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Economic, Social and Cultural Rights in Senegal

REPORT ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS

REPORT PREPARED BY THE WORLD ORGANISATION AGAINST TORTURE
(OMCT) FOR THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHT

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1. Preliminary Observations

The Republic of Senegal ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 13 February 1978. Senegal is also a Party to a number of other international human rights covenants and conventions with related provisions on torture and other cruel, inhuman, or degrading treatment or punishment and on economic, social and cultural rights: the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the Convention on the Protection of All Migrant Workers and Members of Their Families (MWC).

OMCT welcomes the fact that the Republic of Senegal is also a party to the Optional Protocol to the ICCPR and to the Optional Protocol to the CEDAW, both providing for individual complaints procedures. Senegal has also recognised the competence of the Committee on the Elimination of Racial Discrimination and of the Committee Against Torture to receive individual complaints, as specified under article 14 of the CERD and article 22 of the CAT.

OMCT notes, however, that Senegal has not ratified the Second Optional Protocol to the ICCPR regarding the abolition of the death penalty. Finally, Senegal has signed but not yet ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

Senegal, as member of the Organisation of African Unity (OAU), is a party to the Banjul Charter or African Charter on Human and People's Rights adopted in 1981. The Charter entered into force in 1986 and contains provisions regarding civil and political rights as well as economic, social and cultural rights. The Charter prohibits torture and other inhumane treatment (art. 5). The Charter does not introduce new economic, social and cultural rights although it tends to insist on the right of peoples to development and to dispose of their wealth and natural resources.¹ The Banjul Charter does not expressly mention trade union rights or mention standards of living. On the other hand, the Charter introduces a series of duties that citizens owe to the State. The Charter also establishes an African Commission on Human and Peoples' Rights to promote and ensure the protection of these rights.

OMCT welcomes the fact that the Report presented by the Republic of Senegal to the Committee on Economic, Social and Cultural Rights shows continuing efforts to enhance human rights provisions in domestic legislation.² However, OMCT regrets that this Report draws almost exclusively on legal and administrative reforms and documents, which, positive as they may be in essence, are not evidence of a significant improvement of the human rights situation in practice. In particular, the Report provides little empirical evidence of the impact of such measures on the human rights situation. The Report lists a number of plans but

¹ The Charter provides for the right to free association (art. 10.1), the right to property (art. 14), the right to equitable and satisfactory working conditions (art. 15), the right to the best attainable mental and physical state of health (art. 16), the right to education (art. 17), the right to self-determination (art. 20), the right of peoples to dispose of their wealth and natural resources (art. 21), the right to economic, social and cultural development (art. 22). Banjul Charter on Human and Peoples' Rights.

² *Second Periodic Report Submitted by Senegal to the Committee on Economic, Social and Cultural Rights*, 31/08/2000, E/1990/6/Add.25.

provides no indication of their success or failure and does not give an evolution of the situation in time. Conversely, the Report highlights the serious social and developmental problems that Senegal faces, in particular in relation to nutrition, health and women.

On 7 January 2001, the Republic of Senegal adopted by referendum a new Constitution that enhances the provisions for human rights. In its preamble, the Constitution now makes direct reference to the Banjul Charter, to the Universal Declaration, to the French Universal Declaration of the Rights of Man and the Citizen (1789), as well as to the Convention on the Rights of the Child. The Constitution of Senegal guarantees the enjoyment of economic, social and cultural rights.³ However, OMCT regrets that apart from the Labour Code, which codifies the relations between employees and employers, there is no specific body of legislation to guarantee the enjoyment of economic, social and cultural rights. OMCT also deplores that there are no specific legal provisions regarding discrimination in the field of economic, social and cultural rights. To OMCT's knowledge, there is no intention on the part of the State to introduce laws repressing discrimination in the workplace, in access to housing, health care and education. In this regard, OMCT is afraid that for the time being, economic, social and cultural rights remain at the level of constitutional principles or desirable goals rather than that of enforceable rights.

In 1991 an Ombudsman of the Republic was created to act as a mediator between the people and the State. In 1997, the *Comité Sénégalais des Droits de l'Homme* - Senegalese Human Rights Committee (CSDH) was reformed and its mandate widened. It is an independent institution of consultation, observation, evaluation, dialogue and proposals in issues relating to human rights. The CSDH is an independent institution, it has a wide jurisdiction and latitude in taking up cases.⁴

With regard to the status of women, the Senegalese Constitution makes direct reference in its preamble to the CEDAW. OMCT welcomes the introduction of two new constitutional articles, which strengthen the protection of women's rights. Article 15 - under title II 'Public Liberties, Human Rights, Economic and Social Rights and Collective Rights' - proclaims the equality of men and women in the acquisition of land and property. Article 18 under the same title, prohibits forced marriages as a violation of individual freedom.

As in the previous Constitution, article 91 states that international treaties, once they are ratified, have legal precedence over national laws. Treaties and international agreements must be ratified or approved by means of a law to take legal effect. The Constitutional Council determines whether a constitutional reform is needed to ratify an international treaty.⁵ However, the Committee Against Torture in its Concluding Observations called on Senegal to apply without reservations the then article 79 of the Constitution, today article 91 of the new Constitution, which provides for the precedence of international law over national legislation.⁶ This comment was made with particular reference to Senegal's use of amnesty laws for perpetrators of torture.

³ Preamble of the Constitution of the Republic of Senegal and title II article 7 and 8.

⁴ *Protectors or Pretenders? Government Human Rights Commissions in Africa*, Human Rights Watch, at <http://www.hrw.org>, accessed 11/07/2001.

⁵ Constitution of the Republic of Senegal, title VIII, articles 89, 90, 91.

⁶ *Concluding Observation of the Committee Against Torture: Senegal*, 09/7/96, A/51/44, para. 117.

2. General Observations: the human rights situation in Senegal

As a lower middle-income country, Senegal faces a difficult socio-economic situation. On the basis of the Human Development Index (HDI), UNDP rates Senegal at the 160th position of the 175 countries rated. Senegal thus belongs to the category of countries with 'weak human development'. The global evolution of the situation is a cause for concern, as it shows evidence of a deterioration of social indicators. This regression is to be linked to the difficulty in translating economic growth into human and social development. Whereas, since the devaluation of the CFA Franc in 1994 the economic growth has been consistent, about 5.3 percent on average during 1996-1998, inflation contained and the current account deficit reduced⁷, Senegal's ranking with regard to its GDP and to its IDH have consistently diverged. The impact of such growth on the welfare of the population has yet to be felt. One explanation for this is the dramatic increase in the price of basic necessities. Households have not been able to adjust their income to match this price surge and social benefits have diminished, thus deteriorating the purchasing power of households.⁸ The upcoming harmonization of the Value Added Tax (VAT) in accordance with the standards of the Economic Monetary Union of West Africa (UEMOA), by increasing the price of 63 products by 18 percent, including basic necessities, might well cause the situation to further deteriorate. This divergence between economic and social indicators is symptomatic of the inability of the State to ensure a just distribution of wealth in society and of the out-flow of capital towards the developed world. It might also indicate that for the time being Senegal is not taking appropriate steps, to the maximum of its available resources, to implement the rights enshrined in the Covenant.

Economic insecurity is a constant element of the Senegalese environment. About 30 percent of households live below the poverty line, which is defined as the income necessary to buy 2400 calories per day per person.⁹ According to the World Bank, despite the resumption of economic growth, social indicators remain a cause for concern. Poverty has actually increased. A Priority Survey (ESP) in 2000 indicated that over 58 percent of households were living below the poverty threshold defined in terms of minimum caloric intake of 2400 calories per day per adult.¹⁰ The rural populations is disadvantaged: 75 percent of poor households are rural and 58 percent of rural households are poor. Unemployment figures are very high and demonstrate a strong disparity in favour of urban areas. The national unemployment rate is of 11 percent while this figure doubles in rural areas (25 percent for men and 22 for women). The social and economic situation of young people is also a cause for concern as 41 percent of young people in Dakar are unemployed.¹¹

The political situation of Senegal was marked by presidential elections in March 2000 and followed by general elections. The Socialist Party lost the presidency to Abdoulaye Wade, head of a coalition of opposition parties and himself a long-time opponent of President Senghor and President Diouf.

The 18 year-old conflict in Casamance has continued despite a series of peace initiatives in Banjul and Ziguinchor involving the government of President Wade and the MDFC –

⁷ *Country Profile: Senegal*, The World Bank at <http://www.worldbank.org/afr/sn2.htm> accessed on 16.07.2001.

⁸ RADDHO, 06/08/2001.

⁹ *Résumé du Rapport Humain sur le Développement – 1998*, United Nations Development Programme UNDP, at <http://www.cyg.sn/pnud/html/premierrapport.htm> accessed on 09.07.2001.

¹⁰ *Interim Strategic Paper, Working Paper*, Republic of Senegal, 08/05/2000, World Bank.

¹¹ *Résumé du Rapport Humain sur le Développement – 1998*, United Nations Development Programme UNDP, at <http://www.cyg.sn/pnud/html/premierrapport.htm> accessed on 09.07.2001.

Movement des Forces Démocratiques de Casamance Movement of Democratic Forces of Casamance. Tensions remain strong between government forces and the MFDC. This tension has led to border clashes with Guinea-Bissau, which the MFDC is suspected of using as an operational base. This ongoing conflict is likely to have a negative impact on the enjoyment of economic, social and cultural rights throughout the country, and in particular for the inhabitants of the Casamance region.

Three problems lie at the source of violence and related human rights violations in Casamance, which impede a peaceful solution. These are: the land problem – in 1960 land was nationalised and awarded to migrants from northern Senegal – the question of regionalism that is still pending, and the fact that a number of civilian leaders are former army members thus effectively protecting the army from legal proceedings.

The Committee Against Torture noted in its Concluding Observations that the conflict in Casamance impeded the effective implementation of the CAT. In Casamance, government forces and MFDC militia are responsible for a number of cases of torture, ‘disappearances’ and extra-judicial executions. The UN Special Rapporteur on Torture reported that suspected MFDC members were detained in Casamance and subjected to torture and other inhumane treatment destined to create a climate of terror in the population and thus withdraw support for the MFDC.¹² These acts are alleged to have happened at the time of arrest, during interrogation of detainees and while persons were being held incommunicado. The *Rencontre Africaine pour la Défense des Droits de l’Homme* – African Conference for the Defence of Human Rights RADDHO, a member of the OMCT network, requested permission to visit the prisoners, which was denied. In 1998, Anquiling Diabone, regional representative of RADDHO in Casamance was arrested at a military checkpoint, beaten, kicked repeatedly and left tied up in the sun for several hours. He was also threatened with death.¹³

In 1989 a Senegalese citizen lodged an individual complaint against Senegal to the Human Rights Committee alleging violation of his civil and political rights through acts of torture and arbitrary and prolonged detention. The Committee convening in 1994 found his claim valid.¹⁴ Apart from Casamance, torture is most prevalent following student demonstrations and police round-ups. RADDHO recounted that a number of torture cases are still pending in the judiciary. These cases implicate military personnel (for cases in Casamance) and police officers (the case of Abdou Aziz Fofana dates back to 1997). Judicial proceedings are particularly slow in cases of torture implicating police officers. Even when an inquiry is launched, police investigators take an inordinate amount of time in delivering their conclusions to the Prosecutor.¹⁵

¹² *Report of the Special Rapporteur on Torture*, Human Rights Commission, E/CN.4/1999/61, paras. 650.

¹³ *Urgent Appeal SEN 001/9810/OBS 076*, Observatory for the Protection of Human Rights Defenders FIDH-OMCT.

¹⁴ *Views of the Human Rights Committee under art. 5, para. 4, of the Optional Protocol to the International Covenant on Civil and Political Rights*, Communication No. 386/1989, Senegal 27/10/94 CCPR/C/52/D/386/1989.

¹⁵ RADDHO, 06/08/2001.

3. The Impact of Economic Restructuring and the Implementation of Development Programmes and Projects.

According to information received from RADDHO, a member of the OMCT network, the devolution policy of the central government towards provinces also concerns development programmes and projects. Since this policy began, local authorities have been made responsible for the conception, the definition and implementation of development programmes in the economic, educational, social, health and cultural domains. OMCT deplors that this de-centralisation, which could have had a positive impact especially on the quality of the dialogue with the people targeted by the programmes, has not really improved the dialogue with civil society. There is limited dialogue between local authorities, civil society, NGOs and trade unions regarding the formulation, elaboration and implementation of development programmes and projects. In Senegal there is no provision for the inclusion of civil society in the process of elaborating and implementing development programmes. Government authorities limit their consultations to inviting NGOs and representatives of civil society to attend workshops and seminars.¹⁶ This in turn seriously limits the positive impact of such initiatives in improving the enjoyment of economic, social and cultural rights for the Senegalese people. Finally, women are critically under-represented in the management of public affairs. Consequently, they cannot effectively participate in major political orientations.

Structural Adjustment Policies have been implemented in Senegal since 1979 and, despite an increase in the real GDP growth rate, have had a very negative impact on a number of social sectors and on the enjoyment of economic, social and cultural rights. In particular, RADDHO, a member of the OMCT network, highlights that in 1981, following budgetary cuts to comply with SAPs, boarding-schools in secondary education ceased to exist. They provided a vital service for rural children who did not have access to education in the immediate vicinity of their parents' homes. Such reductions in social services continue to be implemented in the wake of SAPs in the areas of health care, education and the economy.¹⁷

The Committee on Economic, Social and Cultural Rights highlighted the fact that Structural Adjustment Policies (SAP) must be formulated and implemented in a manner that is compatible with adequate social protection and economic, social and cultural rights.¹⁸ Since 1993, when the Committee on Economic, Social and Cultural Rights recommended that Senegal overhaul its social safety nets in the light of SAPs, Senegal has introduced 'Initiative 20/20' designed as a basic social safety net. RADDHO reports that the funds allocated to basic social services fall far short of the minimum social expenditure needed to cover basic services.¹⁹

A joint study by UNICEF, UNDP and the *Cabinet d'Etudes et de Management de Projet* EMAP – a management and project consultancy group – compared the different social, HDI and other rates with the targets expressed in 'Initiative 20/20'. The report developed a series of ratios (expressed in percentage points) for the analysis of priorities in human development. It showed that whereas the norm for public expenditure should have represented 25 percent, the actual rate was of 18.8 percent and that it had fallen from 19.8 percent in 1995. Furthermore, overall social expenditure had increased to 40 percent in 1998 from 33.3 percent

¹⁶ RADDHO, 06/08/2001.

¹⁷ RADDHO, 06/08/2001.

¹⁸ *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Senegal*, , 05/01/94, E/C.12/1993/18, para. 14.

¹⁹ RADDHO, 06/08/2001.

in 1995, reaching the target of 40 percent. However, the ratio of basic social expenditure slumped from 31.1 in 1995 to 27.9 in 1998, falling far short of the norm of 50 percent. Finally, the overall ratio of expenditure for human development has decreased slightly to 2 percent in 1998 but that means that since 1995 it has remained well below the norm of 5 percent. The study also showed that Senegal spent a higher share of its budget on military expenditure (12.9 percent in 1997) and on servicing its debt (29.8 percent) than on basic social services (11.6 percent).²⁰ In this respect, there is a risk that the current initiative 20/20 might not prevent a further deterioration of the social situation in Senegal following the implementation of the Highly Indebted Poor Countries Initiative (HIPC) under the auspices of the World Bank and the International Monetary fund (IMF).

OMCT is further concerned that the policies designed to implement SAPs in Senegal generally do not take into account social issues and do not evaluate their impact on the standard of living of populations already weakened by the slump in purchasing power. Therefore these populations live in extremely precarious social conditions. Beggars in the streets and the number of homeless have drastically increased in Dakar. In this respect, RADDHO reported that a study by the Directorate for Forecast and Statistics is being prepared to evaluate the phenomenon.²¹

Indeed, in Senegal, the implementation of structural adjustment policies has meant that the government no longer fulfils all of its social obligations. For example, RADDHO reports that the government no longer builds social housing and that the HLM system (Habitations à Loyer Modéré), providing for affordable housing has been abandoned. Private property developers and housing co-operatives have replaced the State's initiatives in the housing sector.²² (See also section 4)

RADDHO, a member of the OMCT network, also reported on the consequences of the SAPs' implementation in the transportation sector. The public transportation company for the Dakar region, the SOTRAC, has witnessed grave violations of workers' rights because of the implementation of such policies. In 1998-1999, RADDHO published a report showing that 809 employees were technically unemployed because of lack of work. This technical unemployment has had a very high social and human cost for employees: at that time RADDHO reported that 40 workers as well as 8 workers' spouses and 22 workers' children had died due to the precarious socio-economic conditions they faced. Furthermore, unemployed workers could no longer pay their social security contributions and have consequently lost their family benefits. This default in the payment of social contributions also led to the bankruptcy of the *Institut de Prévoyance Maladie* – health insurance – with CFA Francs 200 million of liabilities.²³

In the light of the negative outcome SAPs have had on the enjoyment of economic, social and cultural rights in Senegal, OMCT is afraid that the current Heavily Indebted Poor Countries (HIPC) initiative and the related Poverty Reduction Strategy Papers (PRSPs) might also impact negatively on the enjoyment of economic, social and cultural rights.

In 1998, the World Bank launched a Debt Sustainability Analysis (DSA) for Senegal, under the original HIPC initiative. The failure of Structural Adjustment Policies has given the

²⁰ RADDHO, 06/08/2001.

²¹ RADDHO, 06/08/2001.

²² RADDHO, 06/08/2001.

²³ RADDHO, 06/08/2001.

impetus to the HIPC Initiative. DSA have been steadily revised to take account of new criteria. Adjustment programmes have been implemented in the following areas: private sector, agriculture, energy sector, health, education, transport and rural development.²⁴ The Independent Expert of the Commission on Human Rights on the effect of structural adjustment and foreign debt, Mr. Fantu Cheru, warns that policies implemented under the HIPC initiative are very similar to the measures foreseen by SAPs. The Independent Expert points out that International Financial Institutions (IFIs) are applying today the same policies that have brought about high unemployment, increasing malnutrition and falling school enrolment.²⁵

In May 2000 Senegal presented an interim Poverty Reduction Strategy Paper (PRSPs) and will present the final version to the World Bank and the IMF in December 2001. OMCT would like to express its concern about the fact that no single reference to human rights is made in the interim paper. In the view of the measures envisaged by the paper, OMCT is further concerned that these policies, as they resemble very much the Structural Adjustment Policies (SAPs), may adversely affect the enjoyment of economic, social and cultural rights.

Finally, according to the Independent Expert, the Poverty Reduction Strategy Papers (PRSPs) have been developed in consultation with all constituencies, including public administrations, local communities, civil institutions and development partners. The Independent Expert further points out that the final version of the PRSP is still to be discussed with all parties concerned including the private sector, the press, trade unions, women's groups, NGOs and local representatives.²⁶ In this respect OMCT deplors that human rights organisations have not been involved in the process.

4. The Right to Adequate Housing and Forced Eviction.

4.1. Accessibility and affordability

OMCT is concerned that the existing housing policy in Senegal does not cover the needs of the population. There is indeed an important gap between demand and supply. Furthermore, the less affluent strata of society does not have access to building credit and, finally, the State no longer implements housing programmes. In the past Senegal has implemented a number of housing programmes to facilitate the access of its population to adequate housing: the *Banque de l'Habitat* provides loans for construction and the *Habitations à Loyer Modéré HLM* – Council Housing used to provide affordable housing. However, the HLM no longer exist. Indeed, as Senegal implements structural adjustment policies, the government increasingly pulls out of the housing sector. Private property developers and housing co-operatives take over the role of the State in the housing industry.²⁷

According to information provided by RADDHO, a member of the OMCT network, the high interest rate on housing credit prevents a large part of the population from having access to it.

²⁴ *Senegal, Decision Document under the Enhanced HIPC Initiative*, World Bank, 01/06/2000.

²⁵ *The HIPC Initiative: a Human Rights Assessment of the PRSPs*, Special Rapporteur to the Committee on Economic, Social and Cultural Rights, 18/01/2001, E/CN.4/2001/56.

²⁶ *The HIPC Initiative: a Human Rights Assessment of the PRSPs*, Special Rapporteur to the Committee on Economic, Social and Cultural Rights, 18/01/2001, E/CN.4/2001/56.

²⁷ RADDHO, 06/08/2001.

For example, a worker earning CFA Franc 300,000 per year does not have access to the *Société Immobilière du Cap Vert* (Cap Vert Property Company) credit, as it requires him to contribute CFA Franc 5,000,000. Moreover, demand largely exceeds supply.²⁸ OMCT deplors this situation in the light of General Comment No. 4 adopted by the Committee on Economic, Social and Cultural Rights stipulating that housing must be affordable, meaning that State Parties must ensure that housing costs be commensurate with income levels.²⁹

OMCT also deplors that women still fall victim to customary law regarding housing. RADDHO reports that divorced women are prevented from keeping of their houses. Polygamy, in which 56.3 percent of women live, does not help. In fact, in the case of polygamous households, when the husband dies, the house is sold and all the widows must leave the house with their children.³⁰

4.2. Quality

Regarding the quality of housing as well as housing conditions, RADDHO also reported the case of the Bandia village located 50 kilometres away from Dakar, in the vicinity of a quarry. The village is built on limestone, next to a highly coveted quarry.

Apart from the dust and the disturbance generated by the detonations, the use of explosive containing ammonia pollutes the water supply, leading to serious health problems such as cancer and tuberculosis. For instance, a doctor has to come once a week to treat cases of tuberculosis.³¹ Furthermore, the use of explosive also negatively impacts on the enjoyment of other right such as the right to education and the right to adequate housing. For instance, houses threaten to collapse with each detonation, while school classes must halt at each passage of a lorry because of the noise and the school walls threaten to cave in.

OMCT regrets that Senegal has not taken any steps to remedy to this unacceptable situation and its impact on the enjoyment of other rights such as the right to health, the right to food and the right to education. OMCT would like to point out that the position of the government of Senegal is at variance with General Comments No. 4 which provides that housing must be habitable and not present a health risk³², that it must be in a location allowing adequate access to social facilities such as schools³³ and must have adequate basic facilities such as water.³⁴

²⁸ RADDHO, 06/08/2001.

²⁹ *Committee on Economic, Social and Cultural Rights, General Comment No. 4*, para. 8(c), in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, 07/02/2000, HRI/GEN/1/REV.4.

³⁰ RADDHO, 06/08/2001.

³¹ RADDHO, 06/08/2001.

³² *Committee on Economic, Social and Cultural Rights, General Comment No. 4*, para. 8(d), in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, 07/02/2000, HRI/GEN/1/REV.4.

³³ *Ibid*, para. 8(f).

³⁴ *Ibid*, para. 7.

4.3. Evictions

The Constitution of Senegal protects the right to land and to ownership in article 15 but RADDHO reports that forced eviction from homes and from land, destruction of homes and attempts to intimidate inhabitants into deserting their homes are a recurrent in Senegal.

RADDHO, a member of the OMCT network, reported that in the Diamaguène district of Dakar, the population is being threatened with eviction for the second time in 40 years. In 1960-1961, inhabitants of the Bay Gayndé area were evicted by the political and administrative power of the time. After their expulsion, the people settled in the Diamaguène district. Today, 454 households are thus threatened with expulsion although in 1961 they paid to acquire ownership of the property. Since then, new owners have bought the land and are in possession of property certificates. Some of these plots of land have been re-sold or mortgaged without the knowledge of the inhabitants. These new landowners are threatening the households with eviction.³⁵ Furthermore, evidence provided by RADDHO highlights the fact that there are grave irregularities in the allocation of land and in the recognition of ownership. RADDHO thus reports that the district chief, Samba Dramé who founded the Diamaguène district suffered numerous attempts of intimidation such as imprisonment, trials, etc. According to Mr. Dramé, notary Doudou Ndoye misused these plots to draw up a new land register and also to influence the sale of these plots by allocating them new numbers. Surprisingly, the inhabitants of Diamaguène continue to pay their land taxes with no mention of the plot number on the tax slip.³⁶

In Diamaguène 108 plots of land, with on average eight persons per plot, are in dispute. Ten plots of land, housing on average ten persons per plot, have been razed to the ground. One household has been expelled. In all, 334 households with an average of 8 persons per household, while they are threatened with expulsion, have for the second time paid the sum of CFA Franc 50,000 to the notary to accede to property. As a consequence, the Lébou family, which claims original ownership of the land, has received a total of CFA Franc 6,500,000. Between 1982 and 1984, the notaries received numerous payments amounting to CFA Franc 16,700,000 and representing payments made repeatedly for the same property.³⁷

RADDHO, a member of the OMCT network, further reported on a number of eviction cases, which were often accompanied by ill-treatment on the part of police forces:

- Gana Sow, mother of eight, inherited a plot of land from her mother in 1961, when she refused to leave her property, she was arrested and imprisoned. Her house was destroyed and she had to live in a shed with her eight children until her death.
- The plot of Boubacar Wade was destroyed. He now rents a house and depends on the solidarity of his neighbours to pay his rent. When the police came to evict him they destroyed his personal documents as well as his diplomas.³⁸

Finally, RADDHO, a member of the OMCT network, reported that in April 2001 the 5,000 inhabitants of the Baraka slum, located in Dakar, were threatened with eviction and destruction of their homes. It is reported that the inhabitants of the Baraka slum, composed

³⁵ RADDHO, 06/08/2001.

³⁶ RADDHO, 06/08/2001.

³⁷ RADDHO, 06/08/2001.

³⁸ RADDHO, 06/08/2001

primarily of women and children, have been living in the area for a considerable length of time and that they have established several schools and health centres. In this regard, OMCT warns that the forcible eviction of these 5,000 inhabitants would violate not only their right to adequate housing, but also their right to work, to adequate food as well as jeopardising the means of survival of an already poverty-stricken population.³⁹ This would be a blatant violation of the provisions of article 11 paragraph 1 of the ICESCR and of General Comment No. 4 especially in terms of security of tenure.⁴⁰ Notwithstanding the type of tenure at hand, all inhabitants should be guaranteed security of tenure from forced eviction and intimidation.⁴¹

5. Access to Land, the Right to Food and Poverty

Article 15 of the Constitution of Senegal guarantees the access to land to all those who can develop and exploit its potential. The current policy of devolution and de-centralisation of political power has contributed to the better occupation of land. However, Dakar still concentrates 25 percent of the population on an area representing 0.3 percent of the national territory.⁴²

The land question remains critical in Senegal, mainly because of the smallness of plots of land, of the increase in the salt levels in the soil thus reducing the size of arable land and because of speculation. Those farmers who cannot exploit their own land are forced to work for bigger producers.⁴³ The conflict in Casamance is itself based on a land issue, in particular the fact that there has been a strong influx of migrants from the north of Senegal to Casamance in order to find land.

Women face significant problems with regard to access and distribution of land. Generally, women's access to land property is a function of family ties with men (wives, sisters or daughters of male landowners) in clear violation of land law provisions. Furthermore, women have practically no access to credit and cannot provide guarantees for the loans they take. Consequently, women do not dispose of sufficient means to exploit their land. Furthermore, article 152 of the family Code, which recognises men as heads of the household, limits, among other things, women's access to seeds.⁴⁴

RADDHO, a member of the OMCT network, also reports that the situation of farmers has become precarious due to the intense international competition. OMCT is deeply concerned by the precarious situation of those farmers who are being refused credits to purchase necessary seeds, fertilisers and pesticide, as they have not repaid their debt, further undermining their capacity to produce, repay their debt and earn a living for themselves and their families. Such conditions push a large number of farmers into a vicious circle of poverty, seriously affecting their economic, social and cultural rights.⁴⁵

³⁹ RADDHO, 06/08/2001.

⁴⁰ *Committee on Economic, Social and Cultural Rights, General Comment No. 4*, para. 8(a), in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, 07/02/2000, HRI/GEN/1/REV.4.

⁴¹ *Ibid*, para. 8(a).

⁴² RADDHO, 06/08/2001.

⁴³ RADDHO, 06/08/2001.

⁴⁴ RADDHO, 06/08/2001.

⁴⁵ RADDHO, 06/08/2001.

In this respect, OMCT would like to express its concern about the high incidence of poverty in rural areas, mostly affecting farmers. A 1991-1992 government survey showed that poverty must be explained by the insufficiency of resources, the lack of diversification (relying on a single source of income), the poor performance of the agricultural sector, the low level of rural incomes, the smallness of land plots and the lack of diversity in crops. According to this survey, 52.6 percent of households in the Kolda region were poor of which 94 percent were rural households. In Fatick the numbers were 43.9 percent and 94 percent respectively. In the region of Louga and Kaolack 40 percent of household were poor and in Tambacounda 38.9 percent of households were poor. The Tambacounda region comprises the poorest *département* of Senegal where 86.8 percent of households are poor. In Ziguinchor, 37.8 percent of households are poor of whom 90 percent are rural households; Thiès has 20.9 percent of poor, Diourbel 19 percent and Dakar 12.5 percent.⁴⁶

6. The Right to Education

The Committee on Economic, Social and Cultural Rights noted in its 1993 Concluding Observations on Senegal that budgetary cutbacks in the wake of structural adjustment policies would endanger the educational sector.⁴⁷

OMCT notes with concern that as part of the implementation of the Decennial Educational Plan, the government is no longer hiring teachers, thus aggravating the current educational crisis and threatening the long-term potential of the Senegalese educational sector. Indeed, the government of Senegal is giving preference to unskilled teachers who have only been trained for four months. These are hired as volunteers (*volontaires de l'éducation*) and receive a salary of CFA Franc 50,000, which is only just above the minimum salary of CFA Franc 47,000.⁴⁸ The government's intention to train teachers for 45 days only during the summer at the *Ecole Normale Supérieure* represents a further grave threat to the quality of education.⁴⁹ Finally, RADDHO reports that teachers are no longer guaranteed employment by the State and this contributes to the general uneasiness in the educational sector.⁵⁰

7. The Right to Work

The labour situation in Senegal is determined by high unemployment rates, especially among the youth, and by a vast informal sector. Unemployment figures are very high and demonstrate a strong disparity in favour of urban areas.⁵¹ The national unemployment rate is of 11 percent while this figure doubles in rural areas (25 percent for men and 22 for women). The social and economic situation of young people is also a cause for concern as 41 percent of young people from Dakar are unemployed.⁵²

⁴⁶ RADDHO, 06/08/2001.

⁴⁷ *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Senegal*, 05/01/94, E/C.12/1993/18, para. 7.

⁴⁸ RADDHO, 06/08/2001.

⁴⁹ RADDHO, 06/08/2001.

⁵⁰ RADDHO, 06/08/2001.

⁵¹ *Résumé du Rapport Humain sur le Développement – 1998*, United Nations Development Programme UNDP, at <http://www.cyg.sn/pnud/html/premierrapport.htm> accessed on 09.07.2001.

⁵² *Résumé du Rapport Humain sur le Développement – 1998*, United Nations Development Programme UNDP, at <http://www.cyg.sn/pnud/html/premierrapport.htm> accessed on 09.07.2001.

In this respect, OMCT is particularly worried about article 47 of the Labour Code, which introduces greater flexibility in the labour market, allowing for, justifying, and in fact leading to a massive lay-off of workers without prior notice.⁵³

7.1. The informal sector

RADDHO, a member of the OMCT network, reports that according to UNICEF (2000), the informal sector employs 82 percent of active urban workers and represents 54 percent of GDP.⁵⁴ It is of course difficult to accurately evaluate the size of the informal sector. Traditionally, women and children dominate this sector, although recently, due to the high level of unemployment in Senegal, men have taken over the informal sector. The women's situation has therefore been further weakened and confined to the less productive occupations. It is hard to say whether informal sector workers can enjoy their economic, social and cultural rights as no research has been done in this respect. What is certain, though, is that social security and labour rights cannot be enjoyed in the informal sector. Concerning social security for informal workers, the *Caisse* has put at their disposal a programme of integration into the social security system but so far only 15 percent of informal sector workers are covered.⁵⁵ However, neither the *Institut de Prévoyance Maladies* – health insurance – nor mutual benefit societies are able to meet the needs of this population.⁵⁶

7.2. Discrimination at work

OMCT would like to draw the attention of the Committee to the incidence of discrimination in the workplace, in particular in relation to disabled persons. In this respect, RADDHO, a member of the OMCT network, reports that the examining jury eliminated Boubacar Fadiya from the recruitment of the 'voluntaries for education' although he had successfully passed the examination. The motive was that Mr. Fadiya suffered from a disability, in violation of article 6 of the Constitution of Senegal and article 1-1 of the Senegalese Labour Code.⁵⁷ Following the refusal, Mr. Fadiya filed a complaint to the *Conseil d'Etat* – Council of State, the highest administrative jurisdiction. On 29 June 2000 the Council of State annulled the jury's decision for abuse of power. Although the matter was resolved satisfactorily, OMCT notes that the incidence of discrimination remains very high both in the public as well as in the private sectors.

Discrimination against women with regard to access to employment also remains a factor of concern for OMCT. Indeed, following the implementation of a new law allowing 14 weeks of maternity leave, employers often give preference to male employees. While OMCT welcomes the promulgation of the new law on maternity leave, it deplors the fact that the Senegalese government did not take appropriate measures to address the resulting discriminatory practices.

⁵³ RADDHO, 06/08/2001

⁵⁴ RADDHO, 06/08/2001.

⁵⁵ RADDHO, 06/08/2001.

⁵⁶ RADDHO, 06/08/2001.

⁵⁷ Babacar DIAKHATE, *Le droit syndical au Sénégal*, Dakar : Friederich Ebert Stiftung, 1998, on www.fes.sn accessed on 10/07/2001.

7.3. Child labour

OMCT also deplores the high incidence of child labour in Senegal. In this respect, a study carried out by ILO and IPEC in 2001 in urban and rural areas shows that more than 400,000 children under the age of 18 were in full-time employment, in clear violation of international provisions of the ILO and of provisions of the Code of Labour in Senegal.⁵⁸ According to a joint UNICEF and government of Senegal survey (MICS II, 2000) 37.6 percent of working children are aged between 5 and 15. Children start working at a very early age: 31 percent of working children are between 5 and 9 years and 43.9 percent are between 10 and 15 years of age. Senegal has introduced a series of educational measures to tackle the problem but these have proved insufficient.⁵⁹ In the fishing industry, children aged between 7 and 14 work up to 14 hours a day, 7 days a week with fishing trips lasting up to a month. In the bakery industry, children between 12 and 18 years old work 10 hour-shifts from 8pm to 7am everyday of the week. Children aged between 7 and 18 work as household staff from 7am to 11pm from 6 to 7 days a week. The situation of these domestic workers, mostly girls is particularly worrying because of the lack of protection and discriminatory wages. In slaughter-houses, children averaging 16 years of age work 11 hours a day 7 days a week.⁶⁰

8. Trade Unions

In its 1993 Concluding Observations, the Committee on Economic, Social and Cultural Rights deplored the fact that the enjoyment of trade union and labour rights is restricted as foreign workers are barred from holding office in trade unions⁶¹ and as the right to strike is limited by the State's ability to impose compulsory arbitration before a strike can take place.⁶²

Since then Senegal has promulgated a new labour code.⁶³ With respect to foreigners holding office in trade unions, article L-19 of the code permits foreigners to hold administrative and directional positions in a Senegalese trade union. However, OMCT regrets that the code restricts this right to citizens whose countries of origin reciprocate this right to Senegalese citizens. OMCT would like to emphasise that human rights are absolute and must be enjoyed by all without discrimination and cannot, therefore, be granted on a reciprocal basis. Regarding the power of the State to impose arbitration, this provision also has been modified in the new Labour Code. OMCT welcomes this but deplores that 30-days notice is required before a strike is permissible.

OMCT is also deeply concerned about the dismissal of trade unionists because of their trade union membership or activities. Such sackings take place on a large scale and are not properly addressed by the existing legislation. Article L-29 of the Labour Code prohibits the employer from using membership of a trade union as a justification for denying employment, advancement or benefits as well as a reason for laying off employees. While the law provides for compensation in case of breach, it does not declare the sacking void and does not provide

⁵⁸ ILO/IPEC Report on Child Labour, CNTS/CSA/UNSAS/BIT-IPEC, 2001.

⁵⁹ RADDHO, 06/08/2001.

⁶⁰ ILO/IPEC Report on Child Labour, CNTS/CSA/UNSAS/BIT-IPEC, 2001.

⁶¹ *List of Issues: Senegal*, Committee on Economic, Social and Cultural Rights, 13/12/2000, E/C.12/Q/SEN/1, paras. 19.

⁶² *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Senegal*, 05/01/94, E/C.12/1993/18, para. 8.

⁶³ Bill 97-17.

for reinstatement in case of sacking.⁶⁴ Such gaps in the law lead to inadequate protection for trade unionists at the work place. Moreover, OMCT notes with concern that the existing provisions are not properly implemented and monitored.

Indeed, according to information compiled by RADDHO, a member organisation of the OMCT network, a number of workers have been laid off as a direct consequence of their membership or of their intention to join a trade union. RADDHO reported that 17 workers were laid off in 1994 by IPRES and that the LONASE company sacked its five trade union representatives; all but the head representative and deputy were reinstated later. The Dem Dik Company has also sacked 49 workers, alleging that the trade union leader had deserted his work for trade union activities. According to RADDHO, these practices are widespread, in particular in the food industry (cases at Africamer, Senemer, Compagnie Sucrière du Sénégal, SOCA, SONACOS) and in the security industry (Sen Sécurité, Sagam, Mégaforce, Scorpion, Eagle, ADSAT, EGSE,). In all these cases, the Labour Inspectorate preferred to attempt a conciliation procedure between employees and employers. However, in most cases, the employers refuse to answer to the summons.⁶⁵ Moreover, OMCT strongly questions the fairness of the conciliation procedure, especially in the light of the unequal power relationship between employers and employees. In this regard, the Committee on Economic, Social and Cultural Rights affirmed, in its Concluding Observations to the State Report submitted by Honduras, that State Parties must effectively control the negative effects of transnational and national companies' activities on employment and working conditions.⁶⁶

Article 25 of the Constitution of Senegal as well as article L-7 and L-29 of the labour code profess the right to create trade unions and for workers to exercise their trade union rights freely and without constraint. However, the International Confederation of Free Trade Unions (ICFTU) points out that the Labour Code requires the Ministry of the Interior to give prior authorisation before a trade union can exist legally. Furthermore, a new law replaced the 1968 law that allowed the Ministry to dissolve trade unions in 1997 but this provision was not repealed.⁶⁷

Finally, OMCT would like to draw the attention of the Committee to the measures taken by the authorities to prevent trade unionists from exercising their activities. The ICFTU reported that, in November 1998, the general-secretary of the electricity workers' union, SUTELEC, Mademba Sock, and another trade union official, Samba Yero Dieye, were sentenced to six months imprisonment and CFA Francs 280 million fine for alleged conspiracy to disrupt law and order.⁶⁸ Their arrest came in July 1998 during a work-to-rule to protest against the privatisation of the State electric utility SENELEC and to demand higher wages. SENELEC lodged a complain against SUTELEC claiming that the union has sabotaged the installations. SENELEC also laid off those arrested. In December 1999, the ILO called on the government of Senegal to reinstate trade union leader Mademba Sock and other activists dismissed from SENELEC.⁶⁹

⁶⁴ Babacar DIAKHATE, *Le droit syndical au Sénégal*, Dakar : Friederich Ebert Stiftung, 1998, on www.fes.sn accessed on 10/07/2001.

⁶⁵ RADDHO, 06/08/2001.

⁶⁶ *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Honduras*, 21/05/2001, E/C.12/1/Add.57. para. 15.

⁶⁷ *Annual Survey of Violations of Trade Union Rights 2000*, International Confederation of Free Trade Union.

⁶⁸ *Annual Survey of Violations of Trade Union Rights 2000*, International Confederation of Free Trade Union.

⁶⁹ *Annual Survey of Violations of Trade Union Rights 2000*, International Confederation of Free Trade Union.

9. Vulnerable Groups and the Enjoyment of Economic, Social and Cultural Rights

9.1 HIV and AIDS

OMCT would like to cite Senegal as an example of best practice in the fight against HIV/AIDS. OMCT welcomes the determination and effectiveness of the government of Senegal in designing prevention campaigns and in setting up health care for HIV/AIDS patients. The first reports of HIV/AIDS cases in Senegal date back to 1986. A national HIV/AIDS campaign was set up and preventive measure quickly taken. Between 1992 and 1996, Senegal invested USD 20 million in prevention programmes and, more important, dealt with obstacles to the success of these programmes. Political support for fighting HIV/AIDS has been remarkably consistent over time. The government developed a close co-operation with the biggest potential opponents to an HIV/AIDS campaign, namely religious authorities, which helped defuse tensions and allowed prevention messages to be relayed by religious leaders. The Senegalese tradition and culture of active community involvement helped the government to reach all Senegalese and to draw on the dynamic.⁷⁰

In 1992, sex education was made part of the curriculum in primary and secondary schools. Youth not enrolled in school were reached through youth groups. Parents were also made aware of the risks and were encouraged to take responsibility for their children's safe sex behaviour. Sex workers had been registered in Senegal for more than 15 years when HIV/AIDS broke out. Registered sex workers had to have regular health checks and STD (sexually-transmitted diseases) treatment. Mobile populations, which are particularly at risk, such as migrant and transport workers, have been particularly targeted. As it is known that STDs infections facilitate infection by HIV, Senegal established the very first African national STD control programme integrating STD treatment into the primary health service. The quality of care improved markedly following a national health workers training campaign.

As a result, the use of condom increased from near to zero to 67 percent of men having casual sex in 1997. In 1998, 99 percent of prostitutes had used a condom with their most recent new client and 97 percent with their most recent regular client. 81 percent of men and 76 percent of women know how HIV is transmitted. Such high levels of knowledge about HIV reveal the success of the AIDS campaigns. The HIV prevalence shows no sign of increasing with the notable exception of the sex workers population, reaching an alarming 35 percent in Ziguinchor in 1996.⁷¹ The incidence of HIV in sex workers rose from 1 percent in 1986 to 13 percent in 1995, but HIV prevalence among antenatal clinic women has remained very low. Since 1995 the prevalence of HIV among sex workers has decreased to 7 percent in 1998, however this is not the case in Ziguinchor as mentioned neither above, nor in Dakar and Kaolack where numbers continue to rise.⁷²

OMCT commends Senegal for its prompt and decisive answer to the HIV/AIDS epidemic as well as its determined use of its available national advantages (community spirit, health service) in keeping the HIV infection contained. Senegal thus maintains one of the lowest Sub-Saharan rates of infection, with a figure at 1.77 percent for adults. 7800 persons died of

⁷⁰ *Acting Early to Prevent AIDS: the Case of Senegal*, UNAIDS Best Practice Collection, Key Material, UNAIDS 99.34E, June 1999.

⁷¹ *Acting Early to Prevent AIDS: the Case of Senegal*, UNAIDS Best Practice Collection, Key Material, UNAIDS 99.34E, June 1999.

⁷² *Epidemiological Fact Sheet on HIV/AIDS and STD, 2000 Update, Senegal*, UNAIDS – WHO.

AIDS in 1999 leaving 42,000 cumulative orphans under the age of 15.⁷³ However, there is much to be done and the evolution of the infection among sex workers, mostly female, is not encouraging.

9.2 Street Children and Related Economic, Social and Cultural Rights

According to RADDHO, a member of the OMCT network, the issue of street children has taken alarming proportions in this last decade. This phenomenon must be linked to the economic and social crisis that Senegal is enduring. The family unit, once a guarantee of safety and security for its members, has become more precarious. The decrease in family income, high unemployment, substantial urbanisation in the capital city, the spread of shanty towns and promiscuity as well as the demise of the education system have pushed an increasing number of children onto the streets.⁷⁴ In general, street children survive by begging, peddling goods, washing cars and selling goods. Up to 28.3 percent of these children are set on the streets by parents who lack adequate resources.⁷⁵

In 1995, a study carried out by UNICEF on street children in Dakar, Kaolack and Saint Louis showed that 65 percent were older than 15, 36 percent were aged between 10 and 14, and 4 percent were younger than 10. The proportion of girls is reported to be low. Moreover, the study also reports that 55.8 percent of street children are illiterate, 22.4 percent can read and write French and 22.2 percent can read and write Arabic.⁷⁶ Furthermore, Dakar is now confronted with an additional problem: that of families living on the streets. This problem is a consequence of the social and housing crisis (see part 4).⁷⁷

Of particular concern to OMCT is the situation of children from koranic schools, known as *talibés*, who are forced to beg for their food and to raise money for their teachers. The majority of *talibés* who run away from their masters end up on the streets. The Committee on the Rights of the Child observed, in its Concluding Observations, that Senegal must pay particular attention to this phenomenon and take measures to ensure that *talibés* can effectively enjoy their economic, social and cultural rights.⁷⁸

A UNICEF study carried out in 1999 on the reinstatement of children who have broken off with society has shown that 4 out of 10 street children had passed through reinstatement centres and ultimately failed to reintegrate mainstream society. OMCT deplors that the reinstatement centres have so far failed to reintegrate street children in the mainstream society. OMCT further regrets that Senegal has not implemented a significant policy to deal with this problem.

⁷³ *Epidemiological Fact Sheet on HIV/AIDS and STD, 2000 Update, Senegal, UNAIDS – WHO.*

⁷⁴ RADDHO, 06/08/2001.

⁷⁵ RADDHO, 06/08/2001.

⁷⁶ RADDHO, 06/08/2001.

⁷⁷ RADDHO, 06/08/2001.

⁷⁸ *Concluding Observations of the Committee on the Rights of the Child: Senegal, 27/11/95, CRC/C/15/Add.44.*

9.3 Women and the Enjoyment of Economic, Social and Cultural Rights.

In its Concluding Observations on the State Report submitted by Senegal, the Committee on Economic, Social and Cultural Rights deplored that Senegal did not provide sufficient information on the measures taken to ensure the enjoyment of economic, social and cultural rights by women. The Committee was particularly concerned with women's right to work, women's labour conditions and equality between men and women in the workplace. The Committee noted that a significantly lower literacy rate for women compromised women's employment and advancement opportunities.⁷⁹ Moreover, in its Concluding Observations for Senegal the Committee on the Elimination of Discrimination Against Women highlighted the issues affecting women's economic, social and cultural rights and which needed to be addressed by the State: the question of customary or traditional law, the measures to combat widespread violence against women, the question of the legality of polygamy, equality between men and women especially within marriage, the question of health and education as well as the implementation of the anti-female genitalia mutilation law (FGM).⁸⁰

Since the implementation of a National Action Plan for Women – *Plan d'Action Nationale de la Femme* PANAF in 1996, following the Beijing Women's Conference, some improvements in the social and economic level of women have been noted. The contribution of foreign partners to programmes for women have focused on the vulnerability of women in a context marked by a deterioration of the general social and economic situation. In a global poverty reduction programme of USD 7,240,000 UNDP has committed USD 800,000 to the socio-economic promotion of women and to the fight against poverty among women. Other partners such as the African Fund for Development, the Nordic Development Fund and other NGOs have greatly contributed to poverty reduction, with a particular emphasis on women.⁸¹

9.3.1. Women and the right to health

OMCT is particularly concerned by the discrepancy that exists between male and female social indicators. Figures from UNESCO and the World Health Organisation (WHO) show that while the literacy rate for males was 43 percent that of women was significantly lower at 23 percent in 1995. This represents a disparity of 20 percentage points, which is largely due to the differential in school enrolment ratios. The ratio in 1996 was of 19.7 percent for males and of 11.9 percent for women in secondary education.⁸²

Furthermore, OMCT is concerned about the evolution of the maternal mortality rate, which has been constantly increasing. From 460 deaths per 100,000 births in the 1979-1983 period, the rate worsened to 555 deaths per 100'000 births in the 1986-1993 period.⁸³ The year 1990 saw a peak of 1,200 deaths per 100,000 births.⁸⁴ These data clearly show a worrying insufficiency of health programmes and family planning policies, which have failed to reduce maternal mortality. This situation also highlights the urgent need to carry out further research to obtain more up-to date figures.

⁷⁹ *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Senegal*, 05/01/94, E/C.12/1993/18, para. 6.

⁸⁰ *Concluding Observations*, Committee on the Elimination of Discrimination Against Women, 12/04/94, A/49/38.

⁸¹ RADDHO, 06/08/2001.

⁸² *Epidemiological Fact Sheet on HIV/AIDS and STD, 2000 Update, Senegal*, UNAIDS – WHO, UNESCO figures.

⁸³ RADDHO, 06/08/2001.

⁸⁴ *Epidemiological Fact Sheet on HIV/AIDS and STD, 2000 Update, Senegal*, UNAIDS – WHO.

9.3.2. Discrimination

Evidence provided by RADDHO, a member of the OMCT network, also highlights the fact that discrimination against women persists in different sectors. In this respect, article 152 of the Family Code, which recognises men as heads of the household, perpetuates discrimination against women in the fields of taxation, family allowances and access to seeds in particular. Indeed, a salaried and married woman will pay more taxes than her husband. Furthermore, she may not take social responsibility for dependents, including her husband or her children (for example in case of illness). As indicated above, there are important discriminations in women's access to land and housing. (See section 4) Women's access to ownership of land is limited by the socio-economic environment: they have access to land through male relatives and they barely have access to credit, although this is a clear violation of land law provisions. Discrimination against women in access to employment has also been highlighted in section 7).

OMCT further deplores that women still fall victim to customary law regarding housing, divorced and polygamous wives being unable to claim the house they have been living in at the moment of the divorce or at the moment of the death of their husband.⁸⁵

9.3.3. Violence against women: female genital mutilation (FGM)

Despite the promulgation of a law, in 1999, criminalizing female genital mutilation (FGM), this practice continues throughout the country with the frequent support of religious authorities.

Indeed, OMCT notes with concern that the authorities have yet to implement adequate and comprehensive policies to address this issue. In the light of the authorities' rapidity and effectiveness in establishing a campaign on HIV/AIDS, which involved and rallied religious leaders, OMCT questions the government's real willingness to embark on this task.

In this regard, OMCT would like to point out that the impetus to ban FGM comes from women themselves. The village of Malicounda, where women persuaded their husbands and elders to abandon the practice, initiated the movement in 1997.⁸⁶ The movement then spread to neighbouring villages and then to all of Senegal as village after village pledged to refuse FGM. Women have from the start been supported by NGOs, but it remains very much a grassroots movement symptomatic of the vitality of civil society in Senegal. The government has long delayed in following suit, but in 1997 President Abdou Diouf praised the Malicounda women in a public speech and the National Assembly voted a law criminalizing FGM in 1998.⁸⁷

⁸⁵ RADDHO, 06/08/2001.

⁸⁶ *Au Sénégal, contre l'excision*, in *Le Monde Diplomatique*, June 2000, at <http://www.monde-diplomatique.fr> accessed on 13 July 2001.

⁸⁷ *Au Sénégal, contre l'excision*, in *Le Monde Diplomatique*, June 2000, at <http://www.monde-diplomatique.fr> accessed on 13.07.2001.

9.4. Refugees and asylum seekers

OMCT regrets that although the Constitution of Senegal guarantees the equal access to public services (Preamble) and rejects injustice and discrimination (Preamble, article 1 and 5), that Senegal is furthermore a State Party to the 1951 Refugee Convention and to the 1969 Organisation of African Unity's Refugee Convention, in practice refugees and asylum seekers are confronted with considerable obstacles to their enjoyment of economic, social and cultural rights.

The 1951 Refugee Convention clearly viewed economic and social rights as crucial components to the meaningful protection of refugees.⁸⁸ In the preamble to the OAU's Refugee Convention, State Parties recognises the need to establish common standards for treating refugees, thus paving the way for a full recognition of economic and social rights for refugees.

OMCT is very concerned about the situation of asylum seekers who, while awaiting a decision on their status, are denied access to health care. According to information provided by RADDHO, a member of OMCT network, health care is granted upon the presentation of a valid UNHCR certificate.⁸⁹ Similarly, children of asylum seekers who have not yet been granted the refugee status cannot enrol in schools unless they are able to pay tuition fees. Furthermore, children also face language problems when they are able to attend school.⁹⁰ Even though Senegal has set up an Eligibility Commission (Commission d'Eligibilité), the obtaining of an UNHCR certificate is particularly slow, as there is sometimes a six-month delay between the application and the interview of applicants. Altogether the decision of granting the refugee status is particularly slow and can take up to a year. In the meantime, refugees are denied their economic, social and cultural rights.

In this respect, OMCT welcomes the fact that Mauritanian refugees who have lived in Senegal for the last ten years have founded a health care centre assisted by NGOs and UNHCR and supported by the Bamako Initiative, an initiative of the Senegalese health services which permits them to buy medicine at reduced prices.⁹¹

OMCT is also preoccupied with the linguistic problems faced by refugees in their administrative procedures. Language barriers are an important impediment in the enjoyment of economic, social and cultural rights. Refugees from Sierra Leone and Liberia have thus limited access to Senegalese institutions.⁹²

OMCT is also concerned about the issue of zones. In Senegal, the UNHCHR has denied assistance to refugees from Guinea Bissau, Liberia and Sierra Leone on the grounds that the zones of assistance for these refugees are Ivory Coast and Guinea Conakry. The concept of 'zones of assistance' does not have any meaning in international humanitarian law. Conversely, certain refugees have enjoyed positive discrimination. Indeed, Rwandan,

⁸⁸ *From Response to Solutions: Strengthening the Protection of Refugees Through Economic, Social and Cultural Rights*, WARIPNET and the Lawyers Committee for Human Rights, October 2000.

⁸⁹ RADDHO, 06/08/2001.

⁹⁰ RADDHO, 06/08/2001.

⁹¹ *From Response to Solutions: Strengthening the Protection of Refugees Through Economic, Social and Cultural Rights*, WARIPNET and the Lawyers Committee for Human Rights, October 2000.

⁹² RADDHO, 06/08/2001.

Burundian and Congolese refugees are provided with far better assistance than others.⁹³ Those refugees who do not have access to assistance or who do not have sufficient private means are left homeless and sleep in the streets.⁹⁴

Finally, OMCT expresses concern regarding the government of Senegal's response to refugees' claims on their economic, social and cultural rights. WARIPNET and the Lawyers Committee for Human Rights report that two hunger strikes by refugees have taken place. They were in protest against refugees' impossibility to enjoy their economic, social and cultural rights. In particular, the slowness of the acquisition process of refugee status acquisition, the denial of assistance on geographical grounds and language barriers all act as barriers to the full enjoyment of these rights. Refugees striking in Dakar in June 2000 were arrested and molested by police. They were detained, charged with disturbing the peace and sentenced to one-month imprisonment. Following that, the government of Senegal deported them to Mali, allegedly in accordance with Senegalese law.⁹⁵

10. Poverty and Access to Justice

The access to justice for indigent people though guaranteed in theory is restricted in practice by their ignorance of judicial proceedings and by their inability to pay legal expenses such as bail and lawyer fees. From a purely legalistic point of view, the State can appoint lawyers for legal aid to assist indigent people. However, the reality is very different, as the number of lawyers at the disposal of the Public Prosecutor's office is minimal.

11. Conclusions and Recommendations

Despite the fact that the 1991 Constitution of Senegal guarantees the enjoyment of the economic, social and cultural rights enshrined in the Covenant, OMCT regrets that, apart from the Labour Code, there is no specific body of legislation guaranteeing economic, social and cultural rights, as well as non-discrimination in their enjoyment. There is a risk, therefore, that for the time being they remain at the level of principles or desirable goals. OMCT would therefore urge the Senegalese government to take appropriate measures, including the enactment of legislation, to ensure that all the people of Senegal enjoy without discrimination of any kind the economic, social and cultural rights set forth in the Covenant. OMCT would further recommend to the authorities to closely monitor the implementation of such legislation.

OMCT is particularly worried at the situation in Casamance and its impact on the enjoyment of economic social and cultural rights. The land issue remains a central component of the ongoing conflict. In this respect, OMCT calls on both the government and the MFDC to resume peace negotiations and to cease all violence against civilians in the region, in particular against human rights defenders.

⁹³ *From Response to Solutions: Strengthening the Protection of Refugees Through Economic, Social and Cultural Rights*, WARIPNET and the Lawyers Committee for Human Rights, October 2000.

⁹⁴ RADDHO, 06/08/2001.

⁹⁵ *From Response to Solutions: Strengthening the Protection of Refugees Through Economic, Social and Cultural Rights*, WARIPNET and the Lawyers Committee for Human Rights, October 2000.

Another element of concern to OMCT is the ongoing deterioration of social indicators, despite the economic growth, which has been consistent since 1994 and has created an environment conducive to more effective implementation of economic, social and cultural rights. In this respect, OMCT would recommend that the Senegalese Government take adequate, effective, immediate and appropriate steps, at the local, national and international levels, including in the elaboration of the final version of the Poverty Reduction Strategy Papers (PRSP) to be presented in December 2001 to the World Bank and the IMF, to guarantee that economic growth and the wealth deriving from it benefits to the whole population and contribute to the enjoyment of economic, social and cultural rights for all.

The lack of participation of the civil society and affected groups in the elaboration and implementation of development programmes and projects also remains a factor of concern to OMCT. While there exists no provision, in national law, for the inclusion of civil society in the process of elaborating and implementing development programmes and projects, consultations with NGOs and representatives of civil society remain limited. This in turn seriously limits the positive impact of such initiatives in improving the enjoyment of economic, social and cultural rights for the Senegalese peoples. In this respect, OMCT would urge the Senegalese government to enact legislation guaranteeing the right of information and participation of civil society, and people affected by development programmes and projects, together with a comprehensive and systematic review of the relevant administrative procedures and policies at the local and national levels.

OMCT remains equally worried by the negative impact that the implementation of structural adjustment programmes (SAPs) and the recent HIPIC initiative might have on the enjoyment of economic, social and cultural rights throughout the country. While OMCT welcomes the introduction of initiative 20/20 designed as a basic social safety net, so far the money allocated to basic social services remains insufficient. In this respect OMCT would begin by urging the Senegalese government to bring its legally binding obligations under the Covenant to the negotiating table with the IMF and the World Bank in order to ensure that decisions taken do not negatively impact on the enjoyment of economic, social and cultural rights throughout the country. OMCT would also recommend to the Senegalese authorities to fully integrate human rights, and in particular economic, social and cultural rights, in the elaboration, formulation and implementation of the Poverty Reduction Strategy Paper (PRSP) to be completed in December 2001. In this respect, OMCT would urge that Senegalese human rights NGOs be fully involved in the process. Finally, OMCT would also expect Senegal to expand the budgetary allocation for its initiative 20/20 to provide adequate safety nets for the vulnerable sectors of society in order to avoid a deterioration of the enjoyment of the economic, social and cultural rights for which the Covenant provides protection.

OMCT notes with concern that forced evictions, from homes and land, as well as destructions of homes and attempts to intimidate inhabitants into deserting their homes remain frequent throughout the country. This situation is accompanied, and often explained, by strong irregularities in the allocation of land and recognition of ownership. Harassment and threats against persons asserting their right to adequate housing and fighting against evictions are also reported. In this regard, the situation of the Diamaguène district of Dakar and of the Baraka slum, also located in Dakar, are particularly worrying. OMCT would urge Senegal to undertake a systematic and comprehensive review of the relevant legislation, administrative procedures and policies to combat forced evictions, in accordance with General Comments No 4 and 7 of the Committee, and address irregularities in the allocation of land and

recognition of ownership. OMCT would also recommend that the authorities address police brutality during the eviction procedures. OMCT would finally expect that the Senegalese government regularise the situation of the population of the Diamaguène district and the Baraka slum in Dakar in a way guaranteeing the right to adequate housing.

The housing situation in Senegal also remains worrying with regard to the criteria of accessibility, affordability and quality. In this respect, OMCT would urge the Senegalese government to review its current housing policies, and in particular to reinstate a system of social housing and reassesses the current system of credit in order to ensure universal, non-discriminatory and reasonable access to housing credit for all. With regard to the situation of villages located in the vicinity of quarries, such as the village of Bandia, the Committee urges the State party to take measures to relocate the affected population to safer areas and to ensure that these people receive proper compensation by the enterprises operating the quarries.

The land question also remains critical in Senegal, particularly with regard to the size of plots of land. Indeed, due to the small size of plots, many farmers and their families are unable to earn a living from their agricultural work and are therefore pushed into poverty. OMCT is further deeply concerned by the precarious situation of those farmers who, not having repaid their debt, are being refused credits to purchase necessary seeds, fertilisers and pesticide, further undermining their capacity to produce, repay their debt and earn a living for themselves and their families. In this respect, OMCT would urge the Senegalese authorities to guarantee farmers' access to credit at reasonable or zero interest rates, and to untie the granting of credit from the reimbursement of their debt in order for them to be able to buy necessary seeds, pesticide and fertiliser to perform their activities and provide for themselves and their families.

OMCT is further concerned by the labour situation in Senegal, determined by high unemployment rates and by a vast informal sector. Unemployment figures are very high and demonstrate a strong disparity in favour of urban areas. The national unemployment rate is of 11 percent and double that figure in rural areas. The social and economic situation of young people is also a cause for concern as 41 percent of young people in Dakar are unemployed.

In this respect, OMCT is deeply worried about article 47 of the labour code, which introduces greater flexibility in the labour market, allowing for, justifying and in fact leading to massive lay-off of workers without prior notice. In this respect, OMCT would urge Senegal to repeal article 47 of the Labour Code.

The lack of enjoyment of labour and social rights in the informal sector continues to be a cause for concern. While OMCT welcomes the fact that the *Caisse* has put a programme of integration of informal workers into the social security system, so far only 15 percent of informal sector workers are covered. Moreover, most informal workers have, for the time being, no access to health benefits. The situation of women is particularly worrying in this regard. Indeed, while women continue to be over represented in this sector, men have recently taken over the informal sector due to the high level of unemployment, confining women to the less productive and most precarious occupations. In this regard, OMCT believes that the current social security system and existing programme of integration need to be reviewed in order to guarantee that informal workers do have access to and benefit from social services. OMCT would therefore urge Senegal to review its current programme of integration aimed at involving informal workers into the social security system, in order to guarantee their access to basic social services. OMCT also draws the attention of the authorities to the fact that this

review should be based on a thorough and comprehensive assessment of the scope of the informal sector. Finally, OMCT would ask the government to report on the progress achieved in this regard in its third periodic report.

OMCT also deplores the incidence of discrimination at work, notably within the public administration, and in particular in relation to people with disabilities and women. In this regard, OMCT would recommend that the Senegalese authorities closely monitor discriminatory practices which take place both in the private sector as well as in the public administration in order to take adequate measures against those responsible and to provide effective remedies to the victims. In this respect, OMCT would also urge Senegal to pay particular attention to discrimination against women in access to employment resulting from the implementation of the law on maternity leave.

Child labour remains also a factor for concern as more than 400'000 children under the age of 18 are in full-time employment, in particular in the fishing industry, the bakery industry and as domestic workers, with a direct incidence on their ability to attend school. While Senegal has introduced a series of measures to address this issue, so far these remain insufficient. In this respect, OMCT would urge the Senegalese authorities to take effective measures to reinforce existing laws on child labour, and to improve its monitoring mechanisms to ensure the enforcement of existing legislation and protect children from economic exploitation. OMCT would also recommend the promulgation of a law making school compulsory until the age of 16, as well as the establishment of a social fund for the education of children from families living below the poverty line.

With regard to the right to education OMCT is further concerned by the aggravation of the current educational crisis in Senegal. OMCT notes in particular that the quality of education and the long-term capabilities of the educational sector are threatened by the fact that the authorities are no longer hiring teachers. In this regard, OMCT would urge the Senegalese government to review the current disposition of the Decennial Educational Plan, in particular those concerning the recruitment and training of teachers in order to guarantee the long-term quality and capabilities of the Senegalese educational sector.

OMCT is also very concerned about the current *de jure* and *de facto* restrictions to the enjoyment of trade union rights. While OMCT welcomes the promulgation of a new labour code, which permits foreign workers to hold trade union offices, the new labour bill restricts this right to citizens whose country of origin reciprocates this right to Senegalese citizen.

OMCT is also deeply concerned about the dismissal of trade unionists because of their trade union membership or activities. Such sackings take place on a large scale and are not properly addressed by the existing legislation.

OMCT is extremely worried by the fact that the Labour Code requires the Ministry of the Interior to give prior authorisation before a trade union can exist legally, seriously restricting the right of everyone to form and join trade unions as guaranteed by article 8 of the Covenant. Furthermore, the provision of the 1968 law that allowed the Ministry to dissolve trade unions was not repealed in the new 1997 law.

OMCT would therefore urge Senegal to take effective measures to guarantee trade union rights. In this respect, OMCT would ask to the government to repeal existing provisions of the Labour Code prohibiting foreign workers from holding trade union offices in Senegal if their

country of citizenship does not reciprocate trade union rights to Senegalese citizens, allowing the Ministry of the Interior to dissolve trade unions and requiring prior authorisation of the Ministry of the Interior before a trade union can legally exist. OMCT would also expect the government to take adequate measures to effectively control the negative effect that the activities of national and transnational companies have on trade union rights, in particular with regard to lay-offs for exercising trade union activities. In this regard, the means and budget of the Labour Inspectorate should be increased and the Labour Law should be amended in order to guarantee reinstatement in case of dismissal for trade union activities.

While the issue of street children has reached alarming proportions in the last decade, OMCT deplors the fact that the authorities have so far been unable to efficiently address this issue, regarding the socio-economic causes of this phenomenon as well as possible ways of reintegrating of children into mainstream society. In this regard, the situation of the *talibés* is of particular concern. OMCT points out that no significant policy is implemented to deal with this problem in Senegal. In this respect, OMCT would urge Senegal to take effective measures and implement a comprehensive policy addressing the problem of street children, in its socio-economic causes as well as regarding the means and ways of children's reintegration into mainstream society. Moreover, OMCT would ask the government to take appropriate measures to ensure that *talibés* children can effectively enjoy their economic, social and cultural rights.

The situation of women, with regard to their enjoyment of economic, social and cultural rights as well as the violence they face also remain a factor of concern to OMCT. Discrimination against women continues to persist in all spheres of society, and notably with regard to taxation, fiscal matters, access to land and housing. In this respect, OMCT would urge Senegal to take more active and positive steps to address the inequality and discrimination against women and girl children in Senegal, in law and in fact. In particular, OMCT would urge the government to repeal article 152 of the Family Code, *which* discriminates against women. Moreover, OMCT would also ask the Senegalese authorities to effectively enforce legislation prohibiting customary practices, which violate the rights of women and girl children, and to take effective measures to combat such practices and beliefs by all means, including educational programmes. Government action should focus, in particular, on the elimination of practices of polygamy, female genital mutilation and restricted access to land, property, housing and credit. The project of establishing a National Observatory on the Rights of Women as an independent body should be reactivated in order to closely monitor progress with regard to the realization of women's human rights. Regarding violence against women and the issue of female genital mutilations (FGM), OMCT would ask the government to implement adequate and comprehensive policies to address this issue. Finally, OMCT would ask Senegal to report on the progress achieved in this regard in its third periodic report.

The situation of refugees and asylum seekers with regard to their enjoyment of economic, social and cultural rights also remains a factor of concern for OMCT. In particular, the slowness of the process for acquiring refugee status- without which social benefits are refused- and language barriers all act as impediments to the full enjoyment of economic, social and cultural rights. In this respect, OMCT would urge the Senegalese authorities to take appropriate measures to guarantee that asylum seekers, while awaiting a decision on their status, have access to basic social services including hospital care and education. In this respect, OMCT would recommend the creation of a fund within the Ministry of Social Action (Ministère d'Action Sociale) and, in cooperation with the United Nations High Commissioner

for Human Rights (UNHCHR), guaranteeing proper access to basic social services for the most vulnerable asylum seekers, in particular women and children.

Finally, OMCT regrets that access to justice for indigent people, though guaranteed in theory, is restricted in practice by their ignorance of legal proceedings and by their inability to pay legal expenses such as bail and lawyer's fees. In this regard, OMCT would urge the Senegalese government to take adequate measures to guarantee that indigent people do really benefit from the provision of free legal aid.