



COUNTRY PROFILE

The Preamble of the 2001 Constitution of Senegal²³⁰ provides that the country rejects and eliminates all forms of injustice, inequalities, and discrimination. Article 1 then builds on the Preamble to provide for non-discrimination on the basis of, sex amongst others. Article 7 further provides that both men and women are equal and that the law promotes the equal access of men and women to mandates and functions.

Article 1 of the 2001 Constitution provides that Senegal is a secular State. Article 25-3 further provides that family matters are regulated by civil law. Family law in the country is mainly covered by the 1972 Family Code²³¹ which was adopted with the view of synthesising Islamic and customary norms with French civil law, taking into consideration the improvement of the condition of women in the family.²³² Informal unions are therefore not recognised by the law.

The Preamble of the 2001 Constitution affirms the country’s adherence to the UDHR, the African Charter and CEDAW. This implies that all the rights protected by these treaties should be a lived reality for Senegalese women.

MAIN TRENDS IN FAMILY LAW

The Constitution of Senegal contains several provisions that are in line with international human rights standards relating to women in the family. For instance, Article 15 of the Constitution provides that both men and women ‘have the right to accede to the possession and to the ownership of land’ as determined by law. Article 17 further protects the family as the natural and moral base of the human community and requires the State to ‘see to the physical and moral health of the family and, in particular ... of the elderly persons’. The inclusion of elderly persons here implies that the State has to look after the well-being of older women too, who often suffer vulnerabilities at the hands of their family.

Article 18 of the 2001 Constitution further states that ‘[f]orced marriage is a violation of individual liberty’. It also states that forced marriage ‘is forbidden and punished within the conditions established by law’. Forced marriage is also banned by Article 108 of the Family Code. Concerning property, Article 19 provides that the woman has the right to have her own estate, which she has the right to manage on her own. Concerning parental duties, Article 20 establishes that both parents have the right and duty to raise their children.

Article 157 of the Family Code provides that both spouses can request for a divorce. Upon separation or divorce, under Article 278 of the Family Code, the judge can decide to give custody to any of the parents taking into account the best interests of the child.

Book VI of the Family Code provides that both the husband and the wife have a claim over the matrimonial property.

Treaty	Date of ratification	Reservations/Declarations
CEDAW	5 February 1985	None
African Charter	13 August 1982	None
Maputo Protocol	27 December 2004	None

230 Available in French and in English (accessed 17 January 2024)
231 Code de la famille Senegalais (accessed 17 January 2024)
232 A Bouland ‘Family law in Senegal: Opposition and pragmatic pluralism’ (2022) 56 *Canadian Journal of African Studies* 1164

KEY GAPS AND CONTESTATIONS

(i) **Child marriage:** One major gap in the Senegalese law is the failure to protect the child from marriage. According to Article 111 of the Family Code, the minimum age of marriage for a boy is 18 and 16 for a girl. However, there can be exceptions to the minimum age of marriage for serious causes, which can be determined by the President of the Court and the consent of the person exercising parental authority.

(ii) **Remarriage and parental authority:** A woman can only remarry 300 days after the dissolution of the first marriage. There is a time limit of three months in the case of divorce or annulment of the marriage.²³³ This provision is discriminatory since men do not have to respect such timelines and they can remarry immediately after the dissolution, divorce, or annulment.

Article 152 of the Family Code provides that the husband is the head of the family. Article 153 also states that the husband chooses the matrimonial home and the wife follows him.

Article 277 of the Family Code provides that both the mother and the father have parental authority. However, during the marriage, such parental authority is exercised by the father as the head of the family, who is also responsible for all decisions related to the child. The mother will have parental authority only when a judge decides that the case falls under one of these instances: (1) total or partial forfeiture on behalf of the father; (2) the father cannot exercise his duties as the head of the family due to inability, absence or

alienability; (3) conviction for abandonment of the family; or (4) delegation of parental authority to the mother.

(iii) **Polygamy:** Under Article 65 of the Family Code, the husband, in the act of marriage, needs to establish whether it is a monogamous marriage or a polygamous one. Article 113 of the Family Code provides for women to not remarry before the dissolution of her first marriage, it provides that a man cannot remarry if he has a number of wives above what is prescribed by the law. The number of wives prescribed by Article 116 of the Family Code is four. The Family Code clearly allows for polygamous marriages by men.

(iv) **Inheritance:** The Family Code recognises both civil law and Muslim personal laws for succession. Under Article 407 of the civil law, the surviving wife has an equal right to inheritance of the deceased husband. However, under Articles 609 and 637 concerning inheritance as per Muslim Personal Law, surviving wives do not inherit on an equal basis. Additionally, sons and daughters do not have equal rights to inherit assets from their parents.²³⁴

(v) **Violence against women:** There is also a gap concerning the protection of women from violence since there is no comprehensive law on the same. Article 297 bis of the Criminal Code criminalises physical violence against a spouse but this is not sufficient.

(vi) **Abortion:** Article 305 of the Criminal Code criminalises any type of abortion and further criminalises anyone who disseminates information about the same.

RECOMMENDATIONS

Law reform:

- ▶ Reform family laws to:
 - ▶ increase the age of marriage to 18 without any exceptions;
 - ▶ remove the timelines that women must respect for remarriage;
 - ▶ prohibit polygamy while ensuring that women already in polygamous relationships are not disadvantaged;
 - ▶ ensure that both husband and wife are responsible for the family and that they both choose the matrimonial home together;
 - ▶ provide both mother and father with the same parental rights;
 - ▶ remove the Muslim Personal Law option for inheritance since it is discriminatory against women
- ▶ Reform the Criminal Code to allow abortion as per international human rights standards.
- ▶ Adoption of a comprehensive law against violence against women that comprises of domestic violence, including marital rape.

²³³ Article 112 Code de la famille Senegalais

²³⁴ <https://wbl.worldbank.org/content/dam/documents/wbl/2024/snapshots/Senegal.pdf> (accessed 17 April 2024)

KHADIJA'S* STORY

Senegal



Case study collected with the support of Association des Juristes Sénégalaises

The Family Code of Senegal permits polygamous marriages for men (Article 116). It also protects women in polygamous marriages to a certain extent, where each wife can claim equal treatment (Article 149), and the husband cannot use the income of one of the wives for the benefit of the others (Article 369). While this protection is offered for women in polygamous marriages, it is not adequate/extensive, as demonstrated in Khadija's case. Khadija's story illustrates the negative impact of polygamous marriages on women and the aftereffects on women who opt for divorce. It further shows the need for family law reform in polygamous contexts to offer more protection to women during marriage and after divorce.

"My name is Khadija*, and I live with my son in Dakar, Senegal. I was married to my cousin as his **second wife**. My father arranged our union, believing my ex-husband would take good care of me as he was my father's nephew. However, our marriage lasted only four years, much to my father's disappointment.

Before our marriage, we agreed that I would keep my receptionist job in Dakar, and he would continue working as a senior technician at a telecommunication company in Bakel, a town over 600 kilometers away from Dakar.

After some time, he convinced me to move in with him, promising he had secured a job for me in Bakel. After resigning, I discovered he had lied to me, leaving me with no option but to become a housewife. Even my mother-in-law intervened and urged him to find me another job. But he firmly refused.

Later, he was transferred to Thiès, a region 70 kilometers from Dakar. Upon moving there, he demanded I stay at his first wife's house or leave his home. Feeling cornered and left with no choice, I returned to my parents' home with our son.

Shortly after, he filed a report of conjugal abandonment, accusing me of abandoning our family and matrimonial home. Later, he informed my father that he had repudiated me. Repudiation is a process where the husband has the right to end the marriage unilaterally without any explanation.

Three years later, I filed for an official divorce. My father didn't want me to take the matter to court, arguing that dirty laundry should be washed in the family. But I couldn't contain my suffering anymore, so I took my future into my own hands. Ultimately, my father had no choice but to support me.

I was determined to get full custody of my son since he had always lived with me and had minimal contact with

his father. Our son was just three months old the last time my ex-husband saw him. Furthermore, he never provided any financial support for our child. I've been taking care of the childcare expenses with the help of my father since the beginning.

I was lost at the start of the divorce procedure. Things were very slow, and the endless postponements did not make it easy. Being unemployed, I was already struggling to find money to buy tickets to travel to attend the court sessions. Therefore, I was not in a position to afford a lawyer for myself.

A friend suggested that I seek help from one of the legal aid clinics of the Association des Juristes Sénégalaises (AJS). Their services were truly beneficial, as obtaining custody of my son without a lawyer would have been challenging. Especially when my ex-husband had a personal lawyer and had requested the judge to let him have the child every other weekend. I didn't want that because my child is very young, and it could disturb him mentally.

The AJS lawyer who handled my case drafted the divorce petition and defended my right to exclusive custody throughout the prolonged proceedings. She convinced the judge that the child's best interests should precede all other considerations. Finally, the court granted me sole custody of my son.

I remarried in December 2023. My only concern now is how to support my child and pay for his education.

I think financial independence is crucial post-divorce. In my case, my ex-husband forced me to quit my job, and then he ended the marriage. If I were financially independent, I wouldn't have to wait for child support money at the end of every month. That hurts me a lot.

To other women facing divorce and custody battles, I would say stay strong, especially in the face of all the stigmatization."

* Not her real name