The Constitution of the Republic of Senegal
Introductory Notes

By Alioune B. FALL
Professeur des Universités - Agrégé de Droit Public
Université de Bordeaux
Membre du LAM
Ancien Directeur du Centre d'études et de recherches sur les droits africains et sur le développement institutionnel des pays en développement (LAM-CERDRADI)
Rédacteur en chef de la revue électronique 'Afrilex'

I Origins and historical development of the Constitution

Senegal has been regarded as a peaceful and democratic country. It has also been considered to be a 'democratic showcase' on the African continent. Although such a perception may be exaggerated, it is however historically and politically justified. One of the remarkable moments of Senegal's political and institutional history remains the peaceful alternation of power that occurred in 2000, the first since the country's independence from France in 1960. President Wade took over the reins of power in Senegal after twenty years of political struggle in the opposition.

The positive outcome of Senegal's 2000 presidential election was not an historical accident. It was the result of a long political process that started during the colonial era[1] and was facilitated by the experience of political and civil society activists. It might also be justified by the establishment of capable political institutions by previous political regimes. Compared to many African countries that are yet to respect democratic principles and human rights, the alternation of power in Senegal was a significant political development. Nevertheless, besides the success of the 2000 presidential elections, this has not spared Senegal from a myriad of crises that are inherent to each democratic system. Such crises are exacerbated on the African continent by internal conflicts like those that marred the electoral process in Cote d'Ivoire. Cote d'Ivoire, just like Senegal, was until recently regarded as a peaceful and stable country in Africa. But political crises, including the concept of '*ivoirité*'[2] that pertains to the conditions of eligibility for President, have damaged the country's reputation.

The democratization of the political system in Senegal is not only the result of a democratic process established by the political and social organization of traditional society or the rich political experience from which Senegalese politicians benefited from the colonial and post-colonial era. Other factors have contributed to the pacification of social conflicts and paved

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[1] See I. Fall, '*Le droit constitutionnel au secours de l'authenticité et de la négritude : le serment du Président de la République, acculturation ou retour aux sources?*', *Annales africaines* (Dakar, 1973), at p. 203. It is evidenced by ceremonies that took place during the inauguration of the King. See also P. Diagne, '*Pouvoir politique traditionnel en Afrique occidentale: essai sur les institutions politiques précoloniales*', *Présence africaine*, 1967. The two authors recalled that African pre-colonial political systems had institutions and principles that were similar to those present in today's democracies.

[2] R. Benegas and B. Losh, '*La Côte d'Ivoire au bord de l'implosion*', *Politique Africaine*, 87, October 2002, p. 139 and C. Vidal and M. Le Pape (eds), *Côte d'Ivoire : année terrible 1999-2000* (Paris, Karthala, 2002).

the way for the alternation of power in the country. The establishment of a number of administrative and political structures by the post-independence ruling party positively influenced the quality of democratic debate and the functioning of institutions and the civil service in general.[3]

Senegal's constitutional background is rich and complex. In terms of abundance, its richness results from the number of constitutions and constitutional acts that have been promulgated from 1959 to date. With regard to quality, Senegal's constitutional history has given rise to different constitutional regimes. Political leaders have also been preoccupied with the establishment of a state and a democratic regime.[4] The successive political regimes evolved within a peculiar political, social, and cultural environment and context. This is why the political evolution of Senegal is known to be especially complex.[5]

Constitutional principles regulating the organization and functioning of the state were inscribed for the first time in the first 1959 Constitution. Later, they were improved and complemented in the constitutions that followed. Some of the principles are adherence to the rule of law and a pluralistic democracy, the functions of the state, the political structure of the executive characterized by the existence of the President of the Republic and the Prime Minister, and principles concerning the relationship between the executive and the legislature, as well as the status and powers of the judiciary. Therefore, all subsequent constitutional amendments have been the modalities to develop and redevelop principles that have become almost entrenched. It can then be said that through Senegal's 2001 Constitution, the country's political regime was merely strengthened.[6]

The Constitution that is currently in force was enacted and promulgated on 22 January 2001. It is the fourth constitution, the previous ones being those of 1959, 1960, and 1963. Like many other constitutions of Francophone African countries, the 2001 Constitution was literally inspired by the 1958 French Constitution that is still regarded in those countries as 'the parent constitution'.

The Constitution of Senegal borrows principles on the functioning of the polity from the French political and legal orders. In this respect, the order it establishes adopts the republican form of government; a unitary state that was centralized but later became decentralized; political pluralism; the pre-eminence of the President of the Republic as an institution; and the recognition of numerous rights and freedoms that lacked enforcement mechanisms. The Constitution also recognizes the existence of a parliament that has limited constitutional powers and a judiciary that lacks effective independence. The independence of the judiciary is brought into question because the head of state presides over the Superior Council of the Magistracy (the equivalent of the judicial service commission).

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[3] A.B. Fall, '*La démocratie sénégalaise à l'épreuve de l'alternance*', in *Droit constitutionnel et Droit pénal, revue Politéia, Cahiers de l'Association Française des Auditeurs de l'Académie Internationale de Droit Constitutionnel*, n° 5, printemps 2004, at pp. 35-82.

[4] See D.C. O'Brien, M-C. Diop and M. Diouf, *La construction de l'Etat du Sénégal* (Paris Karthala, 2002).

[5] I.M. Fall, *Evolution constitutionnelle du Sénégal. De la veille de l'indépendance aux élections de 2007* (CREDILA CREPOS, 2007), at p. 9.

[6] As above.

The combination of the constitutional distribution of political powers with the way they are being exercized in Senegal has resulted in a political regime still dominated by the head of state. This political system is currently being contested within the context of political pluralism. The Senegalese political regime is neither a presidential system of government like the United States, nor a parliamentary system of government like many European democracies. It has nevertheless moved away, just like many African countries, from the system of government created by African states in the early 1960s. That system was centred on the head of state. It was known as 'presidential monocentrism' or 'Negro-African Presidentialism'.

Since independence, the desire to strengthen personal political power has characterized the development and enactment of the constitutions in Senegal. The disagreement among actors on the management of political power first emerged during the establishment of the Federation of Mali between Leopold Sédar Senghor and Modibo Keïta in June 1960. The disagreement might have been justified by differences between the two countries. Mali was larger than Senegal, but with poorly developed infrastructures and less resources than Senegal. Senegal had benefited from an important colonial legacy in terms of infrastructure, particularly in the so-called *communes de plein exercice*: Saint-Louis, Rufisque, Gorée, and Dakar. Dakar was also the capital city of what was known as *Afrique Occidentale Française* (AOF). To this may also be added the long and rich political experience of Senegal. There were also struggles for power and political leadership between Senegalese and Malians. This is why, for instance, Leopold Sédar Senghor once claimed that Modibo Keïta had attempted to stage a *coup d'etat* to enable Malians to control political power. The Federation of Mali was dismantled only two months after it was established (20 June to 19 August 1960). Senegal established a parliamentary system of government in the 26 August 1960 Constitution. It therefore had a bicephalic executive (with a Prime Minister and a President of the Republic).

These interpersonal conflicts have continued in Senegal's political and institutional arena, characterized by the adoption of numerous constitutions and constitutional amendments. The first Constitution was adopted by Act 59-003 of 24 January 1959, which instituted the Constitution of the Republic of Senegal.

The 1959 Constitution remained in force until the country's independence in 1960. This sovereign status prompted the country to adopt Act 60-045 of 26 August 1960, amending the Constitution of the Republic of Senegal. This was Senegal's second Constitution[7] and it differed from the 1959 Constitution. The latter was adopted by the Constituent Assembly, while the former was adopted by the National Assembly. The second Constitution maintained principles enshrined in the first Constitution, such as a parliamentary system of government—unlike many other African states—that was subsequently consolidated. What can be said to be the major innovation of the 1960 Constitution was the establishment, for the first time in Senegal's history, of multiparty democracy after independence.[8] In practice, however, what was introduced in the country was single party state. The second Constitution was in force until 1962 when a political

[7] Act 60-045 of 26 August 1960: The Constitutional Amendment Act of Senegal.

[8] Pursuant to Article 3 of the Constitution, '[p]olitical parties and groupings are allowed to seek votes and be elected'.

crisis between Mamadou Dia and Léopold Sédar Senghor turned Senegal's political stage upside down.[9]

Following the collapse of the Federation of Mali, which had proven that a federation made up of two states was impossible, Léopold Sédar Senghor learnt that the concept of power sharing was irrelevant.[10] It is then easier to understand the reasons why the Constitution that Senghor proposed and adopted through a referendum on 7 March 1963 concentrated political powers into the hands of the heads of state (Articles 36 to 47). The new Constitution transformed the former parliamentary system of government adopted by Senegal to a presidential system. The head of state was now to be elected by direct universal suffrage and by majority vote in two rounds (Article 21). The position of Prime Minister, as head of government, was suppressed. In fact, pursuant to Article 43, '[t]he head of state is assisted by ministers and secretaries of state chosen and appointed by himself. He defines their duties and terminates their functions. Ministers and secretaries of states are accountable to the head of state'. The Constitutional Act 67-32 of 20 June 1967 established a political imbalance between the executive and the legislature by bestowing on the President, through Article 45*bis*, the power to dissolve the National Assembly. However, this power was mitigated by the fact that upon the dissolution of the National Assembly, the mandate of the President should be automatically subject to renewal.

The establishment and success of Senegal's first institutions can be credited to President Senghor, whose political personality marked the history of the country. Senghor was elected in 1946 to the French Constituent Assembly by the rural population. The nature of his electorate and the rural population led people to refer to him as 'the MP of the peasant' or 'the MP from the scrubland'. Nonetheless, the 1946 election turned out to be the beginning of a long political career that first took Senghor to the French Section of the International Socialist (SFIO) and later to the presidency of Senegal after independence. Senghor became President in 1960. He was re-elected in 1963, 1968, and 1973. During that time, he escaped what was considered as a *coup d'etat* staged by the President of the Council, Mamadou Dia, and an attempted assassination. In

[9] Senghor was the head of state and Mamadou Dia was the President of the Council (head of government). According to Act 60-045 of 26 August 1960, which amended the Constitution of the Republic of Senegal in force at the time, particularly Article 26, the President of the Council developed and implemented the country's policy. He was responsible for national defence. He controlled the civil service and the army. Article 24 provided that the head of state was the gatekeeper of the Constitution and the guarantor of the functioning of institutions. Such power-sharing between Senghor, as head of state, and Mamadou, as head of government, was marred by numerous difficulties. Both sought absolute power. Senghor was not comfortable with such political cohabitation. Subsequently, a motion of 'no-confidence' was initiated by members of parliament supported by Senghor to oust the head of government. The motion led to an institutional crisis. Mamadou had attempted to invade the House of Representatives (National Assembly) in order to stop the members of parliament from proceeding with the vote of the motion without the decision of the party. This was considered by President Senghor to be an attempted *coup d'etat* and a threat to national security. Charges were levelled against Mamadou. He was prosecuted, tried, and sentenced to jail. The crisis led to the adoption of a new constitution in 1963 that bestowed on the President enormous political powers, without sharing. The adoption of this Constitution marked the end of parliamentary system of government and the dawn of the presidential system of government in Senegal.

[10] When speaking about his program of government on 19 December 1962, President SENGHOR stated: "In fact, the structures of our State, our Constitution, are more responsible in this painful affair than the characters of men, whatever may be said. The break-up of Mali had proved that a Federation for two was impossible. The end of a collaboration of seventeen years proves that in Africa, for the moment, the bicephalic executive was impossible".

1973, Senghor introduced a multi-party state limited to four political ideologies,[11] thereby excluding Cheik Anta Diop, a learned Senegalese scholar who could have been a serious political opponent. The negative relationship between Senghor and Cheik Anta Diop and Mamadou Dia led to numerous criticisms of Senghor. In 1980, he voluntarily relinquished power and handed the presidency over to the then Prime Minister, Abdou Diouf.[12] This was applauded by political actors. It was unique because on the African continent, presidents have continued to repeal presidential term limit provisions in order to maintain their grip on power. One of the political achievements of Abdou Diouf, who ruled the country for over 20 years, was the amendment of the Constitution in order to limit the number of presidential terms to two. This enabled the alternation of power.[13] Diouf was replaced by Abdoulaye Wade following presidential elections organized on 28 February and 19 March 2000. Wade was known for his struggle in the opposition for more than twenty years. When he gained power, Wade enacted a new Constitution adopted by referendum with a voter turn-out of 66 percent. Consequently, the 1963 Constitution, considered to be the oldest constitution on the African continent, was abrogated and replaced by Act 2001-03 of 22 January 2001 on the amendment of the Constitution. Unlike the 1963 Constitution, which was enacted under conditions of turmoil and political upheaval, the 2001 Constitution was adopted by referendum, with enthusiasm generated by the first alternation of power that brought Wade to the presidency of the Republic. The 2001 Constitution has since been amended numerous times. The most recent amendments have been that operated through the Referendum Act No. 2016-10 of 5 April 2016 on the amendment of the amendment of the Constitution and through Act No. 2018-14 of 11 May 2018 on the amendment of the Constitution and Instituting citizen sponsorship of candidates.[14]

The second alternation of power was recorded in 2012 when Macky Sall came to power. Sall was a former Prime Minister of Abdoulaye Wade and the Speaker of the National Assembly. Sall won the run-off to Wade during the presidential elections that took place on 25 March 2012.

II. Fundamental Principles of the Constitution

In this Section, we discuss the constitutional principles enshrined in the 2001 Constitution. We first look at fundamental principles whose values are universal (Part A) and second, at fundamental principles pertaining to the organization and functioning of the state of Senegal (Part B).

A. Principles of universal values

[11] See Constitutional Act 76-01 of 19 March 1976 on the amendment of the Constitution. See also I.M. Fall (consolidated texts), *Les Constitutions du Sénégal de 1959 à 2007* (CREDILA, 2007), at p. 90.

[12] This transfer of power, carefully prepared by Leopold Sedar Senghor, was facilitated by Constitutional Act 76-27 of 6 April 1976 that amended Article 35 of the Constitution. The new provision would hence read as follows: 'In the case of death or resignation of the head of state or when his impediment to exercise presidential powers is declared final by the Supreme Court, the Prime Minister takes over the reins of the country until the expiration of the mandate of the President. He appoints a new Prime Minister and cabinet ministers under the conditions provided for by Article 43'.

[13] Article 21 of Constitutional Act 91-46 of 6 October 1991.

[14] See Senegal National Gazette, Special Issue 6926 of 7 April 2016, p. 505; see J.M. Nzouankeu, *Constitution de la République du Sénégal*; éd. *Alternatives. L'encrier et le porte-plume*, May 2017, p. 42.

The preamble to the 22 January 2001 Constitution reaffirms the adherence of the people of Senegal to legal instruments with universal values:

> the Declaration of the Rights of Man and of the Citizen of 1789 and to the international legal instruments adopted by the Organization of the United Nations and the Organization of African Unity, including the Universal Declaration of Human Rights of 10 December 1948, the Convention on the Elimination of All 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.

Being part of Senegal's constitutional dispensation, these instruments recognize, among others, the principles of equality before the law, the continuity of state affairs, the secular nature of the state, and the free participation of citizens in the management of the state. Other principles pertain to human dignity, the indivisibility of the democratic state, and the separation of powers.

B. Principles on the organization and the functioning of the state

The 22 January 2001 Constitution proclaims that Senegal is a democratic state. In fact, pursuant to Article 1(6), '[t]he principle of the Republic of Senegal is: the government of the people, by the people and for the people'. The corollary of this principle is the 'inalterability of national sovereignty that may be expressed through procedures and consultations that are transparent and democratic' as affirmed by the preamble and Article 3(1) and (2):

> National sovereignty shall vest in the Senegalese people, who shall exercise it through their representatives or by way of referendum. No section of the people nor any individual may arrogate to itself, or to himself, the exercise of sovereignty. Suffrage may be direct or indirect. It shall always be universal, equal, and secret. All Senegalese nationals, of both sexes, who are 18 years old and enjoy their civil and political rights, may vote in the conditions determined by statute.[15]

The preamble solemnly consecrates the principle of

> the separation and the balance of powers instituted and exercised through democratic procedures; the respect for the fundamental rights and freedoms of the citizen as the founding value of the Senegal society; the respect for and the consolidation of the rule of law wherein the State and citizens are subject to the same legal standards enforced by an independent and impartial judiciary.

In this respect, Article 88 of the Constitution provides: 'The judicial power shall be independent of the legislative power and the executive power. It shall be exercised by the Constitutional Council, the Council of State, the Court of Cassation, the Court of Auditors and the Courts and Tribunals'. Article 90(2) and (3) provides the substantive basis for the independence of the judiciary: 'In the exercise of their duties, the judges are subject only to the authority of the law. Judges may not be removed from office'. These safeguard measures are intended to allow judges to perform their crucial role within the rule of law because according to Article 91, '[t]he judiciary is the guardian of the rights and freedoms provided for by the Constitution'. The

[15] Article 3 of Act 2001-03 of 22 January 2001 on the Constitution of Senegal.

Economic, Social and Environmental Council established in 2008[16] is also part of institutions of the Republic of Senegal as provided for under the Constitution.[17] The object of the Council was amended through a Constitutional Act in 2012 in order to ensure that environmental needs during the 'elaboration and implementation of developmental policies and programmes' are prioritised.[18]

Principles that regulate the electoral process in Senegal pertain to the universal, equal, and secret nature of suffrage (Article 3(2)): every citizen who meets the conditions defined by the law is a voter; electoral choice is a matter of personal independence and conscience of each voter. It must be preserved through, among others, mandatory voting in the voting booth. Each voter is allocated one vote. Article 64 provides that any imperative mandates (*mandat impératif*) for members of the National Assembly is void, and it recognizes proxy for not more than one individual. Article 66 provides for the principle of public debates and states that debates may be closed to the public only exceptionally and for a limited duration.

It follows from the analysis of Article 3 of the Constitution that sovereignty rests with the people. They exercise it through their representatives (representative democracy) or referendum (direct democracy). With regard to representative democracy, the President of the Republic and members of the National Assembly are directly elected by the people.

The principles laid down in the Constitution also pertain to the nature of the political system of government in Senegal. Its political system falls within the classical systems of government widely studied in constitutional law: the parliamentary and the presidential systems of government. Some authors have argued that Senegal has moved from the parliamentary to the presidential system since the adoption of the 1963 Constitution.[19] The third category of political system of government, known as the 'presidentialist' system, does not qualify for the two classical systems but merely emphasizes the predominance of the political powers of the head of state.

Other scholars maintain that Senegal has adopted the parliamentary system of government because the Constitution contains the peculiar features of such a system. It means that the head of state still wields tremendous political powers but they are mitigated by the powers granted to the National Assembly. The increase in the powers of the head of state was inspired by French constitutional reforms that instituted direct universal suffrage for the election of the President of the Republic[20] and the 1962 political crisis between Léopold Sédar Senghor

[16] Act 2008-32 of 7 August 2008 on the creation of the Social and Economic Council (CES) (Official Gazette No. 6420 of 8 August 2008, Special Issue, p. 754).
[17] Article 6 of the Senegal Constitution.
[18] Constitutional Act 2012-16 of 28 September 2012 amending the Constitution and establishing the Social, Economic and Environmental Council (CESE) (Official Gazette No. 6688 of 28 September 2012 at pp. 1187-1189).
[19] The presidential system of government is characterized by a system of government where the head of state wields tremendous political powers. However, a presidentialist system of government should not be confused with the presidential system of government. The latter system promotes rigid separation of powers and the lack of a reciprocal relationship between the executive and the legislature.
[20] Senegal inherited the universal direct suffrage system for the elections of the President of the Republic from France through the constitutional reform championed by President Charles De Gaulle. Direct universal suffrage for the election of the President increased the presidential powers.

and Mamadou Dia. A rationalized parliamentary system of government entails a reciprocal relationship between the executive and the legislature in order to attenuate the powers of representatives and strengthen those of the executive. Thus the head of state can dissolve the National Assembly.[21] The National Assembly may obligate the Prime Minister and cabinet ministers to resign as well. This is because the government is accountable to the National Assembly, which is achieved by a vote of no-confidence.[22]

From the foregoing, we can clearly see the features of both a presidential system (direct universal suffrage for the election of the President of the Republic) and a parliamentary system of government, with regard to reciprocal powers and relationships (dissolution of the National Assembly by the President and the no-confidence vote by the National Assembly against the government). It can thus be concluded that Senegal has a hybrid system of government that also has the characteristics of a presidentialist system, owing to the tremendous political powers that lie with the head of state. These powers can, to some extent, be used to encroach on fundamental rights and freedoms. In Senegal, as in other African countries, the qualification of 'parliamentary' or 'presidential' does not conform to the exact nature of the political regime. In many instances, while some democratic progress has been made in a number of countries, the President of the Republic still dominates the executive.[23]

III. Fundamental Rights

This Section is divided into two parts. In the first, we focus on the fundamental rights provided for by the Constitution (Part A). In the second, we look at the judicial bodies tasked with enforcing fundamental rights (Part B).

A. Fundamental Rights provided for by the Constitution

The concept of fundamental rights is not defined by the Constitution or any law. Scholars have attempted to define its scope.[24] The use of the adjective 'fundamental' and the enumeration of some rights by the Constitution provide, however, an idea of what fundamental rights entail. It can be said that fundamental rights are those human rights and public freedoms that are constitutionally protected. Fundamental rights can mean 'a set of rights and privileges that are constitutionally accrued to individuals in their relationship with public officials'. The constitutional recognition of human rights means that the legislature should provide mechanisms for their full realization and not deny those rights. In the last scenario, the Constitutional Council may intervene to enforce fundamental rights. Article 8 of Senegal's Constitution provides that the state guarantees to all citizens individual fundamental freedoms, economic and social rights,

[21] Article 87 of the Constitution provides: 'The President of the Republic may dissolve the National Assembly by decree upon consultation with the Prime Minister and the Speaker of the National Assembly'.
[22] Article 86 of the 22 January 2001 Constitution.
[23] A.B. Fall, '*Quelle pertinence pour la typologie des régimes politiques dans les Etats d'Afrique francophone?*', presentation at the Conference organized by the Niger Constitutional Law Association (ANDC) from 26 to 28 October 2016 at the Faculty of Legal and Political Sciences of the University Abdou Moumouni of Niamey (Niger), in *Le régime semi-présidentiel au Niger* (L'Harmattan-Sénégal, 2017 atp p. 175-202).
[24] B. Kante, '*Les Droits fondamentaux de la personne : un essai de catégorisation juridique*', Public Lecture at the University Gaston Berger, 2005.

as well as collective rights.[25] In addition, Article 10 provides: 'Everyone has the right to express and speak freely their personal opinion through speech, writing, image, and peaceful demonstration, subject to respect for honour and consideration of others and the public order'. Any infringement of the exercise of these rights is punishable by law.[26] These rights should be exercised as prescribed by the law. They are enforced by the judiciary.

B. Judicial enforcement of fundamental rights

Fundamental rights and freedoms in Senegal[27] are protected by a constitutional judicial body known as the 'Constitutional Council' and an administrative judicial body known as the 'Supreme Court'. The protection of human rights by the former can be described as the constitutional enforcement of human rights,[28] and the protection by the latter is the judicial enforcement of human rights by an administrative judge.

Senegal's Constitutional Council contributes to the protection of fundamental rights by way of control of the constitutionality of laws. The Constitutional Council was established in 1992 by Act 92-23 of 30 May 1992. This Act was abrogated and replaced by Act 2016-23 of 14 July 2016.[29] The Constitutional Council controls the constitutionality of the internal rules of procedure of the National Assembly, laws, and international conventions. It also adjudicates disputes between the legislature and the executive. The Constitutional Council may also be seized through the certified question procedure when matters of constitutionality arise before the Supreme Court or the Court of Appeal.[30]

The Constitutional Council is composed of seven justices: a President, a Vice-President, and five judges. The head of state appoints the justices of the Constitutional Council. Two are chosen from a list of four candidates proposed by the Speaker of the National Assembly.[31] The Constitutional Council may be seized directly by the head of state or by two-thirds of the members of the National Assembly to conduct the abstract review of a law before its enactment. The Constitutional Council may also be seized through the certified question procedure when matters of constitutionality arise before the Supreme Court or the Court of Appeal.[32] Through

[25] Fundamental rights are '[c]ivil and political rights: freedom of opinion, freedom of expression, freedom of the press, freedom of association, freedom of assembly, freedom of movement, freedom of demonstration, cultural freedoms, religious freedoms, philosophical freedoms, right to form and to be part of unions, freedom of entrepreneurship, right to education, right to know to write and read, right to property, right to work, right to health, right to healthy environment, right to information'.

[26] Article 9 of the 2001 Constitution (Constitutional Act No. 2008-33 of 7 August 2008, Official Gazette No. 6420 of 8 August 2008, Special Issue, at p. 754).

[27] El Omar Diop, *La justice constitutionnelle au Sénégal, essai sur l'évolution; les enjeux et les réformes d'un contre-pouvoir juridictionnel* (Éditions CREDILA /OVIPA, 2013), at p. 333.

[28] For more detail, see M.M. Sy, '*La protection constitutionnelle des droits fondamentaux en Afrique: L'exemple du Sénégal*', unpublished Ph.D. thesis, University of Social Sciences of Toulouse, 2005, at p. 481.

[29] Act 92-23 of 30 May 1992, abrogated and replaced by Act 2016-23 of 14 July 2016 pertaining to the Constitutional Council, Official Gazette of Senegal, 6946 of 15 July 2016, abrogating and replacing the Organic Law on the Senegal Constitutional Council.

[30] Article 92(1) of the 2001 Constitution as amended.

[31] Article 89 of the 2001 Constitution as amended (Constitutional Act No. 2016 of 5 April 2016 on the amendment of the Constitution, Official Gazette, Special Issue, No. 6926 of 7 April 2016 at pp. 505-509).

[32] The certified question before the Court of Appeal was introduced into the constitutional procedures of Senegal through the Constitutional Amendment Act 2016-10 of 5 April 2016 on the amendment of the Constitution, Official

this procedure, any citizen who is a party to legal proceedings is entitled to appeal to the Constitutional Council to ask it to review the constitutionality of a law opposed during a trial.

The judicial enforcement of human rights suffers from a number of limitations, as noted by scholars.[33] Citizens do not have direct access to the constitutional judge. They also do not have standing to seize the constitutional judge in order to request the annulment of a bill before its enactment. Furthermore, only organic laws are compulsorily submitted for review by the President of the Republic. Ordinary laws are not subject to compulsory review before their enactment. This implies that the ruling majority in the National Assembly may adopt a law that breaches fundamental rights and freedoms without it being directly reviewed by the Constitutional Council. The last limitation is that the Constitutional Council frequently pronounces that it lacks jurisdiction to review constitutional amendment acts. That is, even when constitutional amendment acts are inconsistent with fundamental rights and freedoms, they cannot be reviewed by Senegal's constitutional judge, unlike his Benin counterpart. To strengthen the protection of fundamental rights and freedoms, the constitutional judge in Senegal should be able to review constitutional amendment acts as well as all the other types of laws that may be inconsistent with human rights. Furthermore, the Constitutional Council has abstained from reviewing the different phases of the referendum. In 2001, the Constitutional Council found that there was no legal instrument in Senegal's legal system that granted it jurisdiction to review decisions taken by the President of the Republic in matters pertaining to the referendum.[34]

The Constitutional Council's rejection of a number of petitions on the excuse of lack of jurisdiction has made the Council unpopular in Senegal. The Council has often maintained a literal interpretation of the Constitution, thereby rejecting petitions rather than finding jurisdiction in the 'spirit or purpose of the Constitution', as its Benin counterpart[35] has done on many occasions. The notion of consolidating democracy should push the judges in Senegal to adopt a different position.[36]

Fundamental rights may also be protected by the administrative chamber of the Supreme Court.[37] Administrative acts and actions that violate fundamental rights and freedoms may be challenged before the administrative chamber of the Supreme Court for excessive power wielded by the administrative authority, on the one hand, or before the High Court when an individual alleges to have suffered prejudice from actions of the state, on the other.

Gazette of Senegal, Special Issue 6926 of 7 April 2016, at p. 505 and following. Before this amendment, the certified question of constitutionality could only be raised before the Supreme Court.

[33] E.O. Diop (n. 23 above), p. 280.

[34] Decision 77 - Case 6/C/2000, of 2 January 2001, on the regularity of the constitutional referendum. Sixteen members of parliament sought to obtain from the Constitutional Council the annulment of a decision by the head of state to submit a project of the referendum directly to the people. See also commentary by Abdoulaye Dièye, in I.M. Fall (ed.), *Les décisions et avis du Conseil constitutionnel* (Dakar), at pp. 402-403.

[35] A.B. Fall, '*Le juge constitutionnel béninois : avant-garde du constitutionnalisme en Afrique'*, in *La Constitution béninoise du 11 décembre 1990. Un modèle pour l'Afrique*, International Colloquium from 8 to 10 August 2012, Cotonou, Bénin, *Essays in the Honour of Maurice Ahanhanzo-Glélé* (L'Harmattan, 2014), pp. 717-728.

[36] A.B. Fall, 'Forward', in E.O. Diop (n 23 above).

[37] To understand the jurisdiction of the Supreme Court, read Organic Act 2017-09 of 17 January 2017, abrogating and replacing Organic Act 2008-35 of 7 August 2008 on the creation of the Supreme Court.

Nevertheless, Senegalese citizens are yet to fully enjoy their fundamental rights and freedoms. One reason for this is the lack of direct access to the constitutional judge. The existence of a number of other mechanisms for human rights enforcement has not strengthened that protection either. As an illustration, public demonstrations continue to be forbidden and the arbitrary deprivation of liberty of political opposition leaders is being perpetrated. Modern democracies have witnessed the emerging role of constitutional judges in the promotion and protection of human rights enshrined in the Constitution. Benin provides the best illustration. It is critical that constitutional reforms are undertaken in Senegal in order to grant direct access to the Constitutional Council. Such reforms, including widening the Council's powers and changing the appointment procedures of judges, are of utmost importance. This would prompt the Constitutional Council to effectively play its role of controlling the executive, which is an important guarantee of the separation of powers. In the protection of fundamental rights, the constitutional judge is the bulwark against violations. This is why he or she must understand the huge responsibility and power they wield. The judge's attitude can generate a sentiment of approval or disapproval in the country.[38]

The Constitution also recognizes principles pertaining to the organization of political power. In addition to the principle of separation of powers provided for in the preamble to the Constitution,[39] the draftsmen also acknowledged a number of principles that characterize pluralistic modern democracies.

C. Recognition of principles of constitutionalism

Respect for human rights and fundamental freedoms in Senegal contribute to the state and to nation-building. This is emphasized in the Constitution's preamble by the country's adherence to

> the Declaration of the Rights of Man and the Citizen of 1789 and to international legal instruments adopted by the Organization of the United Nations and the Organization of African Unity, including the Universal Declaration of Human Rights of 10 December 1948, the Convention on the Elimination of All 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.

Senegal has a positive record of respect for human rights. Political life in Senegal is stable and human rights violations are rare. There are numerous civil society organizations that specialize in the promotion and protection of human rights. The most prominent is *Rencontre Africaine pour la Défense des Droits de l'Homme* (RADDHO). The Constitution recognizes fundamental rights and freedoms. Article 8 provides that 'the state guarantees to all the citizens individual fundamental freedoms, economic and social rights as well as collective rights. Those rights are: civil and political rights: freedom of opinion, freedom of expression, freedom of the press, freedom of association, freedom of assembly, freedom of movement and freedom of

[38] See to that effect, A.B. Fall, '*Le processus de démocratisation en Afrique francophone: le juge de l'élection dans l'impasse? (Essai de prospective)*', in J.P. Vettovaglia (ed.), *Démocratie et élections dans l'espace francophone* (Editions Bruylant Bruxelles, 2010), at pp. 553-573.
[39] As above.

demonstration, …'.[40] The Constitution also recognizes the freedom to form and be part of a union, and the right to strike. Since independence, unions and federations of unions have been established in Senegal in various sectors, including education.

That being said, the political sphere in Senegal has always been turbulent. Political opposition was suspended during the Senghor, Diouf, Wade and Sall presidencies. This is unlike the situation in many other African countries where long-time political opposition was not tolerated and opposition leaders were harassed and sometimes imprisoned. However, the recent prosecution of Karim Wade, the son of former President Abdoulaye Wade, and the ongoing criminal proceedings against Khalifa Sall, the Mayor of Dakar and declared presidential candidate, have had a negative impact on Macky Sall's regime.

Human rights protection is strengthened by the recognition of the sacred and inviolable nature of life provided for under Article 7(1) of the Constitution: 'The human person is sacred. It is inviolable. The State has the obligation to respect it and to protect it.' Article 7(3) adds: 'The Senegalese people recognize the existence of the inviolable and inalienable rights of man as the basis of all human community, of peace and of justice in the world'. The inviolability of the domicile is also provided for in Article 16.

The principle of a socialist republic, enshrined in Article 1 of the Constitution, is reminiscent of the socialist ideology embraced by the ruling party after independence. Socialist ideology was championed by Léopold Sédar Senghor through African socialism. To Senghor, African socialism was characterized by solidarity in sharing the fruits of labour and the development of religious, cultural, and spiritual activities to ensure people's full development. Society was required to abolish class struggle and atheism. This principle continued to be referred to in the 2001 Constitution, although the Socialist Party had lost the elections and Abdoulaye Wade, who was then elected, had claimed to be liberalist. A feature of liberalism was, however, included in the preamble to the Constitution in this way: 'nation-building is founded on individual liberty and respect for the human person, [as] sources of creativity'.

Strictly speaking, the original ideology of Wade's party was labour socialism. Wade was forced to change this and adopt liberalism following the constitutional amendment of 1976 that instituted a multi-party state limited to three political parties, each having a pre-defined ideology. If Wade had not done so, there was a risk that his political party could have been dissolved. The country's under-development and poverty were seen as imposing a duty of solidarity in order to protect and maintain national cohesion. President Wade, through his social programs, threatened the ideology of social liberalism. His successor, President Macky Sall, who was an ally of President Abdoulaye Wade, also created a few social programs such as universal medical insurance, family allowances, and support for poor households. With regard to state policy in education, socialist ideology was continued. To that effect, Article 22(1) of the Constitution provides: 'The State has the duty and the responsibility for the education of children in public schools'. Likewise, the state has the duty and obligation to protect institutions such as marriage

[40] See Title II of the Constitution, Human Rights and Fundamental Freedoms and the Duties of Citizens (Constitutional Act 2016-10 of 5 April 2016, Constitution of the Republic of Senegal); see also J.M. Nzouankeu, Consolidated text, last integrated amendment, Constitutional Act 2016-10 of 5 April 2016, Ed. Alternatives, May 2017.

and family (Article 17) and to protect youth from exploitation, drugs, narcotics, moral abandonment, and delinquency, pursuant to Article 20.

The Constitution institutes the principle of equality in different ways. Firstly, in the preamble, it proclaims 'the access of all citizens, without discrimination, to the exercise of power at all its levels, the equal access of all the citizens to the public services, the rejection and the elimination, under all their forms, of injustice, of inequalities and of discriminations'. Secondly, Article 1(1) reiterates the equality of all the citizens before the law, without any distinction pertaining to their origin, race, sex, or religion. This principle is essential to counter the resurgence of hierarchies and the system of customary discrimination, especially to overcome the issue of caste in society with regard to access to and control over political power since Senegal's independence. It is also intended to neutralize the centrifugal forces that could jeopardize the development and the consolidation of the state and the Republic. Thirdly, the principle of equality is reaffirmed in Article 7: 'All human beings are equal before the law. Men and women have equal rights'. Fourthly, through the constitutional amendment 2007-06 of 12 February 2007 that amended Article 7, the principle of equality is strengthened through an addition of sub-article 5: 'The law promotes the equal access of women and men to all positions and functions'. To implement this constitutional provision, Parliament adopted Act 2010-11 of 28 May 2010 that instituted equality between men and women in all elective and partially elective institutions. The law also enjoined political parties to submit lists of candidates that would abide by these gender equality norms.

Other provisions are devoted to equality between men and women. Equality of men and women in access to land (Article 15) is a right of utmost importance, particularly in rural areas. The rights of women to own property and to the personal management of their assets (Article 19) are recognized as well. The Constitution forbids all sorts of discrimination between men and women with regard to employment, salary, and tax.

The secular nature of the state is recognized in Article 1. Senegal is a state that respects all beliefs and does not identify with any religion. It also recognizes and respects the freedom of conscience and religion. The secularity of the state in Senegal does not entail the clear separation between spirituality and temporality, as is the case in France. Rather, it means that there is constitutional recognition of the status of religions and religious communities. Article 24 provides:

> Freedom of conscience, religious and cultural freedoms or practices, [and] the profession of religious educators are guaranteed to all, subject to respect for public order. The institutions and the religious communities have the right to develop themselves without hindrance. They are disengaged from the protection of the State. They regulate and administer their affairs in an autonomous manner.

Furthermore, Article 22(3) adds: 'The institutions and the religious or non-religious communities are equally recognized as a means of education'. The particularity of Senegal in this regard is the existence of Muslim brotherhoods of which a large proportion of the population (90 percent) are members. Religious communities and brotherhoods in Senegal coexist peacefully. This is a distinguishing feature of Senegal because elsewhere in Africa, the cohabitation of different religions has been the subject of conflicts and wars. The specific conditions of cohabitation

between the state and religion in Senegal have generated a particular form of secularism that does not exclude a reciprocal relationship between the state and religion, contrary to the case of western countries.

The principle of a multi-party state that transcends sociological divisions is provided for in Article 4 of the Constitution:

> The political parties and coalitions of political parties participate in the expression of suffrage. They are bound to respect the Constitution as well as the principles of national sovereignty and of democracy. They are forbidden to identify themselves to one race, to one ethnic group, to one sex, to one religion, to one sect, to one language or to one region.

Since the establishment of an integral multi-party state, Senegal now has over twenty political parties that continue to form coalitions with each other in order to increase the chance of gaining political power.

The 2001 Constitution has been lauded for having constitutionalized the status of the opposition. The presence of an effective opposition is regarded as a factor that contributes to the consolidation of democracy. For Senegal, however, this constitutional recognition is justified by the desire to prevent the many violations of the rights of the opposition that have been recorded under previous political regimes. To that effect, the preamble to the Constitution affirms

> the will of Senegal to be a modern State which functions according to the loyal and equitable interaction between a majority which governs and a democratic opposition, and a State which recognises this opposition as a fundamental pillar of democracy and an indispensable cog to the good functioning of the democratic mechanism.

The existence of many political parties that do not meet the legal and political requirements for the formation of a political party is a problem that Senegal's democracy must address. In Senegal, as in many other African countries, the number of political parties can be estimated at between three and four hundred. This has prompted a number of observers to suggest that the formation of political parties should be regulated, without re-establishing a limited multi-party state as was the case during President Senghor's reign. Many persons who form political parties do not envisage gaining power. Rather, their objective is to seek, through their political parties, some privileges or election to the National Assembly. This is what can be termed a 'fictitious multi-party system' that encourages 'political transhumance' and is detrimental to the progress of any democratic system because it lessens the opportunities for alternation of power.

The principle of subordination of the army to civil authorities, particularly to the President of the Republic, is affirmed by Article 45 of the Constitution: 'The President of the Republic is responsible for the National Defense. He presides over the Superior Council of the National Defense and the National Council of Security. He is the Commander-in-Chief of the Armies: he appoints to the military offices and [has] the armed force at his disposal'. This principle guarantees the republican nature of the army. This has been essential to Senegal's stability despite increasing rumours of military coups during times of political crises.

The principle of legality of crimes and punishments is reaffirmed by Article 9(2) and (4), which prevent arbitrariness: 'No one may be condemned if it is not by virtue of a law [which] entered into force before the committed act. The defense is an absolute right at all the stages and in all degrees of the procedure'.

Corruption remains pervasive in developing countries, including Senegal. The corrupt political system is characterized by clientelism, prompting the preamble to the Constitution to reaffirm the country's 'commitment to transparency in the functioning and management of public affairs and to the principle of good governance'.

IV. The separation of powers

The principle of separation of powers is provided for in the Constitution (Part A), but its implementation remains problematic (Part B).

A. The recognition of the principle of separation of powers

In the amended 2001 Constitution, the people of Senegal reaffirmed their adherence to the Declaration of the Rights of Man and of the Citizen of 1789. Pursuant to Article 16 of the Declaration, '[a]ny society in which the guarantee of rights is not assured, nor the separation of powers determined, has no Constitution'. In fact, the preamble to the Constitution proclaims 'the separation and the balance of powers conceded and exercised through democratic procedures'. Put differently, power is exercised by the executive (composed of the President of the Republic and a government), the legislature (a unicameral parliament), and the judiciary. Titles III and IV of the Constitution are respectively devoted to the President of the Republic and the government, the two institutions that wield executive powers.[41] Title VI is devoted to the National Assembly, which represents the legislature.[42] Title VII concerns the relationships between the legislature and the executive. Title VIII pertains to the judiciary.[43] The independence of the judiciary is

[41] First and foremost, the President of the Republic determines the policy of the nation pursuant to Title III of the Constitution. He is the Commander-in-Chief of the army, the guarantor of respect for the Constitution, for the smooth and regular functioning of institutions, and for the defence of territorial integrity. Article 53 provides that the government is composed of the Prime Minister and cabinet ministers. Cabinet ministers are appointed by the President of the Republic upon proposition by the Prime Minister (Article 49 states that the Prime Minister is appointed by the President of the Republic, who can also terminate his functions). The government, under the leadership of the Prime Minister, implements the nation's policy. The Prime Minister is accountable before the President of the Republic and the National Assembly. This consecrates, in Senegal, the parliamentary system of government 'dualist or orleanist', implying the principle of political responsibility of the Head of Government both before the President of the Republic and the National Assembly.

[42] As the representative of the people, the National Assembly adopts laws, controls the actions of the government, and assesses public policies. The Referendum Act 2016-10 of 5 April 2016 on the amendment of the Constitution instituted the High Council of the Territorial Entities (HCCT) (Article 66-1), which represents territorial entities. The HCCT advises the government on matters pertaining to decentralization. The HCCT does not have legislative powers.

[43] The judiciary is represented by the Constitutional Council, courts and tribunals. The judiciary is first referred to in the preamble to the Constitution: 'the respect for and the consolidation of a State of law in which the State and the citizens are subject to the same juridical norms under the control of an independent and impartial justice'. Title VIII, entitled 'The Judicial Power', reaffirms its independence with respect to both the executive and the legislature and provides for the judiciary's organization and functioning.

recognized. To that effect, Article 88 provides: 'The judiciary is independent from the executive and the legislature. It is exercised by the Constitutional Council, the Supreme Court, the Audit Court and the courts and tribunals'. Article 90(2) and (3) provides substantive basis for the independence of the judiciary: 'In the exercise of their duties, the judges are subject only to the authority of the law. Judges may not be removed from office'. These guarantees are meant to establish a conducive environment for the judiciary to play its legal role within the state because, following Article 91, '[t]he judiciary is the protector of rights and freedoms provided for under the Constitution and the law'.

In view of the foregoing, it appears, in theory, that the draftsmen incorporated the principle of separation of powers in the Constitution. In practice, however, its effectiveness is problematic.

B. The encroachments upon the principle of separation of powers

The principle of separation of powers enshrined in the Constitution and the laws of constitutional values are not applied effectively. The separation of powers should, following Montesquieu's famous quote, be entrenched in such a way that 'power checks power'. In Senegal, the executive undermines the legislature and the judiciary. Further, the pre-eminence of executive powers is institutionalized, due to the enormous constitutional powers of the head of state. Furthermore, the High Council of the Judiciary, tasked with supervising the work of judges, is chaired by the President of the Republic, who is also the chair of a political party. There is no law that forces the head of state to relinquish responsibilities within his political party. The Minister of Justice is the deputy chair of the High Council of the Judiciary. The Attorney General maintains direct links with the executive, whereby the Minister of Justice may direct the Attorney General to initiate prosecutions. On one side, the President of the Republic has the power to pardon persons who have been found guilty. On the other, the Minister of Justice may grant parole to persons who have been sentenced to serve prison terms.

The President of the Republic, as the president of a political party, determines who may run for office under the banner of that political party. The consequence is that once elected, that member of Parliament feels accountable to the head of state. A partisan relationship is henceforth developed between the ruling majority and the majority within the National Assembly. The partisan nature of the relationship between the executive and the legislature could hinder the ability of the latter to control the former. Equally, bills emanating from the executive, even when they are justified by political convenience, may not encounter many difficulties in being adopted by Parliament.

Furthermore, the executive has the right to determine the priority of a bill or to propose it on the agenda of the National Assembly.[44] This procedure allows the executive to control the

[44] Article 84 of the amended Constitution provides to that effect, that '[t]he inscription, by priority, on the agenda of the National Assembly of a bill or of a proposal of law or of a declaration of general policy, is of right if the President of the Republic or the Prime Minister make the demand for it'. See Constitutional Act No. 2012-16 of 28 September 2012 amending the Constitution (Official Gazette, Special Issue No. 6688 of 28 September 2012, at pp. 1187-1189).

National Assembly's agenda. The executive has the power of amendment.[45] The government may also use the procedure of a blocked vote.[46] Further, the President of the Republic can veto a bill from the National Assembly through the means of a second examination of the bill, provided for by Article 73 of the Constitution.[47] In view of the foregoing, the executive appears to wield enormous powers that are broadened through the de-concentration of powers, but mitigated by their decentralization.

V. De-concentration and decentralization

Senegal reaffirms its commitment to striving for peace and fraternity with the people of the world. The Constitution's preamble confirms this vision through the principle of intangibility of national territory and national unity respecting the cultural specificities of the people and community that make up the nation. Cultural values constitute the foundation of national unity to the Senegalese. National unity cannot therefore be utilized to legitimize claims for secession, such as those that have been voiced in Casamance, on the grounds of ethnicity. There has been rebellion in the Casamance region of the country since 1982, in a bid to gain independence. In Article 5, the Constitution provides that '[a]ny act of racial, ethnic, or religious discrimination, as well as any regionalist propaganda infringing the internal security of the State or the territorial integrity of the Republic, is punished by the law'. The powers of the President of the Republic are intended to guarantee territorial integrity and national unity. Before the President takes office, he takes the oath before God and the people, pursuant to Article 37, 'to consecrate all my abilities to defend the constitutional institutions, the integrity of the territory and the national independence'. Pursuant to Article 42(1) and (2), '[h]e incarnates national unity. He is the guarantor of the regular functioning of the institutions, of national independence and of the integrity of the territory'. Exceptional powers vest in the President of the Republic pursuant to Article 52 when the Republic's institutions, the independence of the nation, and its territorial integrity are under threat. Thus the Constitution does not recognize ethnicity or regionalism. Article 5 is clear to that effect.[48] However, the people have the right to form associations of a cultural nature provided that they abide by criminal laws and public order.

There is neither war nor peace in Casamance currently. The fact that the people appear to be weary of a conflict that is economically, socially, and humanly costly has instead benefited the government of Senegal. However, the fact that the legitimate causes of the conflict cannot be discussed and debated in the country because of the Constitution is a handicap toward finding a sustainable resolution. Since President Macky Sall came to power, a number of initiatives

[45] Article 82(1) provides that '[t]he President of the Republic and the Deputies have the right of amendment. The amendments of the President of the Republic are presented by the Prime Minister and the other members of the Government'.

[46] Article 82(5) of the amended Constitution provides that '[i]f the Government demands it, the assembly referred to [the matter] pronounces by a sole vote on all or part of the text under discussion retaining in it only the amendments proposed or accepted by the Government'.

[47] Article 73 of the amended Constitution provides that '[w]ithin the time period established for promulgation, the President of the Republic can, by a substantiated message, demand of the National Assembly a new deliberation which may not be refused. The law may only be voted in second reading if three-fifths of the members composing the National Assembly pronounce themselves in favour of it'.

[48] It provides the following: '[a]ny act of racial, ethnic, or religious discrimination, as well as any regionalist propaganda infringing the internal security of the State or the territorial integrity of the Republic, is punished by the law'

towards resolving the conflict have been launched but they are yet to yield positive results. The difficulty in reaching a peaceful settlement has been exacerbated by the killing of dozens of peasants in the region. These killings have resuscitated the issue of the independence of the Casamance region even though the perpetrators have been arrested and the rebel group active in Casamance has condemned those crimes and denied its involvement.

Senegal took the option for a unitary state. The principle of unity implies the indivisibility of the Republic and the motto of Senegal is *Un Peuple, Un But, Une Foi*: 'One People, One Goal, One Faith'.[49] This unity also implies that political directives to other institutions come from the top of the executive. Therefore, Senegal has a unicameral parliament (the National Assembly), one judiciary, and one political power that governs the country. However, the effectiveness of one political power and of administrative decisions throughout the country can be problematic if all the executive powers are concentrated in the hands of central institutions. This is why two administrative techniques are envisioned: first, de-concentration (Part A), and second, decentralization (Part B).

A. De-concentration

Article 102, last sub-article, of the 2001 Constitution as amended provides that 'the implementation of decentralization is accompanied by de-concentration which is the general rule with regards to distribution of competences and means among state civil services'. It appears from this provision that de-concentration is a mechanism of administrative management by which the national executive delegates its decision-making powers to the representatives it has appointed within administrative entities. Unlike decentralized state officials who are elected, de-concentrated state officials are instead political appointees of the head of state. They act under the leadership and hierarchical position of the national executive. There are three levels of de-concentration: the governor of the region, the prefect in the division, and the sub-prefect in the sub-division. Public services are also de-concentrated. If de-concentration is the extension of the state, the same can be said for decentralization.

B. Decentralization

In this Part, three points are discussed: the history of decentralization in Senegal, its principles, and the autonomous administration of local entities.

1. Historical background of decentralization

In a country characterised by the centralisation of political power, a mechanism that aimed to diversify decision-making organs through decentralisation was developed. Decentralisation is a system of administration that aims to transfer competences to local entities[50] led by elected leaders and that enjoy legal personality different from that of the central state.[51]

[49] Article 1(3) of the 2001 Constitution.

[50] Since the Constitutional Amendment Act 2016-10 of 5 April 2016, Official Gazette of Senegal, Special Issue 6926 of 7 April 2016, they are now called Territorial Entities. Act 2013-10 of 28 December 2013, The New Code on Local Entities, however, maintains the appellation 'local entities', contrary to the country's Constitution.

[51] Y. Niang, '*Le choc de légitimités dans le processus de la décentralisation*', Seminar of Public Law at the University Gaston-Berger of Senegal (2013), p. 1.

Senegal experienced decentralization before independence. At that time, four communes were created: Gorée, Saint-Louis, Rufisque, and Dakar. Since then, the history of decentralization in Senegal has recorded some important steps:

- In 1928, the status of full autonomous commune was extended to all the communes;
- In 1966, a consolidated Code on the Administration of Communes was enacted, bringing together all laws that pertained to the communes;
- Act 72-25 of 25 April 1972 instituted rural communities in 1972; this reform was considered as the 'founding act of autonomy of local entities';
- In 1990, the leadership and administration of rural communities was conferred to the Presidents of Rural Councils, instead of Sub-Prefects, through the Act of 8 October 1990;
- The year 1996 can be regarded as the moment when decentralization reached its peak in Senegal. The region became a local entity. This was achieved through the enactment on 22 March 1996 of Act 96-06 on the Code on Local Entities and Act 96-07 on the Law on the Transfer of Competences to Regions, Communes and Rural Communities. The latter is of the utmost importance in the history of decentralization in Senegal, considering the competences transferred to local entities by the central state. The promotion of region to the rank of local entity can be added to this historical achievement. The creation of communes of sub-divisions as well as the institution of the principle of control of legality *a posteriori* rather than tutelage control in matters of administration of local entities were the outcome of the 1996 reform.
- In 2013, Senegal adopted Act 2013-10 of 28 December 2013 on the New Code on Local Entities, which represents the third act toward decentralization: 'Action III on decentralisation'.[52] Among the innovations brought about by this law are the suppression of the region as a territorial entity (although it has remained an administrative entity), the creation of the division as a local entity that was hitherto an administrative entity, and the integral change into communes of all the rural communities. It follows that since the enactment of Act 2013-10, Senegal has two types of local entities: the division and the commune. The aim of Action III was to convert these entities into territorial entities. Decentralization is also regulated by principles.

2. Principles of decentralization

The Constitution protects the autonomy of local communities *vis-à-vis* the central government by recognizing their administrative freedom and managerial autonomy. Pursuant to Article 102,

> the local entities constitute the institutional framework of the participation of the citizens in the management of public affairs. They administer themselves freely by elected assemblies. They participate through the territorialization of public policies, the implementation of the country's national policy, and the elaboration and follow-up of specific development programmes for their territory. Their organization, their composition and their functioning are determined by law. The

[52] For more detail on the debate related to the enumeration of different actions, see Y. Sane, '*La decentralisation au Sénégal, ou comment reformer pour mieux maintenir le statu quo*', Cybergeo: European Journal of Geography [Online], Espace, Société, Territoire, document 796, at http://journals.openedition.org/cybergeo/27845; DOI: 10.4000/cybergeo.27845 [accessed on 19 February 2018].

implementation of decentralization is accompanied by deconcentration which is the general rule with regards to the distribution of competences and means among state civil services.

The following are the principles of decentralization:

- The principle of administrative freedom recognized by Article 102 of the Constitution;
- The exercise by elected representatives of control of the legality of the actions of local entities;
- The transfer of competences to local entities;
- The principle of financial compensation for expenses generated by the process of transfer of competences;
- The absence of tutelage among local entities; and
- Respect for the principle of the unitary state.

3. The autonomous administration of local entities

The autonomous administration of local entities is a constitutional principle. Pursuant to Article 102, 'the local entities constitute the institutional framework of the participation of the citizens in the management of public affairs. They administer themselves freely by elected assemblies'. A number of established mechanisms render this principle effective. These are the existence of local political organs, the transfer of competences, and control of the legality of the actions of decentralized authorities rather than control of tutelage by the state or its representatives. The principle of autonomous administration allows local entities to be free from the tutelage of the central state. Local entities are administered by a local council made up of elected officials for the purpose of managing local public affairs. The central state, or its representative, no longer exerts power to annul the decisions of local entities. The scope and the implementation of this principle are regulated under the New Code on Local Entities established under Act 2013-10 of 28 December 2013. It can be enforced judicially. The autonomy is confirmed through the existence of the control of legality, which also has its limitations.

Since the enactment of the New Code on Local Entities, Senegal has two types of local entities: the division and the commune. They are supported by two organs: an executive and a legislature. The executive organ in the division is the President of the Council of the Division, and the Council of the Division is the legislature. The commune elects a Mayor (the executive organ) and a Municipal Council (the legislative organ). Residents of the division and the commune directly elect the Councils of the Division and Municipal Councils within each division and commune. The Council of the Division and the Municipal Council each elect their executive (the President of the Council of the Division, and the Mayor of the Municipal Council).

Decentralization means the transfer of power from the central state to local entities. Act 2013-10 declares nine areas of transfer of competences. These areas have, for the first time, been provided for in Act 96-07 of 22 March 1996 (abrogated and replaced by the aforementioned Act 2013-10 of 28 December 2013).[53] The transfer of human resources to territorial entities is also

[53] The following competences are concerned: the management and utilization of the public realm (Articles 300 and following of the New Code on Local Entities); management of the environment and natural resources (Articles 304

provided for by the Act. In this respect, the central state avails local entities, state officials, and employees in order to realize the mission assigned to local entities. The officials are appointed by the Ministry of Local Entities. Their status is regulated by legislation on local public administration, either by legislation concerning the national civil service or by specific legislative or regulatory texts. Further, the central state has transferred assets, which include those within the public and private state domains, to the local entities.

However, not all of the state's competences are transferred to local entities. The areas of agriculture, farming, fisheries, and revenues, which contribute significantly to the development of the economic activities of the country, have been retained by the central state. We can then argue that the decentralization process is imperfect, or incomplete, since the exclusion of these areas from the competences of local entities could hinder their ability to realize their development and maintain their financial autonomy. Nonetheless, the central power is entitled to develop the nation's policy. In this regard it has the right to oversee territorial entities. In the event of dysfunction, the central state can dissolve the local entity and replace it with a special delegation.

Finally, the control of the legality of action of the territorial entities has replaced tutelage control. Local entities are now subject to the control of legality[54] rather than the control of tutelage. The principle is restated in Article 243 of the New Code on Local Entities, which provides that 'the decisions adopted by the local entities are transmitted to the state representative in the division or the Commune, who subsequently acknowledges the receipt'. As the prefect can no longer suspend a decision adopted by the local entity that he finds to be illegal, the only remedy available to him is to seize the judge through the procedure of prefectoral reference, which is a type of remedy for the excess of power by the local authority that demands judicial annulment of the decision (Article 246 of the Code). In this case, the state representative immediately informs the president of the local entity of the existence of the judicial action and the illegalities invoked by the impugned act. Other than judicial remedy, no hierarchical remedy is foreseen in this circumstance.

The judiciary has consequently become a major actor in the decentralization process. Citizens, central state representatives in the local entities, and the local authorities are entitled to lodge judicial complaints. Judicial intervention in the sphere of decentralization is rendered effective by the settlement of administrative disputes[55] on the grounds that the authority has

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and following of the Code); health, population, and social action (Articles 306 and following of the Code); youth, sports, and leisure (Articles 308 and following of the Code); culture (Articles 310 and following of the Code); the education, alphabetization, promotion of national languages, and professional training (Articles 312 and following of the Code); planning (Articles 314 and following of the Code); development of the territory (Article 316 and following of the Code); and habitat and urbanization (Articles 318 and following of the Code). In addition to the nine areas of competences, territorial entities have general competences on the management of local public affairs.

[54] Prior to the reform, there was tutelage control over decisions and actions of local entities by the central state via its representative, the *préfet.* Important decisions of local entities were submitted to the *préfet* prior to their implementation. The latter could suspend their application should he find they were illegal. Apart from the power to suspend, the *préfet* could also prevent the implementation of actions of the entities if he deemed it to be necessary. This was known as the power of approval or opportunity. It was a veto power of the *préfet* (see A. Bockel, *Droit administratif* (CREDILA, Université de Dakar Abidjan, éd. NEA, 1978), p. 307).

[55] With regard to the organization of the judiciary, Senegal HAS adopted unity of the judiciary (unlike the French system of duality in the judiciary, with civil courts on the one hand and administrative courts on the other), but

exceeded his power (*ultra vires*).[56] According to the Organic Act on the Supreme Court, the administrative chamber decides in the first and last resort on matters of excess of power by executive authorities and on the legality of actions and decisions of local entities. Judicial control is exercised after the state representative in the local entity has referred the matter to the court. The mechanism of referral by a state representative is a complex procedure and is explained in more detail below.

The referral may be exercised by the central state representative on his own initiative (spontaneous or direct referral) or upon the demand of a citizen (provoked referral).[57] The referral applies to those decisions that ought to be submitted to the central state representative pursuant to Article 243 of the Code. Unlike an appeal asserting excess of power, the referral procedure can concern both unilateral and conventional acts, such as public contracts, concessions, or leases of commercial or industrial public services. The state representative can request that the entry into force of the impugned act be suspended. Such suspension can only be granted if the reasons for illegality invoked by the state representative appear to be serious and are of such a nature to justify annulment. The judge should adjudicate and render the decision within ten days.

Principles pertaining to the distribution of financial resources between the central government and the decentralized entities also exist. Generally, revenues of the local entities are generated, on the one hand, through a local tax payment system that is yet to be implemented, and on the other, through the financial compensation of expenses generated by the process of the transfer of competences to the local entities. To this effect, a *Fonds de dotation de la décentralisation*[58] is established and must be shared among divisions, cities, and communes according to criteria established under decree and under relevant decisions[59] of the Council for

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maintained the French solution pertaining to the legal regime applicable to the administration. The public administration in Senegal, just as in France, is regulated by the Administrative Law, meaning a special legal regime different from that of the Civil Code. This is why in the aftermath of independence, Senegal adopted a Code on the Obligation of the Public Administration (COA); see Act 65-51 of 19 July 1965, Official Gazette of Senegal, Special Issue of 23 August 1965, p. 1965. For more detail, see J.C Gautron, '*Réflexions sur l'autonomie du droit public sénégalais*'; *Annales africaines*, 1969, at p. 38 ; S. Diop, '*Quelques remarques sur le Code des Obligations de l'Administratif*', *Revue des Institutions Politiques et Administratives 5RIPAS)* 1987 at p. 95 and subsequent, Faculté des Sciences Juridiques et Economiques, Université Cheikh Anta DIOP de Dakar; A.B. Fall, '*Le Code des Obligations de l'Administration au Sénégal ou la transposition de règles de droit administratif français en Afrique*', in *Essays in Honour of Jean du Bois de Gaudusson*, Espaces du service public, tome I, pp. 225-254.

[56] Act 2008-35 of 8 August 2008 on the institution of the Supreme Court (following Act 2008-34 of 7 August 2008 on the amendment of the Constitution and replacing the *Conseil d'Etat* (Council of State) and the *Court de Cassation* by the Supreme Court) bestows on the Administrative Chamber of the Supreme Court the power to control the legality of administrative decisions and actions. The Supreme Court is made up of three chambers: the criminal, civil, and social chambers. This system was established by Senegal at the time of independence by Ordinance 60-17 of 3 September 1960, the Organic Act on the Supreme Court. Then, the control of legality was bestowed on the second section of the Court. See V.O. Camara, '*La Cour suprême du Sénégal*', in G. Conac (ed.), *Les Cours suprêmes en Afrique* (1988), at p. 307; M. Aur, '*La naissance de la Cour suprême au Sénégal*', in G. Conac (ed.), *Les Cours suprêmes en Afrique* (1988), at p. 73.

[57] To this effect, Article 250 of the New Code on Local Entities provides that a person aggrieved by an administrative decision or action may, within a period of two months starting from the moment the decision becomes executory, request the central state representative to refer the matter to the court.

[58] New Code on Local Entities, Articles 324-328.

[59] New Code on Local Entities, Chapter II, Articles 324 and following.

the Development of Local Entities.[60] Finally, financial resources resulting from the exploitation of mines and other hydrocarbons are allocated to local entities. So far, these resources are yet to be realized by the local entities, while mining companies that operate in different mining operations have paid relevant taxes to the central government.

In addition, despite the autonomy of the local entities, the central state still controls the budget of these entities on the basis of the principle of unity of state finances. Budgetary control is undertaken by the state representative within the entity. The control focuses on the process of explanation of the budget, which can be exercised in four instances. The first is when the budget is not adopted on the date prescribed by law (Article 254 of the New Code on Local Entities). The second is when the adopted budget is not balanced (Article 256). The third arises in the case of deficit in the financial statement (Article 260). The fourth is when the budget does not provide the financial resources necessary for the payment of a compulsory expenditure (Articles 264 and following). This control is also performed by the national treasurer and the judge of the audit court. The audit court can also verify the financial statements of any institution, company, and organization, irrespective of its legal nature, that receives financial support from the local entities (Article 251).

The judge of the audit court, pursuant to Article 252 of the Code, participates in the budgetary control of the local entities. The judge also examines the management of the local entities and makes recommendations when necessary. The judge adopts measures required to ensure that his investigations are kept secret.

The control of legality of the acts of local entities is limited because certain types of acts, especially those that are important by virtue of their nature, require approval in advance by the representative of the central government.[61] Such control by the central state has prompted scholars to suggest that the local entities in Senegal have management power rather than decisional power. The criticism levelled against political decentralization is that it is yet to be effective in Senegal. The creation of the High Council of the Territorial Entities by way of the Constitutional Amendment Act 2016-10 of 5 April 2016[62] did not change the legal regime on decentralization: the High Council lacks legislative powers. There is even controversy over the modality of designation of its members. The Superior Council of the Local Public

[60] The New Code on Local Entities has provided for the establishment of organs to follow up and support local entities in the implementation of the new competences transferred from the central government. One is the National Council for the Development of Local Entities (CNDCL), provided for under Act 96-07 of 22 March 1996 on the transfer of competences to regions, communes and rural communities. The CNDCL is tasked with reflecting on and orienting relevant decisions to strengthen the decentralization process. The CNDCL meets once a year under the chairmanship of the President of the Republic.

[61] Article 245 of Act 2013-10 of 28 December 2013, the Code on Local Entities, provides that '[b]y way of derogation to the executory nature of acts provided for under Article 243 and 244 of this Code, the acts adopted in one of the following areas must be approved in advance by the state representative: temporary (primitive) and supplementary budget, loans and guarantees of loans, local entities development plan, financial agreements on international cooperation containing an amount that must be determined by decree, public domain and urban planning, guarantees and participation in private companies carrying out public services activities, public contracts exceeding an amount determined by decree and concession contracts of a duration of over thirty years'.

[62] For more information on the power, organization, and functioning of the High Council, see Act 2016-24 of 14 July 2016 on the Organisation and Functioning of the High Council, Official Gazette of Senegal, Special Issue 6949 of 15 July 2016, at p. 931 and following.

Administration has also been created to provide relevant advice and orientation on laws pertaining to the status of the local civil servant. The members of the Superior Council took office on 27 February 2018. The operationalization of the Superior Council will 'contribute to the establishment of an effective local governance system since the absence of the status of local civil servants limited the capacity of the territorial organisation'.[63]

Furthermore, the local entities are still unable to finance their activities and their local policy of development. They do not enjoy financial autonomy. Their financial autonomy is impeded[64] by the fact that their financial resources are still provided by the central government.

It can be argued that in general, the process of decentralization in Senegal is still on-going. It has not yet met its expected goals.[65] However, it is important to note that the process of decentralization in Senegal began during the colonial era, long before many African countries. Decentralization is part of the general framework of the democratization of Senegal's political system, which also preceded the wave of democratization that swept through francophone African countries in the 1990s.

VI. The reception of international law within Senegal's legal system

The process of the reception of international law within Senegal's legal system is regulated by Article 98 of the Constitution, as follows: 'The treaties or agreements duly ratified or approved have, on their publication, an authority superior to that of the laws, subject, for each treaty or agreement, to its application by the other party'. According to this provision, two conditions must be met for international law to have domestic effect. The first pertains to the ratification process and the second relates to reciprocity in the application of the international instrument by other member states. If the two cumulative conditions are met, international law will consequently have a superior status to that of domestic laws. This is the case for the regulations made by the Western African Economic and Monetary Union (UEMOA), which have a direct influence on Senegal's public finance laws. Be that as it may, a norm of international law should be consistent with the provisions of the Constitution prior to its ratification. This is what is envisioned by Article 97: '[i]f the Constitutional Council has declared that an international commitment contains a clause contrary to the Constitution, the authorisation to ratify it or to approve it may only be given after amendment of the Constitution'.

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[63] Statement by the head of state at the official ceremony of installation of the Council on 27 February 2018. See the Daily '*Le Soleil*' of 27 February 2018.

[64] M. Zaki, '*Les entraves à l'autonomie financière des collectivités locales au Sénégal*', at <http://afrilex.u-bordeaux4.fr/les-entraves-a-l-autonomie.html> (accessed in 2014), at p. 32.

[65] The statement by Youssouf Sané faithfully explains the current development of the decentralization in Senegal: 'The decentralisation process in Senegal has been hectic. It has encountered both progress and regression. Legal instruments that establish it are rather ambitious but in reality, the process is complex. The decentralisation process faces some difficulties. In fact, the central government transfers a number of its powers to local entities by maintaining its control over these entities. The creation of new entities raises a number of concerns. Communes are recurrently created but they lack territorial and economic viability. These entities are unable to obtain resources that would finance their investment plans. State subsidies are not enough, the collection of taxes is deficient, the partnership with foreign western entities is disorganized and has a number of risks. The state increases reforms but is yet to question and rethink the creation of new entities which might be considered as the sources of much more dysfunctions and the lack of resources for local entities'. See Y. Sane (n. 49 above).

Almost all the constitutions of francophone African countries recognize the superiority of international law over domestic laws. But what does this supremacy entail? To this effect, there are two major systems: the dualist system, which entails the juxtaposition of two legal orders (domestic and international law), and the monist system, which entails unity between the international and the domestic legal orders. In other words, in a dualist legal system, international law is given domestic effect through domestication, which means that the state concerned adopts legislative measures to implement and sometimes to transform the treaty.[66] In the absence of a unique procedure for the integration of international law within the domestic legal order, there are numerous mechanisms on the reception of international law. We can then distinguish between the international commitments of the state (through ratification) and the internal validity of the treaty through domestication, which is an act of parliament.

Senegal is a monist state. International treaties are directly, 'automatically', integrated within the domestic legal system. However, a number of modalities must be realised at the domestic level. These modalities are carried out by institutions that have the competence to engage with international law. The Constitution provides that international law becomes part of the domestic law and has superior status over the latter. Norms of international law become supra-legislative, but infra-constitutional. They can be contained in a single constitutional provision, or many. With regard to procedure, the treaty must be ratified or accessed by the competent national authorities and then published in the national gazette. From this moment, the treaty becomes legally binding and opposable *erga omnes*.[67]

The ratification of important treaties, as in France[68] and Senegal, must be approved by Parliament in advance. Senegal has followed the French example, recognizing the supremacy of international law. This can be observed through a closer examination of a number of constitutional provisions of francophone West African states.[69] In Senegal, if the treaty to be ratified, or its provisions, is inconsistent with the Constitution, the latter must be amended.[70]

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[66] Germany, Denmark, Finland, Great Britain, Italy, and Sweden are dualist states. For international treaties to take effect within these states, they must be domesticated. The treaty that has been domesticated has legislative value. Even in this circumstance, international law might have priority over domestic law during the application. See C. Grewe and H. Ruiz-Fabri, '*La situation respective du droit international et du droit communautaire dans le droit constitutionnel des Etats*', in *Droit international et droit communautaire, perspectives actuelles, colloque de Bordeaux*, SFDI, at pp. 275-276.

[67] A few examples of constitutional provisions are Bulgaria (Constitution of 12 July 1991, Article 5.4); Colombia (Constitution of 5 July 1991, Articles 53 and 93 on international labour treaties and international human rights treaties); Ecuador (Constitution of 10 August 1998, Article 163); Spain (Constitution of 27 December 1978, Article 96); France (Constitution of 4 October 1958, Article 55: numerous francophone African states have similar provisions); Greece (Constitution of 11 June 1975, Article 28); Macedonia (Constitution of 17 November 1991, Article 118); Peru (Constitution of 31 December 1993, Article 55); Portugal (Constitution of 2 April 1976, Article 8.2); Romania (Constitution of 8 December 1991, Article 11); and Russia (Constitution of 12 December 1993, Article 15.4).

[68] The prior parliamentary authorization does not have any normative value: being a mere authorization for the executive, it does not have any effect on the validity or the content of the treaty.

[69] Article 98 of the Constitution of Senegal; Article 151 of the Constitution of Burkina Faso; Article 79 of the Constitution of Guinea; Article 132 of the Constitution of Niger; Article 147 of the Constitution of Benin; Article 140 of the Constitution of Togo; Article 87 of the Constitution of Cote d'Ivoire.

[70] Article 97 of the Constitution of Senegal; Article 150 of the Constitution of Burkina Faso; Article 131 of the Constitution of Niger; Article 146 of the Constitution of Benin; Article 78 of the Constitution of Guinea; Article 86 of the Constitution of Cote d'Ivoire; Article 139 of the Constitution of Togo.

Thus scholars have emphasized the fact that Article 98 of the Constitution consecrates monism as the framework for the reception of international states' commitments within the domestic legal system.[71]

I. Senegal's monism

Article 98 provides that '[t]he treaties or agreements duly ratified or approved have, upon their publication, an authority superior to that of the laws, subject, for each treaty or agreement, to its application by the other party'. This provision is the basis of Senegal's monism.[72] Beyond its theoretical and legal meaning, Article 98 contains an historical dimension that explains both the conditions under which monism was adopted in Senegal and Senegalese scholarship in the area of international law.

Its historical dimension stems from the fact that Article 98 was inspired by Article 55 of the Constitution of the French Fifth Republic that also consecrates monism in the French legal system.[73] From an ideological and a legal perspective, France and Senegal can be considered close to each other, which may be why there are similarities in approaches to international law.[74] The question is whether such similarities are the result of colonial legacy or a simple voluntary choice by the constitution's framers. The answer to this question demonstrates the specificity of African post-colonial legal development.

A. Ideological and historical determinisms

Francophone African legal systems are characterized by two trends which are reflected in the relationship between domestic and international law. On one hand, countries appear to be encouraged to establish an original legal system and norms, but on the other, the tendency to duplicate the legal model from the former colonizers remains acute. This is both a limitation and an originality of African legal systems. Senegal meets the same challenges.

Although the decolonization process ended the political domination of African countries, we can observe however that for some aspects, the influence of the erstwhile colonial master has persisted. Logically, such domination in the international arena was supposed to end because of the elevation to international sovereignty by former colonies. If it is true that domination ended, then it did not concern the legal sphere in general, and in particular the internal modalities that define the relationship between domestic and international law. Such an attitude reflects dualism in African political philosophy. The dualism was translated by the fact that states wanted neither to break dramatically with their colonial gains nor to maintain faithfully the colonial legacy.

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[71] D.N. Doye, *La Constitution sénégalaise du 7 janvier 2001 commentée et ses pactes internationaux annexes* (Dakar E.D.J.A, 2001), at p. 39.

[72] As above. The proclamation of monism on the basis of Article 98 may be considered to be premature. This provision merely confers the immediate application of international agreements and a superior authority of international law over domestic laws subject to reciprocity.

[73] See A. Pellet, '*Vous avez dit « monisme » ? Quelques banalités de bon sens sur l'impossibilité du prétendu monisme constitutionnel à la française*', in *Architecture du droit, Mélanges en l'honneur de Michel Troper* (Paris, Economica, 2006), at p. 828, where he rejects some arguments qualifying the French legal system as a monist state.

[74] West African francophone states have copied the model used by the former French colonizer. They then apply the monist system. This can be seen from a close reading of the above-mentioned Constitutions of these countries.

This is why, with regard to the relationship with international law,[75] African legal systems have continued to apply rules that were applied during colonization.[76] The position of Senegal's legal system toward international law is a legacy of the French colonial system. This statement is substantiated by the general attitude of Senegal after independence and other aspects of domestic law.

In the international sphere, Senegal withdrew from treaties that negatively impacted upon its newly acquired international sovereignty.[77] These treaties were highly political and had no effect on individuals. Contrariwise, treaties that had a direct effect on the status of individuals, such as international human rights treaties, were not denounced by Senegal.[78]

In view of the foregoing, Senegal's inspiration drawn from the French legal system when integrating international human rights treaties is limited and shaped by the national legal system. A study on international treaties in Africa by Jean-François Gonidec found that 'the point of departure in the reception of international law, as it is the case in many other areas, is the duplication of the colonial model'.[79] The reason is simple. On the one hand, there is political justification for reference to the colonial model. French colonies were subject to the policy of assimilation during colonization. On the other hand, there is technical justification. The development of post-colonial constitutions was facilitated by external experts from the former colonial powers.[80] It is within this context that Article 98 of the Constitution reflects the historical influence that French law has had on the development of law in Senegal. However, if monism was introduced in Senegal via colonization, it has remained in the national legal system by way of voluntary acceptance by the constitution's framers.

B. A model proclaimed by the Constitution

This persistence of monism is evidenced by the fact that the wording of Article 98 of the 2001 Constitution has not changed since the adoption of the Constitution of the first Republic,[81] despite numerous constitutional amendments. We can then say that the wish of the Senegalese

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[75] M. Bedjaoui, '*Problèmes récents de la succession d'États dans les nouveaux États*' (1970) 130 *Recueil des Cours de l'Académie de Droit International de la Haye* 490-492.

[76] P.-F. Gonidec, '*Note sur les conventions internationales en Afrique*', (1965) 11 *Annuaire Français de Droit International* 866-885.

[77] This is the case of political treaties, treaties on neutrality, arbitration, mutual assistance and, to some extent, treaties on international organizations.

[78] J.-C. Gautron, '*Sur quelques aspects de la succession d'États au Sénégal*' (1962) 8 *Annuaire Français de Droit International* 843- 850.

[79] P.-F. Gonidec (n. 73 above), p. 866.

[80] The idea was put forward by Jean Du bois de Gaudusson. He wondered whether 'we should continue to qualify as mimesis what rather results from the familiarity of legal systems that share similar concepts, vocabulary, legal technics, typology and legal texts? We can of course agree that these legal families were imposed but sharing similar constitutional and institutional institutions should be viewed as a value'. J Du Bois de Gaudisson, '*Le mimétisme postcolonial, et après?*' (2009) 129 *Pouvoirs* 45-55, 48.

[81] One change that occurred in the relationship between international and domestic law pertains to the sharing of the competences of ratification between the President of the Republic and the Parliament, instituted by way of Article 95 of the Constitution of 22 January 2001. There was also the emphasis, under Article 96 of the Constitution, on the possibility to abandon a portion of national sovereignty for the benefit of African unity. See D. Sy and I.M. Fall (eds.), *La constitution quoi de neuf ?* (Dakar Nouvelles Imprimeries du Sénégal, 2000), at pp. 53-54.

people regarding the interplay between international law and domestic law has remained constant throughout that time.

Senegal's state reports to various human rights monitoring bodies place monism at the forefront to justify the efforts Senegal is taking to realize its human rights obligations.[82] In Senegal's report to the Universal Periodic Review, the state underscored that Article 98 of the Constitution 'consecrates the supra-legislative nature of international treaties in the domestic legal system and translates the commitment of the state toward the protection and the promotion of human rights'.[83]

The only shortcoming to Article 98 is the lack of judicial decisions confirming or implementing the superiority of international treaties over domestic laws. In fact, courts have controlled the conformity of domestic legal norms to international law (conventionality control) but are yet to invoke the monist approach as the basis of the control. The decisions by the Constitutional Council to that effect are laconic and contradict the doctrinal and well-known position of Senegal as a monist state. The decision in the *Ohada Treaty* case can be cited as one of the occasions where the Constitutional Council would have provided jurisprudential consecration of the principle of monism in Senegal. In this case, the Constitutional Court was required to review the constitutionality of the Ohada Treaty on the ground that it deprived the national Court of Cassation of its competence to adjudicate over commercial and other business-related disputes as the apex court in favor of the regional Common Court of Justice and Arbitration (CCJA) established under the Ohada Treaty. Instead of interpreting the abandonment of jurisdiction of the Court of Cassation in favour of the regional CCJA as the result of the superiority of the Ohada Treaty over national laws (the monist system), the Constitutional Council instead interpreted it as the result of the state relinquishing a portion of its sovereignty for the benefit of African unity.[84]

It is worth mentioning the lack of a national legal framework for the conclusion and implementation of international treaties other than Article 98 of the Constitution. That provision, as the Constitutional Council stated, cannot be considered to be the abandonment of state sovereignty, but as a mere limitation upon national competences, a limitation that is the logical consequence of international agreements.[85] As such, the limitation cannot be considered as a violation of the Constitution because it is constitutionalized. Contrary to the position of the Council, this argumentation is instead linked to the monist nature of Senegal's legal system rather than the quest for African unity. The decision therefore ignores constitutional provisions that recognize the deprivation of the jurisdiction of the Court of Cassation in favor of the regional court. It also may show that national courts, especially the Constitutional Council, have less interest toward the development of international law.

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[82] For a discussion of the legal framework on the reception of international human rights treaties in Senegal's domestic system, see the framework document on the elaboration of the Senegal state report, HRI/CORE/SEN/201, para. 29.

[83] See A/HRC/WG.6/4/SEN/, related to the Senegal state report presented pursuant to the annex to Resolution 5/1 of the Human Rights Council.

[84] The abandonment by Senegal of a portion of its sovereignty for the benefit of African unity is provided for in paragraph 3 of the preamble to the Constitution of 22 January 2001.

[85] See *Traité Ohada*, Constitutional Council decision. 16 December 1993, in I.M. Fall, (ed.), *Les décisions et avis du Conseil Constitutionnel du Sénégal* (Dakar, CREDILA, 2007), point 8 at p. 98.

The question to be answered is whether the reasoning by the Constitutional Council was influenced by the peculiar nature of community law compared to international standards, or whether the excess of pan-africanism was prioritized to the detriment of a rigorous constitutional analysis. In one way or another, the decision by the Constitutional Council would have strengthened the conditions for the reception of international law in the domestic system.[86] It is important that community law is applied in accordance with the monist requirements within member states.[87]

II. Ambiguity of the monist practice in Senegal

There is a discrepancy between the theoretical recognition of the monist system and the practice of national institutions. Both the judge and the law-maker adopt positions that are antithetical to the superiority of international law and international human rights treaties within the domestic legal system.[88] The jurisprudence is also not sufficient to address the shortcomings that may be observed in the theoretical recognition of the monist system.

One of the reasons that may justify this shortcoming is the fact that actors are confused about the conditions of application or execution of international law obligations within the domestic system and the conditions for the reception of international law norms within the domestic system. The two notions are inherently different. The conditions for the reception of international law norms in the domestic system are related to the immediate application of international norms, while the execution of international commitments in the domestic system pertains to the direct applicability of international norms.[89] In fact, if Article 98 provides for the immediate application of international conventions in the domestic system subject to ratification, publication, and reciprocity, it does not provide that they are directly applicable.

Generally, international instruments are not applied in Senegal. It is as if their ratification was meant to serve only a diplomatic purpose in Senegal's international relations. The unfortunate decision by the Constitutional Council that international treaties are not part of the *bloc de constitutionalité*[90] is of course evidence of the discrepancy between the theory and the practice of the monist system in Senegal. In practice, the Constitutional Council has regularly referred to international instruments, although it is limited only to those inscribed in the preamble of the Constitution.[91]

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[86] A. Sall, '*Commentaires sous CC.sn., 16 décembre 1993 Traité OHADA*', in I.M. Fall (ed.) *Les décisions et avis du Conseil constitutionnel du Sénégal*, (Dakar, CREDILA, 2007), p. 104.

[87] See E. Chevalier '*Le principe de primauté dans les ordres communautaires : l'exemple de l'Union économique et monétaire ouest africaine*' (2006) 42(3-4) *Cahiers de Droit Européen* 346- 351.

[88] M. Kamara, '*De l'applicabilité du droit international des droits de l'homme dans l'ordre juridique interne*' (2011) *Revue Juridique et Politique des États Francophones* 116-119.

[89] J. Verhoereven, *La notion d'applicabilité directe du droit international* (R.B.D.I., 1980), pp. 249-251.

[90] *Loi d'amnistie*, CC.sn., 12 February 2005, in I.M. Fall (ed.), *Les décisions et avis du Conseil constitutionnel du Sénégal* (Dakar, CREDILA, 2007), p. 475.

[91] Professor Ismaïla Madior Fall alludes to this in his commentary on the decision of the Constitutional Council quashing the law on equality between men and women in politics. See *Parité sur la liste de candidats aux législatives*, CC.sn., 27 February 2007, in I.M. Fall (ed.), *Les décisions et avis du Conseil constitutionnel du Sénégal* (Dakar, CREDILA, 2007), p. 524.

Also, international treaties, although ratified, are not applied in the domestic law.[92] This is contradictory to the monist system Senegal has adopted. What is only required of an international treaty is that it should be ratified following the conditions laid down by Article 98 of the Constitution. The lack of application of international treaties in the domestic law presents two major legal risks. The first is the risk of suppressing the monist approach to international law by way of limiting the immediate applicability of international conventions and the second is that it may cause Senegal to engage its international responsibility for internationally wrongful acts. This was the case of a communication brought before the United Nations Committee against Torture by Souleymane Guengueng as part of the criminal case concerning Hissène Habré.[93] It is therefore important to integrate international law into the domestic system in Senegal to prevent the occurrence of such communication.

A. The nationalization of international treaties via legislation

The nationalization of international treaties via legislation must be distinguished from the domestication of international treaties that is undertaken in common law African countries. This distinction is of paramount importance because the concept of 'nationalization' is usually assimilated into the process of transformation of international conventions in order to give them an internal legal validity.[94] In the particular case of Senegal, the notion of nationalization of international conventions means the attitude of Senegal's law-maker is to copy the text and the substance of the treaty into a national law. For international human rights treaties, the Senegalese law-maker usually copies their substance into national law.[95]

This practice is problematic, considering that Senegal is a monist state. The practice mainly concerns international human rights treaties.[96] In this respect, the major risk is the threat to the integrity of international treaties in the national legal system. The practice can also hinder the functioning of the monist system in Senegal. The first criticism is that the practice is inconsistent with the monist position of Senegal's legal system. The issue here is more political than legal because beyond the legal aspect, what is required is coherence in the process of the reception of international instruments in the domestic system. The nationalization of international law norms is then an obstacle to their reception in the national legal order. Therefore, the compatibility of such a practice with Senegal's position as monist is brought into question.

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[92] This is the case for the Convention on the Rights of the Child and the Convention Against Torture. See, to that effect, Human Rights Watch, '*Sur le dos des enfants: Mendicité forcée et autres mauvais traitements à l'encontre des Talibés au Sénégal*', April 2010.

[93] Communication no 181/2001: Sénégal 19/05/2006., CAT/C/36/D/181/2001. (Jurisprudence), cited in El. H. M. Sanghare, *La réception du droit international des droits de l'homme au Sénégal*, Thèse Université de Grenoble, 2014, p. 80.

[94] B. Taxil, '*Méthodes d'intégration du droit international en droits internes*', in *Internationalisation du droit et internationalisation de la justice, Actes du Congrès de l'AHJUCAF du 21-23 juin 2010*, p. 109.

[95] This is what can be read in Senegal state reports before the United Nations Committee on the Elimination of Racial Discrimination, CERD/C/408/Add.2, at para. 12; before the Committee on the Rights of the Child, CRC/C/SEN/2, at para. 36; and before the Committee against Torture, CAT/C/SEN/3 (2011), at paras. 84-164

[96] El. H.M. Sanghare (n. 90 above), p. 81.

The other criticism is that the practice destabilizes the monist approach to the international law Senegal has adopted. We can observe that the nationalization of international treaties is inconsistent with the superiority granted to these norms by Article 98 of the Constitution. The existence of such a provision in Senegal's constitutional dispensation renders unconstitutional every other procedure that may be undertaken in order to give effect to international law norms within the domestic legal system. A number of hypotheses could be offered to understand why such a practice has emerged in Senegal. We could still think that it results from the confusion, alluded to earlier, between the conditions of application of international law norms and those of reception of the norms into the national legal system.[97]

It is also possible to conclude from the process of nationalization of international law norms the attempt by the state to legitimize international law obligations in the domestic system. It is however not clear that this is the real intention of the Senegalese law-maker. What we clearly know is that the state does not have the ability to legitimize international law norms in the domestic system. In their elaboration, these norms are external to the national legal order. International instruments are the product of compromise among state parties. They belong to a social and legal order that obeys realities that are different from those of Senegal.[98] This is why Senegal cannot nationalize international treaties just because it wishes to provide more legitimacy to the norms contained therein. The only avenue for the state is to denounce the international treaty concerned.

The reasons invoked above result in the disarticulation of the monist approach to international law Senegal has adopted and lead to the ineffectiveness of international treaties in the domestic system. This situation is of particular concern for international human rights treaties since it limits the scope of their application in the domestic system and renders them weaker and weaker.

B. The centralization of competences of reception of international law in Senegal

The prerogative to ratify an international treaty, and therefore to confer to it the power of applicability in the domestic system, belongs to the central state, irrespective of the nature of the treaty.

However, there are uncertainties as to the role of political institutions to integrate international law norms within the domestic system, and particularly international human rights treaties.[99] In Article 95, the Constitution defines only the conditions of opposability of international standards in the domestic legal system. Article 95 provides that '[t]he President of the Republic shall negotiate international commitments. He shall ratify or approve them[,] as the case arises [*éventuellement*], on the authorization of the Parliament'.[100] The Article confirms the inherent power of the President of the Republic[101] to ratify international treaties and appears to

[97] El. H.M. Sanghare (n. 90 above), p. 82.
[98] P. Reuter, '*Principes de droit international public*', R.C.A.D.I., vol. 103, 1961, p. 438 and following.
[99] El. H.M. Sanghare (n. 90 above), p. 126.
[100] With regards to subsection two of this provision, see Constitutional Act No. 2012-16 of 28 September 2012 amending the Constitution (National Gazette, Special Issue No. 6688 of 28 September 2012 at pp. 1187-1189).
[101] This is the case of modern states and is seen as reminiscent of the powers of the leader in the monarchical political system. See J. Combacau and S. Sur, *Droit International Public* (7th ed., Paris L.G.D.J., 2007), p. 121.

give the National Assembly an accessory role as the organ of ratification of international instruments. The resentment appears to be genuine since the expression '*éventuellement*' used in Article 95 confirms it. Is it fair then to suggest that the legislature has no power with regard to the ratification (reception) of international treaties? According to practice, it appears that the legislature has an important role in the ratification process.[102] In other words, and particularly with regard to international human rights treaties, the legislature has enormous powers in the reception of international law norms within the domestic system. In this instance, the executive power appears to be an accessory and its role is to implement legislative provisions.[103]

The involvement of the legislature in the reception of international law norms within the domestic system is not automatic. Its involvement merely concerns a number of international conventions expressly provided for by the Constitution. We can assume that the involvement of the legislature is required because of the effect that the ratification of the treaty may have on specific areas of domestic law and policy. However, the Constitution provides for direct intervention of the legislature for other domains. International human rights treaties are among the treaties that require intervention by the legislature for them to be valid in the domestic system. Article 98 makes such intervention a substantive condition for the validity of international law norms in the domestic system.[104] One of the conditions is parliamentary ratification. This is how we understand the statement by Professor Madior Fall that

> for the treaty to be opposable to the state or applied in Senegal, it must be regularly ratified or approved. This means that the National Assembly must analyse the instrument and approve it through the adoption of a law authorising the ratification or the approval. The treaty must also be published in order to be opposable to citizens or invoked by them for their benefit.[105]

Although Madior Fall's argument identifies the role of parliament in the reception of international law norms, it does not shed much light on the legal nature of the parliamentary authorization. Though Article 95 can be invoked as the primary legal basis for the intervention of the legislature, as it presupposes the possibility of ratification by way of authorization by the National Assembly, Article 96 is the provision that can be seen as a legal basis for the power of the legislature. This is because Article 96 explicitly enumerates a number of legal instruments that can only be approved or ratified through a law. One form of international treaties that must follow that process is that related to the status of persons. If we agree that international human

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[102] See HRI/CORE/SEN/2011, the Framework document on Senegal's state reporting process, at p. 8 and following.

[103] The exclusion of executive power in the reception of international law norms is a deliberate choice by Senegal's political leadership. Article 57 of the Constitution merely provides that 'the Prime Minister [has] the administration at his disposal and appoints to the civil offices [*emplois*], determined by the law. He assures the execution of the laws and [has] the regulatory power at his disposal subject to the provisions of Article 43 of the Constitution'. The Prime Minister has consequently no power to integrate international law norms within the domestic system, but Article 57 can serve to complement the power of the legislature. The legislature however has exclusive and specific powers in some areas. Cf. El. H.M. Sanghare (n. 90 above), pp. 127-140.

[104] Article 98 provides that '[t]he treaties or agreements regularly ratified or approved have, on their publication, an authority superior to that of the laws, under reserve, for each treaty or agreement, of its application by the other party'.

[105] I.M. Fall, *L'évolution constitutionnelle du Sénégal : de la veille de l'indépendance aux élections de 2007* (Paris, Karthala, 2009), at p. 31.

rights treaties regulate the status of persons,[106] Article 96 therefore consecrates the power of the legislature in the reception of international human rights treaties. This is why the reception of international human rights treaties in the domestic system must be supported by a law.

In practice, almost all the instruments that have effects on the status of individuals are ratified by way of parliamentary authorization.[107] The intervention of the legislature is limited to the authorization. The remaining formalities provided for under Article 98, such as publication, are within the scope of the duties of the executive. Publication is not only a specific procedure for international treaties. It is a general condition for the awareness of normative instruments that they are of national or international nature.[108] However, according to Senegalese scholarship, the publication of international treaties facilitates the avoidance of 'secret agreements that only the political leadership, not even the population, knows: this is a guarantee for the respect of fundamental rights and freedoms'.[109]

With regard to the last condition for the opposability of international agreements within the domestic system—reciprocity—it is important to note that this does not apply to human rights treaties. This position is unanimous within Senegalese scholarship. Professor Alioune Sall argues that

> the reservation to international treaties only applies to a certain type of international treaties excluding those from the United Nations and African Union. Such a logic is applicable to treaties that are not ratified by many states (…) such as the CEDEF. It makes it easier for the citizen to invoke that treaty in [a] court of law.[110]

The non-reciprocity in international human rights treaties has already been affirmed by international jurisprudence. By taking the view that international human rights treaties do not require reciprocity, Senegal merely aligns itself with that position.[111]

CONCLUSION

For many years, Senegal has been considered to be a 'democratic showcase' in West Africa. Historical factors and a rich and stable political background are some of the elements that provide evidence of its democratic progress. The first stage of that progress stems from the legacy of pre-colonial Senegal marked by the existence of democratic principles in some provinces and kingdoms that regulated the relationship between leaders and populations (the election of the King and his disposal—political responsibility—in the case of serious misconduct

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[106] Human rights are considered as subjective and inalienable rights that are accrued to individuals. This suggests that human rights treaties define the 'human condition in a particular society'. See the preamble to the Universal Declaration of Human Rights.

[107] See HRI/CORE/SEN/2011, the framework document on the elaboration of the Senegal state report, p.8, cited by El. H.M. Sanghare (n. 90 above), p. 129.

[108] The publication of an act is a formality aimed at bringing a legal act to the attention of citizens. See G. Cornu, *Vocabulaire juridique* (6th ed., Paris, P.U.F., 2004), p. 728.

[109] Fall (n. 101 above), p. 31.

[110] A. Sall, '*Communication au forum de l'AJS', La prise en charge sanitaire et judiciaire des victimes de VBG du 12 juillet 2010*, in F.-K. Camara, *Les droits de l'homme. Cours licence 3*, p. 11, available at fsjp.ucad.sn/files/dieye/droit_fond.pdf.

[111] On the question of human rights, see El. H.M. Sanghare (n. 90 above), p. 130 and following.

toward the people). Equally, during the colonial period, political life was also tumultuous and intense. A number of factors have contributed to the democratic experience within territories and for the people who were living there: the election of a Senegalese as a member of the French parliament in 1848, and the policy of decentralization that dates back to 1872 when autonomous communes were created. (These communes are Saint-Louis, Gorée, Rufisque, and Dakar.[112]) The decentralization process continued, albeit with numerous reforms, in 1972, 1996, and 2016. We can also note the development of well-organized unions that argued vigorously against the colonial power.[113]

The accession of Senegal to independence marked the dawn of the beginning of a new democratic era under the presidency of Léopold Sédar Senghor.[114] Senghor established a *de facto* single-party state, the Socialist Party (PS), before instituting a multi-party state limited to four political parties in 1974. The full multi-party state was instituted by Abdou Diouf who took over from Senghor in 1981. In the West African region, Senegal was the unique multi-party state until other countries democratized their political systems in the 1990s. The democratization of political systems was achieved through national conferences and constitutional amendments. Senegal by then became an exception in Africa: freedom of expression, freedom of assembly, freedom of the press, freedom of movement, and religious freedoms as well as the right to form unions were guaranteed. Political prisoners were practically non-existent or rare. Civil society organizations were conducting activities within the state, particularly the protection and promotion of human rights. This gave Senegal a good democratic reputation. The image of Senegal as a democratic state was strengthened when President Senghor voluntary resigned. This action, rare at that time in Africa, was lauded in the country and all over Africa, where heads of state continue to maintain their grip on power by repealing presidential term limit provisions in their constitutions. The image of a democratic Senegal should, however, be relativized. Despite its political and democratic stability (Senegal has never experienced a *coup d'état*), Senegal under President Senghor was characterized by the domination of one party, the PS, that hampered the development of opposition parties. Many of these opposition parties evolved incognito to avoid their dissolution or the arrest of their leaders.

This, however, did not jeopardise the reputation of Senegal as a democratic showcase in Africa. The increased democratic experience in Senegal has led to two alternations of power, in 2002 and 2012, through peaceful, fair, and transparent elections. Of course it is not enough, but it remains evidence of the political maturity of the people of Senegal that demonstrates their ability to change the political leadership through elections. Throughout that time, religious authorities

[112] The particularities of these communes, also known as '*Quatre vieilles*', is that their inhabitants had French citizenship and were entitled to vote for members of the French parliament.

[113] Demonstrations by unions started earlier in Senegal. The most famous battles by unions in Senegal occurred in 1946 and between 1945 and 1948 by (Dakar-Niger) railway employees. With regard to the development of unionism in Senegal, see O. Gueye, *Sénégal, histoire du mouvement syndical. La marche vers le Code du travail, préface de Iba Der THIAM* (L'Harmattan, 2011).

[114] It should be recalled that President Senghor was the son of a Catholic father and a Muslim mother. They belonged to a minority tribe in a state dominated by the Ouolof. He was Christian in a country of 90 percent Muslims and where religious leaders have influence. This could be evidence that the people are unconcerned about the ethnic or religious backgrounds of Senegal's leaders.

developed close relationships with political leaders in the country.[115] Church leaders' influence on voters is now decreasing.

As it was stated earlier, Senegal has had four Constitutions. Numerous constitutional amendments have been made in between. Some have remained highly controversial and others have been lauded. The last constitutional amendment was made in 2016 under the initiative of President Macky Sall. The amendment introduced the limitation of the duration and the number of presidential terms. The process has been criticized by the opposition and a portion of citizens.[116]

Since the 2001 referendum, Senegal's political and institutional scenarios have been fraught. Opposition leaders and scholars have criticized the President and the ruling coalition *Ben Bok Yakarr* ('Together for a shared hope'). The last legislative elections were won by the ruling coalition (125 seats out of 165) but with a low voter turn-out of 53.66 percent. As was the case for the referendum, these elections were also criticized for the lack of democratic consensus. Twenty percent of voters did not participate because of the non-distribution of their voter registration cards. According to observers and opposition political parties, these elections marked the regression of the democratic process in Senegal. The head of state was not a candidate, but he was personally involved in the elections. The President's official picture was all over campaign materials. Public and private media (radio, television, newspapers, internet, etc) were used by incumbents abusively, in violation of the Electoral Act. The Act guarantees equal access by candidates to the media (Article 61). No state organs tasked with ensuring the respect of equal access by candidates to the media enforced this provision. Neither the National Council for the Regulation of Media (CNRA) nor the Autonomous National Electoral Commission (CENA) took measures to address these imbalances, although they had the powers to do so. They could have sanctioned the violations and dysfunction that marred the July 2017 legislative elections.

The victory of the ruling coalition is qualified by the irregularities that marred the conduct of elections. The percentage of abstention was considerable. The ruling coalition obtained 48 percent of the 53 percent of voter turn-out. This suggests that the 125 out of 165 seats obtained by the ruling coalition were the result of an inappropriate electoral system. At the level of division where 105 of the 165 members of parliament[117] are to be elected, elections are conducted under the one-round majority vote system. This system allows one party to win all the seats even with only one seat of difference. The election for the remaining 60 seats was conducted under the proportional electoral system at the local level.[118] If the opposition had united in a single list during these elections, it could have won the majority of seats in parliament. The reason is simple: the opposition had obtained, on its own, the majority of votes cast.

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[115] C. Coulon, *Le marabout et le prince. Islam et pouvoir au Sénégal* (Paris, Pédone, 1981), at pp. 233-240.

[116] One of Macky Sall's presidential campaign promises was to reduce the duration of presidential terms from seven to five years and their number from unlimited terms to two. He finally organized a referendum after receiving the advisory opinion of the Constitutional Council. The proposal was approved, but the Council argued that such a limitation would not apply to the incumbent term: that is, seven years.

[117] For the first time, fifteen members of parliament are elected by the diaspora. They also represent the diaspora in the national parliament.

[118] V.M.S. Dione, *Entretien au Point Afrique*, published 8 September 2017, http://afrique.lepoint.fr/actualites/senegal-il-n-y-a-pas-lieu-pour-la-coalition--au-pouvoir-de-se-rejouir-pour-2019.

The next presidential elections will take place on 24 February 2019. They are already the subject of controversy between the ruling coalition and the opposition. This is in part because the potential presidential candidates of the two major opposition political parties, the PS and the Democratic Senegalese Party (PDS), have either been sentenced to jail and consequently not eligible (Karim Wade), or under arrest and prosecution (Khalifa Sall, the Mayor of Dakar). The judicial problems of the two opponents to the current President are seen as political machinations by President Macky Sall to exclude them from running for president. The President is also accused of attempting to defy the rule of law in Senegal and utilizing the judiciary, including the Constitutional Council. The organization of the elections will be conducted by the Minister of Interior. The Minister has already made it clear that he supports President Macky Sall for the upcoming elections. Opposition parties have requested that the organization of the elections be conferred to an independent institution. President Abdou Diouf did this in 1997 by creating the National Observatory of Elections (ONEL). The objective of the request was to ensure the regularity, transparency, and validity of the elections. Abdou Diouf also appointed a non-partisan Minister of the Interior to oversee the elections. These are positive lessons to be learnt.

For the 2012 presidential elections, President Abdoulaye Wade agreed to appoint an independent personality at the Ministry of Home Affairs to organize the elections, following pressure and demands by the opposition political parties. Another subject of disagreement was the system of godfathering for independent candidates which, for now, has been regulated for the upcoming presidential elections. In fact, since the two opponents (the Socialist Party and the Democratic Senegalese Party) were barred from the presidential poll, the National Assembly passed a constitutional amendment bill on godfathering, championed by President Macky Sall, ten months prior to the elections (on 19 June 2018). The bill required each presidential candidate to obtain 0.8 percent of registered voters backing their candidacy in at least half of the fourteen regions that make up the country.[119] The ruling coalition and the President considered that such a threshold would limit unrealistic candidacies. However, the opposition that boycotted the vote of the amendment bill, and political commentators, believed that the aim of the amendment was to marginalize or exclude from the presidential poll candidates who might win elections. The refusal by the government to hand over the voter roll to other presidential candidates was greatly criticized by the opposition. The opposition has pledged to create trouble and chaos during the upcoming elections should the voter roll not be shared with its candidates.

According to Maurice Soudieck Dione, 'democracy in Senegal is stagnated at the beginning stage. Democratic gains are constantly trampled by ambitions to strengthen personal power carried out by the successive regimes. But it is precisely these antidemocratic behaviours that fuel the mobilization and determination of political forces to rise up'.[120] This statement is true. Ruling coalitions, the opposition, and civil society activists have demonstrated their maturity to resolve the political crises that have occurred in the country through negotiation and

[119] Initially, the proposed bill obliged candidates to obtain one percent of registered voters, which amounts to 65,000 signatures obtained in at least in seven regions (the minimum of 2,000 signatures per region). It was through an amendment adopted by the ruling coalition that the threshold was lowered to 0.8 percent (Constitutional Act 2018-14 of 11 May 2018 on the amendment of the Constitution, Article 29. Official Gazette of 12 May 2018). When opposition parties sought a declaration of invalidity of the constitutional amendment establishing a godfathering system, the Constitutional Council declared on 9 May 2018 that it did not have jurisdiction to decide such a matter.

[120] Dione (n. 114 above).

compromise. The consolidation of democracy not only rests upon the alternation of power, as was the case in 2000 and 2012. It also requires the consolidation of a culture of respect for human rights and for the principle of the rule of law, both by state officials and citizens. This is a long-term goal that cannot be achieved merely through the change of political leadership at the level of the presidency.[121] Senegal continues to consolidate its democracy. Considering the gains that it has made over time with regard to democracy, the outcome of democratic consolidation will likely be successful.

[121] A.B. Fall (n. 3 above), pp. 35-82; see also www.afrilex.u-bordeaux4.fr.

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