a common destiny. Equal rights for all and equality of one and all before the law serve as the cement for this national unity.

For this reason, the legislative authority gives pride of place to this dual equality in the Constitution.

To begin with, the preamble stipulates, **"equal access of all citizens to public services."**

Then in the first article, the general principle of the role of the State is set out: **"to ensure equality of all citizens before the law, without distinction of origin, race, sex or religion, and the obligation to respect all forms of belief."**

Article 7 of the Constitution is even more explicit in paragraphs 4 and 5.

Paragraph 4 stipulates: **"All human beings are equal before the law. Men and women have equal rights."**

Paragraph 5 prescribes: **"There shall exist in Senegal, neither subjection nor privilege due to one's place of birth, one's person, nor one's family."**

For the public authorities, ensuring equality of all before the law is a constant priority. For example, a woman was appointed Head of Government from March 2001 to November 2002. Women also head the Constitutional Council and the Higher Council on Audiovisuals and eight women held ministerial portfolios.

On the international scene, it must be recalled that it was the Senegalese delegation to the Conference of the African Union in Durban that initiated the proposal that when time came to appoint the ten commissioners who were to make up the Secretariat of the African Union, five of them must be women.

Access of women to ownership of land is also part of this priority. This is enshrined in Article 14, paragraph 2 of the Constitution, and illustrated throughout the country with the setting up of numerous women's promotion groups, which have access to loans to finance their activities.

Senegalese inheritance law generally attributes equal parts to men and women. The only exception is provided for by article 571 of the Family Code, which only applies if in his lifetime the deceased had expressly or by his unequivocal behaviour shown that he was a Moslem.

ARTICLE 4: THE SACRED AND INVIOLABLE CHARACTER OF HUMAN BEINGS, THEIR RIGHT TO LIFE AND PHYSICAL AND MORAL INTEGRITY

Based on article 7, paragraph 1 of the Constitution, **the human person is sacred. It is inviolable. The state has an obligation to respect it and protect it.**

Paragraph 2 states that **every individual has a right to life, to freedom, to security to integrity of his/her person, and in particular protection against physical mutilations.**

According to the terms of these provisions, no one may be deprived of his or her life by virtue of the law and on the basis of a final ruling of a judicial authority. Senegal can therefore be proud of being among those countries that have **de facto abolished** the death sentience. Indeed, although this sentence still remains in the range of sentences as a deterrent, in the 42 years of existence of the State of Senegal, it has only been applied twice (**in 1965 and in 1967**). Furthermore, it must be pointed out that discussion is currently on going about its possible abrogation.

Protection of physical integrity as set out in the Constitution was further strengthened in the criminal code amended in 1999 by law n° 99-05 of January 21, 1999, which deals with all the acts that constitute a violation of such integrity.

ARTICLE 59 OF THE CRIMINAL CODE (LAW 99-06)

The law covers violations of physical integrity that occur while a person is in police custody in the police station or the office of the Gendarmerie. In that case, according to the text, **"when violations have been noted on the part of criminal investigation officers during the period of detention in police custody, the Director of Public Prosecutions or his representative shall inform the Head of the Prosecution Department, who shall then inform the Court of Criminal Appeal. This report may be made upon request of the victim."**

ARTICLE 294 PARAGRAPH 2 OF THE CRIMINAL (LAW 99-05) deals with "violations of the physical integrity of a person of the female sex or a person who is particularly vulnerable by reason of being in a state of pregnancy, old age, or ill health, having led to physical or psychological deficiency. The guilty party shall be punished by a prison term of between one and five years and to pay a fine ranging from 30,000 to 150,000 francs. The sentence shall not be suspended."

ARTICLE 297(A) OF THE CRIMINAL CODE (LAW 95-05) deals with "assault and battery and all other forms of violence and assault on a spouse." Such acts are punishable by a term of imprisonment of between one and five years and a fine between 50,000 and 500,000 francs.

Where such acts of violence have led to illness or total incapacity to work for more than twenty days, the sentence shall not be suspended.

ARTICLE 5: THE RIGHT TO RESPECT OF THE DIGNITY OF A PERSON AND THE RIGHT NOT TO BE SUBJECTED TO ANY FORM OF EXPLOITATION, TORTURE OR CRUEL, INHUMAN AND DEGRADING PUNISHMENT OR TREATMENT

In proclaiming in article 7, paragraph 1 that the human person is sacred and inviolable and placing and obligation upon the State to respect and protect it, the Constitution recognises "the existence of inviolable and inalienable human rights as the basis of all human communities and of peace and justice in the world."

This provision rejects any idea of debasement or exploitation of one person by another. It is therefore appropriate to recall that Senegal is a party to the Convention against torture and all forms of cruel, inhuman or degrading punishment or treatment.

In line with these constitutional principles, article 319(a) of the amended criminal code (Law 99-05) provides that "an individual who misuses the authority conferred on them by their function to harass a person, using orders, gestures, threats, words, written statements or by constraint, with a view to obtaining sexual favours, shall be punished by a term of imprisonment of between six months and one year and a fine of between 50 000 and 500 000 francs.

If the victim is below the age of 16 years the sentence shall be the maximum term of imprisonment."

Article 320(a) of the criminal code (Law 99-05) states that "any gesture, touch, caress, pornographic manipulation, use of images or sounds through any technical process, for sexual purposes on a child of less then 16 years of one or the other sex shall constitute an act of paedophilia, punishable by a term of imprisonment of five to ten years. If a parent or a person having authority over the minor commits the offence, the **maximum** sentence shall be pronounced. The attempt is punished to the same degree as the actual offence."

Finally, article 299(a) of the criminal code (Law 99-05) defines excision as "the act of damaging or attempting to damage the integrity of the genital organ of a female person through the partial or total removal of one or several components, by infibulation, by rendering insensitive, or by any other means. This act is punishable by a prison sentence of six months to five years. Where such sexual mutilations have been carried out or facilitated by medical or paramedical personnel, the maximum sentence shall be imposed."

Many articles of the criminal code for define and punish violations of the dignity of an individual through public abuse, libel or false accusations.

In addition, it must be recalled that Senegal is a party to the Convention against torture, and in application of this international instrument, Law 96-15 of August 28, 1996, along with article 295 paragraph 1 of the criminal code, have repeated the definition given by the first article of the convention and make torture and other cruel, inhuman and degrading punishment and treatments a grave offence, punishable by prison sentence and fine.

ARTICLE 6: THE RIGHT TO LIBERTY AND TO THE SECURITY OF A PERSON

This is the freedom to move about in the country without hindrance and in all safety, which is enshrined in the Constitution in articles 7.2 and 9, paragraphs 1 & 2.

Article 7, paragraph 2 stipulates, **"Every individual has the right to life, to liberty, to security and to the free development of their personality."**

Article 9, paragraphs 1 & 2 provide: **"any violations of liberties and any deliberate obstacles put in the way of the enjoyment of liberties shall be punished by law."**

"No one may be condemned, except by a law that entered into force before the act was committed. The right to a defence is an absolute right at all stages and degrees of the procedure."

It is thus established that law enforcement agents, in this case investigating police and magistrates, may not breach this fundamental right. It is for this reason that the Senegalese lawgiver has set up very stringent and detailed regulations in this area, along with disciplinary and criminal sanction in case of violations. Similarly, the presence of a lawyer at all stages of the criminal procedure is a further guarantee of the right to a defence.

In line with these constitutional principles, Law 99-06 (cited above) amended various provisions of the Rules of criminal procedure.

- Even before the reform in 1999, very strict measures were imposed on investigating police and police custody. This was to ensure that this deprivation of liberty nevertheless took account of the fundamental right.

- Thus, according to **article 55 paragraph 9 (Law 99-06), "in the event of an extension of the period of detention in police custody, the criminal investigation officer shall inform the detainee of the reasons for the extension and inform him of his right to be examined by a doctor. He shall inform him that he has the right to choose a lawyer from among those registered with the court, or with an articled clerk. Mention of these formalities shall be made in the record of the hearing, failing which it shall be null and void." Counsel chosen shall be notified immediately. He/she may consult the file immediately and communicate freely with the client. If**

the lawyer cannot be contacted or cannot arrive on time, the formality is considered to have been carried out. Mention of this is made in the record of the hearing, failing which the procedure shall be null and void.

"After hearing the statements of the person brought before him and, if necessary, the comments of his/her lawyer, the Head of the Prosecution department may issue a reasoned committal order." "The lawyer may only speak or ask questions after being authorised to do so by the Prosecutor.

It has become clear that there is also a need to better preserve the right to defence even during the preparatory investigation. In the past, the appointment of a lawyer was only compulsory during the investigative phase, if the accused was the victim of an infirmity that could compromise his/her defence. However, the severity of possible sanctions in criminal cases has led the legislative authority to make it obligatory to have the assistance of a lawyer before the court of assizes. The president of the court may appoint a lawyer if the accused does not make his/her own choice.

Law 99-06 amended article 101, paragraph 4 of the rules of criminal procedure in order to remedy this imbalance in the texts. The preliminary investigation is the most delicate stage of the legal procedure for a person accused of an act that can be qualified as a crime. With this amendment, **the assistance of a lawyer now becomes obligatory in all criminal cases**, right from the time of the preparatory investigation. The lawyer may be appointed by the accused or by the court.

ARTICLE 101, PARAGRAPH 4 OF THE RULES OF CRIMINAL PROCEDURE (LAW 99-06)

"The assistance of a defender is compulsory in criminal cases or when the accused is the victim of an infirmity that could compromise his/her defence. In this case, if the accused person has not chosen a lawyer, the magistrate shall appoint one. In this case, if the appointed does not present him/herself within 24 hours after the accused has been brought before the examining magistrate, the latter may proceed with the indictment."

In other areas, it became clear, where detention prior to trial is concerned, that there was a problem with holding people in remand, while attempting to apply the principle of strengthening individual liberties that requires that detention be the exception to the rule of presumption of innocence.

The legislator felt, therefore that all these **principles** militated in favour of a limitation of the period of detention in remand. Law 99-06 therefore amended articles 127 and 127(a) of the Rules of Criminal Procedure in order to accommodate respect for the rule of presumption of innocence better.

Article 55(a) (Law 99-06) provides: "The appointed lawyer shall be contacted by the detainee or any other person of their choosing or, failing that, by a criminal

investigation officer. If the lawyer is unable to travel to the client quickly, the lawyer may communicate by telephone or by any other means of communication with the detainee in conditions that shall ensure confidentiality of the conversation." "If the lawyer designated cannot be contacted, the criminal investigation officer shall so indicate in the record of the hearing of the detainee."

"The criminal investigation officer or, the policeman, under the control of the former, shall inform the lawyer of the nature of the alleged offence."

"At the end of the interview, which may not exceed thirty minutes, the lawyer may, if necessary, make written comments to be added to the proceedings. The lawyer may not speak of this interview to any party during the period of remand."

"The Director of Public Prosecutions shall be informed by the criminal investigation officer as quickly as possible, of the measures taken to implement this provision. "

ARTICLE 55(b) OF THE RULES OF CRIMINAL PROCEDURE (LAW 99-06)

"Pursuant to article 55(a), for each person held in remand, the criminal investigation officer shall indicate in the record of the hearing, all information given and all requests made and the action taken on them.

The detainee shall initial these indications and if he/she refuses, this is noted in the record.

Failure to include these indications shall render the report null and void."

In the case of an offence *in flagrante delicto*, the procedure shall be accelerated. Knowing the vital role played by the Prosecution Department in such cases, the legislative authority has provided for the suspect to appear before the Head of the prosecution department. Law 99-06 amends article 63, paragraph 1 of the rules of criminal procedure for this purpose.

ARTICLE 63, PARAGRAPH 1 OF THE RULES OF CRIMINAL PROCEDURE (LOI 99-06)

"In the case of flagrante delicto, where the act is punishable by imprisonment, the Prosecutor shall only interrogate the person brought before him about their identity, and the acts of which he/she has been accused, in the presence of the lawyer appointed by the accused or by the court."

ARTICLE 127 OF THE RULES OF CRIMINAL PROCEDURE (LAW 99-06)

"For minor offences, where the maximum sentence provided by law is less than or equal to three years, the accused, if they are domiciled in Senegal, shall not be held for more than five days before appearing for the first time before an examining magistrate."

However, subject to the same conditions in terms of the possible sentence, if the accused is domiciled within the jurisdiction of the competent court, **he/she may not be detained in remand**.

These provisions shall not apply to criminal cases or to repeat offenders.

"For minor offences, if remand is ordered, the committal order issued shall only be valid for a non-renewable period of six months, except for cases where it is not compulsory and for the offences set out under articles 56 to 100 of the Criminal code."

ARTICLE 7: THE RIGHT TO HAVE ONE'S CAUSE HEARD BY A REGULAR COURT

According to **article 91 of the Constitution,** the judicial power is the trustee of the rights and liberties defined by the existing laws.

Article 88 stipulates that the judicial power is independent of the legislative power and of the executive power. It is exercised by the Constitutional Council, the Council of State, the Court of Appeal, the State Audit Office and the courts and tribunals.

The two provisions combined are themselves a guarantee of the right of every individual to have their cause heard in a fair manner, by a regularly constituted jurisdiction, in accordance with the law.

They are also strengthened by article 9, which recognises the presumption of innocence, the legality of offences and sentences, and the absolute right to a defence at all stages and in all degrees of the procedure.

The constitutional provisions cited above are taken into account by the Rules of criminal procedure and the Criminal code, amended by Laws 99-06 and 99-05.

Thus, the Criminal code recognises and guarantees the legality of offences and sanction in its article 4.

The initial drafting of the text was incomplete, as it did **not** include the offences and sanctions defined by regulations (contraventions) that fall under the

purview of administrative authorities. The new drafting of article 4 is now as follows: **"No crime, nor offence, nor contravention,** shall be punished with sanctions that were not provided for by law or by regulation, **before** they were committed.

The various provisions of the rules of criminal procedure set out the means available to victims of human rights violations, to bring their case before the public justice service. These are simple complaint, a complaint including a claim for damages, or a direct summons, etc.

A complaint may be addressed to the Head of the Prosecution Department, who has the power to evaluate the complaint and decide whether or not to pursue the matter.

Depending on his conviction, he may dismiss the case. In that case, the rules of criminal procedure require that he inform the complainant of this administrative measure, so that the latter may bring the matter to justice by other means.

If the victim is not satisfied with the ruling of the court, they may appeal the ruling before a higher jurisdiction. In criminal cases, the deadline for lodging an appeal is one month. On the other hand, the deadline for appealing decisions of the examining magistrate varied between one and three days in the past, and this ran counter to the interests of victims. For this reason, Law 99-06 amended artic 179 of the rules of criminal procedure, which now reads: "this appeal, which is lodged by making a statement before the office of the clerk of the court, shall be lodged within five days after notification of the decision of the prosecution department."

Appeal for cassation is an extraordinary recourse that is available to any victim who considers that the ruling made in the final instance was made in violation of the law.

Finally, the right to have one's cause heard is also guaranteed by the mechanism of the plea of unconstitutionality, which enables any party making an appeal before the Court of Cassation and the Council of State to have "the Constitutional Council determine whether a law is in conformity with an international agreement or with the constitution. If the Constitutional Council declares that the law or the agreement is not in conformity with the Constitution, that text shall no longer be applied to the case."

ARTICLE 8: FREEDOM OF CONSCIENCE AND OF RELIGION

Freedom of conscience and of religion is quite sacred to life in Senegal. For this reason, artic 24 of the Constitution speaks very explicitly about the issue and guarantees this freedom, the only limitation on it being issues of public order. This guarantee is also extended to the profession of religious educator.

In addition, the Constitution recognises the rights of religious institutions and communities to develop without hindrance and to administer and manage their affairs independently, and free of state tutelage.

In practice, these rights are not subject to any limitations or hindrances. This has led to perfect communion among the majority of believers, who are Moslems, (95 % of the population) and Christians and others (5% of the population).

The same applies to the various religious orders, which exist in harmony. Religious education is also free, within the framework of a lay state. In fact, the government intends to introduce it into the school curriculum at primary and secondary levels, in the near future.

ARTICLE 9: THE RIGHT TO RECEIVE INFORMAION AND TO EXPRESS AND DISSEMINATE ONE'S OPINIONS

The Constitution has a very broad vision of the recognition and guarantee of what it calls pluralist information in its Article 8, paragraph 10.

Under article 10, it recognises for each individual, the right to express and disseminate his/her opinions freely, using words, the pen or images, or peaceful demonstrations, as long as exercising these rights does not violate the honour or consideration of another individual or disrupt public order.

Article 11 recognises the freedom to create a press organ to provide political, economic, cultural, sporting, social, recreational or scientific information that does not require prior licensing. Nevertheless, the constitution indicates that the legal regime governing the press shall be set by law.

These provisions of the Constitution have had diverse effects in practice. The guarantee of the right to pluralist information, strengthened by the freedom to create press organs, has led to a veritable explosion of the media space in Senegal, with numerous major press organs and broadcasting stations that are operating to the satisfaction of the public throughout the country.

Pluralist information is provided under a precise legal and institutional framework, which ensures appropriate regulation of the audiovisual landscape. **Law 79-44 of April 17, 1979** on press organs and the profession of journalist is the legal instrument that defines the rules of functioning of these bodies and the personnel that run them.

This text is supplemented by the provisions of the criminal code **(articles 248 to 272)** and the rules of criminal procedure **(article 623).**

The institution of the Higher Council on Audiovisuals, an independent body, plays a major role in ensuring free competition among the various press organs, as well as free access of various voices to the state media.

Another effect has been the establishment of many political parties in Senegal, since the abolition of the limitation on the number of parties in 1981.

Indeed, in guaranteeing the freedom of association, the Constitution establishes the freedom to create political parties. These parties are governed by Law 8 1-17 of May 6, 1981, which defines the rules of their existence and functioning as regards public order and the security of the state.

The only limit on their functioning is under article 4 of the Constitution, which places upon them the obligation to respect the Constitution and the principles of national sovereignty and democracy. It prohibits them from identifying themselves according to race, ethnic group, sex, religion, language or region.

Finally, freedom to express and disseminate one's opinions is also extended to peaceful demonstrations. The only limitation here is public order, any disruption of which is sanctioned by the criminal code (articles 92 and following).

ARTICLE 10: THE RIGHT TO ASSOCIATION

Article 12 of the Constitution accords citizens a far-ranging right to form associations, as well as economic, cultural, and social groups and societies, subject to conforming to the rules established by laws and regulations. This right is limited by the prohibition on forming groups whose objective and activities infringe criminal laws, or are directed against public order.

Several laws have been passed to implement this constitutional provision and define the conditions for setting up associations, and the attendant sanctions.

- First of all, the Code of civil and commercial obligations (Law 68-08 of March 16, 1968) in its articles 812 to 821, which define the general rules of establishment for all associations.

- Law 79-02 January 4, 1979 amending article 814 of the Code of civil and commercial obligations specifies that "**the object of the association must be clearly defined and must concern only one activity or activities that are closely linked. In particular, associations other than political parties and their attached groups must refrain from any political activity.**"

-Law 79-03 of January 4, 1979, amending Law 65-40 of May 22, 1965 on seditious associations provides for "the possible dissolution of associations whose activities undermine public order."

- Law 81-77 of December 10, 1981, amending Law 65-40 above provides for "the dissolution of associations whose activities are totally or partially devoted to practising racial, ethnic, or religious discrimination or inciting such discrimination."

- Several provisions of the law constituting the Labour code enshrine the principle of freedom to set up trade unions as non-profit associations, to defend the professional and moral interests of their members.

ARTICLE 11: FREEDOM TO ASSEMBLE

The right to assemble freely is recognised by the Constitution as a civil and political right that it guarantees with the legal and regulatory restrictions in article 8.

This provision is implemented by Law 78-02 of January 29, 1978 on meetings. The texts makes a distinction between private meetings held in a private place, and which require authorisation, and public meetings, which require authorisation from the duly designated authorities.

Public meetings are also subject to the provisions of articles 92 and following of the criminal code, when they are made up gatherings in the street.

ARTICLE 12: FREEDOM OF MOVEMENT AND RESIDENCE WITHIN THE COUNTRY

These rights are recognised and guaranteed by article 14 of the Constitution, and they allow any citizen of Senegal to move about freely, both within and without the national territory and to reside in Senegal or abroad, within the conditions established by law.

In this regard, Senegalese emigration law imposes no restrictions on Senegalese citizens entering or leaving the country. Since June 2002, in the framework of the Economic Community of West African States, which brings together 15 States, including Senegal, citizens of those States may now hold a single community passport.

Concerning the right to asylum, it may be noted that Law 68-27 of July 24, 1968 governs the status of refugees in Senegal. According to the terms of this text, **"no individual who enjoys the status of refugee in Senegal shall be deported from Senegal, except for reasons of national security, if he/she carries out activities contrary to the public order or is condemned to a custodial sentence for a crime or serious offence."** (Article 4)

A refugee faced with a deportation order has the right to have appeal to the Commission on Admissibility to Refugee Status to examine his/her case. He/she is also given a reasonable time to enable him/her to find another host country. This decision may be appealed on the grounds of action *ultra vires* before the Council of State, within two months. The appeal suspends the application of the ruling.

Finally, collective deportation for reasons of racial, ethnic or religious discrimination is quite unknown in Senegal.

ARTICLE 13: THE RIGHT TO PARTICIPATE IN THE GOVERNMENT OF THE COUNTRY, TO BE EMPLOYED IN THE PUBLIC SERVICE AND TO USE PUBLIC GOODS AND SERVICES.

In its preamble, the Constitution sets the principle of the right of all citizens to hold positions of power at all levels without discrimination, and their right to have access to public services.

The guarantee of the right of access to public positions and services is dealt with under article 27 of the Constitution, which established the duration of the Presidential term of office at 5 years, renewable only once. As a guarantee, it is indicated that this provision may only be revised following a referendum. Article 29, paragraph 4 of the same text also provides for the possibility of an independent candidate in presidential elections. The only condition imposed on the candidate is to accompany his/her application with 10, 000 signatures of voters from six regions, with a minimum of 500 per region.

Law 61-33 of June 5, 1961, setting the general status of civil servants, defines in articles 3, 4, 8 and 20, the conditions of access to the public service, which are based on the principles of freedom and competence.

ARTICLE 14: THE RIGHT TO PROPERTY GUARANTEED FOR ALL CITIZENS

The right to a guaranteed property is part of the **economic**, social and cultural rights of the individual, according to the terms of article 8, paragraph 8 of the Constitution. Article 15 also states, **"The right to property may only be encroached upon in the legally manifest case of public need, and then subject to fair, prior compensation."**

The text also recognises **"the right of men and women to have ownership and possession of land, under conditions defined by law."**

Finally, article 19 of the Constitution expressly recognises **"the right of a woman to possess her own assets, like her husband. She has the right to manage such assets herself."**

This guarantee of the right to property is repeated in the texts of many laws to give it effect:

- Law 69-30 of April 29, 1969, on requisition of person and goods. The law subjects this procedure to the same one as for expropriation for public use.

- Law 72-61 of June 12, 1972, setting up the family code, which institutes three ante nuptial settlements; one based on communal estate of the spouses, the ordinary law settlement maintaining the estates of husband and wife separately, and a settlement in trust for the woman. The future spouses choose the settlement.

- Law 76-67 of July 2, 1976, on expropriation for public use, which determines the conditions and manner of compensation in case of expropriation.

ARTICLE 15: THE RIGHT TO WORK UNDER EQUITABLE AND SATISFACTORY CONDITIONS

The right to work under equitable and satisfactory conditions features in the Constitution of 2001 as one of the priorities of public authorities. The preamble to the Constitution states that they are "**convinced of the will of all citizens, men and women alike, to assume a common destiny through solidarity, work and patriotic commitment."**

Subsequently, article 8 paragraphs 5 and 9 recognise the right to undertake business and the right to employment as part of the economic and social rights of every citizen.

Article 25 recognises for each citizen, **"the right to work and to seek employment without being limited in the exercise of such right for reasons of discrimination based on origin, sex, opinion, political choice or beliefs."**

The same text goes on to enumerate the equitable and satisfactory conditions of work that are guaranteed for each individual. They include the following:

- Exclusion of all forms of discrimination between men and women in employment, salaries and taxes.

- The right to join or not join a trade union.

- The right to go on strike, on condition that this does not violate the freedom of labour or endanger the company.

- The right of workers to participate in determining the conditions of work through their representatives.

- The mission of the state to ensure hygienic and humanitarian conditions at the workplace and set, through legislation, the conditions of assistance and protection that it can provide, in relation with business and workers.

The Labour code defines the hygienic and humanitarian conditions and the conditions of assistance and protection due to workers. The Social security code

organises "concretely the social assistance and hygiene measures accorded by the State to employees and their families."

Finally, all these measures are monitored by labour inspection departments, and are under the authority of labour courts, which constantly ensure that those most closely involved implement them.

ARTICLE 16: THE RIGHT TO THE BEST STATE OF PHYSICAL AND MENTAL HEALTH

Article 17, paragraph 2 of the Constitution states that it is the duty of the State and public groups to ensure the physical and moral health of the family and particularly of the handicapped and the elderly. It also guarantees access to health services and well being for families in general, and those living in the rural areas in particular. Finally, it calls upon the State to undertake to improve the working conditions of women in general and rural women in particular.

To implement these constitutional principles, the public authorities have drafted a health policy, which is being implemented in an institutional framework covering the whole country. It goes from the health hut in each village, to the health post at sub-prefecture level, to the medical district in the departments, and finally the hospital at the regional level.

Owing to the high cost of health care, the authorities have set up the Primary Health Care Programme, which allows every individual to have access to full medical care, including consultation, analyses, tests and appropriate treatment, with the payment of a modest sum.

Maternal and child health centres have been set up in the health posts and this has made it possible to monitor mothers and infants from the early months of pregnancy, right up to the time when the child enters school. These centres also provide counselling for family planning and make contraceptive products available to women who request them. These activities have had positive results; considering the high population growth rate in Senegal and its negative impact on economic and social development policy.

ARTICLE 17: THE RIGHT TO EDUCATION AND TO FREELY TAKE PART IN THE CULTURAL LIFE OF THE COMMUNITY

The right to education and cultural liberties are enshrined in the constitution under article 8 as economic, social and cultural rights.

In article 21, it "gives the State and public groups the mission of creating the enabling conditions and the public institution that will guarantee that children receive education. With regard to the right to education and training, article 22 of the

Constitution makes it a duty of the State, while making access to school an absolute right for all girls and boys in all areas of the national territory.

The Constitution recognises religious institutions and communities as a means of education and places a duty upon all national public and private institutions to educate their members and participate in the national literacy effort in local languages.

Finally, it opens up possibilities for private schools to contribute to the public authorities' educational effort.

Law 91-22 of February 16, 1991, establishing the orientation for national education was passed to implement these constitutional provisions. It sets as a foundation "**the elevation of the cultural level of the population"** and as an objective, **"the training of men and women, free and capable of creating the conditions for their development at all levels, to contribute to the development of science and technology and to finding effective solutions to the problems of national development."**

Elementary education was proclaimed as a fundamental right for all children, and the decision has been taken to increase social mobilisation on this issue, with the following concrete activities, among others:

- Institution of the President's award for schools that have distinguished themselves in enrolling young girls.

- Setting up a programme of education for young girls, as well as community schools.

- Setting up a Programme of Development of Human Resources and the New School Support Programme, with the help of UNICEF.

- Setting up a Support Programme for Women's promotion groups, which has created 300 community day care centres in five regions of Senegal.

- Finalising the implementation of the Ten-year Education and Training programme (1998-2007), which will make it possible to redress the geographical disparities in the area of education and better take into account handicapped children. The objective is to achieve education for all.

- Finally, the NEPAD project, which includes a large component on education for the African continent.

The efforts deployed by public authorities can be assessed in the light of the following indicators:

- Adult literacy rate is 49.9 % for men and 47.9 % for women. These are people aged 6 and above and who are capable of reading in any language.

- Illiteracy, however, affects more women than men (82.1% as compared to 63.1%). The percentage of individuals who know how to read and write in French is 24.7%, with 28.6% for men and 15.6% for women. Nevertheless, progress has been made in the field of education, in particular for the younger generations.

- General school enrolment is 55.7%

PART THREE: ANSWERS TO THE CONCERNS EXPRESSED BY THE COMMISSION AFTER THE PRESENTATION OF THE LAST REPORT BY SENEGAL

The concerns expressed by the Commission related to the following:

- **The situation in Casamance**
- **The status of refugees**
- **Policies implemented to ensure the protection of the rights of families**
- **Strategies implemented to harmonise national codes with the provisions of the African Charter on Human and Peoples' Rights**
- **Conditions of detention in prisons**

A. THE SITUATION IN THE CASAMANCE REGION

The drafting of combined periodic reports gives us the opportunity to speak about Casamance and developments in the situation of the region. During the presentation of the second periodic report of Senegal on the Charter, on October 13, 1992 in Banjul, the African commission on Human and People's Rights, in its comments and recommendations, stated expressly that **"it had taken note of the desire expressed by the Republic of Senegal to give priority to negotiations, rather than the use of force to resolve the issue. The Commission expressed the wish that there would be absolute transparency on this issue and stated that it was aware of the mission of the State in this region of Senegal."**

To tackle this issue, it must be noted that it has often been presented erroneously in ethnic or ethnical terms. Concerning the supposedly ethnic aspect of the problem in Casamance, it must be stated that Casamance, like all other regions of Senegal, is made up of several ethnic groups. It is certainly not predominantly Diola. There are indeed Diolas in Lower Casamance (28%), whereas in Middle and Upper Casamance, there are Peulhs (32%) and Mandingos (17%). It must be noted, however, that there are also Mandiacks and Mankagnes (4.2%) in Lower Casamance.

As such, within the populations of the Lower Casamance region, there do not exist and have never existed any policies or practises designed to exclude, restrain or

give preference to one ethnic group or the other, in the sense of the first articles of the Convention for the Elimination of all forms of racial discrimination, as well as Law 81-77 of Senegal, which defines and sanctions all forms of discrimination.

This vision of the issue is corroborated by the very history of the Movement of Democratic Forces of Casamance (MFDC), whose initial objective was to fight the forces of colonisation, and was never separatism from the rest of Senegal. This is illustrated further by the ethnic origins of the founders, Emile Badiane, Ibou Diallo, Assane Seck, who were respectively from the Joola, Peulh and Wolof ethnic groups. Then, finally, the movement was created in Sédhiou, a town in Middle Casamance, with a predominantly Mandingo population.

In fact, in the history of the independent Senegal, the demands for the independence of Casamance are a new factor. It was in 1980, during a meeting of the Chamber of Commerce in Dakar on August 23, that Father Diamacoune declared, "By what right did France attach Casamance to Senegal at the time of independence, without consulting those involved? Casamance", he said, "has nothing to do with Senegal in historical, economical and ethnic terms. It is only for reasons of convenience that it was administered with Senegal, but it was a protectorate."

And yet, in making a historical account on Casamance in Zinguichor on December 21, 1993, on the joint request of the MFDC and the Senegalese government the French historian, Mr. Jacques Charpy, Heritage Curator General declared the following:

"Casamance did not exist as an autonomous territory before colonisation. Despite interesting geographical characteristics, because of the distant situation from Saint Louis (capital of the former French West Africa) and the consequences of the Gambian enclave, the territories situated between the Gambia and Guinea Bissau were always administered by the government of Senegal, during the time of French colonisation."

Indeed, still according to Mr. Charpy "when France recovered Senegal from the English in 1817, after the Empire, the instructions of the French government defined Senegal and it Dependencies as the part of the African coast lying between Cap Blanc and the rivers of Sierra Leone and including particularly the river of Casamance." Subsequently, "**with the extension of conquest to the Niger and the Gulf of Guinea, the government felt it necessary to reconstitute an action unit and thus a supreme authority in West Africa."**

In 1892, for the budget, Senegal itself had been divided, into a protectorate and a territory under direct administration, but with both attributed to the same administrators. En 1904 (decree of October 18), French West Africa was allocated its final composition, with an autonomous budget. Senegal was thus reconstituted, although it maintained it budgetary duality, which was cancelled in the reform of 1920 (decree of December 4).

Still according to the same account, at the time when Senegal was preparing for independence, within the territorial limits set by the coloniser, many Senegalese deplored the balkanisation of French West Africa, but nobody proposed a new territorial breakdown. Only a few old people in Saint Louis, often descendants of mixed race families, expressed their regret at seeing the page turned on their Franco-African history, with their city losing its status as capital that it had held for three centuries. No region of Senegal expressed the desire to be autonomous.

The contemporary unity of Senegal is not synonymous with uniformity. National conscience has not erased the rich diversity inherited from a long history.

Although they have been profoundly Senegalese for the past few decades, our countries have Wolof, Serere, Toucouleur, Mandingo, Diola, Balante, etc. from time immemorial.

Finally, we must emphasise that the government has spared no effort to ensure lasting peace in this part of the country. For this reason, in addition to the various laws of amnesty that were passed between 1991 and 1993, the government accepts MFDC combatants as partners in negotiating for peace.

Even more, the government has gone so far as to accept to meet them on neutral ground for the same purpose.

Thus, the government considers it necessary to continue to fight against the exactions carried out by armed rebel groups, in particular the setting of anti personnel mines, which continue to wreak havoc within the populations of the zone, in order to preserve the fundamental rights of the inhabitants of the region. The Senegalese authorities have sought to ensure transparency in their attempts to resolve the conflict, and all military interventions in the area are announced to the general public. To this end, the last exercise carried out by the Army and the Gendarmerie in November 2002, to ensure the security of the population was announced to the press prior to beginning.

Furthermore, civil society, and in particular the populations of the region are actively involved in the peace process, in order to allow the situation to move rapidly towards a final resolution of the conflict.

Drawing on the lessons of the past, the government is prepared to re-establish dialogue and return to the negotiation table, but with a united MFDC that speaks with only one voice.

The Senegalese head of state, President Abdoulaye Wade declared the following at the opening of the Congress of the International Federation of Human Rights Leagues: **"The first duty of the state is to guarantee the protection of the civilian population and territorial integrity. The first of human rights is the right to life. In Casamance, law enforcement forces are carrying out a security mission**

under difficult conditions. The objective of the mission is obviously to protect human rights."

To conclude on this issue, mention must be made of the assessment made by Amnesty International, noting positive developments in the situation since 2001, in its last report on Senegal.

B. RESPONSE ON THE SITUATION OF REFUGEES IN SENEGAL

Senegal shelters some 20,000 Mauritanian refugees, more than 10,000 urban refugees, mainly from Liberia and Sierra Leone, and a few refugees from the Great Lakes region.

Our country has received a number of international conventions on refugees into its substantive law, in particular, the OAU convention governing aspects that are specific to African refugees, and which was signed in Addis Ababa. Laws have been passed to enable implementation of these texts:

- Law 68-27of August 6, 1968, instituting the status of refugees, amended by law 75-109 of December 20, 1975.
- Decree n° 78-484 of June 5, 1978, on the Commission of Refugees, amended by decree n° 89-1582 of December 30, 1989.

Senegal is a country with a long-standing tradition of hospitality and has a generous policy governing the acceptance and protection of refugees, wherever they may come from. Refugee cards are delivered within a reasonable lapse of time after applications have been examined and reasoned opinions have been received from the National Commission on Refugees, which has among its members a representative of the High Commission on Refugees, as an observer.

To show how much importance is accorded to the issue of refugees, according refugee status is within the remit of President of the Republic, and a person whose application is rejected may appeal to the Council of State for cancellation on grounds of action *ultra vires.* The appeal suspends the execution of the decision.

A summary of the texts governing these issues gives an idea of the avant-garde role played by Senegalese public authorities in the international struggle for the promotion of the rights of refugees and stateless persons.

C. RESPONSE ON POLICIES IMPLEMENTED BY THE GOVERNMENT OF SENEGAL FOR THE PROTECTION OF THE RIGHTS OF FAMILIES

According to article 17 of the Constitution, marriage is the foundation of the family and together the two constitute the natural and moral basis of any human community. For this reason, they are placed under the protection of the State and public

groups which have the duty to ensure the physical and moral health of the family and in particular, of the handicapped and the aged.

In the same vein, the State guarantees access to health services and well being to all families and particularly those living in the rural areas. All these constitutional provisions on state protection of the family, and especially women, children, the handicapped and the aged, are an illustration of the interest accorded by public authorities to the crucible of all human communities. For this reason, a number of legislative and institutional measures have been adopted to ensure the implementation of these fundamental prescriptions.

Since marriage is the foundation of the family, article 18 of the Constitution considers forced marriage a violation of individual liberty, punishable by law.

The natural right and duty of parents to raise their children, with the support of the state and public group is enshrined in article 20 of the Constitution, which also guarantees the protection of the State to young people against exploitation, drugs, moral decay and delinquency.

The Family code (Law 72-12 of June 12, 1972) defines the conditions of the form and substance of marriage and divorce and the mutual obligations of spouses, filiation, paternal authority and its effects, ante-nuptial settlements and the system of inheritance in ordinary law and in Islamic law.

The conditions of the form of marriage mainly concern the action of the official of the registry, if it is a ceremony, with the future spouses appearing in person before him, or if it is merely noted, still before him, but in the absence of the future spouses.

The Family code included a certain number of provisions that were judged discriminatory against women. They have either been amended or abrogated. Among them are:

Article 13-1, which imposed a legal domicile on **married women,** which they could not leave without the permission of the husband. This text has been abrogated (Law 89-01 of January, 17, 1989).

Article 19 (Law 89-01), which now allows women to administer the assets of a husband presumed absent during the procedure to have him declared absent.

Article 80 (Law 89-01), which now allows a woman to obtain a copy of the family register from the official of the registry at the time of establishment of the marriage certificate.

Article 154, which required married women to obtain the permission of their husband in order to hold a profession separate from his, has been abrogated (Law 89-01).

Article 332 of the Criminal code, which made abandoning the marital home an offence, but only applied to the wife. This provision has been abrogated (Law 77- 33 of February 27, 1977). This offence has been replaced by the offence of abandoning the family, under article 350 of the criminal code, and which applies to both the husband and the wife.

Law 73-37 of July 31, 1973, instituting the Social security code, has set up a number of mechanisms in the form of family pre-natal allowances that contribute significantly to the social and health protection of workers' families.

The aged and the handicapped are given particular attention by public authorities. They are brought together in various associations throughout the country and assist the government in drafting and implementing its policy with regard to the elderly and the social and health assistance that is due them.

Divorce, which is understood as a breaking of the marital link, requires the intervention of a judge, whether it is a divorce by mutual consent or a disputed divorce. Wife repudiation, which depends simply on the will of the husband, is prohibited in Senegal because it violates the dignity of the woman. One of the causes of divorce, which serve to protect the rights of women, is failure of the husband to care for the wife.

Descent of legitimate children is established in relation to the father and of natural children, in relation to the mother, unless the child is expressly recognised by his/her father. The same applies for Senegalese nationality. Nevertheless, Law 89-42 of December 26, 1982, amending the Code of nationality of Senegal provides that the following categories may opt for Senegalese nationality:

- The legitimate child born of a Senegalese mother and a father who is a foreign national, from the age of 18 until the age of 25.

- The natural child, when the parents in the second degree of descent are Senegalese and if the other parent is of foreign nationality.

D/ GENERAL ANSWERS ON STRATEGIES FOR HARMONISING NATIONAL CODES WITH THE PROVISIONS OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

See the constitutional, legislative and regulatory measures presented in the present report.

E. RESPONSE ON CONDITIONS OF DETENTION IN PRISONS IN SENEGAL

Senegal abides by its international commitments and the principles that govern society have set up a legislative and regulatory system that make conditions of detention appropriate to allow criminal sanctions to play their essential role of punishment and social insertion.

Prison administration agents, a corps of specialised civil servants, are in charge of managing prisons in Senegal, with the assistance of resource persons, specialised social workers, and other operators from the civil society.

This arrangement was set up with the reform that took place in 2000.

Law n° 2000-39 of December 29, 2000 introduced innovations in the legal handling of sentencing and thus, to a certain degree, of detention, to Senegal.

It must be pointed out that administrative detention is not allowed in Senegal. Only the Head of the Prosecutions Department or his/her representative in the courts in the regions; examining magistrates and magistrates in the courts of first or second instance may order a person to be incarcerated.

The legal handling of sentences may be assessed by analysing the attributions of the position of judge for determining penalty that has been set up for each penitentiary and with the Penalties adjustment committee that sits with each Court of Appeal.

Decree n° 2001-362 of May 4, 2001 on procedures for applying and adjusting criminal sanctions contains provisions for implementing the reforms introduced in the rules of criminal procedure.

Thus the prison director is not solely responsible for handling the penalty.

The judge for determining penalties acts after consultation with advisory bodies, which enable him to have a better appreciation of the execution of the sentence passed by the legal authorities.

The philosophy behind this arrangement is to offer a broad range of measures that will give the judge a larger choice, in order to make the most appropriate decision for the individual being sentenced. In other words, prison is no longer the sole criminal response to transgressions of the law.

The reform should lead to a reduction in prison populations, reduce the phenomenon of repeat offenders, and avoid detention for short sentences.

The improvement is expected to be considerable, both for the officers of the prison administration, and for the inmates of penitentiaries.

At the administrative level, the state has almost doubled the daily ration for inmates and thus strengthened the impact of the reform by humanising the execution of criminal sanctions.

It may be concluded that conditions of detention in Senegal are governed by a legislative and regulatory set up that is largely inspired by the clearly expressed will of the public authorities to ensure the respect of the fundamental rights of human beings, to humanise as much as possible the conditions of detention and prepare the condition for a harmonious reinsertion of the detainee into the society.