

DISCLAIMER: This document was produced in 2005 and is a summary of the laws of Algeria that appertain to international parental child abduction, contact and relocation as they were at that time. **reunite** International Child Abduction Centre cannot vouch for the accuracy of this information for use in litigation and it is not intended to provide case specific advice.

SENEGAL

Overview

Senegal gained independence from France in 1960 and has a mainly secular legal system, having been influenced by French civil law. Article 1 of the Constitution of 1963 reads that Senegal is a secular State. Prior to the promulgation of a Family Code in 1972, personal status had been governed by Islamic law and custom. Islamic law continues to govern Muslim inheritance and has had an impact Senegalese law. In practise, customary law also retains a significant influence.

The majority of the population are Maliki Muslims. A minority of the population follow Christianity or indigenous religions.

Court Structure

District Courts were established in 1984 and have jurisdiction over civil and commercial matters. They have a general jurisdiction in matters of personal status, except with regard to the establishment of paternity of a child and adoption. The Regional Courts were created in 1984 by Law No. 84-19 of 1984 in order to replace the Courts of First Instance. These courts have civil and commercial chambers and have jurisdiction over family matters. At the third level is the Court of Appeal, which is divided into 8 chambers. These include 2 civil and commercial chambers, 2 social chambers, a chamber for minor offences, a chamber for minors and a chamber of accusations. There is one Court of Appeal in the capital Dakar. The final court of appeal is the Court of Cassation. The court is divided into 3 chambers for criminal matters, civil and commercial matters and social matters, including work and social security.

Filiation

Article 191 of the Family Code 1972 reads that every child born at least 180 days after the contracting of a marriage and no more than 300 days after the dissolution of a marriage is presumed to be the husband's child. Article 192 continues to read that a man cannot deny his paternity of a child born within less than 180 days of the marriage if he knew his wife was pregnant before he married her, if he has signed the birth certificate or if the child is stillborn. If a child is born outside of these circumstances the father may acknowledge paternity before an officer of the civil registry. Article 194 reads that a child acquires the status of a legitimate child when the parents are subsequently married and parentage has already been established in relation to each of them or when the father, upon marrying the mother, acknowledges a child whose paternity had not been established.

The husband may deny paternity of a child conceived during marriage if he can establish that he was absent from the wife during the 300th and 180th day preceding the birth, if scientific data establishes he cannot be the father or if the wife concealed her pregnancy or the birth in a manner that casts doubt over the paternity of the child. However, adultery does not constitute sufficient grounds to initiate proceedings for the denial of paternity. Any proceedings must be initiated within 2 months from the birth of the child, or upon the husband's return if he was absent at the time of the birth, or after being informed of the child's birth if this fact been concealed from him.

Custody and Guardianship

Article 277 of the Family Code reads that during marriage parental authority belongs jointly to the mother and father. However, it continues to state that the father is the head of the family and therefore he exercises parental authority over his legitimate minor children, a minor being a person under the age of 18 (Article 276, Family Code). The mother may exercise parental authority if the father has lost parental authority, is absent or if he has delegated the authority to her. A child who only has a relationship established with the mother will be under her parental authority alone. The duties of the guardian include overseeing the child's assets. Guardianship ends when a person attains majority or marries.

Parental authority is lost if the person exercising this authority is convicted for inciting their own children to immoral behaviour, has a double conviction for inciting minors to immoral behaviour, is convicted of an offence against the person of a child that is punishable by more than 5 years imprisonment or has a double conviction for an offence against the person of a child. Any person exercising parental authority forfeits this right if they have maltreated the child or behaved in any way to endanger the health, safety or morality of a child in their custody. Where one parent forfeits the right to parental authority, this authority is then normally transferred to the other parent

Article 278 of the Family Code states that upon divorce or separation a judge can award custody to one of the parents, or to a third person, in the best interests of the child. If one parent is deceased the right to custody and to exercise parental authority is with the surviving parent, unless this would not be in the best interests of the child. The custodian has the right to fix the residence of the child with him or her and can exercise all the rights attached to paternal authority of the person and property of the child. Regardless of who is awarded custody both parents must contribute to the upkeep and education of the child.

Access

The non-custodial parent may have access to the child. The Regional Court has jurisdiction to determine any conditions attached to contact rights.

Non-Muslim Family Law

The Family Code is applicable to all Senegalese.

Nationality

Article 1 of Act No. 61-10 of year 1961 establishing the Nationality Code reads that any child born in Senegal of a parent also born there shall be Senegalese.

International Law

Senegal signed the Convention on the Rights of the Child without reservation in 1990.

Child Abduction

Article 338 of the Penal Code establishes a penalty of 5 to 10 years imprisonment for the abduction, replacing or concealing of a child. Abduction without fraud of a person under the age of 18 is punishable under Article 348 of the Penal Code by imprisonment for 2 to 3 years.

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