

REPUBLIC OF SENEGAL
ONE PEOPLE — ONE PURPOSE — ONE FAITH



PERIODIC REPORT

ON THE IMPLEMENTATION OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

PRESENTED BY THE REPUBLIC OF SENEGAL

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ABBREVIATIONS, ACRONYMS AND INITIALS

ASDIC – Senegalese Community Initiatives Development Association;
ANEJ – National Youth Employment Agency
ANRAC – National Agency for the Revitalization of Economic and Social Activities in Casamance
APJ - Criminal Police Officers
ARTP – Posts and Telecommunications Regulatory Authority
ARV – Antiretroviral Drugs
ILO – International Labour Organisation
HRC - Human Rights Council
ECOWAS – Economic Community of West African States
CENA – Independent National Electoral Commission
CEPS – Study, Planning and Monitoring Unit
CES – Ecological Monitoring Centre
African Charter – African Charter on Human and Peoples' Rights
CIJ – International Court of Justice
CNLS – National AIDS Control Council
CORED – Ethical Standards Compliance Council
African Commission – African Commission on Human and Peoples' Rights.

CONSERE – Higher Council for Natural Resources and Environment
CNEQUF – National Employment and Qualifications Centre
CNRA - National Audiovisual Regulatory Commission
CNO - National Ozone Committee
CP – Criminal Code
CPP – Criminal Procedure Code
CSDH –Human Rights Committee of Senegal
CRFPE – Regional Educational Staff Training Centres
CUR – Regional University Centres
PRSP – Poverty Reduction Strategy Paper
ENP – National Police School
EPT – Education for All
FIJ –Youth Integration Fund
FISE – Youth Integration Fund for the Environmental Sector
FNPEF –National Women’s Entrepreneurship Development Fund
FNPJ - National Youth Development Fund
FONDEF – Technical and Vocational Training Development Fund
FSE -Livestock Stabilization Fund
FSER – Street Children Solidarity Fund
FSN - National Solidarity Fund
MAC – Remand Home and Correctional Facility
MFDC - Movement of the Democratic Forces of Casamance
NETS – Child-Centred Nutrition and Social Transfers Project
OCB – Community-Based Organisation
OFFP – National Vocational Training Agency.
OFFEBAN - National Suburban Youth Employment Agency
ILO – International Labour Organisation
MDGs – Millennium Development Goals
NGO - Non Governmental Organisation
ONLPL – National Observatory for Places of Deprivation of Freedom
OPJ – Criminal Police Officer
OAU - Organisation of African Unity
WFP – World Food Programme
PANAF – National Women’s Action Plan
PAN-LCD - National Desertification Control Action Plan
PARCOM – Community Radio Networks Assistance Project
PARRER- Partnership for Combatting Child Begging and Rehabilitating Street Children
PDEF – Ten-year Education and Training Plan
PEPAM – Millennium Drinking Water and Sanitation Programme
PNAE - National Environmental Action Plan
PRCC – Community Capacity Building Programmes
PRN – Nutrition Enhancement Programme
PSJ – Sector Programme for Justice
RAC – Joint Annual Review
RADDHO – African Human Rights Defence Meeting
SAO – Ozone Depleting Substances
WAEMU –West African Economic and Monetary Union
UNESCO – United Nations Educational Scientific and Cultural Organisation
UNICEF – United Nations Children’s Fund
UNIR – Self-Employment Resource Unit

GENERAL INTRODUCTION

1. The Government of the Republic of Senegal has the honor to present its combined (8th, 9th, 10th and 11th) periodic report in a single volume to the African Commission on Human and Peoples' Rights (hereinafter referred to as the African Commission) pursuant to Article 62 of the African Charter on Human and Peoples' Rights (i.e. the African Charter) adopted on 28 June 1981 by the Assembly of Heads of State and Government of the Organisation of African Unity (OAU) at their meeting in Nairobi and ratified by Senegal on 13 August 1982. Since then, the African Charter has been an essential component of the national legal system of Senegal as it has « authority¹ superior » to national legislation and regulations.

2. This report is a revised version of the one submitted to your Secretariat by the previous government of former President Abdoulaye WADE in October 2011. In fact, the new Senegalese authorities who took over after the 2012 presidential and parliamentary elections, deemed it appropriate to update all the information submitted to you in respect of the implementation of the African Charter in Senegal, and especially to provide some facts about the preliminary steps taken to give effect to the authorities' determination to make human rights promotion and protection the cornerstone of the new political reforms promised to the people of Senegal.

3. The Government of the Republic of Senegal therefore hopes that the consideration of this revised periodic report will provide a valuable opportunity for open and constructive dialogue with members of this august Commission concerning the effective implementation of the African Charter, the issues and challenges it poses for a country which, in spite of its limited resources, is making efforts to properly discharge its treaty obligations.

4. Our periodic report starts with a preliminary section devoted exclusively to answers provided by the Senegalese Government on relevant recommendations contained in the concluding observations you forwarded to Senegal after reviewing our last periodic report. Thereafter, it puts the implementation of the relevant provisions of the African Charter in context by providing vital information on the legal, political, economic, social and cultural conditions underlying their implementation in Senegal. It also provides some information on the application of special provisions of the Charter and the problems faced by the authorities in their implementation during the period under review, which incidentally coincides with the implementation of the United Nations Millennium Development Goals (MDGs)².

¹ See Article 98 of the Constitution of Senegal.

² The eight (8) MDGs are as follows: Reduce poverty and hunger, provide free education for all, promote gender equality and empower women, reduce infant mortality, improve maternal health, combat diseases, provide sustainable human environment, establish global partnership for development.

CHAPTER ONE
ANSWERS TO THE AFRICAN COMMISSION'S OBSERVATIONS

5. The presentation of all the periodic reports (3rd to 7th) by Senegal took place at the 34th Session of the African Commission held in Banjul, the Gambia from 6 to 20 November 2003. On this occasion, your Commission requested the Senegalese authorities to provide additional information on a number of issues, specifically to:

- Provide the African Commission with information on measures taken by the government of Senegal to settle the problems relating to the families of the Diola boat disaster victims ;
- Continue with efforts aimed at harmonizing national legislation with the relevant provisions of the African Charter;
- Inform the African Commission about steps taken to improve the situation of street children ;
- Provide details on measures taken by the Senegalese government to improve detention conditions in Senegalese prisons ;
- Create a favorable environment on the Senegalese media landscape for pluralistic expression and to ensure that freedom of the press is exercised in accordance with the fundamental rights stipulated in the African Charter.

6. We are highly honored to provide the following answers to all these important points :

I. ON THE CASAMANCE ISSUE

7. The situation of insecurity which characterized the southern region of Senegal for decades since the 1980's and 1990's has subsided as a result of efforts made by the government. The General Peace Agreement of 30 December 2004 signed between the government of Senegal and the Movement of the Democratic Forces of Casamance (MFDC) has calmed down the situation considerably, though it is still regrettable to note that acts of violence are committed intermittently by isolated armed gangs and that people fall victim to anti-personnel mines.

8. In any case, Senegal has strongly embarked on an extensive reconstruction programme in Casamance based naturally on the implementation of universally-accepted rights to which every individual is entitled, in particular economic, social and cultural rights.

9. The Senegalese Constitution adopted in 2001 by referendum establishes in its Article 1 as follows « equality of all citizens before the law, without any distinction whatsoever as to origin, race, gender, religion » and Title II of the Constitution

also takes this matter into consideration (« Civil and human rights, economic and social rights as well as collective rights »).

10. Thus, for some years now, Senegal has initiated and implemented the Poverty Reduction Strategy Paper (PRSP) which was lauded due essentially to the consensus approach adopted by all concerned stakeholders during its preparation, especially by members of civil society. As already indicated, this paper aims at reducing poverty by strengthening the capacity of vulnerable populations, especially women and people living in rural communities.

11. More importantly, with regard to Casamance, it must be emphasized that in terms of economic, cultural and social rights, the region can hardly be referred to as a disadvantaged community. On the contrary, Casamance is a privileged location. In fact, looking at its specific situation, both geographical and post-conflict, Casamance has benefitted from the implementation of a special development programme as part of the aforementioned General Peace Agreement.

12. This commitment which is captured in the preamble of the document was highlighted in Article 4 of the Agreement entitled « Re-launching economic and social activities». Under this Agreement, «The State commits the National Agency for the Revitalization of Economic and Social Activities in Casamance (ANRAC) to mobilize NGOs and Specialized Depollution Organizations, in partnership with the Army and ex-servicemen of the MFDC, to start the humanitarian clearance of mines in Casamance as soon as possible to facilitate the recovery of economic activities.

13. The Government of Senegal which started the reconstruction of Casamance committed itself to taking measures aimed at promoting the return of refugees and displaced persons back home and at providing the necessary assistance for their social reintegration. Definitively, the Government of Senegal declared the children orphaned by the « JOOLA » boat disaster as wards of the State and a national Office established to cater for them. Furthermore, significant efforts have been made to ensure a sea link between Dakar and Ziguinchor with the commissioning of a new boat for transporting people and the entry into service of a cargo vessel to promote marketing of products.

14. In this new context, the Government of Senegal, bolstered by a sustained political will to also combat acts of torture and impunity, agrees perfectly with the dictum that « a democracy must at all cost ensure that legitimate means are used to guarantee the security, peace and stability of the State. »

II. ON THE ISSUE OF STREET CHILDREN

15. The phenomenon of street children in Senegal takes us back to two very distinct realities:

- The children who roam about in the major cities of Senegal on whom national statistics are not available ;
- The children who are commonly referred to as « talibés ».

16. Concerning street children, their number in the Dakar region is estimated at about 8000; 95% of them originate from other regions of the country and neighboring countries (mainly from the Gambia, Guinea, Guinea-Bissau and Mali).³ The Government of Senegal recently developed an integrated national system for the protection of children, which was incorporated into the Economic and Social Policy Document (DPES) with the aim of improving the protective environment for children in keeping with an Action Plan based on individual rights approach and results-oriented management.

17. The talibés phenomenon is a secular practice linked to socialization models which existed and still exist in rural communities having traditional Koranic schools (also called *Daaras*). It is a very complex phenomenon deeply-rooted in Senegalese society, which, due to poverty in families, lack of public school infrastructure and lack of choice on the part of parents for the religious education of their children, has often resulted in the use of children for begging by the Koran teachers.

18. Though statistics on this practice are somewhat unreliable, it appears quite clearly that the number of talibés, which was quite marginal at the end of the 1970's, gradually increased to more than 300,000 or even 400,000 at the end of 1999, according to estimates provided by government when it was developing its "Vision of Children in the Third Millennium"

19. To address this extremely serious situation, the Senegalese government initiated several actions aimed at combating the practice:

- Adoption of legislative mechanisms such as the introduction of the offence of begging⁴ into the criminal code and the adoption of a law criminalizing human trafficking and exploiting others through begging⁵ ;
- Establishment of a strategic framework for the reduction of the phenomenon of street children : 2006-2010 Poverty Reduction Strategy, National Social Protection Strategy of the Economic and Social Policy Paper 2011-2016, establishment of a mechanism for the Pooling of Resources and Experiences to address the practice [Partnership for the Withdrawal and Reintegration of Street Children (PARRER)] ;

³ See The child beggars in the Dakar region, a Survey document by the World Bank, ILO and UNICEF, 2007.

⁴ Articles 241 to 247a, paragraph 2 of Article 245 expressly state that « persons who allow children of below 18 years in their custody to beg shall be liable to a term of imprisonment of between 3 to 6 months. »

⁵ Law 2005-06 of 10 May 2005 on combating human trafficking and related practices, and protection of victims, in particular its Article 3 on exploiting others through begging.

- Establishment of projects to improve reception and provide care for children attending Daaras ;
- Establishment of a Daaras Inspectorate Unit within the Ministry of Education ;

-Implementation of a project towards the modernization of Daaras with the aim of providing the young talibés with a qualitative religious education and the basic skills such as the ones formally acquired at the basic education level in schools under the Ministry of Education.

20. A framework agreement has been signed between the Ministry of Education and the Association of Koranic Schools of Senegal in order to:

- Strengthen the partnership between the formal sector of education and the Daaras ;
- Rehabilitate and equip 90 Daaras ;
- Improve the environment and learning in 20 Daaras where three languages will be taught (Arabic, French and Wolof) ;
- Develop a harmonized curriculum incorporating religious education and basic skills taught at the basic education level.

21. Similarly, the different State entities directly or indirectly in charge of children increased the volume and frequency of communication activities aimed at impacting the behaviour of leaders and communities towards the talibés. During an Inter-Ministerial Council devoted to the issue in August 2010, the Senegalese government took a series of measures aimed at:

- Continuing with its advocacy among political, religious, customary authorities, development partners and the entire community towards the provision of the best possible conditions for the talibés ;
- Continuing with and strengthening land-use planning and establishment of appropriate infrastructure for the development of talibés ;
- Improving the laws in force in the area of extending protection to the talibés.

22. Thus, through the development of religious arguments, the main religious leaders made public statements in the media condemning forced begging by children and carried out several outreach campaigns among parents. In this regard, PARRER initiated a begging prevention project by way of community participation and a change of social standards in 200 villages that are supply locations of child beggars within the 4 regions identified in the survey conducted by the Government.

23. The phenomenon of street children had all along been of concern to public authorities in Senegal. Government's unwavering conviction led to the adoption of texts and programmes aimed at combating the said phenomenon.

24. In fact, as already indicated, several legislative measures were adopted, in particular:

- Law 2005-06 which makes certain offences like human trafficking and exploiting others through begging punishable ;
- The criminal code which prohibits begging in its Articles 241 to 247a; Article 245 paragraph 2 (Law 75-77 of 09 July 1977) expressly states that « those who allow children of below 18 years in their custody to beg shall be liable to a term of imprisonment of between 3 to 6 months ».

25. Beyond these aspects, the government, in collaboration with other bodies, has implemented programmes for children in vulnerable situations. This applies to a programme which links the State through the Ministry of Children's Affairs, UNICEF and NGOs, the purpose of which is to strengthen priority actions to eliminate the worst forms of child labour and protect them from all forms of exploitation, abuses and violence.

26. The project dubbed "Rehabilitating the Rights of Talibés" under the Programme dubbed Children in Extremely Difficult Situations (Cooperation Programme between the government of Senegal and UNICEF (1992-1996) with the overall objective of contributing to combating begging among talibés, whose number is estimated at 100.000. A similar Programme organized with the same partners on the Daaras, lays emphasis on improving living conditions and education of children in Koranic schools (talibés) and street children. In addition to these government efforts, other initiatives such as the Dahra de Malika, the Paul Guérin LA JOIE Foundation and that of the Training Centre for Talibés of Saint-Louis also provided support.

27. Girls and boys living in dangerous situations are between 2.5 to 3 %, even 4 % of the total population of the country estimated approximately at 10.000.000 inhabitants at the beginning of this 3rd Millennium⁶'. It must be underscored that Organisations such as ENDA T.M, Pour le Sourire de l'Enfant, Street Children Solidarity Fund (FSER), Espoir Sans Frontière, the Senegalese Community Initiatives Development Association (ASDIC), are working proactively on the well-being of street children.

28. In addition to this arrangement, the State is involved in information and social communication activities.

III. ON THE ISSUE OF PRISON CONDITIONS

29. To implement the recommendations contained in the last concluding observations, the highest Senegalese authorities initiated a series of actions aimed at improving the living conditions of detainees and especially at

⁶ Cf. **National Care Programme for Children in Dangerous Situations**, Prime Minister's Office, MFDSSN, December 2000.

preparing for their social reintegration. They were focused particularly on the rehabilitation of places where people are deprived of their freedoms, on improvement of the daily living conditions of detainees, on the establishment of a genuine social reintegration policy and on the improvement of working and living conditions of prisons' staff.

a. General information on prisons Senegal :

30. As at 31 December 2012, the prison population in Senegal was 33,337 inmates distributed across 37 prisons in the country⁷. Its composition was as follows:

- 30,433 males or 91.29% of the prison population ;
- 1488 females or 4.46% of the prison population ;
- 1416 minors ⁸ or 4.25% of the prison population ;
- 3063 foreigners⁹ or 9.19% of the prison population.

31. This prison population was concentrated in the Dakar region which accounted for almost half of the inmates or 15,670 persons or 47%. This is followed by regions, such as Thiès-Diourbel with 7,217 inmates (22%), Kaolack with 3,101 inmates (9%), St-Louis with 3007 inmates (9%), Ziguinchor with 2,216 inmates (7%) and Tambacounda with 2126 inmates (6%).

32. The prison population grew exponentially between 2002 and 2012 since the number virtually doubled.

b. Rehabilitation of detention centres in Senegal :

33. It is for these reasons that the new Senegalese authorities, mindful of their treaty obligations, committed themselves to «improving living conditions in the prisons», since in their view, «the prison environment must be made more humane¹⁰ to ensure that it becomes a preparatory ground for a future social reintegration of the prisoner¹¹.» Thus, in the 2013 budget of the Ministry of Justice, an amount of CFAF 4.5 billion was allocated for infrastructural rehabilitation. The plans of the Ministry of Justice are:

- The construction of the remand home and prison (MAC) with a capacity of 1500 inmates in Sébikotane (40 kilometres from Dakar) to ease the congestion at the Mac de Rebeuss and the CP of Dakar;

⁷ In addition to the 30 mixed regional Remand Home and Prison (MAC), the country has 2 penal camps (CP) in Dakar and Koutal, 2 MACs for women and 2 other MACs in the Dakar region and one MAC for minors in the Dakar region.

⁸ Including 39 girls.

⁹ Accounting for 47 nationalities.

¹⁰ In an interview with the Dakar Daily, the current Minister of Justice confessed that « most of our prisons **did not respect the inalienable rights of prisoners** » (Le Quotidien of 2 June 2012). The emphases are ours.

¹¹ General policy speech delivered by the Prime Minister Abdoul Mbaye before members of the Senegalese National Assembly on 10 September 2012.

- The construction of six (6) such regional prisons (MAC) with a capacity of 500 each and the establishment of an annual infrastructural rehabilitation programme for the remaining prisons;

34. It is also envisaged that the budgets for the next two years will take into account the construction of the National Prisons Administration School and a Medical and Social Service for the prisons.

35. In the meantime, the following achievements should be credited to the Ministry of Justice:

- The construction of a multi-purpose building at the MAC de Rebeuss prison facility consisting of a library, a socio-educational service, a concert hall and a computer room ;
- The reinstatement of the electrical connections at the MAC facilities of Rebeuss and Cap Manuel;
- The installation of gas cookers in the prison facilities (MACs);
- The construction of rooms for minors at the female MAC in Dakar.

c. Improving living conditions of detainees :

36. The medical-social centre of the prison's administration has for some years been administered by a physician, an officer of the Senegalese army. The sick prisoner receives full medical attention right from consultation, through treatment to prescription of drugs. Towards this end, every prison facility has an infirmary and very serious ailments are treated at the Special Ward of Aristide LeDantec hospital.

37. This year, one hundred CFAF (100) million was allocated to the medical-social service of the prison's administration following a « personal commitment » by the Minister of Justice who also raised the daily maintenance allowance of the prisoner from CFAF 460 to 600 in 2013 and promised to raise it to CFAF 1000 in the 2014 budget.

38. Libraries, telephone booths, television sets, ventilators and air extractors were installed at the Rebeuss MAC and at the Liberté 6 Prisons Camp and in some prisons in the countryside.

d. The new social reintegration policy

39. It is characterized in particular by the creation of the function of a judge responsible for the enforcement of sentences and his core tasks¹² consist of:

- Determining for each convicted offender residing in the prison of his jurisdiction the key modalities for the treatment of an offender's file ;

¹² Decree 2001-362 of 4 May 2001 on enforcement procedures and reform of criminal sanctions.

- Ensuring case-by-case follow-up of convicts not yet detained against whom surveillance measures and judicial assistance have been imposed.

40. In this regard, it must be underscored that the last amendments made in the criminal code introduced alternative sentences instead of custodial ones for convicts, and they generally consist of community service. These sanctions tend to facilitate rehabilitation of the convicted person in the form of providing labour and making the convict undertake positive and restorative activities for the society by preventing relapse into offences. In this regard, the judge responsible for the enforcement of sentences presides over the prison's advisory committee on probation services, and he is tasked with assisting the judge in determining the key modalities for the treatment to be meted out to every offender.

41. Further to these measures, the Senegalese government provided all the 37 prisons in the country with socio-educational services under the 2013 budget. Backyard gardens were also developed in these prisons so as to contribute to improving the dieting of the inmates. The backyard garden area of Sébikotane was rehabilitated for this purpose and the MAC at Sédhiou is undertaking fish farming on experimental basis.

e. Improvement of working and living conditions of prisons staff :

42. In the last ten years, the Government of Senegal has recruited about 700 officers. The status of the staff has been changed and benefits such as housing allowance have been provided them.

43. About twenty vehicles have been allocated to the prison's authorities to facilitate staff mobility, in particular in cases such as administrative transfers, fulfilling judicial orders for removals, medical evacuations and meeting other official administrative needs.

44. The emphasis was also laid on the determination to address long prison sentences and overcrowding in prisons. In this regard, several measures were taken particularly by establishing a monitoring mechanism for long periods of remand in custody. In fact, regarding correctional matters, the duration of the warrant of committal is six (6) months pursuant to the provisions of Article 127a of the Criminal Procedure Code.

45. In criminal matters just as in investigations, the duration of the warrant of committal has not yet been determined. In practice, the prison's administration establishes and forwards on quarterly basis to the Keeper of the Seals the status of accused persons who have spent three or more years in detention. A tribunal, domiciled at the Supreme Court, receives requests for compensation for persons on remand who have finally been cleared of the charges, freed or acquitted. In short, the fight against long periods of remand, which has become the principle of the Senegalese government, consolidates the rights of detainees to be

judged within a reasonable timeline and greatly contributes to decongesting prisons.

46. The other regulatory mechanism is transfer which allows prison authorities to regularly decongest prisons in Dakar and the major urban centres by transferring prisoners to other regions of the country.

47. Furthermore, programmes have been established as part of penal labour in agricultural-oriented prison facilities such as (Sébikotane, Vélingara, Nioro), to effectively address overcrowding and idleness in prisons.

48. Finally, the government has designed a large-scale infrastructural programme (justice sector programme) for the construction of new prisons in the Dakar region and in the countryside.

49. Concerning health and hygiene, it is important to recall that the medical-social facility of the Prison's Administration is headed by a physician, an officer of the Senegalese Army. This mechanism is strengthened in each prison by an infirmary headed by a nurse. Serious illnesses are treated in a Special Ward at the Aristide LeDantec Hospital. In Senegal, a prisoner who falls ill is fully taken care of from consultation, through treatment to the supply of drugs.

50. In conclusion, it must be noted that since 2000, the government has consistently increased the daily ration per prisoner which went up from CFAF 200 to CFAF 500. This commendable step had a tangible impact as it improved detention conditions, thus, today, the situation described by the Commission in 2004, can be referred to as a thing of the past.

IV. ON THE ISSUE OF CREATING A CONDUCTIVE ENVIRONMENT FOR PLURALISTIC EXPRESSION IN THE MEDIA AND FREEDOM OF THE PRESS PURSUANT TO THE PRINCIPLES OF THE CHARTER

51. In Senegal, as a result of the liberalization of the sector, media organizations enjoy a favorable environment which guarantees a very high level of freedom of expression.

52. The media landscape is particularly rich and diversified. There are about twenty dailies, a dozen weeklies and monthly publications including hundreds of private commercial and community radio stations.

53. Private radio stations play a significant role not only in informing citizens, but also in developing a genuine public debate in the society through interactive broadcasts that provide the public with the opportunity to make contributions to radio programmes by telephone. The television sector has experienced an exponential explosion since the establishment of the first private television station, the 2sTV in 2003. To date, Senegal can boast of twelve (12) public and private television stations. Apart from the traditional media, the online press is

also growing rapidly and constantly with more than twenty online news web sites.

a. Constitutional safeguards on the right to information and freedom of expression

54. Since independence, conscious of the importance and role that freedom of opinion plays in developing and consolidating the rule of law, Senegal acceded to the principles of the Universal Declaration of Human Rights (UDHR) and established the foundations of the right to communication in her founding Charter. In fact, Article 8 of the 1963 Constitution laid down the principle of freedom of expression. This principle is taken up in the Constitution of 22 January 2001, which in its preamble, reaffirms « her adherence to the Universal Declaration of Human and Citizenship Rights of 1789 and the international instruments adopted by the United Nations Organisation (UNO) and the Organisation of African Unity (OAU), in particular the Universal Declaration of Human Rights (UDHR) of 10 December 1948, the Convention on the Elimination of Forms of Discrimination against Women of 18 December 1979, the Convention on the Rights of the Child of 20 November 1989 and the African Charter on Human and Peoples' Rights of 27 June 1981 »

55. The Senegalese Constitution, in Article 8, recognizes « fundamental individual freedoms », « civil and political liberties » among which feature prominently freedom of opinion and expression, and affirms in Article 10 that « each one has the right to express and freely disseminate their opinions through speech, writing, images, peaceful march insofar as exercising such rights does not impugn the honor and reputation of another person or public order ». This affirmation is consolidated and supplemented by Article 11 which stipulates that « the establishment of a media organization for political, economic, cultural, sporting, social, recreational or scientific information is free and shall not be subject to any prior authorization ».

56. Freedom of the press is therefore a constitutional freedom in Senegal, a fundamental freedom that is all the more valuable as its existence is one of the basic guarantees of the respect for other rights and freedoms as well as national sovereignty. Freedom of expression is a condition and a guarantee for democracy.

57. However, the implementation of freedom of the press may not be effective without a certain level of organisation of the landscape by public authorities. That explains why, apart from the provisions laid down in the different texts, the Senegalese press regime has outlined its own regulations on the press especially Law 96-04 of 22 February 1996 on social communication organizations, professional journalists and communication technicians.

58. Furthermore, the Government has established independent administrative authorities to regulate the sector. These authorities include:

- The Posts and Telecommunications Regulatory Authority (ARTP);
- Law n°2006-04 of 04 January 2006;
- The National Radio and Television Regulatory Council (CNRA) established to replace Law 98-09 of 02 March 1998 establishing the Higher Audiovisual Council.

59. Apart from these public bodies, there is also the Ethical Standards Compliance Council (CORED), which is an Autonomous Journalism Practice Regulatory Organization.

b. Constraints

60. Senegal has a huge arsenal of texts and laws governing the media. But, in most cases, these texts are not adapted to the current media context. In fact, there are provisions in these laws which limit and restrict access to official information or criminal provisions on seditious and subversive activities, national security, defamation and dissemination of false information.

61. Other no less important bottlenecks like economic, social and cultural environments also influence freedom of the press.

59. Furthermore, the multiplicity of press organisations is not always accompanied by a sufficient level of professionalism. In spite of the existence of schools for qualitative training, many journalists have not received any form of training.

62. As a result, different forms of assistance provided by the government to the press are meant to consolidate media companies, build capacity of journalists, and make freedom of the press effective including pluralism which is an inseparable part of the process.

c. Achievements and prospects

(1) Draft press code

63. The key legal instrument governing the media in Senegal is Law n°96-04 of 22 February 1996. This text which governs all media and professional journalists and information technology technicians, has a lot of shortcomings today following the vibrant growth of the sector and even when compared with the legislation in force in the major democracies.

64. The draft press code which stemmed from broad consultations among media stakeholders, civil society, parliamentarians, legal experts and academics, proposes solutions to the myriad of challenges currently confronting the media sector. The main issues of this consensus text submitted for adoption by the National Assembly, are:

- Decriminalization of press offences ;
- Access to information ;
- Enhancing the status of the journalist ;
- Development of a conducive environment for financing private media through redistribution of resources generated by advertisements, the use of the licensing fees as an essential means of financing public radio and television broadcasts.

(2) Government grant to the press

65. The government of Senegal provides an annual grant to media organizations. This grant, also called Assistance to the Media, is based on Law 96-04 of 22 February 1996 and meant for social communication organizations, journalism and communication technician-related professions. From CFAF 100 000 000 in 2000, the grant has increased to the current amount of CFAF 700 000 000. It is distributed among media organizations, community radio stations and regional correspondents and also for the training of journalists.

66. However, in its current form, assistance to the media has not achieved its desired objectives. For this reason, the draft press code proposes to replace the current procedure with the Support and Development Fund for Media Organizations in Senegal (FADEPS). This fund is expected to adequately resource media organizations to enable them to develop and to properly cater for their employees.

(3) Establishment of on-line media in the regions

67. In 2006, the government decided to support journalists working in the administrative regions of Senegal (local media and regional correspondents) by creating an on-line media in each regional capital to improve the working conditions of journalists. These on-line media points are meeting and exchange sites which contribute to improving conditions for processing information.

(4) Press Center

68. The Press Center is an eight-storey building covering a land surface area of 2000 m². It will serve as a location for reception, accommodation and work of journalists and social communication technicians of Senegalese origin and for foreign journalists visiting Dakar. The core purposes of the Press Centre are to:

- Promote press freedom, media pluralism and independence,
- Serve as a location to support training and upgrading of media professionals.

69. Thus, apart from the international centre for the reception and accommodation of journalists, the Press Centre will comprise of a conference hall, a centre for training and organization of refresher courses for journalists and social communication technicians and also serve as the headquarters of the various associations of journalists.

(5) Support Project for Community Radio Stations (PARCOM)

70. The PARCOM support project is designed to provide substantial logistical and administrative support for rural community radio stations to enable them to offer services which meet immediate needs.

71. The main activities under PARCOM are the following:

- Training of staff of the community radio stations in the area of journalism , management and maintenance ;
- Establishment of a support mechanism for community radio stations ;
- Establishment of a monitoring and supervision system.

72. As a result of this important project, Senegal will acquire the technical and institutional resources necessary to support the ambitious decentralization programme under which local government will be a driving force for sustainable development. On the other hand, it will enable civil society to have the requisite communication tools necessary for the establishment of a cross-cutting outlook on development issues and also initiate genuine dialogue at the grassroots level for the emergence of an effective citizenship consciousness and oversight responsibility over the Millennium Development Goals.

(6) Switching from analogue to digital radio and television broadcasts

73. In view of the important stakes of this project, a National Digital Committee (CNN) was established by *Prime Ministerial Order*¹³ with the aim of providing guidelines, coordination and steering of actions to be carried out to ensure switching from analogue to digital radio and television broadcasting system.

74. In fact, to succeed in switching from analogue to digital system for all and sundry by June 2015, Senegal has established standardization mechanisms and technological choices, dissemination platforms, adaptation of the legal and regulatory framework for radio and television broadcasts, including management of issues relating to democratic access to digital broadcast and implementation of an information strategy for the general public.

75. The Government of Senegal solemnly renews its commitment to the African Commission on Human and People's Rights that the Government will spare no

¹³ Cf. Order No 07593 of 26 August 2010.

effort in achieving a just society within its territorial boundaries and undertakes to participate in African efforts aimed at promoting and protecting human rights.

CHAPTER 2 OVERVIEW OF GENERAL DATA AND STATISTICS

I. DEMOGRAPHIC, ECONOMIC, SOCIAL AND CULTURAL CHARACTERISTICS¹⁴

76. Situated in the western-most part of the African continent on the Atlantic ocean, where Europe and the Americas converge and at the crossroads of major air and shipping routes, the Republic of Senegal which covers a total land surface area of about 196 722 km², is bordered to the north by Mauritania, to the east by Mali, to the south by Guinea and Guinea-Bissau and to the west by the Atlantic ocean, covering a coastline of more than 500 kms. Dakar, the capital city of the country, with a surface area of 550 km², is a peninsula located on the westernmost tip of the country.

77. The climate is the Sudano-Sahelian type, characterized by an alternating dry season from November to May, and a rainy season from June to October.

78. From an initial figure of 3 million inhabitants in 1960, the Senegalese population has grown to almost 12.5 million inhabitants in 2010 with an average annual growth rate of 2.6% per year and an average population density of 48 inhabitants per square kilometre (km²). The high population growth is due to the significant decline in mortality and the high birth rate. According to 2010 estimates, fifty-five per cent (55%) of the Senegalese population live in rural areas and 25% are concentrated in Dakar. The other area of population concentration is the centre of the country, in regions such as Fatick, Kaffrine and Kaolack, the groundnut basin with more than 35 % of the population of Senegal. The east of the country is sparsely populated. Population growth is not matched by the provision of adequate basic social services.

79. One out of two Senegalese nationals is less than 20 years and two out of three Senegalese nationals are less than 25 years. Women account for 52% of the population. Foreigners represent about 2% and are concentrated mostly in Dakar and work predominantly in trade, industry and services sectors and in international organizations.

80. The religions are Islam (94% of the population), Christianity (5%) and animism (1%).

¹⁴ Most of the data presented in this part of the report are sourced from the document on the National **Economic and Social Development Strategy (2013-2017) : On the Pathway of Emergence**, November 2012, pages 3 to 58.

81. Furthermore, the Senegalese population is very diverse in its ethnic composition. It consists of almost twenty ethnic groups, the major ones being Wolofs (43 % of the population), Halpulaars (24%) and Serers (15%).

82. The other groups are made up of people living in the south of the country, particularly in the Casamance region (mostly Catholic often with a strong animist tradition). They include the Dioulas (3 %) who constitute the most significant community, the Mandingos (5.3 %) and the Bambaras (0.5 % each) which are small communities in the outlying regions close to Mali or Guinea. Other ethnic minorities live in the south-east Mountains, and they include the Bassari in the foothills of the Fouta-Djalón highlands.

83. Economically, Senegal is classified among least developed countries (LDCs)¹⁵, with a gross per capita income of US\$770 in 2010. The economic growth rate is structurally weak, especially over the period 2006-2010, to be able to meet the high economic and social demand of its population¹⁶. According to follow-up survey results on poverty conducted in 2011, the unemployment rate was 10.2%. It has practically remained stable compared to 2005 when it was estimated to be 10%. This unemployment rate is 7.7% among men and 13.3% among women. It must be emphasized that majority of the women are engaged basically in unpaid activities. Depending on one's level of education, unemployment is more widespread among persons with secondary education among whom the rate is more than 20% in a broad sense.

84. The low level of integration of job-creating opportunities for economic development and the low access by the population to financial resources, to rights and basic social services constitute a stumbling block to the implementation of options for consolidating local dynamics of sustainable social and economic development. Furthermore, with the ongoing social transformation, the problems of protecting vulnerable groups are persistent and constitute challenges to be addressed within the framework of implementation of the MDGs¹⁷ and the African Charter. In other words, it is only a very strong economic, sustained and sustainable growth and creation of productive jobs, especially for the youth, that can help the Government to fulfill some of its treaty obligations in the area of human rights.

85. The attainment of this goal also calls for the enhancement of private sector performance, specifically in respect of micro, small and medium-scale enterprises which are the driving force. A favorable business climate for private initiative and investment is a key determinant of private sector development, and ultimately the success of poverty alleviation efforts.

¹⁵ 144th out of 169 countries listed. Cf the United Nations Development Programme (UNDP)-Senegal, **Status of MDGs in Senegal**, December 2011, page 2.

¹⁶ The average growth rate was 2.8% except for the period between 1994-2006 when it was 5%. See the United Nations Development Programme (UNDP)- Senegal, **Status of the MDGs in Senegal**, December 2011, page 2

¹⁷ See the United Nations Development Programme (UNDP)-Senegal, **Status of the MDGs in Senegal**, December 2011, page 3.

86. In the area of social protection, the strategy adopted by the Senegalese authorities to improve social security systems, to prevent major risks and disasters and to ensure better protection of vulnerable social groups, as we shall see much later, is confronted with natural structural limitations such as the shortness of cultivation seasons in most of the agricultural zones, which situation reduces opportunities for employment. In addition to this, there is also a high level of inactivity (39%) which increases the rate of economic dependence as well as low labour productivity in the informal sector which is the key economic sector, and inadequate vocational training. All these constitute barriers to the alleviation of vulnerability and poverty in the country.

87. In rural communities, the rural-urban exodus of the youth and active women is obviously a clear sign of the shortfall of productive employment. In the urban areas, the training offered is not adapted to the job market. It is particularly high among young graduates and this phenomenon has very serious social consequences especially it creates tensions on the job market. Women are in the majority in this case (52% of the overall population) and they account for 65% of the active population.

88. In the rural areas, women are mainly engaged in agriculture, livestock farming and fishing. They often carry out 82.6% of their activities by using rudimentary tools as against 79.4% by men. In the urban communities, women consider the informal sector as a suitable alternative since it requires less skills and specialization and furthermore, it is more flexible and more adapted to their financial capacities and their schedule of activities. Generally, vocational training levels are low and limited, thus leading partly to the expansion of the informal sector.

89. Moreover, the gender inequality index which was 0.566 in 2011, translates the persistence of wide social disparities between men and women in Senegal. The disparities between regions are related to access to basic infrastructure: drinking water and sanitation, transport infrastructure, storage, preservation and processing of local products, electricity and hydro-agricultural development. These factors are seen as major sources of inequality and inefficiency in the contribution to economic growth.

90. According to provisional results of the second survey on poverty conducted in 2010-2011 in Senegal, the rate of poverty reduction has grown positively. The proportion of individuals living below the poverty line reduced from 55.2% to 48.3% in 2005 before sliding down to 46.7% in 2011. In 2005 and 2011, it reduced slightly in Dakar and in the rural communities but it stabilized in the other urban centres.

91. In 2011, the regions of Kolda (76.6%), Kédougou (71.3%), Sédhiou (68.3%), Fatick (67.8%) and Ziguinchor (66.8%) had the highest levels of poverty. Moreover, the incidence of monetary poverty was 34.7% among persons living

in households headed by women as against 50.6% among persons living in households managed by men. The marital status of the head of the household makes a difference.

92. Households headed by older persons who are more than 60 years, often inactive or retired, are more affected by poverty; persons of the third age (more than 60 years) accounted for 38.7% of the total number of poor people at the national level.

II. CONSTITUTIONAL AND POLITICAL DEVELOPMENTS

93. Recognized as an exemplary country in the area of democracy following two changeovers of political power conducted under peaceful and stable circumstances in 2000 and 2012, Senegal must, nevertheless, make efforts to create and consolidate a favourable environment for political, economic, cultural and social liberalism.

94. The Constitution confers a central role on the President of the Republic for the determination and implementation of the country's economic policy, and at the same time, it establishes separation of executive, legislative and judicial powers. This was the causal factor of glitches which strongly affected the current governance system of the country.

95. Thus, it is necessary to keep watch over the effective separation of powers and the independence of the judiciary in order to strengthen the democratic governance which is the fundamental bedrock of respect for individual rights under the rule of law. This system guarantees equal access by accused persons to all services and contributes to the impartiality and efficiency of national human rights protection mechanisms, the establishment of an efficient legislative framework, consolidation of democratic institutions and control by the citizenry.

96. The legislative power of the Senegalese Parliament, which until quite recently was a bicameral¹⁸ legislature, is exercised solely by the National Assembly with a renewable plural national representation, of which women comprise 43.3 per cent. After several legislatures, Parliament is still confronted with the issue of weak capacity which does not allow it to exercise budgetary control and monitoring of public policy impacts, quite apart from the numerous forms of support which have been provided to its members as part of the implementation of the national good governance programme.

97. In its operationalization, the justice system is characterized by complex and bureaucratic procedures, thus, limiting its effectiveness, in spite of recent reforms carried out in the sector, which has also benefitted greatly from the gains of recent good governance programmes.

¹⁸ The Senate was abolished during the Constitutional reform of 19 September 2012.

98. The Senegalese government is also engaged in a rationalization drive and a quest for efficiency intended to improve the quality of public service. Though several strategic and organizational audits have come up with measures, they have still not culminated in significant reforms during the past decade which has been marked by institutional instability and this has not been without effects on the economic environment.

99. The decentralization policy is still confronted with a lot of difficulties. The obstacles to the promotion of good governance in the 14 regions, subdivided into 45 departments and 92 districts are institutional, organizational and financial in nature. In fact, the difficulties consist of :

- Inadequate operationalization of land-use planning in managing local governments ;
- Poor demarcation of local government areas and non-existence of local cadastre;
- Failure to use some mechanisms for planning such as contracts-plans as established by law ;
- Poor integration of space-related issues into public development policies especially in the allocation of investment resources, centralization of the economy which has not provided enough room for autonomy in terms of regional and local initiatives.

CHAPTER 3

GENERAL FRAMEWORK FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

100. The promotion and protection of human rights are enshrined in the Senegalese Constitution which expressly guarantees the exercise of civil and political rights without any form of racial discrimination, of freedom of opinion, freedom of expression, freedom of the press, freedom of association and freedom of assembly.

101. This same Constitution clearly establishes the following rights and freedoms: cultural, religious, philosophical, trade union rights, freedom of expression and assembly, entrepreneurship, the right to education, reading and writing, property rights, labour rights, right to health, the right to a decent environment, and the right to plural information¹⁹.

¹⁹ See Title II of the Constitution entitled «Public freedoms and human rights in respect of economic, social and collective rights ».

102. The Senegalese Constitution also establishes that « treaties or agreements duly ratified or approved, on publication, have an authority superior to that of State laws, subject, in the case of each agreement or treaty, to its application by the other party»²⁰. Consequently, the African Charter on Human and Peoples' Rights, just like other human rights legal instruments ratified by Senegal is a component of the national legal system which State institutions, in particular judicial institutions are duty-bound to enforce when its provisions are invoked before them²¹.

103. The supreme law of the country also makes the judiciary the custodian of the rights and freedoms which it establishes²². The judicial reform of human rights, in particular, is within the purview of the highest Constitutional courts and the ordinary courts²³.

104. In his work on the establishment of rights and obligations, the lawmaker, as the administrative authority, may set limits to the contents or the conditions for exercising the legal provisions on human rights. In such cases, the Constitutional Council may be called upon to prevent the promulgation of the law in accordance with two procedures, particularly by way of action or of exception:

- **Seizure by legal proceedings:** The Constitution of Senegal empowers the President of the Republic or the deputies representing 1/10th of the members of the National Assembly to refer a matter to the Constitutional Council to seek remedy for the determination of the constitutionality of a law before its enactment. Hence, any law which is not consistent with the provisions of human rights can be referred to the Constitutional Council for purposes of such a determination.
- **Seizure by way of a plea:** the Constituent Assembly understood «democratize» access to the Constitutional Council to mean a determination of the Constitutionality of a law by using the mechanism of seizure by way of a plea. In fact, this seizure is more open, as every individual who is seeking remedy in a court can, under certain conditions

²⁰ Cf. Article 98 of the Constitution of Senegal.

²¹ For instance, the Association of persons with physical disabilities of Senegal brought before the Council of State the issue of violation by the academic authorities of Senegal of relevant provisions (Articles 2 and 3) of the African Charter on Human and Peoples' Rights relating to non-discrimination (Decision No 12 of 29 June, 2000) whereas the RADDHO (the African Meeting for the Defense of Human Rights) and its President, Mr. Alioune Tine referred to Article 11 of the same Charter to buttress the ultra vires appeal before the Supreme Court against the ban on demonstration by the Prefect of the Department of Dakar (Decision No 35 of 13 October 2011).

²² For instance, in addition to the decisions already taken, it is important to state that the judgment of the erstwhile Council of State of Senegal in which it reaffirmed the rule of non-discrimination among people living in Senegal laid down in Article 96 of the Treaty establishing the West African Economic and Monetary Union (Decision No 76 of 31 August 1994, Prosper Guéna NITCHEN et al) and quite recently the Decision of the Supreme Court of Senegal relating to the participation of Senegalese citizens in local elections (Decision No 31 of 11 August 2011, Oumar Gueye et al, Jean-Paul Dias et al vs. Government of Senegal).

²³ Cf Article 91 of the Constitution.

provided for by law, make a plea of unconstitutionality²⁴ of a law, if he believes that the law applicable to his case would not be consistent with the Constitution. Thus, the courts before which such objections are raised shall be compelled to refer the matter to the Constitutional Council for stay of proceedings until the latter rules on the preliminary question referred to it. If the Constitutional Council considers the provision to be unconstitutional, the latter provision shall be set aside in the case of the ongoing dispute.²⁵.

105. For its part, the Supreme Court²⁶, the highest regular court ensures respect for human rights all over the country as it is:

- a court which rules in first and second instance on abuse of power²⁷ by the executive arm of government and on the legality of actions of local authorities²⁸ ;
- competent to rule in last instance in a dispute involving voters' registration and in rural, municipal and regional elections ;
- responsible for hearing appeals in cassation on grounds of incompetence, breach of the law or of custom against :
 - judicial decisions and rulings pronounced in the last instance by all other courts ;
 - decisions of arbitration boards on collective labour disputes ;
 - competence regarding appeals in cassation against the Court of Auditors and rulings pronounced in the last instance by quasi-judicial administrative bodies ;
- called upon to rule on :
 - applications for review of judicial decisions ;
 - applications for transfer from one court to another on grounds of legitimate suspicion or of public safety ;
 - applications for error of judgment against an appeal court, a court of assizes or a fully-fledged tribunal ;
 - Conflicting decisions or judgments rendered in last instance by different courts in cases involving the same parties and the same judiciary means.

²⁴ See paragraph 1 of Article 92 of the Constitution.

²⁵ See Supreme Court, Decision No 09 of 03 March 201, Birassy GUISSÉ et al vs the Rector of the Université Gaston Berger.

²⁶ See Organic Law No 2008-35 of 8 August 2008 on the Supreme Court.

²⁷ A French lawyer Gaston GEZE, at that time, was of the opinion that this remedy was « the most effective tool available in the world to defend freedoms practically and economically» (quoted by Oumar Gaye and Mamadou Seck Diouf in **(The Council of State and the Practice of Action for Annulment) Le Conseil d'État et la pratique du recours en annulation**, Édition 2001, page 39.

²⁸ Cf. Supreme Court, Judgment No 39 of 23 November 2010, Amadou SYLLA vs Sangalkam Rural Council and the Government of Senegal (on the issue of the allotment of crown lands), Judgment No 40 of 13 December 2010, Gil Léon Louis Malvielle vs. the Government of Senegal (on the expulsion of a foreigner by Senegalese authorities)

106. The Supreme Court can also be consulted by the President of the Republic, the Speaker of the National Assembly or the government on any legal issue²⁹ relating to national life.

107. The same Organic Law, through the procedure of **appeal against execution**, allows any individual to also question the decision of the Supreme Court that has the force of res judicata.

108. In fact, the public prosecutor at the Supreme Court where the parties are engaged in a dispute,³⁰ can file an appeal against a final judgment pronounced by the Supreme Court in the event where the ruling is « vitiated by a procedural error, not attributable to the interested party but has affected the solution provided by the Supreme Court to the case.³¹ »

109. The said claim shall be reviewed by the Supreme Court sitting in a joint session, and the judges who heard the case during the consideration of the appeal in cassation, cannot take part in the deliberations³².

110. This procedure, which is unique in Francophone West Africa, allows the citizen seeking redress to point out the errors for correction of any judicial procedural errors on the part of the judiciary³³.

111. Concerning the regular courts, this issue rather touches on human rights. In this regard, apart from rights enjoyed by any individual involved in a case, the person on trial enjoys specific rights under criminal law. The key principles applicable under criminal law are mainly: the principle of adversarial proceedings, the presumption of innocence and the principle of respect for the rights of the defense.

112. Thus, the civil party or the accused person may be eligible for certain rights under Article 10 of the Universal Declaration of Human Rights, as their « case must be heard fairly and in public by an impartial and independent court». Furthermore, the accused person is entitled to the respect of his physical integrity; devoid of any act of torture in looking for evidence. Moreover, such a principle is laid down in Article 5 of the aforementioned Declaration.

²⁹ See article 6 of Organic Law No 2008-35 of 8 August 2008.

³⁰ See paragraph 2 of Article 51 of the Organic Law No 2008-35 of 8 August 2008.

³¹ See paragraph 3 of Article 51 of the Organic Law No 2008-35 of 8 August 2008.

³² See paragraph 4 of Article 51 of the Organic Law No 2008-35 of 8 August 2008.

³³ See Supreme Court of Senegal, Judgment No 01 of 05 February 20103, Case J/302/RG/11 of 03/11/2011 The SUNEOR formerly. SONACOS vs. Sadikh Diagne, Judgment No 03 of 05 February 2013, Judgment J/54 bis/RG/09 of 26/02/2009, (Africa Coast Estate Company and Civil Society Estate Company Kerou Aldiana vs. Raphaël HEDANT) Société foncière de la Cote d’Afrique et la Société civile Immobilière Keurou Aldiana contre Raphaël HEDANT.

113. Furthermore, the person seeking remedy is entitled to secrecy of correspondence in postal, telegraphic and telephone communications. The right to privacy is also guaranteed.

114. Generally, the person going to court is entitled to all the provisions stipulated in international human rights covenants to which Senegal is a Party including the provisions in Title II of the Constitution. With regard to the specific situation of the detained person, the latter has the right to freedom and security and can cause the legality of his detention to be verified. Moreover, there is the need to ensure that the person is tried as quickly as possible.

115. The aforementioned principles guarantee the effectiveness of the provisions of Article 9 of the Constitution which stipulates that « *Any infringement on freedoms and any voluntary impediment in the exercise of a freedom is punishable by law. No person can be sentenced except in accordance with a law which came into effect before the act was committed. Defense is an absolute right in all situations and at all stages of the proceeding.* »

116. The Government of Senegal also distinguished itself quite early in the establishment of effective sustainable mechanisms to address human rights violations including torture. Capital punishment was abolished through national representation using a symbolic date of **10 December 2004**. In this regard, Senegalese Authorities continued with institutional development efforts initiated at independence.

117. As an extension of this government architecture, there are a number of independent structures involved in the management of Human Rights, among which are the following:

- Human Rights Directorate ;
- National Human Rights Institution : Senegalese Human Rights Committee (CSDH);
- The Office of the Mediator ;
- The National Radio and Television Broadcasting Regulatory Commission (CNRA);
- The Independent National Electoral Commission (CENA).

118. The **Human Rights Directorate** was established in 2011 within the Ministry of Justice. The core mission of this Directorate is to promote and protect all forms of human rights. Its tasks consist of:

- Monitoring international human rights commitments subscribed to by Senegal ;
- Preparing and presenting periodic reports on the implementation of regional and international conventions ratified by Senegal. In fact, Member States are compelled to present reports on twelve (12) conventions at specified intervals ;
- Handling of petitions and other writs alleging human rights violations ;

- Formulating coherent strategies and action plans for the implementation of recommendations of the Universal Periodic Review (UPR) which is a global review mechanism instituted by the Geneva-based United Nations Human Rights Council. In fact, in 2009, the Government of Senegal successfully went through the UPR which is currently the highest barometer for country-level review of compliance with human rights standards. As it is resolutely committed to enhancing the fulfillment of rights and freedoms, Senegal voluntarily accepted 30 recommendations mainly in the area of improving citizens' economic, social and cultural rights which are relegated to the background in many countries;
- Popularizing and promoting human rights.

119. To successfully carry out these tasks, the Human Rights Directorate is assisted by the National Human Rights Advisory Council, which is a State organization comprising State actors and civil society organizations. The aforementioned Council is responsible for bringing its expertise to bear on the preparation of documents for Treaty and Convention regulatory bodies such as the United Nations system and the African Union.

120. Established in 1970, the **CSDH**, which is the first national human rights institution to be created in Francophone Africa, has been consolidated in terms of its status. In fact, initially governed by Decree n°93-141 of 16 February 1993, the status of the Committee was enhanced four years later by the promulgation of Law n°97-04 of 10 March 1997. In line with its mandate as a national human rights institution, the Committee is an independent and pluralistic body in its composition and its core mandate is to:

- Propagate human rights by way of sensitization ;
- Draw the attention of public authorities to human rights abuses, and where necessary, propose measures to put a stop to such abuses ;
- Provide advisory opinion or recommendations on any human rights-related issue;
- Present annual reports to the President of the Republic on the human rights situation in Senegal.

121. **The Mediator of the Republic**, on other hand, is an independent administrative authority instituted by Law n°91-14 of 11 February 1991, and further amended by Law n°99-04 of 29 January 1999. In addition to its traditional responsibilities stipulated in the 1991 law and reaffirmed under the new law, the Mediator, to whom individuals generally refer cases, can intervene without being seised as a precautionary measure ever since Law n°99-04 of 29 January 1999 was promulgated. The Mediator plays a cardinal intermediation role between the Government and citizens who feel aggrieved in matters pertaining to their rights and interests.

122. With regard to Parliament, a Committee on legislation and human rights was established and parliamentary networks have been organized at the sub-regional level within the framework of human rights promotion and protection.

123. The **CNRA** which was established by law n° 2006-04 of 04 January 2006 is tasked with ensuring cohesion in the radio and television broadcasting sector and with promoting compliance with rules on pluralism, ethical standards, and professional code of conduct, laws and regulations in force as well as specifications and conventions governing the media. This new institution updates and reinforces the radio and television broadcasting mechanism in force in Senegal since 1991 by the abolition of the former **Higher Audiovisual Council (HCA)** among others.

124. The **CENA** which was established by Law n° 2005-07 of 11 May 2005 ensures that the electoral law is enforced by the administrative authorities and by political parties, candidates and voters. It has considerable powers which guarantee free and fair elections. The digitization of national and voters' identity cards and the publication of electoral lists mostly on the internet facilitate in particular the oversight responsibility of elections.

125. On the sidelines of this institutional mechanism, there are more than 11,112 non-governmental associations and organizations including 242 trade unions. These civil society organisations are a credible opposition to promote and protect human rights. By their composition and their vocation, they consist of men and women of goodwill who are committed to this thematic area. Through the constant relations existing between them and the population at the national level, they become actual warning and alert mechanisms and pressure groups for cases of human rights violations.

126. Teaching and popularization of human rights are carried out in different forms with the active involvement of human rights defense organizations. At the national level, pursuant to Resolution 59/113B of the General Assembly of the United Nations on the Action Plan for the first phase (2005-2007) of the World Programme for Human Rights Education in primary and secondary school systems, the government of Senegal through the Ministry of Education in close collaboration with civil society organizations designed a human rights education curriculum for basic education.

127. The document of the said Ministry was the subject of consultation at the national level with the support of development partners, in particular UNESCO. At the University level, the Institute of Human Rights and Peace (IDHP/University of Dakar) is developing a professional Masters programme in human rights research.

CHAPTER 4
PRESENTATION ON THE PROCESS OF PREPARING THIS PERIODIC REPORT.

128. In an attempt by the State to consistently bring consensus reports faithfully representing the realities on the ground to the attention of the international community, a long tradition of dialogue with civil society stakeholders has always been complied with, leading thus to the production of credible and qualitative documents. Consultation with non-state actors in preparing human rights reports is mandatory in accordance with the provisions of Law n°97-04 of 10 March 1997 relating to the Senegalese Human Rights Committee.

129. Before being referred to the Senegalese Human Rights Committee, the draft reports prepared by the Ministry of Justice are submitted for review by the National Human Rights Advisory Council which is an advisory body consisting of Ministerial departments and stakeholders of civil society.

130. The participation of civil society organisations in the process does not prevent them from submitting alternative reports reflecting their positions on specific issues to the august Committee for the implementation of the African Charter in Senegal.

CHAPTER 5

INFORMATION ON THE IMPLEMENTATION OF THE AFRICAN CHARTER IN SENEGAL

131. Complying with their willingness to respect their international obligations in spite of a difficult international and national economic situation marked by the persistence of the financial crisis, the fragile national economy, the urgency to ensure sustainable improvement of the living conditions of the population, which also bring in their wake new challenges such as adapting to climate change, food security, peace and security that must inevitably be addressed by making it their philosophy, which also becomes yours, that the African Charter « must be interpreted as an aggregate (in the sense that) all its clauses are mutually reinforcing³⁴», the Senegalese authorities have formulated and implemented policies and programmes with the aim of ensuring that Senegalese citizens actually enjoy fundamental freedoms and rights set out in the African Charter in their universality, their independence and indivisibility.

132. This report was prepared in accordance with relevant guidelines of the African Commission, in particular those relating to:

- The procedure for the consideration of periodic reports ;
- Reports of States Parties on economic, social and cultural rights (Tunis Guidelines) ;
- Reports of States under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women³⁵;
- The right to a fair trial and legal assistance in Africa³⁶ ;
- Measures for the prohibition and prevention of torture and punishments or cruel, inhuman and degrading treatments or punishments in Africa³⁷ ;
- The freedom of expression in Africa.³⁸

133. In fact, based on political and economic variables such as democracy, the rule of law, the existence of institutions aspiring to be functional and effective, accountability, integrity and good governance of public affairs, the Government of Senegal initiated far-reaching reforms in public administration, a major stakeholder in policy implementation in connection with the relevant provisions of the African Charter, but the reforms are taking too long to produce the expected results.

134. The poor enforcement of rules, difficulty experienced by citizens in gaining access to information and public services, bureaucratic procedures, lack of

³⁴ Cf. Communication 211/98 *Legal Resources Foundation vs. Zambia*, paragraph 70.

³⁵ Resolution ACHPR/Res.85 (XXXVIII) 05.

³⁶ Resolution ACHPR/Res.41 (XXXII) 99.

³⁷ Resolution ACHPR/Res.61 (XXXII) 02

³⁸ Resolution ACHPR/Res.62 (XXXII) 02

transparency, corruption, the use of public services and community property at the expense of the general interest are all factors which encourage an inefficient allocation of resources, thus, leading to poor economic and social results.

135. In addition to this initial factor, one may add the ineffectiveness of institutions responsible for policy and programme implementation, in particular difficulties in communicating and coordinating the roles of the various players such as the State, stakeholders in the decentralization process, civil society and the private sector.

136. As it shall be seen, looking at the action of the State in implementing the relevant provisions of the African Charter on the rights of women and the right to health, the effective implementation of the African Charter is still dependent on the physical and operational modernization of the structures, intelligent linkage of the various programmes and policies, human resource development, promotion of the participatory process in the area of government action, simplification of administrative procedures and more importantly, promotion of the culture of results-based management by Government, particularly concerning respect for human rights.

137. During the period under review covered by this periodic report, the adoption and implementation of the first Social Orientation Law³⁹ of Senegal relate to this strategy. In fact, its main purpose is to serve as a reference framework of the institutional mechanism in terms of responsibility and integration of a legal category, the inclusion of which is necessary to ensure that Senegal complies with its international commitments. The originality of this approach lies in the preparation process which brings on board all concerned national stakeholders; it also takes all aspects into account, in a coordinated manner, (resource mobilization, supervision, etc.), protection of this vulnerable section of the population, in particular, persons with disabilities.

138. This report, which does not cover all the rights laid down by the African Charter, considers the implementation of a number of civil and political rights on the one hand, and economic, social and cultural rights, on the other, in the spirit of the African Charter which establishes that "civil and political rights (remain) inseparable from economic, social and cultural rights in both their conception and their universality and that the realization of economic, social and cultural rights should guarantee the enjoyment of civil and political rights.⁴⁰ ».

139. Furthermore, all collective rights are not specifically treated for the simple and good reason that the Senegalese authorities hope to give it a pride of

³⁹ The Law of Social Orientation No 2010-15 of 6 July 2010 relating to the promotion and protection of persons with disabilities.

⁴⁰ Cf the 7th Recital of the Preamble of the African Charter

place in the next periodic report to be submitted in the next two years. In this report, in addition to the issue of Casamance, issues relating to the environment will be highlighted but in a developmental perspective so as to allow certain aspects of development rights to be considered as provided for by the African Charter.

140. In short, the Government of Senegal has reviewed the implementation of rights set out in the African Charter by taking into account the types of relationships implied by their implementation, notably « a *civil relationship*, which implies legal recognition as a citizen; *political relationship*, an active participation by the Government; *economic relationship*, reciprocity and exchange; *social relationship*, integration into the democratic society; and *cultural relationship*, belonging to a Community⁴¹ » and especially the importance of political, economic, cultural, religious and social history of the country which has a major influence in what Senegalese consider to be their rights and the mode of their enforcement since the human being « only gains access to humanity through the medium of a specific culture.⁴² »

A. IMPLEMENTATION OF CIVIL AND POLITICAL RIGHTS :

I. RESPECT OF RULES OF NON-DISCRIMINATION (Articles 2 and 3):

141. First and foremost, it must be recalled that the Government of Senegal has ratified all the international conventions prohibiting discrimination, especially the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities, and in Africa, the Charter on the Rights and Welfare of the Child and the Protocol to the Charter on the Rights of Women in Africa.

142. Furthermore, the relevant provisions of its Constitution have also established the unequivocal elimination and condemnation of all forms of discrimination. In fact, Article 1 of the Constitution states that « Senegal is a secular, democratic and social Republic. It provides for equality of all citizens before the law without distinction as to origin, race, gender and religion. It respects all beliefs. No section of the population or any individual shall arrogate to himself/herself the exercise of sovereignty. » Article 3 of the same Constitution supplements this prohibition by stipulating that « national sovereignty belongs to the people who exercise it through their representatives and through referendums. »

⁴¹ See Mireille Delmas Marty, **Trois défis pour un droit mondial, (Three Challenges for a Global Right)** Seuil Publications, 1998, page 48.

⁴² See Pierre-Henry Imbert, « L'apparente simplicité des droits de l'homme, réflexion sur les différents aspects de l'universalité des droits de l'homme », (**The apparent simplicity of human rights, reflections on the different aspects of the universality of human rights**) **Quarterly Human Rights Review**, 1989, page 7.

143. This prohibition is extended to the exercise of suffrage since political parties and coalitions of political parties which compete for the expression of suffrage cannot be « identified with a race, an ethnic group, with gender, religion, a denomination, a language or a region ».

144. The Constitution also states that « any act of racial, ethnic or religious discrimination including any act of regionalist propaganda that could cause a breach of internal security of the State or to the territorial integrity of the Republic ⁴³» shall be severely sanctioned by law in view of the fact that in this country, there is « neither subject, nor privilege of place of birth, person or family.⁴⁴ ».

145. While establishing parity between men and women to elected offices⁴⁵, through the Constitutional review of 2008, the Constitution expressly banned «any discrimination between men and women in the area of employment, wages and taxes⁴⁶».

146. At the legislative level, the implementation of these mandatory provisions necessitated the formulation, promulgation and the review of several laws, in particular:

- Law n° 79-02 of 4 January 1979 abrogating and replacing paragraphs 2 and 3 of Article 814 of the Code of Civil and Commercial Obligations, and Article 2 of Law n° 68-08 of 26 March 1968 amending Chapter II of Book VI of the Code of Civil and Commercial Obligations and penalizing the establishment of illegal associations ;
- Law n° 79-03 of 4 January 1979 abrogating and replacing paragraph 1 of Article 5 of Law n° 65-40 of 22 May 1965 on seditious associations;
- Law n° 81-17 of 15 May 1981 on political parties ;
- Law n° 81-77 of 10 December 1981 on prosecution of acts of racial , ethnic or religious discrimination ;
- The penal Code, in which new provisions corresponding to Articles 166(a)⁴⁷, 256(a)⁴⁸ and 257(a) were incorporated.

⁴³ See Article 5 of the Constitution.

⁴⁴ See Article 7 of the Constitution.

⁴⁵ See paragraph 5 of Article 7 of the Constitution.

⁴⁶ See Article 25 of the Constitution.

⁴⁷ « Any official in the administrative and judicial system, any official vested with an elective office or any official of State entities, any State official or employee, public establishments, national companies, semi-public companies or bodies corporate enjoying the financial support of a public authority, who refuse without any legitimate reason to accord a natural person or a corporate entity, the right to the enjoyment of a right based on racial, ethnic or religious discrimination, shall be liable to a term of imprisonment of between three-months and two years and a fine of between 10 000 and 2 000 000 francs.»

25. ⁴⁸ « Shall be liable to the same penalties like the ones stipulated in Article 56 (one month to two years imprisonment and a fine of between 250 000 and 300 000 francs), anyone who must have posted, exhibited or projected for public view ; offered, even for free, even where it is not publicly done, in whatsoever form it may be,

147. Specifically, Law n° 61-10 of 7 March 1961, as amended by Law n° 89-42 of 26 December, 1989, determining Senegalese nationality provides as follows «may opt for Senegalese nationality from the age of 18 years up to 25 years :

- A legitimate child born to a Senegalese mother and a father who is a foreign national;
- "A child born out of wedlock when the parent in respect of whom parentage has been established in the second instance is Senegalese, and the other parent is a foreign national"

148. The foreign woman who marries a Senegalese may acquire Senegalese nationality except where she expressly abandoned any claim to it during the celebration of the marriage. Conversely, a Senegalese woman who marries a foreigner does not lose her original nationality, unless for purposes of her marriage, she expressly requests to be deprived of her nationality. In such a case, the cancellation can only be effective if she is able to acquire the nationality of the future husband.

149. Furthermore, regarding employment and social security, Law n° 61-33 of 16 June 1961 on the general civil service regulations co-exists with specific regulations for some categories of public servants, Law n° 59-64 of 6 November, 1959, as amended by Law 97-17 of 17 December 1997 on the Labour Code and Law 75-50 of 03 April 1975 relating to social security institutions, both Laws state that no distinction shall be made between a man and a woman as far as their implementation is concerned.

150. Under the penal code, Law n° 77-33 of 22 February 1977 on the amendment of the penal code repealed Article 332 which provided for and penalized the offence of desertion of the marital home considered as discriminatory against women. In fact, the choice of matrimonial home was one of the privileges of the husband, who did not seem to care about the provisions of Article 332. In addition, the offence of desertion of the matrimonial home has been removed and replaced with desertion of the family, a more neutral formulation.

151. Law n° 72-61 of 12 June 1972 on the Family Code has instituted divorce by mutual consent, thus placing men and women on equal footing. Furthermore, the same law prohibits repudiation which gives the man priority in Islamic law, and as a penalty, it has made serious insults against women a case for divorce.

directly or in a disguised form, distributed or delivered , for purposes of their distribution by any means, any objects or images, any printed material, writings, speeches, posters, engravings, paintings, photographs, films or emblems, photographs, films or photo negatives, matrices or reproductions designed to declare racial superiority , or racial hatred or constituting an incitement to racial, ethnic or religious discrimination.»

152. The reforms were more extensive, covering all aspects to the point of covering medical care of the husband by his spouse particularly under Law n° 89-01 of 17 January 1989, which repealed the provisions of the Family Code since the latter seemed discriminatory against women. Thus, paragraph 1 of Article 371 as amended, now establishes that «the woman, just like the husband shall enjoy full civil capacity. ». This, however, resulted in the repeal of Article 13 which located the legal residence of the woman to the location chosen by the man ».

153. Similarly, Article 154 which empowered the husband to object to the exercise of a separate profession by the wife was repealed. Article 19 was also amended to enable the wife to temporarily administer the property of the absentee husband. Under the said Article, «once a declaration of absence is deposited, the court appoints a temporary administrator of the estate who can be the spouse in the matrimonial home ...». Finally, Article 80, which allowed only the husband to issue the family civil status book, was also amended by the addition of the following: «a certified copy of the family civil status book shall be given to the wife at the time of establishing the marriage certificate».

154. The legislation was enriched to ensure better protection of vulnerable groups from all forms of discrimination. The following legal texts illustrate this fact :

- Law n°99-05 of 29 January 1999, prohibiting the practice of genital mutilation and supplemented with the adoption of two national action plans for the elimination of this practice.
- Law n°2005-06 of 10 May 2005 on combating human trafficking and related practices and the protection of victims ;
- Law n° 2008-01 of 08 January 2008 on the amendment of the relevant provisions of the General Tax Code which makes equal treatment in matters of taxation a reality for men and women in Senegal ;
- Law of Social Orientation relating to the promotion and protection of the rights of persons with disabilities.

II. RIGHT TO THE RESPECT OF HUMAN DIGNITY AND PROHIBITION OF TORTURE (Articles 4 and 5)

(a) Respect of human dignity

155. Under Article 7 paragraph 1 of the Constitution, «The human person is sacred and inviolable. The State has the obligation to respect and protect it. Any individual has the right to life, liberty and security, unfettered development of personality and physical integrity including protection from all physical mutilation ».

156. These prescriptions of the fundamental Charter are scrupulously adhered to and justify the following measures taken by the highest authorities of the country:

- Abolition of the death penalty with the adoption of Law 2004-38 of 28 December 2004. Until this time, the country had been a de facto abolitionist for more than four (4) decades , but with the inception of this law, it became a de jure abolitionist ;
- Ratification of the Convention on forced or involuntary disappearances on 28 November 2008 ;
- Inclusion into the penal Code of Law n° 96-15 of 28 August 1996 defining torture⁴⁹ ; the adoption of Law 99-05 of 29 January 1999 amending certain provisions of the Senegalese Criminal Code (Article 58, paragraph 1 of Article 295 and Article 297 paragraph (a) in particular) to ensure better protection of physical integrity.

157. Furthermore, with the growing awareness about the extent of the phenomenon of human trafficking in the West African sub-region and in the country , the Senegalese government ratified most of the Conventions on the issue and more importantly :

- The United Nations Convention on the Rights of the Child of 1989 and its Supplementary Protocol on the sale of children, prostitution of children and child pornography of 2000 ;
- Convention n° 138 on the minimum age of admission to employment of 1973,
- The Hague Convention on the Protection of Children and Cooperation in matters of International Adoption of 1993 ;
- Convention n°182 of the International Labour Organisation (ILO) of 1999 on the worst forms of child labour and the immediate action for their elimination ;
- United Nations Convention against Transnational Organized Crime and its Protocols thereto to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2000 (The Palermo Protocol).

158. At the national level, Law 2005 – 06 of 10 May 2005 on combating human trafficking and related practices and the protection of victims was passed to supplement the traditional provisions contained in the criminal code, including Articles 323 et seq relating to pimping and Article 245 which regulates begging, paragraph 3 of which criminalizes persons who allow minors of twenty-one years in their custody to resort to begging.

⁴⁹New paragraph 1 of Article 295 : « *They include torture, injuries, blows , physical or mental violence or other assaults voluntarily exercised by an officer of the public service or any other person acting in his official capacity or at his instigation or with his express or tacit consent , either with the aim of extracting information or confessions , taking vengeance or unleashing acts of intimidation in order to cause any form of discrimination. »*

159. Article 1 of the aforementioned law provides for and penalizes human trafficking for purposes of sex, labour or forced services or slavery and extends the penalization to national and transnational forms of human trafficking. The sanctions provided for under the aforementioned Law n°2005-06 against perpetrators of human trafficking are 5 to 10 years imprisonment and a fine of between CFAF 5 and 20 million.

160. Article 15 of Law n° 2005-06 provides for victims of such acts the right to request for their provisional or permanent maintenance on the national territory with the status of a resident or refugee in addition to the possibility of taking legal action against the traffickers.

161. Two interministerial Councils chaired by the Prime Minister⁵⁰ assisted in determining the modalities for the implementation of 28 recommendations contained in the National Action Plan prepared for the purpose of combating this canker. The requirements for combating the phenomenon necessitated the establishment of a National Task Force for Combating Human Trafficking comprising all concerned Ministries including civil society⁵¹.

162. Under the authority of this task force, its role consists in:

- Playing a monitoring and watchdog role in combating trafficking ;
- Report all known cases of trafficking to the prosecution authorities ;
- Establish regional bodies for combating human trafficking ;
- Define and implement a sensitization policy among the population ;
- Link up and seek the opinion of civil society and development partners regarding the task force's actions and programmes ;
- Propose all legislative and regulatory amendments that inure to improving legislation relating to combating human trafficking.

163. On its part, the Ministry of Justice, in enforcing the aforementioned legislation, sent a circular⁵² to the judicial authorities (prosecution and sentencing) urging them to rigorously apply the law when handling cases relating to human trafficking in general and economic exploitation of children through begging, in particular. Stern instructions were issued to prosecutors to systematically prosecute perpetrators of this crime, make firm submissions and appeal against any ruling that is not consistent with their submissions.

164. The results of this firm policy are already positive since data collected from the prosecutors indicate many cases of prosecution and sentencing of alleged perpetrators of human trafficking⁵³.

⁵⁰ 19 October 2009 and 24 August 2010 respectively.

⁵¹ See Decree No 09051 of 08 August 2010 by the Prime Minister

⁵² See Circular No 4131 of 11 August 2010 by the Minister of Justice.

⁵³ Cf. The Attorney General's Office, Abou Thiam et al vs. Souleymane Ndiaye (29 June 2010) in which a Koranic teacher was sentenced to a year's custodial sentence by the Court for flagrant offences of maltreatment of a child

(b) Combating torture

(1) Overview

165. In view of the fact that the country fully shares your point of view according to which sanctioning perpetrators of acts of torture is just as critical as taking preventive measures « such as the stoppage of incommunicado detention, the search for effective solutions within a transparent, independent and effective legal system and the continuation of investigations into allegations of torture⁵⁴ », soon after the ratification of the Convention against torture and its adoption on 21 August 1986, Senegal initiated a number of actions aimed at giving concrete expression to its treaty commitments.

166. Thus, the country adopted Law n° 96-15 of 28 August 1996 supplementary to the penal Code, establishing a provision on criminalization of torture by referring to Article 1 of the Convention in accordance with the provisions of Article 4 of this same Convention⁵⁵. Since then, attempted torture is penalized like a completed offence and persons found guilty of torture or attempted torture are liable to a term of imprisonment of 5 to 10 years and a fine of CFA 100.000 to 500.000 francs. Punishment for abetment of the offence of torture does not pose any problem in Senegalese law. On this legal basis, members of the security agencies have been arrested⁵⁶ or sentenced⁵⁷ for acts of torture.

167. Abetment is governed by Articles 45, 46 and 47, paragraph 1 of the Criminal Code. It is always punishable, unless a special provision establishes otherwise. Furthermore, the principle of abetment of crime which is deeply-rooted in the Senegalese legal system imposes the same punishment on both the abettor and the principal offender.

168. Furthermore, completing the normative instruments relating to this subject matter, Senegal ratified on 20 September 2006, the Optional Protocol to the

beggars or a judgment delivered by the Court for flagrant violations in Dakar on 8 September 2010 sentenced thirteen (13) persons for economic exploitation of children through begging which is also a human trafficking offence. Twelve (12) were sentenced to six (6) months imprisonment and fine of CFA 100,000 francs and the thirteenth person to a custodial sentence of one year and a fine of CFA one million francs.

⁵⁴ CF. Communication No 48/90, 50/91, 52/91 and 89/93, *Amnesty International, Comité Loosli Bachelard, Lawyers Committee for Human Rights and the Association of Members of the Episcopal Conference of East Africa vs. Sudan*, paragraph 56.

⁵⁵ Paragraph 1 of Article 295 of the Penal Code.

⁵⁶ For instance, the investigating judge issued a warrant for the detention at the 6th Judicial Investigating Office of the Dakar regional Court of Special jurisdiction, of five (5) auxiliary gendarmes of the Kédougou Gendarmerie Brigade (south east of the country) accused of having tortured to death in October 2012 the young Kékouta SIDIBE (See the Daily Newspaper, *Le Soleil* dated 30 November 2012) or the prosecution of three (3) police officers of the Multi-purpose Intervention Brigade (BIP) before the Dakar Military Court, who were identified as the alleged attackers of journalists of the TFM and the WARD (see the Daily *Wal Fadjri* of 18 September 2010).

⁵⁷ Sergeant Ahmed Bessine DIOP, Deputy Commanding Officer of the Kédougou Gendarmerie Brigade was sentenced to two years custodial imprisonment on 14 December 2012 for the death of young Kékouta SIDIBE in the premises of his Brigade.

Convention against Torture which came into force on 22 June 2006. Incidentally, the contents of laws on torture overlap with the relevant provisions of the Rome Statute of the International Criminal Court (ICC) which is also taken into account in a series of laws passed on 12 February 2007 to ensure their effective application in Senegal. By the way, Senegal is the first country in the world to have ratified it on 1st February 1999, after having actively supported this body through a large-scale campaign for signatures and ratifications among African countries and also paid a voluntary contribution of fifty (50) million CFA francs into the Fund of the International Criminal Court in support of victims.

(2) The Hissene Habré Case

169. The overarching expression of the Senegalese authorities' commitment to comply with their treaty obligations on torture is the establishment of a Special Court, dubbed the Extraordinary African Chambers⁵⁸ to try the former President of Chad, Mr. Hissene Habré for crimes of torture he is alleged to have committed while he was at the helm of affairs in that country from 1982 to 1990.

170. Former President of Chad, Mr. Hissene Habré is accused of having committed unspeakable atrocities during his reign and for which thousands of persons were tortured and/or executed especially by his political police, the infamous Documentation and Security Directorate (DDS).

171. As a refugee in Senegal after being overthrown in a coup d'état in 1990, Mr. Habré was indicted in 2000 in Senegal as a result of complaints filed by Chadian victims pursuant to the relevant provisions of the Convention against Torture but the Senegalese courts declared that they were not competent to try him on the grounds that « no procedural text confers on Senegalese courts a universal jurisdiction to prosecute and judge, if the presumed perpetrators of or accomplices in acts (of torture) are found on the territory of the Republic, ...where such acts were committed outside Senegal by foreigners ; that the presence of Hissene Habré in Senegal should not in itself be a justification to bring legal proceedings against him⁵⁹».

172. The courts even indicate that « Article 79 of the Constitution (which stipulates that international treaties are directly applicable in the national legal system of Senegal and therefore can directly be invoked in national courts) cannot be applied as the execution of the Convention requires that Senegal takes prior legislative measures » and that « no amendment of Article 669 of the Criminal Procedure Code (which cites cases for which legal action can be

⁵⁸ Cf. Law No 2012-29 of 19 December 2012 on the Statute of Extraordinary African Chambers within Senegalese Courts for the prosecution of international crimes committed in Chad during the period from 7 June 1982 to 1st December 1990.

⁵⁹ Cf. The Court of Cassation of Senegal, Order No 14 of 20 March 2001, Souleymane Guengueng and others vs. Hissene Habré.

brought against foreigners in Senegal for acts committed abroad) had been made⁶⁰. »

173. The Complainants, not satisfied with the ruling of the Senegalese courts, referred the case to the Committee against Torture on 18 April 2001 by requesting the United Nations institution to determine the violation by Senegal of relevant provisions of the Convention against Torture, in particular Articles 5 and 7 and to indicate provisional measures. The Committee did this on 23 April 2001, by enjoining the Senegalese authorities « not to expel Mr Hissene Habré but to take all appropriate measures to prevent the latter from leaving the Senegalese territory except by virtue of an extradition procedure. »

174. As the Committee against Torture was considering the request of the alleged victims of the crimes perpetrated by Hissene Habré, a Belgian judge, based on a complaint filed at the High Court of Brussels by three Belgian victims of Chadian origin, issued an international arrest warrant on 19 September 2005 against Hissene Habré, after indicting him for crimes against humanity, war crimes, acts of torture and serious violation of international humanitarian law. The same day, Belgium forwarded a formal request to Senegal for the extradition of Mr. Habré.

175. On 15 November 2005, the Senegalese authorities, in line with the extradition request, arrested Mr. Hissene Habré and detained him, only to release him a few weeks later after the Indictment Division of the Appeal Court of Dakar stated that it lacked jurisdiction to rule on the Belgian extradition request.

176. On 26 November 2005, the Ministry of Interior of Senegal issued an order by putting Mr. Hissene Habré « at the disposal of the African Union » and proposing that he be expelled to Nigeria, the Chair of the African Union at the time. But the following day, his colleague, the Minister of Foreign Affairs declared that Mr. Hissene Habré would remain in Senegal until the African Union came out with a clear position on that matter during the Summit in January 2006 in respect of « the competent court » to try him.

177. Meeting in Khartoum (Sudan) for the Seventh Ordinary Session of the Assembly of Heads of State and Government of the African Union, African leaders decided to establish « A Committee of Eminent African Legal Experts tasked with considering all aspects and implications of the trial of Hissene Habré including the options available for his trial ...and to propose concrete recommendations on ways and means of dealing with such issues in the future.⁶¹ »

⁶⁰ Cf. Court of Cassation of Senegal, Order No 14 of 20 March 2001, Souleymane Guengueng and others vs. Hissene Habré.

⁶¹ Cf. Paragraphs 2, 3 and 4 of the Decision on the Trial of Hissene Habré and the African Union, Assembly/AU/Dec.103 (VI).

178. A few months later, the Committee against Torture came out with a ruling on the merits of the case in which it stated that Senegal had violated Articles 5, paragraph 2, and 7 of the Convention and charged the authorities to « hand over the case to competent authorities to proceed with criminal action or, failing that, as long as there exists an extradition request from Belgium, to comply with that request, or where necessary, to any extradition request from another State in line with the provisions of the Convention.⁶² »

179. In July 2006, following a report by the Committee of Eminent African Legal Experts, the African Union officially « mandated the Republic of Senegal, on behalf of the African Union, to proceed with the prosecution and trial of Hissene Habré, by a competent Senegalese court, and provide guarantees for a fair trial » and requested its organs and institutions to provide this country with «the necessary assistance for the smooth conduct and proper outcome of the trial.⁶³ »

180. On 12 February 2007, the Senegalese National Assembly adopted Laws No. 2007-02 and 2007-05 to amend the Criminal Code and the Criminal Procedure Code respectively to enable Senegalese courts investigate crimes against humanity, war crimes and genocide, thus removing certain legal barriers for the trial of Hissene Habré.

181. But the previous Senegalese authorities made the continuation of the Hissene Habré criminal case contingent upon the provision of the necessary funds for the conduct of the trial and even threatened to expel the accused if nothing was done in that regard. Finally, at the end of a round table meeting of donors, Senegal accepted to organize the trial on condition that an amount of 8.6 million Euros was made available to the country.

182. Looking at the attitude of the Senegalese authorities as a tactic intended not to try Hissene Habré, Belgium requested the International Criminal Court (ICC) on 19 February 2009 to direct Senegal to try Hissene Habré or extradite him. At the request of the ICC, Senegal accepted to prevent Hissene Habré from leaving its territory until the State had taken a final decision on the matter.

183. Meanwhile, Hissene Habré's lawyers, fearing that the 2007 laws could be used against their client, referred the case to the ECOWAS Court of Justice, which in turn decided that « the mandate received (by Senegal) from the African Union assigned the country the task of designing and suggesting all the specific modalities for the prosecution and trial of Hissene Habré in strict compliance with an ad hoc international special procedure ⁶⁴».

⁶² Cf. Paragraph 10 of the ICC Decision of 17 May 2006, Communication 181/2001, Souleymane Guengueng and others vs. the Government of Senegal

⁶³ Cf. paragraphs 2 and 3 of the Decision on the Trial of Hissene Habré and the African Union, Assembly/AU/Dec.127 (VII)

⁶⁴ See ECOWAS Court of Justice, Order No ECW/CCJ/JUD/06/10 of 18 November 2010, the trial of Hissene Habré vs. the Republic of Senegal, paragraph 61.

184. Senegal and the African Union therefore announced an agreement on 24 March 2011 on the establishment of an Ad hoc International Court to try Hissene Habré and agreed to meet as early as possible to finalize the statutes and the rules of procedure of the aforementioned Court. But rather surprisingly, on 30 May 2011, Senegal postponed the meeting designed to finalize these important documents indefinitely.

185. In March 2012, President Abdoulaye Wade lost the presidential elections and his successor, President Macky Sall, weary of the attitude of his predecessor, announced on 2 June 2012, the establishment of a working group tasked with « brainstorming on the practical modalities for the preparation and organization of Hissene Habré's trial in accordance with Senegal's international commitments with the support of the African Union. »

186. On 20 July 2012, the ICC, in its ruling, noted that Senegal had failed in its obligations pursuant to Articles 6(2) and 7(1) of the Convention against Torture to proceed immediately with investigations and hand over the case to competent authorities to institute criminal proceedings against Hissene Habré and that « it must, without any further delay, hand over Hissene Habré's case to competent authorities for criminal proceedings to be initiated if the country was not prepared to extradite him. »

187. Four days later, Senegal and the African Union signed an agreement for the establishment of « Extraordinary African Chambers » to become operational at the end of 2012. This was implemented just in February 2013 with the official inauguration of the institution and the appointment of an administrator.

188. The new court was to consist of a prosecutor's Office⁶⁵, an Investigative Chamber⁶⁶, the Indictments Chamber⁶⁷, a Trial Chamber and an Appeals Chamber. Each of the last two Chambers was to be headed by a president from an African Union member country and supported by two Senegalese judges.

189. Their terms of reference were to prosecute « the main perpetrator (s) of the international crimes committed in Chad between 7 June 1982 and 1 December 1990 and the Statute provided for the participation of the victims and their lawyers as civil party at all stages of the proceedings. These victims would also have the opportunity to obtain reparation for the damages suffered.

⁶⁵ Headed by Judge Mbacké FALL assisted by Youssoupha DIALLO, Anta NDIAYE DIOP and Moustapha KA.

⁶⁶ Comprised six (6) Senegalese judges: Jean KANDÉ, Souleymane TIKÉLO, Absatou LY DIALLO, Barou DIOP, Abdoul Aziz DIALLO and Oumar SALL.

⁶⁷ Comprised four (4) judges: Assane NDIAYE, André BOP SÈNE, Lamine SOW and Hippolyte Anquédiche NDÈYE.

190. The Chambers were to receive a budget of 7.4 million Euros financed from contributions mainly from the African Union, the European Union, Chad, the Netherlands, the United States, France, Belgium, Germany and Luxemburg.

191. Finally, Senegal and Chad signed a legal cooperation agreement on 3 May 2013 to facilitate the travels and the work of the judges of the African Chambers within the Chadian territory for purposes of the trial. By this agreement:

- Each party agreed to appoint « a central authority » through whom requests for mutual judicial assistance shall be made ;
- The judges of the extraordinary Chambers could carry out investigations on Chadian territory ;
- The Chadian witnesses could move freely in Senegal ;
- Chad shall be liable to produce any document or records that the judges may request for as part of their investigations ;
- The two countries shall undertake to :
 - Guarantee by any means possible or by any appropriate mechanisms the effective protection of any witness on its territory , before, during and after giving his evidence ;
 - Facilitate the stay of Chadian victims and journalists on Senegalese territory ;
 - Allow persons involved in the trial to proceed to Chad to participate in awareness-raising.
- Chad shall undertake to broadcast information on the trial over public radio and television networks which Senegal will broadcast and telecast.

192. The first trial of a former African Head of State accused of acts of torture would have already started for Africa to demonstrate that the fight against impunity established in the Constitutive Act of the Union is not a superficial window-dressing.

III. THE RIGHT TO A FAIR TRIAL **(Articles 7 and 26):**

193. The unfettered access to an impartial and independent justice with procedural guarantees is a matter of constant concern to the Government of Senegal. Article 91 of the Constitution views the judiciary as the watchdog of rights and freedoms, and the principle of its independence is established by Article 88 of the same Constitution.

194. At the organizational level, the Senegalese judicial system is based on three types of courts apart from its Ministry of Justice and the various departments:

- The superior courts consist of the Constitutional Council, the Supreme Court and the Court of Auditors;
- The courts of second instance are the Appeal Courts of Dakar, Kaolack, St-Louis and Ziguinchor;

- The courts of first instance correspond to the :
 - 11 regional tribunals including the Dakar court of special jurisdiction whose territorial competence falls within the administrative boundaries of the region where they are located;
 - 33 departmental courts⁶⁸;
 - 11 labour courts
 - 1 Military court.

195. The Constitution guarantees that every individual must be heard and it recognizes the principle of legality of criminal offences and penalties and the right to defence⁶⁹, which is absolute at all stages of the judicial process.

196. These provisions are supplemented with two cardinal texts, the Criminal Code (CC) and the Code of Criminal Procedure (CCP), one guaranteeing the legality of criminal offences and penalties, and the other specifying in the various provisions the ways and means victims may proceed to inform the public service of the judiciary.

197. Senegalese courts give their rulings independently and in the event where one of the parties to the trial is not satisfied, he may appeal to a superior court, or where necessary, he can appeal to the Court of Cassation.

198. Senegalese law recognizes the mechanism of the exception of unconstitutionality of laws which allows a party to raise the unconstitutionality of a law or an international treaty ratified by Senegal before the Supreme Court.

199. To protect the rights and freedoms of citizens from any form of arbitrariness by the authorities, Article 92 of the Constitution provides for:

- Appeals concerning the misuse of authority which allows every individual with an interest in the annulment of a ruling of an administrative authority to make a request to the administrative Chamber of the Supreme Court for that purpose;
- Full remedy actions are open to any person whose rights have been violated by any administrative action of the Government.

200. However, poverty and illiteracy are major challenges to individuals getting greater access to justice. In order to bring individuals close to the judicial system and facilitate their access to the courts, the government established a Justice Sector Programme (JSP) in 2004 over a period of 10 years with the main aim of ensuring good governance at the judicial level through the consolidation of the rule of law, improvement of the business environment and more importantly safeguarding the security of persons and property.

⁶⁸ Dakar, Pikine, Guédiawaye, Rufisque, Thiès, Tivaouane, Mbour, Diourbel, Mbaké, Bambey, Kaolack, Kaffrine, Nioro, Fatick, Gossas, Foundiougne, Ziguinchor, Bignona, Oussouye, Kolda, Vélingara, Sédhiou, Tambacounda, Kédougou, Bakel, Louga, Linguère, Kébémér, St-Louis, Podor, Dagana, Matam and Bakel.

⁶⁹ Article 9 of the Constitution.

201. The JSP, with a budget of one and half billion CFA francs, aims at:

- Providing support for the training of judicial staff ;
- Support the emergence of local administration of justice all over the country and opening up more flexible information outlets for those who want to access justice (Local Law Centres);
- Reorganize national courts, the criminal justice system for the publication of judgments through the creation of specialized clusters.

202. This resulted in :

- The adoption of a draft reform of the judicial map intended to establish lower courts and high courts in localities with large population concentration ;
- The establishment of specialized local courts all over the country in such areas as mediation, information, legal aid and legal assistance centres;
- The establishment of a system of judicial assistance with a budget allocation of 3000 million CFA francs in 2012 to enable deprived persons to benefit from the services of a lawyer.

(a) Procedural guarantees in criminal matters :

203. One of the major principles underlying criminal procedures in line with the relevant provisions of the African Charter and the interpretation given by your Commission is that any limitation of the enjoyment of freedom can only be ordered by an authority empowered by law, namely the corps of magistrates and criminal investigation officers. Furthermore, the Criminal Procedure Code (CPC), right from the beginning, had put in place very strict measures concerning police custody ordered by a criminal investigation officer (CIO), and detention arising from the competence of a judge. Disciplinary and criminal sanctions are provided for in case of abuse of these rules.

(1) Rules governing police custody :

204. For purposes of investigations, in the case where the criminal investigation officer is to keep one or several persons in custody, the duration shall not go beyond 24 hours. The duration shall extend beyond 24 hours where there are sufficient, reliable and consistent evidence against the said person or persons as grounds for his/their indictment after which the police investigation officer must send him/them to the public prosecutor or his representative. In case of any practical difficulties regarding the transfer, the public prosecutor (PP) must immediately be made aware of the conditions and the timeline for the transfer.

205. In the two cases, the criminal investigation officer must immediately inform the PP, his representative or where necessary the President of the departmental court vested with the powers of the PP about the measure he is to initiate and

also ensure that the detained person understands the grounds for which he has been kept in custody.

206. Where the person kept in custody is a minor of between 13 and 18 years, the criminal investigation officer must keep him in a special place separate from the adult detainees.

207. The measure of police custody is applied under the effective control of the public prosecutor, his representative or where necessary, the President of the departmental court vested with the powers of the PP. In all other places where it is applied, the criminal investigation officers are duty-bound to keep a register on police custody initialed and signed by the public prosecutor and presented for checks by any prosecutor in charge of its control.

208. The time limit provided may be extended for another deadline of 48 hours under the orders of the PP, his representative or the examining magistrate and must be confirmed in writing.

209. However, the deadlines are doubled in case of crimes or offences against the security of the State, crimes and offences committed during a state of siege, a state of emergency or the application of Article 47 of the Constitution but these two cases of increasing the deadline twofold must not occur simultaneously.

210. In case of extension of police custody, the criminal investigation officer informs the detained person the grounds for the extension by informing him about the provisions set out in Article 56. He informs the detainee about his right to choose a counsel from a list of lawyers or legal persons on traineeship. An indication of these formalities is mandatory in the hearing transcript otherwise it would be deemed void.

211. The lawyer appointed is contacted by the person kept in police custody or any other person designated by the detainee or by default, by the criminal investigation officer. The lawyer can communicate with the person in custody by telephone or by other means of communication, if he cannot move there within a short period of time; such conversations must be under conditions of confidentiality.

212. In case the lawyer appointed cannot be contacted, the police criminal investigator shall indicate it in the hearing transcripts (minutes) of the person in custody. The lawyer shall be informed by the criminal investigator or under the control of the latter, by a police crime officer about the nature of the offence sought.

213. At the end of the conversation which cannot exceed 30 minutes, the lawyer, where applicable, presents written remarks which are attached to the proceedings. The lawyer cannot report this conversation to anyone during the

period of police custody. The criminal police investigator indicates in the hearing transcript of any person in police custody all the information provided and the requests made in keeping with the law. This written information must be specifically initiated by the person concerned and in case of refusal, it must be indicated. These requirements must be fulfilled failing which the transcripts will be deemed invalid.

(2) Measures for the prevention of torture during police custody :

214. In accordance with current legislation, if the PP or his representative deems it necessary, he may cause a person in custody to be examined by a medical doctor appointed by him at any time during the legal deadline of police custody. He may for the same reason and within the same period be contacted through the criminal investigation officer or by any person or by his counsel; in this case, he must give authorization for the medical examination requested. This medical examination shall take place at the location where the person has been detained if it has not been expressly requested for by the PP at a previously cost agreed to by the requesting party. In this latter case, the act of appointing should indicate the existence of such a record.

215. The transcript hearing of any person in police custody must indicate the day and the hour the person was detained, the reasons for the custody, the time limit for questioning, the time for rest and the day and the time the person was released or brought before a competent magistrate. This requirement must be initiated by persons concerned, failure of which renders the transcripts invalid.

216. In the branches or services where the criminal investigation officer is compelled to keep a statement register, the statements and the signatures must appear on the said register. Only the statements are reproduced in the transcripts forwarded to the judicial authority.

217. When abuses are observed on the part of the criminal investigation officers in the implementation of measures relating to police custody, the PP or his representative informs the Attorney General who then informs the Indictments Division. The victim of the alleged abuses can also inform the Indictments Division by application.⁷⁰ The latter, by virtue of the powers conferred on it by Articles 213, 216 and 217 of the Criminal Procedure Code may either temporarily or definitively withdraw the status as criminal police officer from the alleged perpetrator of the abuses, or return the records to the Attorney General's office to institute legal action, if it is determined that an offence was committed to infringe the law.

⁷⁰ See Law No 1999-06 of 29 January 1999.

218. In addition to these provisions, there is the need to consider Articles 213 et seq of the same Code relating to control of the activities of the criminal police officer by the Indictments Chamber.

219. To complete this preventive mechanism against torture, the Senegalese legislator, after ratifying the United Nations Optional Protocol to the Convention against Torture, cruel, inhuman or degrading treatment or punishment on 18 October 2006, adopted the Law establishing the National Observer of Places of Deprivation of Liberty (ONLPL), which is an independent authority vested with the power to exercise control of all detention and custodial centres.

220. SENEGAL reaffirmed its commitment to democracy and respect for human rights on 25 March 2012 by a peaceful change of power at the presidential level of governance.

221. Its quality is all the more important as the changeover was successful following an unprecedented pre-electoral and electoral violence in the recent history of our country.

222. These acts of violence unfortunately brought the Police and the Gendarmerie forces into the forefront and their subsequent use of excessive force in the course of the political demonstrations which took place in February 2012.

223. These events which were acknowledged by three Special Rapporteurs of the Human Rights Council (HRC), by the African Commission and by Amnesty International (AI) recorded loss of human lives and serious cases of torture and cruel treatment meted out to civilians.

224. In May 2012, Amnesty International (AI), Senegal Chapter brought its report⁷¹ into the public domain by exposing serious human rights violations caused by the troubles that characterized the pre-electoral period.

225. Among other recommendations made, the aforementioned organization, outraged, undoubtedly, by the numerous cases of torture of citizens and the use of excessive force by the security agencies, sometimes, of course, leading to loss of human lives, appealed to the new authorities to prosecute the alleged perpetrators of such acts and to ensure payment of compensation to the victims of such human rights abuses by initiating subsequent judicial proceedings.

226. To prevent torture, the Universal Declaration of Human Rights, the Convention against Torture and other cruel, inhuman or degrading treatment or punishment as well as various United Nations resolutions recommend to States to

⁷¹ **An Agenda for human rights, an opportunity the new authorities who emerged from the 2012 presidential elections cannot gloss over.**

teach officials in charge of the implementation of laws and standards contained in their instruments to enable them to ensure a fair balance between their key responsibilities of safeguarding public order and protecting fundamental human rights.

227. The Senegalese Army, the police and gendarmerie, and the security agencies in general are known for their professionalism, their sense of Republicanism and their respect for human rights.

228. The frequent human rights abuses experienced in the past decade are mere aberrations which need to be quickly corrected, including, through capacity building in the area of human rights for the security agencies. The National Police College (ENP), the Gendarmerie Training Institutes and the Armed Forces Training Centre provide initiation courses to their students in this subject, but there is the need to consolidate these gains to ensure greater respect for human rights.

(b) Guarantees in the area of pre-trial detention :

229. The same concern of preserving human freedom appears at the decision-making level where an accused person is detained in the following cases:

- In criminal cases, when the maximum sentence imposed is lower than or equal to 3 years, an accused person who is permanently resident in Senegal cannot be placed in pre-trial detention for more than five (5) days;
- In the same types of cases, the accused person who is a permanent resident within the location of the court handling the case, cannot be put into pre-trial detention;
- The examining magistrate's warrant of committal shall be valid for a maximum period of only six (6) months ;
- Finally, a special tribunal has been established at the Supreme Court to « rule on applications for claims presented by persons who have been the subject of pre-trial detentions but whose cases have been dismissed for lack of evidence, leading to their discharge or acquittal⁷². »

(c) Towards large-scale reform of the Senegalese criminal law :

230. In 2006, the Senegalese Government established a Criminal Law and Criminal Procedure Reform Commission in order to provide the country with a criminal legislation in keeping with international commitments to which it is a party.

⁷² See paragraph 1 of Article 4 of the Organic Law No 2008-35 of 7 August 2008 on the establishment of the Supreme Court of Senegal.

231. The criminal code and the criminal procedure code from Laws No 65-60 and 65-61 of 21 July 1965 had not been amended significantly in spite of the ratification of a large number of international treaties by Senegal. Instead, the reforms carried out in 1977, 1985, 1996, 1999 and 2000 can be cited in this context.

232. These reforms were inspired by the necessity to incorporate new forms of criminality or strengthen the promotion, protection and safeguard of fundamental human rights.

233. Conscious of the fact that the economic and social development of Senegal is dependent on the legal and judicial certainty in general and the quality of its legislation, in particular, the public authorities felt the need to create a platform for brainstorming on the fundamental mission of providing the judicial system of Senegal with legal tools consistent with its aspiration of being a country governed by the rule of law.

234. The Commission, which was presided over by the Dean of the Faculty of Law of Cheikh Anta Diop University of Dakar, comprised representatives of the judiciary (magistrates, lawyers and judicial police), including specialists in criminal law and members of civil society ; it set for itself the objective of maintaining the core and relevant traditional provisions of the current Criminal Code and Criminal Procedure Code and incorporating crimes and new procedures dictated by the numerous regional and international legal instruments acceded to by Senegal.

235. After six (6) years of discussions and exchanges, the Commission developed two (2) preliminary draft reforms to be submitted to the public authorities of the country. The amendments touched on:

- Offences :
 - Protection of extremely vulnerable persons, particularly women and children, who fall victim to sexual violence and other forms of abuses. It is proposed that the minority will be made the constituent element of the offence.
 - Endangering the lives of others ;
 - Theft and concealment of information ;
 - Introduction of notions of therapeutic and safe abortion ;
 - Enforcement by the judge of international conventions ratified by Senegal ;
 - Escape of the person held in custody ;
 - Corrupting a foreign public official ;
 - Cover-up of misapplication of public funds.
- Judicial proceedings :
 - Besides the principle of territoriality, extension of international competence of Senegalese courts with the establishment of

- substantive, active and passive competences including universal competence ;
- Adaptation of procedural rules in combating terrorism ;
 - Enhancing the powers of the investigating judge in the collection of evidence or computerized data In connection with offences relating to cybercrime ;
 - Removal of the power of the investigating judge of a departmental court to issue an order of committal or arrest warrant;
 - Prohibition of re-committal to custody ;
 - Adaptation of the summons procedure based on the investigating officer's report ;
 - Obligation of the Public Prosecutor to initiate proceedings against the person caught in the act within a precise timeframe, failing which the committal order loses its validity ;
 - Extension of the 7-year penalty period for illegal trafficking of migrants or human trafficking ;
 - Mediation in criminal cases ;
 - Possibility for the judge exercising criminal jurisdiction, where necessary, in case of discharge, to automatically award compensatory damages based on a civil wrong, ;
 - Transfer of authority from minors' court to a departmental court for correctional cases and this is purposely intended to bring justice closer to accused persons ;
 - Possibility of the PP to officially communicate with the media (press updates, press releases, etc.);
 - Establishment of criminal chambers within regional courts and holding of quarterly sittings to replace the Assizes Courts ;
 - Possibility for civil society organizations to institute criminal proceedings and to join a civil action to the proceedings ;
 - Need for a lawyer to be present in the early stages (4 to 24 hours) of remand in custody ;
 - Need to prevent and sanction violations of secrecy of inquiries and investigations ;
 - Removal of the power of the PP to remand somebody in custody ;
 - Regulating the modalities for controlling or ascertaining one's identity by the police and the gendarmerie ;
 - Establishment of a national centre for crime control ;
 - Incorporation of age in the definition of rape ;
 - Establishment of the right of the counsel to procure a copy of the criminal case file at his own expense ;

236. The new criminal code and criminal procedure code should be adopted in the course of this year.

(d) Special status of the CSDH :

237. To comply with the provisions of Article 26 of the African Charter and the Paris Principles on national human rights institutions, Senegal reviewed legislation on the CSDH to make it the « appropriate entity tasked with promoting and protecting the rights and freedoms guaranteed⁷³ » by the continental treaty.

238. In actual fact, Law 97-04 of 10 March 1997 provides that the CSDH is an autonomous institution vested with the mandate to promote and protect human rights in Senegal. It is this institutional development that earned it the status of an affiliate with the African Commission at its 28th Ordinary Session held in Cotonou (Benin) in October-November 2000⁷⁴.

239. Presided over by an independent personality appointed by the President of the Republic⁷⁵ and composed of 29 members appointed for a 4-year term of office by an Order of the Minister of Justice⁷⁶, the national human rights institution's core mission is to serve as an interface between the Government, its various agencies and civil society as far as human rights issues are concerned. Based on this mandate, it may, on its own initiative, and at the request of Government, National Assembly or any other competent authority »:

- Express an opinion or make recommendations on all human rights-related issues , including legislative, regulatory or administrative reviews in relation to human rights ;
- Draw the attention of public authorities to cases of human rights violations, and where necessary, propose measures intended bring the situation to an end ;
- Raise awareness about human rights by way of sensitizing the general public and the authorities through the information, teaching, media outreaches and organization of conferences and other appropriate mechanisms for disseminating information to the public ;
- Create , collect and disseminate all human rights-related documentation ;
- Ensure dialogue among social forces drawn from institutions and civil society organizations concerned with human rights issues and undertake any action where human rights abuses are acknowledged or brought to its notice by a public authority⁷⁷ ;
- Coordinate cooperation between Senegal and the United Nations bodies or any other regional human rights institutions, and provide advisory opinion on reports brought before them⁷⁸ ;

⁷³ Cf. Article 26 of the African Charter.

⁷⁴ Cf. Paragraph 11 of the Final Communiqué of the 28^e Ordinary Session of the African Commission

⁷⁵ Cf. Decree No 97-638 of 23 June 1997.

⁷⁶ Cf. Ministerial Order No 5824 of 28 May 1997.

⁷⁷ Cf. Article 2 of Law 97-04 of 10 March 1997 on the Senegalese Human Right Committee

⁷⁸ Cf. Paragraph 1 of Article 3 of Law 97-04 of 10 March 1997 on the Senegalese Human Rights Committee

- Ensure the implementation of decisions arrived at by the Courts and quasi-international judicial institutions in respect of Senegal's obligations under human rights treaties to which the State is a party⁷⁹.

240. In principle, every year, the President of the Committee symbolically presents on 10 December, an annual report to the President of the Republic on the human rights situation in Senegal and the activities carried out by the CSDH⁸⁰. But since the reform of the CSDH in 1997, only 5 reports have been presented to the President of the Republic, the reason being that since 2000, with the advent of President Abdoulaye Wade, the new Senegalese authorities created a High Commission for Human Rights and Promotion of Peace⁸¹ whose mandate⁸² and modalities for intervention⁸³ ended up by creating utter confusion within this State institution as to the actual role and place of the CSDH in the new human rights promotion and protection architecture established by the new government.

241. This situation has a negative effect on the CSDH, thus leading to the Sub-Committee on Accreditation of the International Committee on Coordination of National Human Rights Institutions for Human Rights Promotion and Protection (CIC) of the High Commission for Human Rights (HCDH) to recommend to the CIC Office to downgrade its status from A to B as a result of:

- The obvious lack of financial, material and human support on the part of the Government of Senegal ;
- The absence of a transparent and pluralistic process in the appointment of its members ;
- The appointment of part-time members to the institution ;
- The inability of the CSDH to appoint its own staff.

242. With the advent of President Macky Sall, the CSDH seems to have rediscovered its status as the principal State institution for promoting and protecting human rights: a new President has been appointed and the Government has made a firm commitment to provide the institution with sufficient budgetary resources and staff to enable it to fulfill its mandate independently and impartially.

IV. FREEDOM OF EXPRESSION (Article 9):

⁷⁹ Cf. Paragraph 2 of Article 3 of Law 97-04 of 10 March 1997 on the Senegalese Human Rights Committee

⁸⁰ Cf. Article 8 of Law 97-04 of 10 March 1997 on the Senegalese Human Rights Committee

⁸¹ Cf. Presidential Order No 005691 of 6 July 2004

⁸² See Articles 3 to 10 of the Presidential Order No 005691 of 6 July 2004.

⁸³ According to Article 2 of the aforementioned Order, the High Commission, with the exception of the Secretariat of the High Commission, is composed of a Human Rights Desk and an International Humanitarian Law Monitoring, Documentation and Human Rights Promotion Unit, each with a special mandate overlapping that of the CSDH.

243. Under responses and recommendations of 2003, developments have already shown efforts made by Senegal as far as freedom of expression in the media is concerned. We are only adding a number of legislative clarifications.

244. The Senegalese Constitution, in Article 8, recognizes fundamental personal freedoms which essentially include freedom of opinion and expression.

245. Article 10 clarifies the content and the scope of the freedom of opinion since it establishes that « each person has the right to express and disseminate his opinions through speech, writing, pictures, peaceful march on condition that the exercise of this right does not impair the honor and dignity of others nor breach public order. »

246. This principle is supplemented by the provisions of Article 11 which states that « the establishment of a media outlet for political, economic, cultural, sporting, social, recreational or scientific information shall be free and shall not be subject to prior authorization. »

247. These provisions make the freedom of the press a Constitutional freedom and the freedom of expression a condition and a guarantee for the existence of democracy in Senegal. These freedoms are so fundamental that their existence is one of the essential guarantees of the respect for other rights and freedoms and for national sovereignty.

248. This is the reason why the Senegalese government quickly began organizing the modalities for exercising them and creating the necessary conditions for exercising them fully. Thus, the Government of Senegal, in close collaboration with media professionals, developed a regulation on social communication outlets, professional journalists and communication technicians particularly through Law 1996-04 of 22 February 1996.

B. IMPLEMENTATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

249. It is of paramount importance in a country such as Senegal where 46.7% of the population lives below the poverty line⁸⁴. This explains why the Constitution devotes six (6) provisions⁸⁵ under Title II⁸⁶ to them, and respect for them constitutes « the foundation of Senegalese society⁸⁷ ». In the current Senegalese situation, implementing economic, social and cultural rights amounts to prioritizing the provision of care for the most deprived and/or vulnerable sections of the population and making them the pillars of the poverty alleviation strategy in the country.

⁸⁴ Cf. National Statistical and Demographic Agency, Economic and Social Situation of Senegal in 2011, page 156.

⁸⁵ Article 8 has been devoted to economic, social and collective rights, Articles 17, 19 and 20 to Family matters, Articles 21 to 23 to education, Articles 24 and 25 to cultural rights and Article 25 to the right to work.

⁸⁶ « Public and personal freedoms, economic and social rights as well as collective rights »

⁸⁷ See the 7th Recital of the Preamble of the Constitution.

250. The purpose of this section, based on the dynamic interpretation that your august institution has provided, is to present the relevant provisions of the African Charter on economic, social and cultural rights⁸⁸, the different actions initiated by the Government of Senegal to effectively address the multi-dimensional phenomenon of poverty and improve the living conditions of Senegalese citizens and provide an overview of the implementation of the rights to education and health.

I. IMPLEMENTATION OF ECONOMIC AND SOCIAL RIGHTS AS PART OF POVERTY ALLEVIATION

251. It will be considered from the point of view of actions taken by the Senegalese Government to enable poor and vulnerable sections of the population to enjoy a minimum of income security, livelihood opportunities and access to decent housing. The analysis will centre on food fortification, food aid to the deprived, youth employment and access to housing. It shows not only the scope of the task for the authorities, but more importantly, the financial difficulties and other challenges the government is compelled to address to make the enjoyment of economic, social and cultural rights a reality in the country.

(a) Nutritional Enhancement :

252. As part of the implementation of the Nutrition Enhancement Programme (PRN), to reduce by half the prevalence of malnutrition among infants of between 0 to 5 years, the Government of Senegal established a Child Targeted Nutrition and Social Transfer Project (NETS) in 2001 by which an allocation of 14,000 CFA francs (about US\$30) is paid every two months over a period of six months to mothers of children below 5 years who find themselves in a vulnerable situation. The real purpose of this project is to reduce the impact of rising food prices by increasing the consumption of vulnerable households with children of less than 5 years.

253. According to data from the Poverty Monitoring Survey in Senegal (ESPS II), only 7.72% of eligible persons⁸⁹ benefitted from the Nutritional Enhancement Programme at the national level.

(b) Food Aid to Deprived Persons :

⁸⁸ Particularly in Communication No 155/1996, The Social and Economic Rights Center and the Center for Economic and Social Rights vs. The Federal Republic of Nigeria in which you declared that the right to food and the right to housing are stipulated in the African Charter (see in particular paragraphs 60, 64 and 65 of the Communication)

⁸⁹ Less than 300.000 persons.

254. It is carried out by way of food assistance to extremely vulnerable zones in terms of nutrition provided by the Food Security Commission (CSA), the National Solidarity Fund (FSN) and the World Food Programme (WFP).

255. This programme is intended to ensure availability, management and monitoring of food security stocks at the national level to address shortages, food emergencies and assistance during large gatherings (religious festivals such as the **Maouloud** and the Magal of Touba). The food aid is provided at the request of disaster-stricken people or of large gatherings with the consent of the Prime Minister of Senegal.

256. The programme also helps to provide coupons for vulnerable households to procure foodstuffs from certified retailers. Thus, in 10 communes of Dakar and in the suburbs of Ziguinchor, each member of a household receives CFAF 3000 (about US\$6) per month for 6 months. In 2011, 13.01% of the population entitled to food aid for deprived persons benefitted from this scheme.

(c) Youth Employment ⁹⁰ :

257. In Senegal, it is viewed as an important leverage for the attainment of the right to work and also for poverty alleviation because the employment market in the country is marked by:

- A low level of employment with an atrophied modern sector (6.2%);
- A high level of urban unemployment particularly among the youth (national unemployment rate of 12.9% as against 18.59% in Dakar) ; and
- A chronic under-employment in the rural communities, the main source of massive migratory movement of the population from rural areas to the major urban centres.

258. Unemployment is very high among the youth who constitute a greater proportion of the population. Today, almost 60% of the population below 20 years and the youth who have reached the working age within the 15 and 34 year bracket are more than half of the active population and every year almost 100.000 new job seekers join the labour market. This situation is not without consequence on the current and future situation of the youth in this same job market.

259. Women who constitute the largest part of the population are poorly represented and are often involved in marginal activities, and they are poorly paid. Their gross participation rate, which was around 34% in the 1970's increased tremendously to 46.3% in 2001.

260. The main barriers to youth employment are the following:

⁹⁰ A greater part of the information on this issue is drawn from the report of the **Study Tour on Skills Development for Youth Employment Programme : Policies/measures taken to address youth unemployment in Senegal since 2000**, Ankaraaris, January 2012

- Problem of qualification of the workforce ;
- Problem of mismatch of education with jobs ;
- Weak modern private sector (less than 10% of the total employment) and the fact that more than 90% of the jobs are informal or rural and they are mostly insecure and less decent ;
- Low level of investment due to low savings at the local level and low foreign direct investments, though the situation is now improving.

261. To address this problem, the government of Senegal made a lot of initiatives aimed at developing the skills of the youth to promote their integration and keep them in employment or even promote well-paid self-employed jobs and the entrepreneurial spirit. These include:

- Initiatives aimed at providing financial and technical support :
 - National Youth Development Fund (FNPJ);
 - National Women's Entrepreneurship Development Fund (FNPEF) ;
 - ASC/Employment/Youth Project ;
 - Youth Placement Fund (FIJ);
 - Animal Husbandry Stabilization Fund (FSE) ; and
 - Youth Placement Fund in the Environmental Sector (FISE).
- Support and Placement Structures :
 - National Youth Employment Agency (ANEJ) ;
 - National Civic Service ;
 - National Suburban Youth Employment Office (OFEJBAN) ; and the
 - National REVA Plan Agency.
- Training and Training Financing structures :
 - Technical and Vocational Training Development Fund (FONDEF) ;
 - National Vocational Training Office (OFF) ; and
 - National Employment and Qualifications Centre (CNEQUF).

262. In this regard, the intervention by ANEJ, which has since 2009 been a Member of the High Council for Employment and Training for graduates and non graduates, illustrates the enormous efforts made the Government of Senegal to assist this social category to exercise their right to work . In fact, since its creation, this organization has carried out the following, at the institutional level:

-In 2006, it validated a National Youth Employment Plan for the period 2006-2015 (PANEJ) which, among others, was intended to:

- Make the Youth Sector Development Policy Letter operational ;
- Coordinate initiatives taken to promote youth employment;

- Establish consistency between the initiatives taken towards youth employment and international standards developed on this subject matter.

-Design and implement a new National Government and Employers' Agreement for the promotion of youth employment (2007);

-Validate the Document on the New National Employment Policy (NPNE) for the net creation of a number of modern productive, sustainable and well-paid jobs (2010);

-Create a single database for the management of job offers between the National Labour Force Service and ANEJ, with the financial and technical support of the International Labour Organization (ILO);

-Establish a Self-Employment Resource Unit (UNIR);

-Establish a Coordination Unit at the Ministry of Youth for capacity building projects and programmes aimed at monitoring and evaluating youth employment.

263. These different initiatives enabled ANEJ to guide and inform some 42,552 young persons, assist 8647 young people to receive well-paid vocational training and 2465 others to prepare business plans and 3668 young ones to get jobs in business enterprises and to create direct jobs⁹¹.

(d) Access to decent housing :

264. It is organized around two programmes:

- The « **Jaxaay** » Plan which consists of rehousing the people in Dakar suburbs whose houses were devastated by floods in the country between 2007 and 2011 under very favourable financial terms ;
- The programme is dubbed « one family-one roof »: This programme targets the construction of 5000 public housing units in Dakar and in other regions for Government employees and workers. Among others, it seeks to :
 - Promote alternative construction techniques ;
 - Support the population as part of a self-building process ;
 - Ensure compliance with building standards in the public housing scheme for safety reasons ;
 - Collect information on the availability of land for purposes of the project ;

⁹¹ See Report of the **Study Tour on the Development of Skills for the Youth Employment Programme: Policies/Measures taken to address youth unemployment in Senegal since 2000**, Ankaraaris, January 2012, page 20.

- Assess the projects awarded to public and private promoters ; and
- Manage the database of applicants for housing units in Senegal.

(e) Access to water and sanitation :

265. Access to water and sanitation is important for the implementation of economic, social and cultural rights in Senegal since it is an essential ingredient for health, survival, growth and development of the Senegalese population. For example, according to a study carried out in the country⁹², access to sanitation has one of the most direct effects on labour productivity, diseases, school attendance and improvement of the personal safety of women. In Senegal, particularly in the rural areas, this basic need has, with time, become a big luxury for majority of the people.

- **Access to water⁹³ :**

266. In 2011, according to results from the ESPS II, though more than 80% of the inhabitants of Dakar use running water as major source of water supply, people using public taps in the neighborhoods as a key source of water supply account for 13.2% of the population.

267. In the rural communities and other cities, the supply of clean drinking tap water involves 28% and 68% of the population respectively. Though the main source of water supply is through the taps, the fact still remains that 16.8% of the Senegalese population still use unprotected dug wells, whereas in the cities in the countryside, 10.8% of the population use protected dug wells as against 8% in the rural communities and 0.7% in Dakar.

268. Safe drinking water coverage rate⁹⁴ actually increased in the rural areas in Senegal from 86.4% in 2010 to 90.1% in 2011, though the proportion of this population without access to drinking water is estimated to be 20% as against 1.3% in the urban areas.

- **Access to sanitation :**

269. The rate of access to sanitation, i.e. the proportion of the population with access to basic sanitation system⁹⁵ was 47.4% in Senegal. Out of this population, 37% mainly use flush toilets with septic tanks and 15.3% use uncovered latrines as toilet facility.

⁹² See Joint Annual Review (RAC) of the Millennium Drinking Water and Sanitation Programme (PEPAM) 2012.

⁹³ Cf. National Statistical and Demographic Agency, **Economic and Social Situation of Senegal in 2011**, pages 163-164.

⁹⁴ Corresponding to the number of days in the year during which drinking water service has been continuous.

⁹⁵ That is a toilet flushing system connected to the sewage, the septic tank or to pit latrines.

270. According to the 2012 Joint Annual Review (RAC), performances were recorded in access by the population in rural communities to high quality sanitation as the rate improved from 26.2% in 2005 to 34.3% in 2011 and this progress is attributable to the PEPAM which caused the rate to increase from 29.6% in 2010 to 34.3% in 2011. But these results disguise the wide disparities in access to quality sanitation, because until now 65.7% of the population in the rural areas still does not have access to quality sanitation as against only 36.7% in the urban centres.

271. A lot of efforts still need to be made to ensure that water and sanitation contribute effectively to the realization of the basic economic, social and cultural rights simply because the financial resources to help speed up the rate of improvement of access indicators are slow in coming. According to the UNDP, the total amount required for Senegal to achieve the MDGs by 2015 in water and sanitation aspects is CFA 677 billion francs, accounting for an average of 67.7 billion CFA francs per year. But since 2005, the Senegalese Government has been contributing to the funding of this sector by 21.6% as against 3.7% for local governments. This gives the impression that the improvement of the health of the population will still take some time to achieve.

II. THE RIGHT TO EDUCATION (Article 15)

272. Since the adoption of the Education for All Programme (EFA) in 2000, in the wake of the Ten-year Education and Training Plan (PDEF), significant efforts have been made by the Government of Senegal to enhance the level of education and to develop skills among the population. The main purpose of this new policy is not only to underscore the fact that education is a critical right of the individual and that access, quality and especially its management should be guaranteed by the Senegalese government and it must also be recalled that the missions of education are mostly economic, social and cultural.

273. This explains the choice of the Senegalese authorities to shoulder public education expenditure to the tune of 6% of the gross domestic product (GDP) of Senegal in accordance with the recommendation of the United Nations Educational, Scientific and Cultural Organization (UNESCO). For example, in 2010, government education expenditure was estimated at CFA 385 billion francs, accounting for almost 6.04% of the GDP of Senegal⁹⁶. An in-depth study of the budget shows that recurrent budget for the education sector in 2010 accounted for 43.7% of the total recurrent expenditure of the Government (excluding common expenditure and debt servicing) whereas investment

⁹⁶ See the National Statistical and Demographic Agency, **Economic and Social Situation of Senegal in 2011**, February 2013, page 95.

expenditure in education accounted for only 8.5% of capital expenditure of the Senegalese government⁹⁷.

274. The Senegalese government is not the only one to finance the education sector but the 2010 distribution shows that contributions in percentage terms were as follows:

- Government : 70%
- Senegalese local governments (communes, rural communities and regional Councils) : 17%
- Financial and technical partners : 12%
- Senegalese households : 1%

275. More concretely, the Government of Senegal, through the PDEF, set the following objectives to be achieved by 2015:

- Develop early childhood education and protection ;
- Open up access for compulsory and free primary education for all;
- Promote the acquisition of the necessary knowledge and life skills by the youth and adults ;
- Promote adult literacy ;
- Achieve gender equality ;
- Improve the quality of education ;
- It must also be underscored that all these objectives reflect the national education orientation law of Senegal, in its core missions ;
- Prepare the conditions for comprehensive development to be undertaken by the entire nation ;
- Promote national values;
- Enhance the cultural standard of the population.

276. Thus, the gross pre-school enrolment rate improved from 8% in 2006 to 10.7% in 2011. The overall enrollment rate at the elementary school increased by 10 points (103.2% in 2006 as against 113% in 2011). The gross enrollment rate in primary school was 79.7% in 2011 as against 75.8% in 2005 with wide regional disparities. Dakar (102.6%) and Ziguinchor (115.6%) recorded the highest rates while Kaffrine (44.2%), Diourbel (47%) recorded low performance levels. The EFA has not yet been attained as the net primary school enrolment rate in 2011 was around 59.6% whilst the rate in 2005 was 54.6%.

277. One-third of the children of school-going age do not complete primary education. The unmet demand for schooling, on the one hand, and the large number of drop-outs (about 8% in 2010), on the other hand, limit the gains. The number of school teachers increased tremendously from 396 to 2686 in the pre-school system, from 19876 to 42931 in the elementary school and 6471 to 17119

⁹⁷ See the National Statistical and Demographic Agency, **Economic and Social Situation of Senegal in 2011**, February 2013, page 96.

in the middle secondary, or an increase of 21%, 8% and 10% respectively between 2000 and 2010.

278. In the area of vocational and technical education as well as literacy and non-formal education, the efforts made are still inadequate. The results of vocational and technical education show wide regional disparities; the Dakar region always has the highest concentration of students (62.5%) including most of the private institutions (79.3%). The regions of Louga, Matam and Fatick account for the lowest in terms of students.

279. Higher education is growing rapidly in terms of the number of students. The number of baccalaureate holders increased from 29908 in 2010, to 30564 in 2011, with girls accounting for 40.9%. The entry of this huge number of students into public universities is a thorny issue in spite of the contribution of the private sector to creating access for qualified persons to enter the tertiary level of education. Notwithstanding the establishment of Regional University Centres (CUR), the Cheikh Anta Diop University is bursting at its seams. The development of public education is slow in catching up with the demand.

280. Concerning access by girls to education in particular, the following results were obtained in terms of statistics during the 2010-2011 period:

- At the pre-school level, out of 160687 children, 84784 were girls as against 75903 boys ;
- In the elementary school, out of a total of 1,725,839 pupils, 881678 were girls as against 844161 for boys, representing 51.1% of girls ;
- In the middle school, out of an overall total of 617911 pupils, 298981 were girls as against 318930 for boys, with girls accounting for 48.4% ;
- In general at the secondary education level, out of an overall total of 178547 students, 77263 were girls as against 101284 for boys, with girls accounting for 43.3%.

281. Furthermore, the following initiatives and reforms helped to improve the quality of educational delivery:

- Amendment of Law 91- 92 for the adoption of a 10-year compulsory education (6-16 years) in 2004 ;
- Diversification of educational delivery through :
 - State and private French-Arabic schools ;
 - Grassroots community schools ;
 - The policy of establishing modern Daaras ;
 - The policy of inclusive education (provision of care for children with special needs⁹⁸).
- Establishment of Regional Training Centres for Educational Staff (CRFPE) for preliminary and continuing education of teachers ;

⁹⁸ See Chapter III of the Social Orientation Law No 2010-15 of 6 July 2010.

- Providing educational inputs free of charge (+2 billion/year in the Government budget) ;
- Development of technical and vocational education ;
- Adoption of a results-based management approach with the introduction of the SYSGEAR software;
- Substantial increase in the budgetary outlay from 102 billion in 2000 to 314 billion in 2010 ;
- Promotion of Information and Communication Technologies (TICE) in schools;
- Design and preparation of school textbooks and promotion of national education ;
- Promotion of a gender-equity approach and enrolment of girls.

282. Concerning the right to education of persons with disabilities, holders of equality of opportunity cards enjoy educational and training rights and benefits⁹⁹. For this reason, the government of Senegal, pursuant to Article 16 of the Law of Social Orientation No 2010-15 of 06 July 2010, established a Special Education Committee in the regions, tasked¹⁰⁰, among others, with the following:

- Designate the institutions and services likely to provide special education corresponding to the needs of persons with disabilities ;
- Draw up the list of technical, human and material needs for the operationalization of the special educational institutions;
- Establish and ensure regular update of the database on special education of persons ;
- Transmit the needs expressed to the Ministries concerned: Education, Training, Health, Social Welfare and Justice.

283. With regard to the right of every Senegalese citizen to participate in the cultural life of his country and promote moral and traditional values, several initiatives were taken by the Government. The following may be cited here within the context of freedom of access to cultural life:

- Codification and development of national languages;
- Promotion of freedom of expression through publications produced by Les Nouvelles Editions of Senegal and other publishers with the support of the Ministry of Culture;
- Promotion of access to books and reading with particular emphasis on the youth within the context of the International Book Fair and Teaching Materials organized every two years ;
- Development and supply of fiction or documentaries , games and audio-visual materials, regional public libraries, reading centres and cultural centres which are open to the general public ;

⁹⁹ See article 7 of Decree No 2012-1038 of 02 October 2012 on technical committees and special education.

¹⁰⁰ See article 9 of Decree No 2012-1038 of 02 October 2012 on technical committees and special education.

- Removal of taxes from imported books ;
- Implementation of a large-scale programme in 2013 for the promotion and development of local cultural expressions ;
- Promotion of youth activities through the organization of open-air events at the regional cultural centres and at the Maison de la Culture Doua SECK.

284. In spite of the progress achieved by Senegal in the implementation of the right to education, the constraints are worth noting. Generally, the main problem confronting education is the low level of internal efficiency which translates into low-quality education, inadequate teaching and learning materials including reception facilities related to a deficit in terms of volume, delays in building classrooms and qualification gaps among teaching personnel. This situation resulted in the mass recruitment of pupil teachers and individual contractors with its attendant negative effects of frequent school calendar disruptions and the required number of hours; all these in spite of the significant efforts made by the government, technical and financial partners and by parents of schoolchildren whose contribution to financing education has become enormous.

285. The following additional points are worth highlighting:

- Failure to give effect to compulsory education of children from 6 to 16 years ;
- Lack of efficiency in managing resources allocated for education (financial, human and material) ;
- Non completion of the devolution and decentralization process started in 1996 for the management of education;
- Existence of large numbers of temporary shelters erected to improve access to education ;
- Option to prioritize general education over several decades to the detriment of technical and vocational training ;
- Lack of adequate care for children with special educational needs ;
- Extending coverage to non-formal educational institutions such as the Daaras and the grassroots community schools and incorporation of adult literacy programmes ;

286. All these limitations impede the translation of the huge investments made into concrete results, thus the need to develop strategies to substantially minimize them in order to achieve the millennium development goals (MDGs) under the best possible conditions.

III. THE RIGHT TO HEALTH (Article 16)

287. Senegal has not yet attained the standards prescribed by the World Health Organization (WHO) in terms of coverage of health infrastructural facilities ¹⁰¹ and qualified personnel¹⁰², indicators which remain unequally distributed across the nation to the detriment of several rural communities. The same situation applies to the supply of medicines. In terms of demand, the extremely poor people have systematically not benefitted from the free programmes introduced, thus reducing their capacity to access healthcare to which they are entitled.

288. In terms of resources, the Government of Senegal, in its commitment to achieve the MDGs under healthcare, increased the budgetary allocation for health to the level recommended by the WHO, that is 9% of the total budget of the country¹⁰³. Furthermore, investment in healthcare is viewed as an important vehicle for economic development because good health of the population promotes development through the interplay of different mechanisms:

- Increase in productivity of the labour force promotes investment ;
- Development of human capital ;
- Demographic growth with the simultaneous improvement in the health situation and the level of education leads on the one hand, to decline in mortality rates, and decline in fertility rates, on the other.

289. The health situation of the population presents varied results. Malaria still remains the highest cause of morbidity in Senegal and it accounts for 42.6% of the causes of sicknesses. The efforts to control malaria resulted in a spectacular decline of malaria-related morbidity in proportional terms from 39.7%, in 2000, to 3% in 2009.

290. However, cardiovascular diseases have become a serious public health issue as they have increased across the entire country. Neglected for quite a long time as a result of the widespread nature of transmissible diseases, they now constitute the second cause of deaths after malaria in the health centres in Dakar. These are chronic and expensive diseases which create a huge burden of morbidity and mortality. Among the risk factors associated with cardiovascular diseases, one may mention high blood pressure (50%), smoking (47%), and obesity (23%), cholesterol (12.5% and diabetes (11.6%). Among the cardiovascular diseases, heart attack is a particularly disturbing problem as it is the primary cause of admission of patients to the cardiology departments of hospitals with a rate of between 37 and 40%.

¹⁰¹ In 2010, Senegal had 25 hospitals, 75 health districts with 78 health centres, with 23 of them offering full emergency obstetrical care, 1195 health posts, 270 health units and 476 maternity clinics. (**AIDS Control Strategic Plan 2011-2015 of the Prime Minister's Office, page 7**)

¹⁰² Whilst the WHO proposes a ratio of 1 doctor to 1000 inhabitants, 1 nurse to 300 inhabitants and 1 midwife to 300 inhabitants, Senegal has 1 doctor to 11000 inhabitants, 1 nurse to 4200 inhabitants and 1 midwife to 4000 inhabitants. (**AIDS Control Strategic Plan 2011-2015 of the Prime Minister's Office, page 9**)

¹⁰³ Cf. National Statistical and Demographic Agency, **Demand for Reproductive Health Services: The Case of Senegal**, December 2009, page 7.

291. With regard to AIDS, 0.7% of Senegalese adults aged between 15-49 years are HIV positive, according to 2010-2011 statistical data. This rate was the same in 2005. Women in the regions of Kédougou (2.5%) and Kolda (2.4%) and women who have not had primary education (1.2%) have higher HIV prevalence rates than the others. Among the men, the highest HIV prevalence rate can be found in the Kolda region (2.4%) and to a lesser extent in Tambacounda (1.2%) and Ziguinchor (0.9%). Anti-retroviral drugs are free.

292. Irrespective of the type of child mortality considered, the fact still remains that the level has gone up significantly. For the period between 2007 and 2011, 47 per 1000 live births died before their first birthday, out of which 29% died between 0 and exactly 1 month (accounting for 61.7% of infant mortality) and 18% died between 1 and exactly 12 months. Among the infants who reached their first birthday, 26% died before their fifth birthday.

293. In the same vein, infant and child mortality is very high in spite of the 45% reduction recorded between 1992 and 2010-2011, a year in which the mortality rate stood at 72 per 1000 live births. To a large extent, this state of affairs is attributable to the significant improvement in vaccine coverage at the national level from 59% to 63% of infants of between 12-23 months. Thus, the attainment of the objective of reducing infant and child mortality to 44 per 1000 live births by 2015 may be compromised.

294. With regard to maternal mortality, it stood at 392 per 100 000 live births in 2010-2011, accounting for a decline of 2% in 6 years. However, this rate of decline is too slow for the attainment of the MDG's target of 127 deaths per 100 000 live births by 2015. However, efforts have been made in the area of maternal health with the proportion of births assisted by a qualified birth attendant increasing from 49%, in 1999, to 65.1% in 2010-2011. The rate of antenatal consultation, with at least one antenatal visit moved upwards to 93.3% in 2010-2011, as against 74%, in 2007.

295. However, there is the need for further improvement in the reproductive health services delivery by speeding up the process of reduction of maternal mortality as well as maternal and neonatal morbidity. This foreshadows the repositioning of family planning to cover unmet needs estimated at 29.4%. The coverage of these needs will help reduce maternal mortality from 30 to 20% and infant mortality from 12% to 20%.

296. Moreover, the chronic malnutrition rate of children below 5 years of age reduced by half from 30% in 2000 to 16% in 2001. By contrast, in the rural areas, 21% of children were affected by this form of malnutrition as against 12% in the urban communities. The prevalence of malnutrition is high in regions such as Sédhiou (27%), Kolda (26%), Saint-Louis (25%), Matam (25%), Kaffrine (24%), Louga (23%), Tambacounda (22%) and Kédougou (21%) as against 9% in Dakar.

297. The major constraints bedeviling the decline in maternal mortality as well as infant and child mortality which the government of Senegal is striving to control through its new policies are:

- Difficulties in accessing care and drugs ;
- Time spent in reaching a healthcare facility and the average fee paid for consultation could also be a limiting factor for access to health care;
- Interruptions in vaccine supplies in health centres and health posts ;
- Very limited capacity for resource mobilization for the health sector ; and
- Lack of awareness raising and communication among the various stakeholders in the sector leading to unwarranted reduction and inconsistency in the implementation of activities.

298. Moreover, significant gains have been made in access to drinking water but poor results observed in access to sanitation:

- If current trends are maintained, the objective of access to water for 100% of the urban population and 82% of the rural population could be attained: this rate increased from 93% in 2006, to 98.79% in 2011 for the urban population, and from 69.5% in 2006 to 80.1% in 2011 for the rural population. Beyond the infrastructural gains, the major challenge at this stage is the provision of regular supply of quality drinking water.
- In the area of sanitation, a lot of efforts still need to be made to improve access by the rural population to an improved system of sanitation. The rate of access to sanitation in the urban centres rose from 62% in 2005 to 63.3% in 2011 while the rate moved from 26.2% in 2005 to 34.3% in 2011.

299. The high costs and low investments are visibly the root cause of inadequate basic infrastructure especially in the rural communities. In addition to these, one can mention the high cost of individual sanitation infrastructure, poor households and inadequate resources for local governments. The upsurge of floods in 2012 clearly showed lack of consistency in the management of housing occupancy areas and drainage systems in the urban centres in general, and waterways, in particular.

300. On housing and living conditions, it must be noted that as a result of the rapid urbanization related to rural-urban drift, the dirty and insanitary parts of most urban centres of Senegal account for 30 to 40% of occupied lands, and these locations are home to a very huge percentage of the population.

301. The reckless occupation of land, building of « slums and shacks », the problems of hygiene and public health caused by repeated floods, insecurity relating to poor urbanization are a host of factors which have worsened the vulnerability of the population and deepened the worsening living conditions in the popular communities, such a situation substantially reduces the right of Senegalese citizens to health.

302. In an attempt to put things back in their proper order, the Government of Senegal started to:

- Create conditions for extensive financing of housing units by reviewing the tax components and the high expenses which unduly add to the costs ;
- Promote the participation of concession companies for the initial servicing of the planned human settlements ;
- Establish a system of public financing of roads and utilities, particularly in the rural areas ;
- Put an end to the reckless occupancy of land by providing land access to majority of Senegalese.

303. Having said this, in terms of protection of the right of Senegalese citizens to health, the Government of Senegal has made innovations in the following two specific areas, particularly in the promotion and protection of the rights of persons living with HIV/AIDS and the protection of the rights of persons living with disabilities.

a. Protection of the right of persons living with disabilities

304. In 2010, the Senegalese authorities adopted a law on social orientation with one of its major objectives being to provide persons living with disabilities in Senegal « the necessary medical care for their physical and mental health ¹⁰⁴ », In this regard, they created an « equal opportunities card » which enables the bearer to enjoy complete or partial free healthcare in State medical institutions, local governments and public organisations¹⁰⁵, depending on the seriousness of one's case and at reduced fees¹⁰⁶ in private health services in Senegal. ²²⁴ The extension of healthcare by the government covers orthopaedic equipment and the necessary technical aids to the person with disability in cases where the latter does not enjoy any social security.

305. To enable all Senegalese citizens living with a disability to enjoy this facility, a technical Committee was established in each of the 45 regions of the country, presided over by the Prefects who are tasked with handling the applications for equal opportunities cards and to draw up the list of persons who qualify.¹⁰⁷

306. The coverage provided by the equal opportunities card in the area of healthcare is quite broad because apart from the entitlement to « enjoy the rights and benefits in terms of access to healthcare and rehabilitation », it assists

¹⁰⁴ See Article 7 of the Social Orientation Law No 2010-15 of 6 July 2010.

¹⁰⁵ See paragraph 1 of Article 8 of the Orientation Law No 2010-15 of 6 July 2010.

¹⁰⁶ See paragraph 2 of Article 8 of the Orientation Law No 2010-15 of 6 July 2010.

¹⁰⁷ See Article 1 of Decree 2012-1038 on Technical Committees and Special Education

the beneficiary to access «any other benefit likely to contribute to the promotion and protection of the rights¹⁰⁸» of persons living with disabilities.

307. Furthermore, the law mandates State institutions to ensure the participation of organizations of persons living with disabilities in « information, education and communication campaigns for screening and provision of care for disability diseases during antenatal consultations¹⁰⁹ » and to also take part in general programmes on prevention and awareness-raising in the area of health, road traffic as well as in vocational, educational and university settings¹¹⁰. »

b. Protection of the rights of persons infected with HIV/AIDS :

308. In spite of its youthful population, the overall HIV/AIDS prevalence rate in Senegal is 0.7%. But this low rate conceals disparities which vary according to regions, gender, age and target¹¹¹.

309. Thus, among both men and women, the highest prevalence rates can be found in the southern regions: in Ziguinchor (3.4% for women and 0.8% for men) and in Kolda (92.7% for women and 1.1% for men) and the lowest prevalence rates can be found in the central regions: Diourbel (0.1% for women and 0.0% for men) and Thiès (0.4% for women and 0.3% for men).

310. At the behavioral level among the youth, studies indicate that 10% of this group had sexual relations before the age of 15 and 19% of young girls started a sexually-active life between 15 and 19 years. This explains why the highest prevalence rates are observed between 40-49 years. Among women, the highest prevalence rates (1.5%) occur from the age of 25 years.

311. At the beginning of the epidemic, the ratio of infected men to women was 2 to 1.6 with a prevalence of 0.9 among women and 0.4 among men which bore testimony about the feminization of the epidemic.

312. The epidemiological situation among the high-risk population and gateway population is the following : 18.5% among professional sex workers, 21.8% among men having sex with other men (MSM), 1.4% among truck drivers, 0.8% among fishermen, 0.7% among soldiers, 0.2% among policemen, 1.9% among gold washers and 1.5% among detainees.

313. On the whole, the number of persons infected with HIV/AIDS in Senegal was estimated at 54,505. This positive result was obtained through a rapid reaction by the Senegalese authorities when they were confronted with the pandemic, as this reaction was marked by « its swiftness, by the sustainability of the success

¹⁰⁸ See Article 7 of Decree 2012-1038 on Technical Committees and Special Education

¹⁰⁹ See paragraph 3 of Article 11 of the Orientation Law No 2010-15 of 6 July 2010.

¹¹⁰ See paragraph 1 of Article 12 of the Orientation Law No 2010-15 of 6 July 2010.

¹¹¹ See **AIDS Control Strategic Plan 2011-2015** of the Prime Minister's Office, pages 11-16.

recorded in its prevention, by the proactive nature of the antiretroviral therapy and by the leadership role at the highest level of Government.¹¹² »

314. At the institutional level, immediately the early cases of AIDS were detected in 1986, the Senegalese authorities established a National AIDS Control Committee, an institution charged with the management and coordination of the response by the Ministry of Health which comprised representatives of the Ministries of Youth, Education, Women's Affairs and the Armed Forces.

315. In 2001, in the aftermath of the Declaration by Heads of State at the United Nations Special Session on HIV/AIDS, the coordination of AIDS control was placed under the Prime Minister's Office and the National AIDS Control Council (CNLS)¹¹³ was established. Under the Chairmanship of the Prime Minister, the CNLS was mainly tasked with¹¹⁴ :

- Ensuring proper implementation of decisions and recommendations emerging from its meetings relating to the National Multi-Sectoral AIDS Control Programme ;
- Providing advisory opinion and assisting the government in the definition and guidance of AIDS control policy and the search for ways and means of implementing it ;
- Conducting a study on issues submitted to it on AIDS Control by the President of the Republic, the Prime Minister and other institutions.

316. The CNLS oversees the National Executive Secretariat which coordinates AIDS control at the national level through the Ministries, regional and departmental public institutions that are directly concerned with HIV/AIDS, regional¹¹⁵ and departmental¹¹⁶ AIDS Control Committees in close partnership with civil society, the private sector and local governments.

317. The establishment of this institution strengthened the political and managerial leadership and made the ownership of AIDS Control Programme more effective in all Government institutions, among civil society stakeholders, the private sector and religious denominations.

318. Moreover, this process enabled the Government to put in place a legal framework in 2010 concerning prevention, care, promotion and protection of the rights of infected and affected persons, recognized vulnerable groups and the population at large.

¹¹² See **AIDS Control Strategic Plan 2011-2015 of the Prime Minister's Office**, page 21

¹¹³ See Decree No 2005-550 of 22 June 2005 on the establishment of a National AIDS Control Council.

¹¹⁴ See Article 2 of Decree No 2005-550 of 22 June 2005 on the establishment of a National AIDS Control Council.

¹¹⁵ It is chaired by the Governor, and the Vice Chair position is held by the President of the Regional Council

¹¹⁶ It is chaired by the Prefect, and the Vice-Chair position is held by the Mayor.

319. Apart from helping to address the issue of overall healthcare of persons living with HIV and ensuring prevention to stem the spread of the virus, the Law on HIV/AIDS¹¹⁷ is meant to fulfill the following key objectives¹¹⁸ :

- Eliminate all forms of stigmatization and discrimination against persons infected with or affected by HIV/AIDS and to promote positive attitudes among these persons ;
- Encourage infected persons or affected ones to carry out their responsibilities vis-à-vis non infected persons ;
- Protect women, children, other vulnerable population and medical personnel ;
- Establish a legal framework for research into HIV/AIDS
- Criminalize and administer criminal sanctions against wrong behavior.

320. The Law provides for severe sanctions for the perpetrators of the following offences:

- **Discriminatory acts**¹¹⁹ : persons found guilty shall be sentenced to imprisonment of between 1 and 5 years and a fine of between CFAF 100.000 and CFAF 1 million. The fact that one interferes in health delivery or HIV/AIDS control may constitute an aggravating circumstance for the perpetrator of the act leading to the doubling of the applicable sentence ;
- **Willful transmission of HIV**¹²⁰ : any person with knowledge about his HIV positive status and the modes of transmission of the HIV and has unprotected sexual relations with the aim of transmitting it to another person shall be punished with a term of imprisonment of between 5 and 10 years and a fine of between CFAF 2 and 5 million.
- **Dissemination of false or wrong information on HIV and AIDS**¹²¹ : any person found guilty of spreading false or inaccurate information on HIV/AIDS and the manager of the medium of public broadcasting who becomes the channel of disclosure of this information shall be sentenced to between 6 and 12 months imprisonment and payment of a fine of between CFAF 500.000 to CFAF 2 million.
- **Violation of the obligation of confidentiality**¹²² : the person who, beyond cases permissible by law, provides or reveals the HIV/AIDS status of an infected person shall be liable to a term of imprisonment of 6 months and a fine of between CFAF 50.000 and CFAF 300.000. But the action at law can be initiated only by the victim, his legal counsel or assigns. Where it concerns a member of the medical staff, the court may order the

¹¹⁷ Law No 2010-03 of 9 April 2010.

¹¹⁸ See Explanatory Memoranda on Law No 2010-03 of 9 April 2010.

¹¹⁹ Cf. Articles 24 to 30 and 35 of Law No 2010-03 of 9 April 2010.

¹²⁰ Cf. Article 36 of Law No 2010-03 of 9 April 2010.

¹²¹ Cf. Article 37 of Law No 2010-03 of 9 April 2010.

¹²² Cf. Articles 20 and 38 of Law No 2010-03 of 9 April 2010.

practising license of the perpetrator of the offence to be suspended or revoked or the authorization given to the facility to operate shall be withdrawn where the liability of the latter institution is ascertained;

- **Compulsory screening or obstacle to voluntary screening**¹²³ : compelling someone to undergo forcible screening and being an obstacle to voluntary testing of HIV/AIDS is punishable by a term of imprisonment of between 1 and 5 years and a fine of between CFAF 100.000 to CFA1 million ;
- **Non-compliance with a court decision**¹²⁴ : failure to comply with a screening test ordered by a judge shall be punishable by a term of imprisonment of between 1 month and 3 years.

321. Under this legislation also, the Government of Senegal organized care, in this specific instance, « medical, psychosocial and nutritional ¹²⁵ » care for persons infected or affected by HIV/AIDS. From this standpoint, vulnerable population, particularly women, young people, children with HIV, orphans and vulnerable children are given special attention:

- Pregnant women are given special protection as part of the programme of HIV prevention and transmission to children and of the reproductive health policy ;
- Women who are HIV positive have « a right to maternity » for the enjoyment of free healthcare services.

322. In the area of health-care facilities in the country, « assistance and optimal medical care » are provided to all infected or affected persons and to all persons eligible for these treatments, including the treatment of opportunistic infections, the provision of free access to antiretroviral drugs, particularly to children¹²⁶.

323. The CNLS's duty is to support civil society organizations to enable them to implement psycho-social care programmes in the communities and to take measures designed to strengthen care and control of sexually transmissible infections.

324. With regard to prisoners living with HIV/AIDS, they now enjoy psycho-social and medical care necessitated by their state of health.

325. This new government policy resulted in the enhancement of medical care and access to antiretroviral drugs (ARVs) by persons living with HIV/AIDS. Since then, screening of HIV/AIDS, access to ARVs and immuno-virological tests are free all over the country.

¹²³ Cf. Article 13 of Law No 2010-03 of 9 April 2010.

¹²⁴ Cf. Article 40 of Law No 2010-03 of 9 April 2010.

¹²⁵ See Article 15 of Law No 2010-03 of 9 April 2010.

¹²⁶ See paragraph 2 of Article 16 of Law No 2010-03 of 9 April 2010.

326. Under this policy, the following results were obtained:

- The number of treatment centres for persons infected increased from 48 in 2005 to 175 in 2009 ;
- The number of patients on ARVs increased from 9252 (out of a population of 12,744 infected persons) in 2008 to 18,352 (out of an infected population of 23,576) in 2011 ;
- Orphans and vulnerable children receiving care increased from 723 to 5077 in 2010 ;
- ARVs are available in the 14 administrative regions of Senegal ;
- Mechanisms for collaboration between HIV and TB (Tuberculosis) programmes have been established to reduce the burden of HIV morbidity among TB patients and morbidity among persons living with HIV ;
- The start of a pilot assistance programme for persons living with HIV aimed at providing access to medical care through mutual health insurance organizations in the Kaolack region. It helped to provide access to health services for these persons and their families, adherence of these persons to treatment, access to micro-credits and 98% repayment of these loans;
- The use of « Bajenu Gox¹²⁷ » to promote safe motherhood ;
- The involvement of local health committees in efforts to control HIV/AIDS: in a month, 3956 persons were screened in 19 health posts in the Niore du Rip Department ;
- The involvement of local governments helped to co-finance certain prevention activities, effectively bring on board elected local representatives in targeted local governments and undertake social mobilization which was followed by screening and consultations by the population. These efforts led to the screening of 1471 persons for a target of 1050 persons.

c. **Other measures taken by Senegalese authorities forwards the attainment of the right to health**

327. The implementation of other government initiatives made it possible to achieve the following in terms of access to health:

- Establishment of a free dialysis scheme in public health-care institutions and centres ;
- Reduction in the dialysis session fees in private health care institutions ;
- Commencement of activities at the children's hospital at Diamniadio in the Thiès region ;
- Construction of the Dalal Diam Hospital at Guédiawaye, in the suburbs of Dakar ;

¹²⁷ A term in Wolof language which means a local female moral authority by name « Local Female Patron ».

- Acquisition of 76 haemodialysis machines that are being installed in hospitals in Kaolack, Touba, Ziguinchor and Grand Yoff ;
- Acquisition of scanners meant for hospitals in Grand-Yoff (Dakar), Saint-Louis, Kaolack, Tambacounda, Touba, Ourossogui and Kolda ;
- Equipping surgical operation blocks at the Khombole, Dahra and Darou Mousty health centres;
- Replacement of the Cobalt cancer bomb at the Aristide Le Dantec Hospital ;
- Acquisition of two conventional radiology tables for the Saint-Louis and Kaolack hospitals;
- Installation of the angiography apparatus at the cardiology centre of Aristide Le Dantec Hospital.
- Free Caesarian section operations and deliveries;
- Free artemisinin-based combination drugs for children suffering from malaria ;
- Free anti-tuberculosis drugs ;
- Provision of healthcare for persons aged 60 years and above since 2006 under the Plan SESAME which is based on free healthcare and supply of drugs in all government health facilities. Health care and supply of essential drugs are provided on individual basis and the beneficiary must have a biometric identity card¹²⁸ ;
- Subsidy is provided by the State for insulin meant for diabetic patients by maintaining the price at the same level in spite of switching from animal insulin to human insulin.

IV. THE RIGHT TO A SAFE ENVIRONMENT (Article 24)

328. For a Sahelian country like Senegal close to the Sahara desert, with a tropical climate and a low rainfall pattern and a coast line of more than 500 kilometres, the protection of natural resources and the environment cannot but be « a top priority ¹²⁹» for its leaders.

329. This geographical situation, coupled with the climatic change taking place on the continent for more than a decade, exposes Senegal to a myriad of problems among which are the following :

- Degradation of the forest ecosystems and their related services ;
- Shortage of water resources and decline in agricultural productivity ;
- Coastal erosion ;
- Upsurge of pollution and wastes ;
- Proliferation of water-borne and respiratory diseases.

¹²⁸ In 2011, this programme covered 11.44% of the population who are 60 years and above.

¹²⁹ See the Environmental Sector Policy Letter, page 3.

330. This means that for environmental protection to be effective as envisaged by the Senegalese authorities, it must be geared towards economic, social and cultural development of the country, i.e. adopting a re-orientation approach in relation to the role of the State and other non-State actors in the search for a better living environment for Senegalese citizens.

331. Though one may point to 1968 as the time the Government saw the need to protect the environment with the establishment of a National Advisory Committee for the Protection of Nature and Conservation of Natural Resources¹³⁰, it is the 2001 Constitution which came up with the legislation to the effect that Government had an obligation to protect it.¹³¹ The action of the latter, which was mainly aimed at reconciling improvement in the living conditions of the Senegalese people with the environmental challenges of the country is structured around three (3) strategic guidelines¹³²: improvement of the knowledge base of the environment and natural resources, intensification of the fight against the current trend of environmental degradation and of natural resources in line with treaties to which Senegal is a party and the strengthening of institutional and technical capacity of stakeholders in the implementation of measures for the conservation of the environment and natural resources.

(a) Enhancement of knowledge on the environment and natural resources :

332. It is structured around two (2) strategies:

(1) Environmental Education, Information and Communication on efforts of the State and the activities of other partners such as NGOs.

333. Through this approach, environmental education has now been incorporated into the curricula of the formal and informal education system to make it possible for future citizens who are now students to take up their responsibility of protecting the environment. This was made possible by the establishment of a mechanism for training of teachers with the aim of enhancing their knowledge on these issues.

334. By this mechanism, the legislative and regulatory texts such as the Environmental Code¹³³, the Forestry Code¹³⁴, and the national sanitation strategy were popularized as instruments projecting the positive law, the implementation of which must first of all be carried out by the stakeholders themselves.

¹³⁰ See Presidential Decree No 6328 of 22 May 1968.

¹³¹ Article 8: « The Republic of Senegal guarantees fundamental personal freedoms, economic and social rights as well as collective rights to all citizens. These freedoms and rights are specifically...the right to a safe environment... »

¹³² See Survey, Planning and Monitoring Unit of the Ministry of Environment and Nature Protection, Annual Monitoring Report 2010, February 2011, page 9.

¹³³ Law No 2001-01 of 15 January 2001 and its Implementing Decree No 2001-282 of 12 April 2001.

¹³⁴ Law No 98-03 of 8 January 1998 and its Implementing Decree No 98-164 of 20 February 1998.

(2) Improving information and knowledge resource system :

335. It is carried out mainly as a collaborative effort between the Ministry, research centres and Specialized Survey Offices with the aim of enhancing the knowledge base on environmental issues and monitoring trends of the variables concerned. Within this framework, capacity building was enhanced for the Ecological Monitoring Centre (CES) in the area of collection, processing, storage and dissemination of information, monitoring of natural resources and environmental developments. For example, since 2010, newsletters on analyses of the quality of air and water have been disseminated through the media, in particular through national television broadcasts.

(b) Establishment of institutional and legal mechanism for effective protection of the environment

(1) Institutional and legal framework :

336. The following have been established under the Ministry of Environment:

- Planning and Monitoring Studies Unit (CEPS) to assess in advance State programmes and projects yet to be implemented and also coordinate cooperation and management of external assistance ;
- Higher Council on Natural Resources and the Environment (CONSERE) whose mandate is to coordinate and harmonize environmental policy in Senegal by ensuring the inclusion of environmental factors into national programmes ;
- Regional Environmental Offices whose core mandate is to assist in reviewing the legal and regulatory instruments of all sectors to ensure their compliance and consistency with the Environmental Code by incorporating provisions on sustainability and environmental protection in sectoral and inter-sectoral strategies of the State.

(2) Strong environmental partnership :

337. A strong environmental partnership has been developed around the improvement of relations between the Ministry and its partners (local governments, NGOs, CBO's and private promoters) on environmental management. This is a consultative, planning and joint management approach on environmental and participatory problems.

338. For example, at the local government level, there will be the need, in line with the decentralization Act, to enhance their skills and competence in environmental management whereas with the private sector, the emphasis will be on sensitization towards compliance with the regulation in force and participation in the decision-making process concerning the issues at stake. In this context, the Government of Senegal put in place incentives to facilitate their access to clean technologies and/or knowledge pertaining to the

environmental sector. Furthermore, these private stakeholders are more often consulted when mobilizing financial resources for a better management of the environment.

(3) Cooperation with other sectors of Government :

339. This plan is carried out by incorporating environmentally-related management and sanitation issues and principles into strategies, programmes and activities of other sectors such as agriculture, animal husbandry, education, water systems, industry, transport, energy, mines, town and country planning, trade as well as economic, sanitation and social programmes at the national level¹³⁵.

(c) Intensification of controls in the area of environmental and natural resource degradation as part of compliance with international commitments

(1) Combating desertification and land degradation :

340. This is executed within the context of the implementation of the United Nations Convention on Combating Desertification and Policies developed by the government for its effective implementation. A national action plan for combating desertification (PAN-LCD), linked to the National Environmental Action Plan (PNAE) has been developed. The government's strategy is modeled on the Convention and it aims, among others, at:

- Creating a multi-purpose wood village ;
- Controlling bushfires;
- Controlling wind and water erosion;
- Restoring and repopulating degraded habitats ;
- Restoring certain threatened or endangered species ;
- Controlling salination and acidification of soils ;
- Controlling ground and surface water ;
- Rationalizing the energy economy and promoting renewable energy ;
- Improving food and energy self-sufficiency ;
- Regenerating degraded natural formations.

(2) Management of bio-diversity¹³⁶ :

¹³⁵ In actual fact, many of the legal texts regulate the environment and natural resources. It comprises mainly Law No 64-46 of 17 June 1964 on the national domain Act and its implementing texts, Law No 81-13 of 4 March 1981 on the Water Code and its implementing Decrees, Law No 83-71 of 5 July 1983 on the Hygiene Code, Law No 86-04 of 24 January 1986 on the Hunting and Wildlife Protection Code and its Implementing Decree No 86-844 of 14 July 1986, Law No 88-05 of 20 June 1988 on Town and Country Planning Code, Law No 98-32 of 14 April 1998 on Maritime Fisheries Code and its Implementing Decree and Law No 2003-36 of 12 November 2003 on the Mining Code and its Implementing Decree.

¹³⁶ See National Statistical and Demographic Agency, Economic and Social Situation of Senegal in 2011, pages 182-184.

341. Senegalese biodiversity has a very rich potential. Recent estimates show a potential of 3093 plant species out of which 32 are endangered, 4330 animal species out of which 112 are endangered. Senegal quickly passed a law to enable the country to effectively manage the utilization of natural resources and biodiversity outside the protected areas, and its accession to the United Nations Convention on Biological Diversity of 1992 enabled the nation to support, formalize and harmonize widely-spread traditions on its territory as well as a proactive government policy on natural resource conservation and management (parks network, natural reserves and protected areas).

342. Today, the classified areas include six (6) national parks, six (6) reserves rich in birds, three (3) biosphere reserves and two (2) world heritage sites including two hundred and sixteen (216) classified forests but the country is confronted with a degradation of the vegetation cover and a reduction of woody potential within and out of the classified forestry formations; the consequence is that some animal and plant species are disappearing.

343. The national strategy put in place aims at preserving the gains through appropriate management which allows the population to be brought on board by taking into account productive activities and also involving them in the benefits derived from conservation. It is focused on the following activities:

- Conservation of biodiversity in high density areas ;
- Integration of biodiversity conservation in production programmes and activities ;
- Equitable sharing of the benefits accruing from biodiversity management;
- Information, sensitization and education of all potential stakeholders on the importance and role of biodiversity and the need for its conservation.

344. For instance, this was how controlling invading aquatic plants helped to treat 845.000 m² of water bodies at the Delta of River Senegal in 2011 as compared to 444.500 m² in 2010. The results made it possible to better harness water resources and improve the movement of boats on the cleaned parts, improve drinking water in the adjoining villages, revive inland fishing (by increased catches) and agricultural production activities (kitchen gardening , tree and rice cultivation).

345. However, concerning the management of parks and natural reserves, no development and management plan has been outlined in recent years as a result of the bottlenecks observed in procurement procedures. The inventory of terrestrial wildlife has not been carried out due to lack of financial resources.

(3) Wildlife mangement:

346. This domain is strictly regulated because Senegalese wildlife which, to a large extent, depends on the status of vegetation cover is on the brink of extinction.

347. As a State Party to the Convention on International Trade in Endangered Wild Fauna and Flora, Senegal quickly tackled the issue of regulation of the issue¹³⁷ by committing its implementation to the Directorate of Water Resources, Forestry and Conservation.

348. Furthermore, the State implemented a policy of developing protected areas to ensure daily management of wildlife which includes:

- Upgrading of degraded habitats ;
- Creation of new protected areas ;
- Enhancing the protection of endangered species by promoting repopulation in the natural environment and habitat ;
- Strengthening supervision efforts in protected areas and their surroundings by actively involving the population and the private sector in its management;
- Developing cooperation with neighboring countries for sustainable cross-border ecosystems management;
- Development of eco-tourism and establishment of biodiversity community reserves ;
- Creation of protected marine zones and initiation of programmes and projects designed for the management of marine and coastal resources ;
- Adoption of strong measures aimed at halting the undue pressure put on endangered animal species (for instance, elephants) ;
- Improved organisation of hunting including inventory of wildlife and the assessment of leased land farming.

(4) Development of forestry management :

349. It is carried out through a Forest Action Plan adopted in 1993 and supplemented by the Forestry Code of 1998. The latter defines the legal and institutional framework of forest policy in Senegal which aims at conserving the forestry potential and socio-ecological balances and at meeting the needs of the population in forest products.

350. The protection of forests in the forestry domain of the State is within the purview of the Department of Water and Forestry. Beyond this zone, the State approves management measures taken by the local authorities or the owners of timber and ensures their implementation. In fact, there are community forests, community nature reserves and community natural spaces managed by the

¹³⁷ See Hunting and Wildlife Protection Code (Law No 86-04 du 24 January 1986), Forestry Code (Law No 98-03 of 8 January 1998), Maritime Fisheries Code (Law No 87-27 of 18 August 1987) and Ministerial Order No 9173 MEPN-DEFCCS of 28 December 1999 on the regulation of international trade in endangered Wild Fauna and Flora .

local governments or by private stakeholders, the exploitation of which is supervised by Governmental bodies.

351. Bushfires are prohibited and the offender faces a severe sanction when the fire destroys artificial plantations or covers a land surface area greater than 500 ha. Watchdog committees have been created in the rural communities as part of combating bushfires.

352. Every year, the Minister of Environment issues an Order¹³⁸ on the organization of logging in forests and products subject to quota, which comprise all partially-protected tree species used in the production of wooden furniture, in construction and in industry.

(5) Rational management of chemical products :

353. It concerns:

- chemical products and persistent organic pollutants;
- management of solid wastes as a means of ensuring cleanliness of the living environment: it is determined by a National Plan for the management of hazardous waste adopted in 1999 including various regulations. These regulations are:

- Law No 65-32 of 19 May 1965 on seaports policy;
- Law No 83-71 of 5 July 1983 on the Code of Hygiene;
- Decree No 74-338 of 10 April 1974 relating to domestic waste;
- Ministerial Order No 852 of 8 February 2002 on the establishment of the National Chemical Products Management Committee.

(6) Combating Coastal Erosion :

354. Coastal erosion is a threat to the sea and coastal environment, leading to inconveniences to the population and economic operators located in the coastal region. To combat this phenomenon, the Government of Senegal, in partnership with the various stakeholders¹³⁹, took measures designed to protect the sea and coastal environment.

355. This step assisted in consolidating 750 metres of coastline in 2011 (as against 600 metres in 2010) in the Saly-Portudal zone on the « Petite Côte », against a national target of 500 metres to build a sea defence wall on the entire coastal region by 2015.

¹³⁸ Example, Ministerial Order No 431 MEPNBRLA-DEFCCS of 18 January 2008 outlining the modalities for the organisation of logging in forests.

¹³⁹ One can mention Land-use Development Company at the Petite Côte (SAPCO), the communes, the Military Engineers, the Directorate of Environment and Classified Institutions and the Climate Change Integration and Adaptation Project under Sustainable Development (INTAC).

(7) Protection of the Ozone Layer :

356. Senegal established a National Ozone Committee (CNO) in 1995 with a mandate to formulate a participatory mechanism which effectively brings on board all stakeholders concerned with the establishment of an action plan and its implementation. A Decree of (21 January 2000) on the regulation of ozone-depleting substances (SAO) and Order (of November 2001) regulating SAOs and equipment, ensure control of importation of refrigeration appliances and substances regulated by the Montreal Protocol and determine a quota for the importation of appliances.

357. The Ministry of Environment committed itself to a total elimination of ozone-depleting substances (100%) by 2015:

- by engaging in an awareness-raising campaign for the elimination of the use of methyl bromide fumigators for edible groundnuts in Senegal;
- by designing a national management plan for refrigerant fluids;
- by training refrigeration engineers on the issue;
- by building capacity of the customs authorities in matters relating to control of imports and exports of ozone-depleting substances (SAOs);
- by establishing a reconversion project on industrial installations for fishing and tourism sectors.

(d) Institutional and technical capacity building of stakeholders in the implementation of actions relating to conservation of the environment and natural resources.

358. The government of Senegal embarked on capacity building of initial and continuing training establishments on environmental issues and training institutions for communicators to enable them participate in the implementation of the national environmental education strategy.

359. This initial approach is complemented by:

- Producing and disseminating environment-related communication aids on the thematic area ;
- Developing operational capacity of the Ministry of Environment ;
- Providing support for the implementation of regional environmental action plans ;
- Training and raising awareness of elected local representatives and journalists in the area of environmental education ;
- Finalizing the forestry taxation action plan ;
- Completing works on the new buildings of the Ministry of Environment ;
- Providing school furniture all over the country.

C. SPECIAL CASE OF PROTECTING WOMEN'S RIGHTS :

(Articles 2, 3, 13, 14, 15, 16 and 18 of the African Charter and the Protocol on Women's Rights):

360. This is the area where the country has actually taken a leapfrog compared to other States Parties to the African Charter on Human and Peoples' Rights and its Protocol on the Rights of Women in Africa.

361. In fact, since independence, Senegal has always been concerned about women's issues in the country and this determination found concrete expression in the gradual adoption of a protective normative framework and the establishment of policies for the removal of inequalities between men and women though a lot of hurdles still have to be removed to ensure that gender equality is fully actualized.

a. Positive Development of the protective normative framework :

(1) Improving the status of women in the 2001 Constitution :

362. Several provisions of the new Constitution of 2001 reinforce the enjoyment of equal rights set out in the African Charter:

- Equality between men and women in respect of access to elective mandates and positions (Articles 1 and 7) ;
- Right to education, namely reading and writing, work, health and to safe environment (Article 8) ;
- Right to acquire and own landed property (paragraph 2 of Article 15) ;
- Right to the betterment of living conditions of women in rural communities (Article 17) ;
- Prohibition of forced marriages (Article 18) ;
- Right of the married woman to acquire her own property just as the husband and to personally manage her property (Article 19) ;
- Right of children of both sexes to have access to schools (paragraph 2 of Article 22) ;
- Prohibition of any discrimination between men and women with regard to employment, salary and taxes (paragraph 2 of Article 25).

(2) Efforts made to harmonize national legislation with international commitments :

363. In addition to the amendments made in the 1972 Family Code, Senegalese authorities reviewed the contents of several legislative and regulatory texts with the aim of honoring their treaty commitments:

- Law No 1999-05 of 29 January 1999 which enhanced the penalty for offences such as rape, excision, indecent assault, incest and sexual harassment ;

- Law No 1982-019 of 22 January 1982 on access by women to certain military and paramilitary bodies (Armed Forces, Customs, Civil Aviation) ;
- Penal Code : Law of 24 January 2004 on punishment for violence perpetrated against women in the home and in the society ;
- Labour Code for the protection of women on maternity leave ;
- Social security to ensure healthcare for the woman, her spouse and her children ;
- The general tax Code (Law No 2008-01 of 8 January 2008 on amendment of some provisions of the Tax Code) which removes the joint taxation of the couple and grants the woman full tax autonomy ;
- Law No 2010-11 of 28 May 2010 instituting full parity between Men and Women in all partial or total elective institutions ;
- Decree No 2006-515/PR of 9 June 2006 on access by women to the gendarmerie ;
- Decrees No 2006-1309 and 1310 of 23 November 2006 establishing that a female employee and salaried worker in the private sector should take up medical care of her husband and children.

b. New policies initiated by the government to enhance women's rights :

364. These are mainly :

- The establishment of national women's action plan (PANAF) from 1997 to 2003 ;
- The MDG's by 2015 ;
- The Poverty Reduction Strategy Paper of Senegal (PRSP) 2006-2010 which was part of the guidelines defined by the United Nations for the attainment of the MDGs, i.e. reducing poverty by half by 2015, access to basic social services comprising health, nutrition, education, access to water and sanitation ;
- The National Strategy for Gender Equality and Equity for the period 2005-2015 ;
- Access by women to equipment for domestic chores :
 - Between 2000 and 2005, close to CFA francs 4.5 billion were injected into millet mills, sewing machines, agricultural products processing units and kitchen kits;
 - The Head of State made a commitment in 2006 to provide thousand (1000) mills per annum to women's organizations ;
 - Access by women to basic social infrastructure ;
 - Almost CFAF 18 billion were injected into the implementation of socio-community infrastructure by way of poverty alleviation projects and CENAF-CEDAW ;
- Strengthening of institutional and organizational capacity of women :
 - This is in respect of about 25.000 women's organizations consisting of more than one million women scattered over the entire country ;

- Thus, 85.813 women were trained for women's leadership between 2000 and 2009 ;
- Support was provided for 730 micro-projects supervised by technical experts from the Ministry of Family Affairs.

365. All these initiatives yielded far-reaching results, the most significant ones are the following:

- Increase in the representation of women in the Senegalese Parliament from 33 (or 24%) to 64 deputies (or 44.6%) out of 150 members of the National Assembly ;
- Enlistment of a significant number of young girls into the Senegalese Army. Between September 2007 and January 2008, 300 young girls between the ages of 18 and 23 years were recruited into the Senegalese Army ;
- A more general improvement in the representation of women in the public service. It increased from 15,584 (18.40%) to 16,346 (19.09%) from 2009 to 2010. Women accounted for 17.29% of the judiciary in 2010 and 1.58% of the police force under national command. Senegal does not yet have a governor or woman sub-prefect but this is going to happen since even in 2004, the territorial command was still not open to women.
- Free Caesarian section operations and childbirths.
- Reduction of the practice of excision: between 2009 and 2011, 4452 communities out of 5000 surveyed in 1997 abandoned the practice of excision as a result of the impact of the Community Capacity Building Programme (PRCC) based on a strategy of education on the rights of the individual spearheaded by civil society and supported by UNICEF, which programme helped to promote awareness among the population. These results were so encouraging that donors (UNICEF-UNFPA-USAID) decided to support a National Action Plan launched in February 2010 to fast-track the elimination of excision (2010-2015).
- The Action Plan which is managed by a National Council chaired by the Prime Minister and a Steering Committee composed of the various Ministries concerned and of civil society organizations operating in the sector, made it possible to set up 11 regional committees supervised by the governors within the 12 prevalence zones who ensure that the elimination rate for excision between 2010 and 2011, rose from 71% to 89.04%. The Action Plan, better still, tries to retrain the practitioners of excision to become entrepreneurs or artisans in areas such as solar energy, craft works and small-scale gardening.

c. Future battles of women for universal equality in Senegal :

(1) At the legal level :

366. Concerning the Family Code, they touch on:

- The choice of residence of the couple which still is an exclusive right of the husband (Article 153)
- The exercise of paternal power by the father (Article 152) ;
- The inability of the woman to transfer her nationality to her child and to her husband (Law No 1961-10 of 7 March 1961).However a draft amendment to the law has just been adopted by the government ;
- The marital age of the woman (Article 111) ;
- The prohibition of legal search for paternity even in the case of rape which has been replaced with an action for indication of paternity for the sole purpose of feeding (Article 196) ;
- Discrimination based on gender in the award of succession rights established by Article 637 et seq regulating inheritance according to Muslim law. Senegal is in the process of harmonizing national legislation with the requirements of the MAPUTO Protocol.

367. As far as the Criminal Code is concerned, they touch on:

- Severe sanctions which are applied in the event of abortion by the woman or attempted abortion (Articles 305 and 305 a) ;
- The non imputation of sexual assault to crimes (Article 320)

368. In terms of social security, they touch on:

- The discriminatory nature of the retirement regime, in that women still do not receive family allowances ;
- Lack of pension allowance for the husband and children of a working woman who passes away.

(2) At the economic, social and cultural levels :

369. At the economic, social and cultural levels, women still face huge challenges which affect their equality ambitions under rights set out in the African Charter. One can mention the following:

- Inadequate mobilization of resources to promote women's activities ;
- Failure to systematically incorporate gender into public policies ;
- Persistence of stereotypes, inequalities and discriminations to which women fall victim in the Senegalese society.

CONCLUSIONS