



## CAMPAIGN REPORT

# The law, trials and imprisonment for abortion in Senegal



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## Introduction

The law on abortion in Senegal is both restrictive and unclear. Although the country's criminal code completely prohibits pregnancy termination, the Code of Medical Ethics allows an abortion if three doctors agree that the procedure is necessary to save the pregnant woman's life.<sup>1</sup> Given these circumstances, almost no abortions are legal and unsafe abortion leads to a high maternal mortality ratio. A combination of an inherited colonial penal code, and the influence of religion and social stigma, mean that despite continuing attempts by advocates to change the law, cases of sometimes prolonged pre-trial detention and imprisonment for illegal abortion and for infanticide among women unable to obtain an abortion, are rife, especially among poor and rural women.

This report looks at Senegal's abortion law and policy, the prevalence of unsafe abortions, attempts to reform the law, the process of criminalisation of women, the extent of infanticide, and women's stories, based on a range of published sources and valuable input from Senegalese human rights and women's rights advocates.

## Abortion law and policy in Senegal

The Senegalese Penal Code was inherited from the former French colonial power and has been, for the most part, directly lifted from Article 317 of the 1810 Napoleonic Penal Code,<sup>2</sup> which forbids abortion under all circumstances.<sup>3</sup> In the Senegalese version, Article 305 of the Penal Code prohibits abortion,<sup>4</sup> the beginning of which states:

*"Whosoever, by food, beverages, medicines, manoeuvres, violence, or any other means, will have procured or attempted to provide abortion of a pregnant woman, that she consented to or not, shall be punished with an imprisonment of one year to five years and a fine of 20,000 to 100,000 francs."*<sup>5</sup>

Article 305 goes on to say that the punishment for someone regularly practising abortion is five to ten years in prison, and a fine of 50,000 to 500,000 francs (~USD 86–860); for a woman who consents to or attempts to carry out an abortion on herself, the punishment is six months to two years in prison, and a fine of 20,000 to 100,000 francs (~USD 35–173); and for a medical professional who carries out abortions it is a suspension of their medical licence for at least five years or the complete annulment of their licence, plus six months to two years in prison, and a fine of 100,000 to 500,000 francs (~USD 173–860).<sup>6</sup>

The Penal Code also condemns 'practices that promote abortion', which include public speeches, the distribution of any information describing abortion, including in private settings, and the advertisement of medical practices. Carrying out any of these is an offence under Law No. 80-49 of 24 December 1980, Article 305a of the Penal Code, even if an abortion does not take place. Mr Aboubacry Mbodji, Secretary General of Rencontre Africaine pour la

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<sup>1</sup> Guttmacher Institute (2015) 'Abortion in Senegal.' <https://www.guttmacher.org/fact-sheet/abortion-senegal> p.1

<sup>2</sup> Bartha Maria Knoppers, Isabel Brault and Elizabeth Sloss (Autumn 1990) 'Abortion Law in Francophone Countries.' *The American Journal of Comparative Law* 38:4, p.894

<sup>3</sup> UN Population Division - Department of Economic and Social Affairs (2002) Abortion Policies - A Global Review. Senegal Country Profile. [www.un.org/esa/population/publications/abortion/](http://www.un.org/esa/population/publications/abortion/) p.1

<sup>4</sup> Center for Reproductive Rights (2003) 'Women of the World: Laws and Policies Affecting their Reproductive Lives - Senegal.' <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/senegal.pdf> p.164

<sup>5</sup> Penal Code Senegal. [www.equalrightstrust.org/ertdocumentbank//CODE%20PENAL.pdf](http://www.equalrightstrust.org/ertdocumentbank//CODE%20PENAL.pdf) pp.50-51

<sup>6</sup> Ibid.

Défense des Droits de l'Homme (African Organisation for the Defence of Human Rights/RADDHO) in Senegal, notes that: "Senegal's legislation on abortion is one of the most repressive in the world."<sup>7</sup>

According to Article 35 of the Senegalese Code of Medical Ethics, abortion is legal if the pregnant woman's life is in danger.<sup>8</sup> However, the administrative requirements call for the signatures of two other physicians, one of whom must be a court-approved expert. This is so stringent that the possibility of a legal abortion is very rare.<sup>9</sup> Ultimately, almost no one succeeds.

Fatou Kiné Camara, President of the Association des Juristes Sénégalaises (Association of Women Jurists/AJS), who work to promote and extend the legal rights of Senegalese women, stresses: "Poor people in Senegal are lucky if they see one doctor in their lifetime, let alone three."<sup>10</sup> Senegalese feminist activist, Diakhoumba Gassama, explains that the fact that abortion on therapeutic grounds is permitted, means that anti-abortion commentators often assert that legal abortion is already in place in Senegal. In response, she argues:

*"Here is my challenge to everyone... find me one woman in Senegal who has been able to abort a pregnancy legally."*<sup>11</sup>

Since healthcare practitioners are subject to harsh sentences in addition to a five-year suspension of their professional license if they even provide information about abortion,<sup>12</sup> very few are willing to carry out an abortion. Global Doctors for Choice recount an unpublished ethnographic study of Senegalese health practitioners, which found that one-third thought, in spite of the law, that abortion for rape and incest should always be permitted – yet very few were actually willing to provide these services.<sup>13</sup> Moreover, even with post-abortion care, which is permitted as part of government policy, conscientious objection is frequently invoked when abortion is suspected of being induced rather than spontaneous.<sup>14</sup>

Senegal's national post-abortion care (PAC) programme has been described as "a leader in West Africa in the extension of post-abortion care".<sup>15</sup> The government is increasingly attempting to decentralise PAC services so that women can receive care at the local level. Manual vacuum aspiration (MVA) has been included in national norms and protocols for the

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<sup>7</sup> Fédération Internationale des Ligues des Droits de l'Homme/FIDH (2014) « Je ne veux pas de cet enfant, moi je veux aller à l'école » La prohibition de l'interruption volontaire de grossesse au Sénégal. <https://www.fidh.org/en/region/Africa/senegal/report-senegal-i-don-t-want-this-child-i-want-to-go-to-school>

<sup>8</sup> UN Population Division - Department of Economic and Social Affairs (2002) Abortion Policies - A Global Review. Senegal Country Profile. [www.un.org/esa/population/publications/abortion/](http://www.un.org/esa/population/publications/abortion/) p.1

<sup>9</sup> Siri Suh (2014) 'Rewriting abortion: deploying medical records in jurisdictional negotiation over a forbidden practice in Senegal'. *Social Science and Medicine* 108, pp.20-33.

<sup>10</sup> Alex Duval Smith (2014) 'Senegalese law bans raped 10-year-old from aborting twins.' *The Guardian* 4 April 2014. <https://www.theguardian.com/global-development/2014/apr/04/senegalese-law-bans-rape-survivor-aborting-twins>

<sup>11</sup> Diakhoumba Gassama (2017) 'No woman takes the decision to have an abortion dancing and singing'. [www.safeabortionwomensright.org/blog/no-woman-takes-the-decision-to-have-an-abortion-dancing-and-singing/](http://www.safeabortionwomensright.org/blog/no-woman-takes-the-decision-to-have-an-abortion-dancing-and-singing/)

<sup>12</sup> CRR *Op. cit.* ref 4, p.165

<sup>13</sup> Wendy Chavkin, Liddy Leitman, Kate Polin (nd) 'Conscientious objection and refusal to provide reproductive healthcare: A white paper examining prevalence, health consequences, and policy responses.' New York: Global Doctors for Choice. [globaldoctorsforchoice.org/wp-content/uploads/GDC\\_White-paper-on-CO-in-reproductive-health\\_ENG.pdf](http://globaldoctorsforchoice.org/wp-content/uploads/GDC_White-paper-on-CO-in-reproductive-health_ENG.pdf) pp.15-16

<sup>14</sup> *Ibid.*, p.25

<sup>15</sup> Ipas (2016) 'Comprehensive abortion care needs and opportunities in francophone West Africa: Situational assessment results.' <http://www.ipas.org/en/Resources/Ipas%20Publications/Comprehensive-Abortion-Care-Needs-and-Opportunities-in-Francophone-West-Africa.aspx> pp.31-32

treatment of incomplete abortion, while misoprostol has been on the List of Essential Medicines in Senegal for gastric ulcers, post-partum haemorrhage and PAC since 2013.<sup>16</sup>

However, although the provision of PAC is legal in Senegal, women who arrive at health facilities seeking such care, who will have broken the law, are sometimes reported to law enforcement authorities by unsympathetic health professionals.<sup>17</sup>

Furthermore, PAC is generally available only at secondary and tertiary level facilities, and only from high level providers, such as physicians and senior gynaecologists, but even then, necessary equipment and supplies are frequently unavailable.<sup>18,19</sup> Moreover, a 2017 Knowledge, Attitudes and Practices (KAP) survey of 110 pharmacists, to gather information about misoprostol availability, found that although 72% of pharmacists had heard of misoprostol and 48% who were not selling it expressed a willingness to do so, in fact only 34% reported actually selling misoprostol.<sup>20</sup>

The reinstatement of the Global Gag Rule will have a very negative effect in Senegal. The UN Population Fund (UNFPA) was defunded by the US State Department in April 2017,<sup>21</sup> even though they were providing maternal and child health services in Senegal. Marie Stopes does not offer abortion services in Senegal, but their family planning programme in Senegal is still in jeopardy because it offers abortion services in other countries where it is legal.<sup>22</sup> Smaller NGOs will also be affected. Molly Melching, the founder and director of Tostan, a well-known NGO for its ground-breaking work in reducing female genital mutilation in Senegal, explains:

*“We work in six prisons with women who are the poorest of the poor, often imprisoned for abortions or infanticide. We were being funded by the US Embassy through UNFPA, and were just told that we would get no more money. These women are extremely vulnerable.”*<sup>23</sup>

## The prevalence of unsafe abortions

The absence of legal abortion means that in Senegal, as in other countries with comparable legal barriers, abortion is driven underground – carrying with it risks of complications, imprisonment and social stigma. An estimated 8-13% of maternal deaths in Senegal were caused by complications of unsafe abortion, according to a report by the Fédération Internationale des Ligues des Droits de l’Homme (FIDH).<sup>24</sup>

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<sup>16</sup> Ramatoulaye Ndao, Babacar Mane, Eva Burke, Nafissatou Diop, Kate Reiss, Thoai Ngo, Katharine Footman and Maaïke Van Min (2014) ‘Knowledge and provision practices of misoprostol among pharmacies in Senegal.’ *STEP UP Research Report*, Dakar: Marie Stopes International and Population Council, p.iii

<sup>17</sup> Guttmacher Op cit. ref 1, p.1

<sup>18</sup> Ipas Op cit. ref 15, pp.31-32

<sup>19</sup> Yannick Jaffré and Siri Suh (2016) ‘Where the lay and the technical meet: Using an anthropology of interfaces to explain persistent reproductive health disparities in West Africa.’ *Social Science and Medicine* 156, p.180

<sup>20</sup> Ndao et al. Op cit. ref 16

<sup>21</sup> UNFPA (2017) ‘Statement by UNFPA on U.S. Decision to Withhold Funding’. 4 April 2017.

<http://www.unfpa.org/press/statement-unfpa-us-decision-withhold-funding>

<sup>22</sup> Amy Lee (2018) ‘Access to Family Planning in Senegal Can Stem Infanticide, Abortion, and the Jailing of Women.’ *Pulitzer Centre* 09 March 2018. [www.pulitzercenter.org/reporting/access-family-planning-senegal-can-stem-infanticide-abortion-and-jailing-women](http://www.pulitzercenter.org/reporting/access-family-planning-senegal-can-stem-infanticide-abortion-and-jailing-women)

<sup>23</sup> Marcia DeSanctis (2017) ‘The Soul of a Feminist.’ *Road and Kingdoms*. [roadsandkingdoms.com/2017/juliette-faye-doctor-senegal/](http://roadsandkingdoms.com/2017/juliette-faye-doctor-senegal/)

<sup>24</sup> FIDH Op cit. ref 7

According to a study by Gilda Sedgh et al, published in 2015, an estimated 51,500 abortions took place in Senegal in 2012, virtually all of which were clandestine and unsafe. The methods most commonly used to terminate a pregnancy were drinking caustic agents, such as bleach or detergent; drinking herbal solutions; and surgical procedures such as MVA and D&C. Overall, an estimated 38% were provided by untrained providers, 21% were induced by women themselves, 20% were provided by a nurse/midwife, 17% by doctors and 4% by a pharmacy.<sup>25</sup>

In addition, the study found that 55% of the women who had had abortions experienced complications (range 44% in Dakar to 60% elsewhere). Almost half (42%) did not receive medical treatment.<sup>26</sup>

Socio-economic status plays a crucial role in determining women's access to a safe abortion in Senegal. The risk of complications varied substantially according to women's income and where they lived: 73% of poor, rural women who had abortions had complications, compared to 35% of non-poor, urban women.<sup>27</sup> Private doctors with training may charge up to USD 375 for safe abortion services, while poorer women are unable to afford such services, forcing them to turn to unsafe, clandestine abortions.<sup>28</sup>

## The prevalence of unwanted pregnancies as a result of sexual abuse

A significant issue in Senegal was uncovered by a delegation of experts who visited Senegal in 2014 on behalf of FIDH to study whether Senegal was complying with the rights called for by CEDAW and in the Maputo Protocol on abortion. They found a high prevalence of pregnancy among young girls which were the result of sexual abuse, which was often followed by the refusal of an abortion. In their report, they showed that these pregnancies have terrible physical and psychological consequences for young girls.<sup>29</sup> The physical consequences alone are because the uterus, pelvic bones and spine of young girls are not developed enough to carry a pregnancy without damage, while the cervix and birth canal are too narrow to allow a vaginal birth. A caesarean section in a child, carried out when abortion is not permitted, also carries high risks.<sup>30</sup>

Such cases are so common, Diakhoumba Gassama says, that:

*"Here in Senegal, you cannot open a newspaper without reading: 'Young girl violated by her uncle... students sexually abused'".<sup>31</sup>*

Between 2013 and 2014, the Family Child Guidance Centre alone recorded 420 cases of sexual abuse of girls aged 7 to 14, 30% of whom had become pregnant and were denied an abortion. Of these pregnant girls, some 10-15% had to undergo a caesarean section because

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<sup>25</sup> Gilda Sedgh, Amadou Hassane Sylla, Jesse Philbin and Salif Ndiaye (2015) 'Estimates of the incidence of induced abortion and consequences of unsafe abortion in Senegal.' *International Perspectives on Sexual and Reproductive Health* 41:1 p.8

<sup>26</sup> Ibid., p.1

<sup>27</sup> Ibid., p.8

<sup>28</sup> Ipas Op cit. ref 15, pp.31-32

<sup>29</sup> FIDH Op cit. ref 7

<sup>30</sup> International Campaign for Women's Right to Safe Abortion (2017) Press Release - Sexual abuse of girls followed by refusal of abortion: adding insult to injury. 01 August 2017. [www.safeabortionwomensright.org/wp-content/uploads/2016/06/Sexual-abuse-of-girls-followed-by-refusal-of-safe-abortions-adding-insult-to-injury-updated-4-August-2017.pdf](http://www.safeabortionwomensright.org/wp-content/uploads/2016/06/Sexual-abuse-of-girls-followed-by-refusal-of-safe-abortions-adding-insult-to-injury-updated-4-August-2017.pdf)

<sup>31</sup> Gassama Op cit. ref 11

of their young age.<sup>32</sup> Moreover, in the first 11 months of 2016, some 250 cases of rape of girls aged 3 to 18 were recorded, of which 52 cases resulted in a pregnancy, among which were 25 cases of pregnancy following incest.<sup>33</sup> Yet, in Senegal, abortion on the grounds of rape and incest is not permitted.

## Attempts to change the law

Numerous challenges have been levelled at the Senegalese state and legal institutions by abortion rights and sexual and reproductive health rights activists, calling for amendments to the Penal Code, and lifting of some restrictions. In 2005, AJS and a number of high-level Ministry of Health officials attempted to persuade the National Assembly to permit abortion in cases of rape and incest in the Reproductive Health Law, whose aim was to guarantee the right of individuals and couples to reproductive health, equitable access to reproductive health care, and respect for the physical integrity of women and girls.<sup>34,35</sup> However, threats from members of the National Assembly to reject the bill entirely if abortion was included led the advocates to back down in order to protect access to contraception and PAC, which the bill also covered.<sup>36</sup>

In 2013, the Ministry of Health's Division of Reproductive Health set up an Advocacy Committee for Access to Safe Abortion in Senegal.<sup>37</sup> This multidisciplinary task force was comprised of medical professional associations, lawyers, sociologists, doctors, midwives, journalists, academics and religious persons.<sup>38</sup> According to Soukeyna Diallo of AJS, the aim is to ensure there are legal, medical, and social conditions in place to ensure Senegalese women's survival from abortion, to make infanticide unnecessary, to ease practitioners' anxiety about providing PAC, and to restrict the criminalisation of abortion.<sup>39</sup>

In 2014, the Task Force drafted a bill on safe abortion, using the language of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol),<sup>40</sup> which Senegal had ratified in 2005. The Maputo Protocol in Article 14(2c) commits States parties to:

*"Take all appropriate measures to protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the fetus."*<sup>41</sup>

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<sup>32</sup> FIDH Op cit. ref 7, p.11

<sup>33</sup> Le 360 Afrique (2017) « Sénégal : l'avortement légalisé divise mais les femmes juristes mettent la pression » 4 February 2017. <http://afrique.le360.ma/senegal/politique/2017/02/04/9500-senegal-lavortement-legalise-divise-mais-les-femmes-juristes-mettent-la-pression-9500>

<sup>34</sup> Suh Op cit. ref 9, p.4

<sup>35</sup> Futures Group. (2013) Repositioning Family Planning in Senegal. August [https://www.healthpolicyproject.com/ns/docs/Senegal\\_WestAfricaBriefs\\_Final.pdf](https://www.healthpolicyproject.com/ns/docs/Senegal_WestAfricaBriefs_Final.pdf)

<sup>36</sup> Siri Suh (2017) 'Accounting for abortion: Accomplishing transnational reproductive governance through post-abortion care in Senegal.' *Global Public Health* <https://doi.org/10.1080/17441692.2017.1301513> p.13

<sup>37</sup> Nafissatou Diop and Fatou Bintou Mbow (2016) 'I was raped and got pregnant. Abortion is illegal in Senegal. What do I do?' PowerPoint Presentation. Population Council. [http://www.popcouncil.org/uploads/pdfs/2016STEPUP\\_AbortionSenegal.pdf](http://www.popcouncil.org/uploads/pdfs/2016STEPUP_AbortionSenegal.pdf)

<sup>38</sup> FIDH Op cit. ref 7, p.7

<sup>39</sup> Interview with Soukeyna Diallo, carried out by Diakhoumba Ghassama, 8 June 2017, Dakar, Senegal

<sup>40</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. (2003) Article 14 (2C) Health and Reproductive Rights. <http://www.achpr.org/instruments/women-protocol/#14>

<sup>41</sup> FIDH Op cit. ref 7, p.4

The Task Force informally presented the bill to the Committee for the Reform of the Criminal Code<sup>42</sup> and to officials of the Ministry of Health, hoping they would present it to the Council of Ministers for adoption. This did not take place however. Nonetheless, it is important to stress the work done by the Task Force for legal access to safe abortion in cases of rape or incest. As a team of some 20 organisations and individuals, the Task Force was able to do a great deal of advocacy work and put the subject of abortion, which had been taboo, into the public space.<sup>43</sup> In the first half of 2018, the Task Force plans to formally present the bill to the Ministry of Justice, in order to press for an official response.

AJS have pointed out that Senegal's criminal provisions contradict both the equality provisions of the Senegalese Constitution and the CEDAW provisions which Senegal ratified in 1985.<sup>44,45</sup> Indeed, in the 2015 periodic review of Senegal by CEDAW, the Committee expressed concern about the continuing criminalisation of abortion. The CEDAW Committee recommended the following:

*“Amend Article 305 of the Penal Code, the code of professional conduct and relevant legal provisions to decriminalize abortion and ensure that it is legally available in cases of threats to the life or health of the pregnant woman, rape, incest and serious impairment of the fetus; and remove from the draft new legal provisions the burden of proof for pregnant women to show that their pregnancy is the result of rape or incest.”<sup>46</sup>*

AJS has a long history of campaigning for legalisation of abortion on grounds of rape and incest, and if the continuation of the pregnancy is a risk to the physical or mental health of the girl or woman.<sup>47</sup> AJS has trained over 1,000 *parajuristes* (legal lay people) since 2008, to help with and improve the handling of abortion-related cases. Human rights lawyer Amadou Aly Kane noted that these *parajuristes* are playing a vital part in improving access to justice, while AJS President Camara reported that the *parajuristes* uncover cases of young, pregnant girls and act as their “eyes and ears on the ground”.<sup>48</sup>

Feminist social movements in Senegal and Africa remain strong and tireless in their efforts, urging the government to fulfil its regional and international obligations.<sup>49</sup> This led Senegal's President Macky Sall to state in 2015 that he may eventually support legalisation of abortion in cases of rape and incest.<sup>50</sup>

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<sup>42</sup> FIDH Op cit. ref 7, p.7

<sup>43</sup> Email exchange with Soukeyna Diallo, 18 March 2018

<sup>44</sup> Judy Scales-Trent (2010) ‘Women Lawyers, Women's Rights in Senegal: The Association of Senegalese Women Lawyers.’ *Human Rights Quarterly* 32:1 p.136

<sup>45</sup> Convention on the Elimination of All Forms of Discrimination against Women (2013) Consideration of reports submitted by States parties under article 18 of the Convention Combined third to seventh periodic reports due in 2010 - Senegal 13 December 2013 CEDAW/C/SEN/3-7

<sup>46</sup> Convention on the Elimination of All Forms of Discrimination against Women (2015) Concluding observations on the combined third to seventh periodic reports of Senegal. 28 July 2015. CEDAW/C/SEN/CO/3-7 p.11

<sup>47</sup> International Campaign for Women's Right to Safe Abortion (2017) ‘In Senegal, cases of infanticide raise the question of legalisation of abortion.’ 22 September 2017. [www.safeabortionwomensright.org/senegal-cases-of-infanticide-raise-the-question-of-legalisation-of-abortion/](http://www.safeabortionwomensright.org/senegal-cases-of-infanticide-raise-the-question-of-legalisation-of-abortion/)

<sup>48</sup> Smith Op cit. ref 10

<sup>49</sup> Make Every Woman Count (nd) ‘Senegal's restrictive abortion law.’ <http://www.blog.makeeverywomancount.org/senegals-restrictive-abortion-law/>

<sup>50</sup> Allyn Gaestel and Ricci Shryock (2017) ‘The Price of Senegal's strict anti-abortion laws.’ *New Yorker* 01 October 2017. <https://www.newyorker.com/news/news-desk/the-price-of-senegals-strict-anti-abortion-laws>

The opposition from conservative Muslim and Christian religious leaders has made the road to justice for girls and women a long one, however.<sup>51</sup> For instance, AJS co-hosted a workshop calling for abortion law reform on 16 October 2016, along with the Association des Femmes Médecins (Association of Women Doctors) and the Population Council. National Assembly Deputy Hawa Dia Thiam attended and commented that Senegal needed to reform its laws in order to honour its international obligations under the Maputo Protocol. Jamra, a conservative Islamic organisation, responded by announcing the launch of a state-by-state tour of Senegal to “raise awareness” of their opposition to abortion.<sup>52</sup>

## Miscarriages - or abortions?

Despite the legal barriers to abortion, the number of women who are actually prosecuted for abortion is low, and no prosecutions of abortion providers have been found. According to researcher Siri Suh, between 1987 and 2010 in one region of Senegal, the state only prosecuted 42 cases of illegal abortion, that is, less than two cases per year.<sup>53</sup> (We were unable to find national figures.)

Why so few cases? Again, according to Siri Suh, during both 2009 and 2010, hospital records show that over 90% of abortions were classified as ‘spontaneous’ and 3-8% of cases were not classified at all. This means that less than 1% were classified as induced.<sup>54</sup> In another study, Suh reports that between 2000-2002 a review of abortion records in six district hospitals and 12 health clinics in two regions found that 95% of abortions were recorded as spontaneous, yet up to 35% of patients admitted that the pregnancy was unwanted”.<sup>55</sup>

Sedgh et al also argue that the unusually high percentage of spontaneous abortions may be due to PAC providers classifying induced abortions as ‘spontaneous’ in case notes, in order to protect both women and service providers from legal consequences.<sup>56</sup> Suh concurs with this analysis.<sup>57</sup> This cover-up of induced abortions in medical records is also achieved through the use of ambiguous language, such as ‘induced miscarriage’ or ‘missed abortion’. As a physician and a nurse, respectively, interviewed by Suh told her:

*“We know that most of them lie, but if she [the woman] says it’s spontaneous, you can’t write induced, you have to write spontaneous... We record what the patient tells us, we write the words of the patient, we are not the police, we don’t do investigations.”<sup>58</sup>*

*“We record them all as spontaneous abortions, knowing that induced abortion is illegal, therefore there can’t be any induced abortions. So, we consider them to be spontaneous abortions and we record them as spontaneous abortions.”<sup>59</sup>*

## Infanticide

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<sup>51</sup> International Campaign for Women’s Right to Safe Abortion (2017) ‘The Association of Women Jurists of Senegal Pressure Government’. [www.safeabortionwomensright.org/the-association-of-women-jurists-of-senegal-pressure-government/](http://www.safeabortionwomensright.org/the-association-of-women-jurists-of-senegal-pressure-government/)

<sup>52</sup> International Campaign for Women’s Right to Safe Abortion (2016) ‘Senegalese workshop calling for abortion law reform starts conversation in the media.’ 16 December 2016. [www.safeabortionwomensright.org/senegalese-workshop-calling-for-abortion-law-reform-starts-conversation-in-the-media/](http://www.safeabortionwomensright.org/senegalese-workshop-calling-for-abortion-law-reform-starts-conversation-in-the-media/)

<sup>53</sup> Suh Op cit. ref 9, p.20

<sup>54</sup> Suh Op cit. ref 9, p.11

<sup>55</sup> Suh Op cit. ref 9, p.2

<sup>56</sup> Sedgh Op cit. ref 25, p.5

<sup>57</sup> Suh Op cit. ref 9, p.22

<sup>58</sup> Suh Op cit. ref 9, p.15

<sup>59</sup> Suh Op cit. ref 9, p.18

Infanticide in Senegal is widespread. Newly born infants, reportedly most frequently the outcome of rape or incest, are regularly found dead in public places, including in garbage trucks and sewers. Their existence directly reflects the failure of women to obtain an abortion at all, even an illegal one. Thus, the criminalisation of abortion leads directly to the crime of infanticide and is another reason why women may end up in prison.

Similar to girls and women who seek clandestine, unsafe abortions, girls and women who carry out infanticide often come from poor socio-economic backgrounds. These same women and girls are also much more likely to fall victim to sexual violence and abuse, with pregnancy the consequence.<sup>60</sup>

According to the latest survey on the economic and social situation of Senegal, by the National Agency of Statistics and Demography, in 2012 cases of infanticide accounted for 25% of cases judged in the assizes. Also in 2012, the Directorate of Prison Administration identified 29 women jailed for infanticide. In Dakar alone, it was found in criminal records that 14 women had been sentenced or were in pre-trial detention for infanticide, even though proving the women had committed infanticide is often complicated. "You can receive an anonymous call from someone about a birth to a woman but the baby has not been seen."<sup>61</sup>

In a prison in Thiès, it was reported that in 2017 more than eight women had been found guilty or were in detention for infanticide. Almost all of the ones who agreed to speak to the journalist who interviewed them denied killing their baby. One, a mother of four, said she knew how to cause an abortion and would have done so early in pregnancy if that was what she had wanted. Another said her baby had been born alive and she had fallen asleep while breastfeeding him; when she awoke, he was dead. Another acknowledged hiding a pregnancy conceived while her husband was away, but denied killing the baby.<sup>62</sup>

## The extent of pre-trial detention and prison conditions

Taken together, the two offences of abortion and infanticide account for 38% of the female prison population in Senegal.<sup>63</sup> However, the number of actual prosecutions has remained low, compared to the number of women in pre-trial detention for suspected infanticide or illegal abortion, which is remarkably high. Infanticide in fact accounts for the second largest percentage of women in detention, at 16%.<sup>64</sup> (The largest is drug trafficking).<sup>65</sup>

In the Senegalese prison system, people in pre-trial detention are held in the same prisons as those who have been sentenced for a crime. Thus, 46.5% of all male and female prisoners in prison in Senegal in 2015 were in pre-trial detention,<sup>66</sup> and women suspected either illegal abortion or infanticide were subject to long periods in detention. According to a 2015 study carried out by the Regional Office for West Africa of the UN High Commissioner for Human

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<sup>60</sup> FIDH Op cit. ref 7, p.11

<sup>61</sup> Campaign Op cit. ref 47

<sup>62</sup> Marame Coumba Seck (2017) « Condamnées pour infanticide, des Sénégalaises racontent » *Le Monde* 18 September 2017. [http://www.lemonde.fr/afrique/article/2017/09/18/condamnees-pour-infanticide-des-senegalaises-racontent\\_5187443\\_3212.html](http://www.lemonde.fr/afrique/article/2017/09/18/condamnees-pour-infanticide-des-senegalaises-racontent_5187443_3212.html)

<sup>63</sup> FIDH Op cit. ref 7, p.16

<sup>64</sup> FIDH Op cit. ref 7, p.11

<sup>65</sup> Office of High Commissioner for Human Rights (OHCHR) (2015) 'For a better inclusion of women's rights in detention in Senegal'. 13 March 2015. [www.ohchr.org/EN/NewsEvents/Pages/WomenRightsInDetentionInSenegal.aspx](http://www.ohchr.org/EN/NewsEvents/Pages/WomenRightsInDetentionInSenegal.aspx)

<sup>66</sup> Prison Insider (2017) Senegal country profile: Prison population. <https://www.prison-insider.com/countryprofile/prisonsinsenegal?s=la-population-carcerale#la-population-carcerale>

Rights (OHCHR)<sup>67</sup> in collaboration with AJS, of 153 female detainees in five prisons around Senegal who were interviewed, 72% were in pre-trial detention.<sup>68</sup>

A 2012 study of young women (average age 24 years) in pre-trial detention accused of abortion or infanticide in Senegal found that the average duration of detention was nine months.<sup>69</sup> Pre-trial detention was especially commonplace among poor and rural women who had a low level of education, most of whom came from the outskirts of Dakar or other rural areas.<sup>70</sup>

Senegalese prisons are largely overpopulated and unsanitary. For the small proportion of the prison population that is female (4%), there is no system in place to respond to the specific needs of women. "...This includes the state and configuration of facilities, the isolation of women's premises, which reduces access to leisure and training, and the often-inadequate nature of the health, food and medical system".<sup>71</sup> In May 2014, AJS noted that the women's quarters in Kaolack remand prison had collapsed and had to be evacuated.

Khady Ba, a Senegalese lawyer in Dakar, reports: "the most shocking thing for me is to see women in jail with their babies."<sup>72</sup> Pregnant women are isolated for two months before and after giving birth, and children can remain with their mothers up to the age of three.<sup>73</sup> Since socio-cultural norms in Senegal stigmatise prison, along with abortion or infanticide, women often lose their social connections with their family, friends and communities in the outside world.

## Case histories

The Center for Reproductive Rights has highlighted the dearth of case reports of prosecutions for abortion in Senegal. They found in 2001 that no cases of medical personnel convicted for illegal abortion had been published, and despite the law, that blame and shame tended to fall solely on the pregnant woman or girl.<sup>74</sup> Prosecutions involving women and girls tend to take place behind the scenes and are viewed as a private matter. AJS staff and other feminist activists in Senegal say they are often in the dark about the details of legal cases.

The media do report particularly egregious examples every so often, most notably when an extremely young girl is a victim of sexual abuse but denied an abortion, or when a woman has committed infanticide in a particularly disturbing manner after having been denied an abortion.<sup>75</sup> Often, campaigners use such high-profile cases to flag the need for legal abortion in the country. For instance, in 2011, when a 14-year-old victim of rape was arrested for abortion, Fatou Kiné Camara, President of AJS, called for the immediate application of the Maputo Protocol, Article 14(2c).<sup>76</sup> Around the same time, a 9-year-old who was raped was also forced to go through with the pregnancy. AJS managed to pay for her to have a

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<sup>67</sup> OHCHR Op cit. ref 65

<sup>68</sup> FIDH Op cit. ref 7, p.14

<sup>69</sup> Mohamed Maniboliot Soumah and Liliane Flore Pemba (2012) 'Détention provisoire des jeunes femmes accusées d'avortement clandestin ou d'infanticide au Sénégal.' *Pan African Medical Journal* 12: 49, p.1

<sup>70</sup> Ibid., p.3

<sup>71</sup> FIDH Op cit. ref 7, p.13

<sup>72</sup> Jeanne Hefez (2017) 'When Abortion is a Crime: Women Behind Bars in Senegal'. Planned Parenthood Global <https://medium.com/@ppglobal/when-abortion-is-a-crime-women-behind-bars-in-senegal-1662ae6e36b8>

<sup>73</sup> Prison Insider Op cit. ref 66

<sup>74</sup> Op cit. ref 4, p.165

<sup>75</sup> CRR Op cit. ref 4, p.165

<sup>76</sup> Protocol Op cit. ref 40

caesarean section rather than deliver at term, but she died a few months after the baby was born due to the physical trauma of childbirth.<sup>77</sup>

In 2012, Mariama (not her real name), aged 40 years, gave birth to her seventh child. The infant died at birth and Mariama was convicted of infanticide. She awaited her trial for 3-years in prison, and is now serving a seven-year sentence in Thiès prison, mentioned earlier. She said one of the hardest things was leaving her family behind. In the same prison was a girl aged 16 years and her grandmother, aged 83 years, who was convicted of assisting her granddaughter with infanticide, and a woman who was raped and impregnated by her employer.<sup>78</sup>

Another case was brought into the international spotlight in 2014 when a 10-year-old girl who had been raped by a neighbour was found to be carrying twins but was denied an abortion even so. In spite of continuous pressure, campaigners were unable to convince the government to allow the abortion let alone to change the law – they were only able to ensure the girl received regular scans and free medical care.<sup>79</sup> Fatou Kiné Camara, President of AJS, said:

*"Senegal must legalise safe abortion so that we never see any more cases like hers. Had we had time and had the girl's parents been willing, we could have asked a judge to grant immunity from prosecution to an abortion doctor. However, the family is poor; the [legal] process was difficult enough for them. They were satisfied when the rapist was arrested. The girl is going to have to go through with the pregnancy."<sup>80</sup>*

In an interview with the AJS, the girl was asked whether she was pleased that the rapist – her neighbour – was in police custody. "No," she answered. "I want him to be killed because he has stopped me from going to school."<sup>81</sup>

The situation is again different for those who do go to prison, and these are case histories that are particularly difficult to unearth. One is that of Awa, a 30-year-old woman who was convicted of infanticide in 2014, a crime she had been charged with over ten years before. Awa had been remanded on bail during those ten years and had started a new life. She was found guilty and was forced to leave her husband and their two children behind. Fatou Kiné Camara of AJS explains:

*"Awa's story is a typical story of women who find themselves in prison, sometimes with young children, leaving behind a family... Beyond the concerns about due process for Awa, she is one of many women in Senegal affected by criminal laws with a distinctly discriminatory dimension".<sup>82</sup>*

In 2015, AJS requested a pardon from the President of the Republic, on the basis that a reasonable time limit for a trial to take place had passed, taking into account the woman's

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<sup>77</sup> Suh Op cit. ref 9

<sup>78</sup> Lee Op cit. ref 22

<sup>79</sup> Smith Op cit. ref 10

<sup>80</sup> Smith Op cit. ref 10

<sup>81</sup> Alex Duval Smith (2014) 'Senegal rape: 11-year-old girl denied abortion gives birth to twin boys.' *The Guardian* 19 May 2014. <https://www.theguardian.com/global-development/2014/may/19/senegal-rape-11-year-old-girl-denied-abortion-gives-birth-twins>

<sup>82</sup> OHCHR Op cit. ref 65

family situation. The request was granted and Awa was able to leave Kaolack prison and be reunited with her family.<sup>83</sup>

Likewise, Ina (not her real name) who grew up in her father's home in a rural inland region. After elementary school, she moved to her mother's cramped apartment in one of Dakar's sprawling, lower class suburbs. Because of the family's poverty, Ina quit school to help earn money. At 13, she started working as a domestic servant, living in her boss's home during the week. Several years later, a security guard in the neighbourhood where she worked started harassing her, and one day, he raped her. Soon afterwards, Ina missed her period and realised she was pregnant. Ina hid her pregnancy, and when she went into labour, she delivered alone in a small bathroom at her mother's home. What happened next is unclear, but the baby may have been stillborn. Ina said that she remembers wrapping the body in a skirt and leaving it in an unfinished building near her house. Three days later, the police knocked at her door, surprising her mother, who knew neither of the pregnancy nor the baby's death. Ina said she told the police, "I did it, but I don't know what pushed me to it. It wasn't my intention."

The police took Ina to the station. Doctors examined her to verify that she had recently delivered. Investigators accused her of murdering her infant. Infanticide cases generally require an autopsy of the baby, but circumstantial evidence also carries weight. Ina spent five years in prison, a typical sentence, and came home from prison in 2017. She still sees the face of the baby floating in front of her. "I don't know if it is my fault or not," she said. "All I wish is that God forgives me."<sup>84</sup> The fact that she was a victim not once but twice, first of rape and then imprisonment for not wanting the product of the rape in her life, was not taken into account. Thus, she blames only herself.

Just as Ina was being released, another young woman and her boyfriend were being imprisoned. In September 2017, the Tribunal de Grande Instance of Dakar jailed a teenage couple, both secondary school pupils, for the crimes of abortion and complicity to commit abortion. Without informing their parents, for fear of reprisals, the two ended her four-month pregnancy in August using a medication called "Sittotem", purchased from a clandestine pharmacy. The girl began to bleed heavily and was taken to hospital. In court, their lawyers asked for clemency so that they could continue to go to school. They were convicted, however, and given a month in prison each.<sup>85</sup> We were unable to discover whether this couple were able to return to school once released from prison.

The most recent case to come to light, in March 2018, was of a 14-year-old girl who was put on trial on 14 February 2018 for self-inducing abortion with abortion pills.<sup>86</sup> In a very short space of time, she was convicted of the crime of abortion and given two years' imprisonment. Activists and feminists in the country are keeping an eye on the case and hoping to be able to visit the girl in prison. Diakhoumba Gassama explained that the imprisonment of a minor in Senegal is extremely rare, and expressed particular concern that the court process took just two months, indicating that a powerful individual may have been the perpetrator.

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<sup>83</sup> OHCHR Op cit. ref 65

<sup>84</sup> Gaestel and Shryock Op cit. ref 50

<sup>85</sup> International Campaign on Women's Right to Safe Abortion (2017) 'A young couple, both school students, sent to prison for a month for abortion.' 20 October 2017. <http://www.safeabortionwomensright.org/senegal-a-young-couple-both-school-students-sent-to-prison-for-a-month-for-abortion/>

<sup>86</sup> Elena Strangways (2018) « Une Fille de 14 ans devant le tribunal pour interruption de grossesse » *Senego* 07 March 2018 [https://senego.com/lavortement-senegal-fille-de-14-ans-devant-tribunal\\_652292.html](https://senego.com/lavortement-senegal-fille-de-14-ans-devant-tribunal_652292.html)

The details of these case stories denote the immense failure on the part of the Senegalese justice system to uphold human rights, especially of young girls and women whose pregnancies were not due to any action of their own. This is merely a snapshot of the experiences of a few women and girls who have experienced Senegal's restrictive legislation, which have had life-long effects, including imprisonment, stigma, forced pregnancy and motherhood, and maternal death.

## Conclusions

As a former French colony and predominately Islamic country, and with USAID as the primary donor of funds for maternal health and family planning services since the 1960s, Senegal has not taken any steps to allow safe and even limited legal abortion in the country.<sup>87</sup>

Women who are caught having abortions are regularly placed in pre-trial detention, sometimes for long periods, along with women who are denied abortions and who commit infanticide. It is only the distinction between 'spontaneous abortions' and 'induced abortions' in the maternity wards of hospitals that saves some women from being caught and imprisoned.

Although some statistics exist, it is extremely difficult to unearth details of specific cases or personal testimonies behind the statistics, according to women's rights advocates in Senegal. There is a veil of silence and women are imprisoned behind it. We hope this report will contribute to breaking the silence.

Until there is abortion law reform in Senegal, health complications and deaths from unsafe abortions will persist, along with infanticide. The determined campaigning of Senegalese feminists and human rights lawyers offers some hope that the law may eventually be changed in fulfilment of Senegal's regional and international obligations, and out of respect for women's human rights.

## Acknowledgements

Many thanks to Diakhoumba Ghassama for contributing information for this paper and to Soukeyna Diallo for help and guidance in the research process. We laud the tireless campaigning and research carried out by AJS and FIDH, as well as the journalists who have sought to spotlight the continuing injustice.

## Can you help?

We want to keep these reports as updated and as comprehensive as possible. If you have any more information regarding the above cases, or new cases that have come to light, please contact Nandini Archer: [nandini@safeabortionwomensright.org](mailto:nandini@safeabortionwomensright.org).

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<sup>87</sup> Katherine Drakullic (2016) 'The Global Politics of Post-Abortion Care in Senegal'. University of Minnesota. <https://cla.umn.edu/gwss/news-events/story/global-politics-post-abortion-care-senegal>