Chapter 16
Access to Social Protection by Immigrants, Emigrants and Resident Nationals in Senegal

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16.1 Overview of the Senegalese Social Protection System and Main Migration Features in the Country

16.1.1 Main Characteristics of the National Social Protection System

Unlike Western countries which have implemented a real social policy (as a result of power relations between policy-makers, employers and workers), in Senegal, as in many other countries of Sub-Saharan Africa, social protection has been a legacy from France, the former colonial power. It was therefore well before independence in 1960 that the first traces of social protection were found. The system was built on the Bismarckian model and pegged to wage earners at a time when informal economy was considered transitory (AFD 2014). The colonial power first introduced social insurance programs in the field of occupational accidents, then maternity insurance and family allowances (Merrieux 2013). However, this social protection system did not take into account the realities on the field nor it considered the local culture.

Social protection is most often part of a particular socio-economic context that justifies its relevance and legitimacy. Senegal's social protection system is therefore situated in a specific context marked by socio-economic difficulties and political strategies of both social and liberal inspiration. It is a corporatist system built around salary relationships. Social security and social benefits are acquired through employment and the management of the Service is the responsibility of the State and social partners through the Social Security Fund (CSS), the Pension Insurance Institution of Senegal (IPRES) and Medical Insurance Institutions (IPM).

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The system is disadvantageous to a large part of the population evolving mainly in the informal sector, which has become the main provider of jobs in urban areas since 1980. In Senegal, formal job offers concern only about 10% of the potentially active population, while the informal and agricultural sectors are the main sources of income. This large proportion of the population working in the informal sector can be justified by the inability of the modern sector to occupy a large and undoubtedly growing part of the labor force. In the 1980s and 1990s, the phenomenon, which was thought to occur in a short period, increased particularly because of a population surge that produced, each year, cohorts of first-time job-seekers (ANSD 2013a).

The national social protection system is built around two pillars. First, the social action is based on a non-contributory system directly provided by the State, which organizes funds and implements it. It is meant for nationals who belong to vulnerable groups. The aim is to assist people in difficult economic and social situations. To put this policy based on national solidarity into practice, the country has an institutional framework to develop, implement and monitor social policies and measures. In recent years, measures have been taken to allow some vulnerable groups to receive healthcare through a kind of health insurance provided by the government. These include the "*Plan* sesame" for elderly people, free healthcare for children under five, university medical service for students, scholarships, etc.

Second, the social welfare provision is the backbone of the Senegalese system of social protection. The system was created during the 1970s, aiming to provide coverage for employees,[1] civil servants, and their households. Provision and management of the health risk for employees is done through the Social Security Fund (CSS)[2] and the Health Insurance Institutions (IPM), while pensions are managed by the Pension Provision Fund of Senegal (IPRES) for employees and their families, and the National Retirement Fund (FNR) for civil servants and their families. This diversity of social structures aims to ensure employees (either Senegalese or foreign residents) the maximum possible against classic social risks. The funding of the system is mainly contributory with contributions paid according to the branches, either by employers and employees (retirement and health), or by employers alone (other risks). The State assists to a lesser extent with the possibility of giving grants. The Senegalese social security system covers all traditional risks (occupational diseases, accidents at work, family and maternity risk and elderly people), with the exception of illness. The latter risk is not, however, overshadowed by the public

[1] In line with Article L-2 of Law 97–17 of 1 December 1997 on the new Labor Code, "any person who has undertaken to put their activity in business, whatever their sex and nationality, is considered to be a professional worker, for remuneration, under the direction and authority of another person, physical or moral, public or private".

[2] This public establishment has been entrusted by the social security code adopted by the law 73–37 of 31 July 1973 (JORS n ° 4308 of 4 August 1973, p.1564), the management of the two main branches that are: family benefits (maternity and family allowances) and work accidents and occupational diseases.

authorities given that on the basis of the law on social welfare provision,[3] illness funds (IPM) could be created for the management of non-occupational diseases.

16.1.2 Migration History and Key Policy Developments

In 2009, Senegal has produced its first migratory profile which be repeated in 2018. The development of this profile is part of the project "Support of free movement of people and migration in West Africa" co-financed by the European Union and the Economic Community of West African States (ECOWAS). It is a privileged framework for the collection and analysis of available data on migratory flows and stocks of internal and international migrants related to the current economic context, migration policies in force, the factors underlying migration and the consequences of migration for Senegal. This tool supports the national migration policy of Senegal in a context in which the migration phenomenon has important consequences, especially in economic terms. For example, the amounts of remittances from the Senegalese diaspora have increased substantially over time, reaching 2220 million USD in 2017 (Ndione 2018).

Senegal has been confronted with the phenomenon of migration at three levels. First, as a host country for people from neighboring countries, attracted by relative social, political and economic stability. Second, because of its geographical position, Senegal serves as a transit country for emigration candidates waiting for a favorable situation for their departure. Finally, the continuing deterioration of living conditions in Senegal, along with the removal of obstacles for leaving the national territory, has urged more and more Senegalese to make of emigration a strategy of adaptation to unemployment and poverty.

Much of the migration is done in an irregular and clandestine way. This is, among other things, the reason why, in Senegal, all the studies devoted to migration highlight the major difficulty related to the collection and production of migration data to properly understand the migration reality. The available data are fragmented and do not allow for thorough and detailed analysis. Because of these shortcomings, it is difficult to analyze the evolution of the migration phenomenon in time and space.

According to the Final Report of the General Population Census (RPGA) of the National Agency for Statistics and Demography (ASND 2014), in 2014, the number of Senegalese living abroad was estimated at 156,676[4] (1,15% of the Senegalese population), while the country was hosting nearly 181,651 foreigners (the equivalent of 1,34% of the total population). Most of these foreign residents come from Africa, especially West Africa (84.4%), with a majority of Guineans (86,085),

[3] Law No. 75–50 of 3 April 1975 on social welfare provision institutions in Senegal, JORS No. 4419 of 2 April 1975, p.557.

[4] National Agency of Statistics and Demography (ANSD), Final Report of the General Census of Population and Housing, Agriculture and Livestock of Senegal (RGPHA), September 2014, p. 219, RGPHAE, *Op. Cit*., P. 68.

Malians (20,660) and Gambians (12,811) who arrive mainly for work reasons. All these countries have the particularity of being on the borders of Senegal and, like Senegal, being members of the ECOWAS which aims at economic integration and which is a means of curbing the phenomenon of balkanization of borders caused by colonization. The majority of these people work mainly in the informal sector, notably trade.

According to the statistics of the United Nations Population Division (see Ndione 2018), the number of Senegalese living abroad was estimated at more than 533,000 (3.9%) in 2013, of whom 265,000 resided in Europe (49.7%), 251,000 in Africa (47%) and 16,000 in North America (3%). In Europe, France is the first country of destination with nearly 116,000 settled Senegalese, followed by Italy (79,000) and Spain (59,000). For the African continent, the region of West Africa is the main destination of Senegalese (203,000), where flows are mainly marked by Gambia (101,000), Mauritania (46,000) and Côte d'Ivoire (21,000). Central Africa is the second African destination region for Senegalese migrants (42,000), who settle mainly in Gabon (29,000), Congo (10,000) and the Central African Republic (3000). North America hosts nearly 16,000 Senegalese, divided essentially between the United States (13,200) and Canada (3000).

16.2 Migration and Social Protection in Senegal

Given the demographic changes described above, there is the concern of taking into consideration the phenomenon of migration in the field of social protection in Senegal. In general, the benefits (social welfare provisions) from the national social protection system are intrinsically linked to two requirements: the status of the employee according to the Labor Code and the Merchant Marine Code and residence in the national territory. As a result, foreigners residing and working in Senegal have access to the various benefits guaranteed by the system under the same conditions as nationals. From a legal point of view, therefore, social protection does not discriminate against migrant workers established on the national territory. However, because of their territoriality, social welfare provisions/benefits are not provided outside Senegal. Hence, Senegalese workers living abroad as well as their family members who stay in the home country are covered only if their host country is bound to Senegal by a bilateral social security agreement or convention.[5]

Migrant workers belonging to ECOWAS[6] are in a special situation. While it is true that they benefit from the national social protection system under the same conditions as the indigenous people, in the event of leaving Senegal, their rights are not in principle applicable. The General Convention on Social Security of ECOWAS

[5] Senegal has signed several of them with, notably, Mali, Mauritania, Cape Verde, Gabon, Cameroon and France.

[6] In addition to Senegal, ECOWAS includes Mali, Gambia, Guinea, Guinea Bissau, Cape Verde, Benin, Togo, Burkina Faso, Liberia, Sierra Leone, Cote d'Ivoire, Ghana and Nigeria and Niger.

Member States[7] makes it possible to remedy this situation. Indeed, it enshrines the four principles of international social security law, namely, equality of treatment, the uniqueness of the applicable legislation, the preservation of acquired rights and the provision of benefits abroad. However, although directly applicable, the effectiveness of the said Convention depends on the adoption of administrative arrangements between the different Member States. *Mutatis mutandis,* the Multilateral Convention on Social Security of the Inter-African Conference on Social Welfare Provision (CIPRES)[8] has the same objective. Undoubtedly, in the future, these two normative instruments should contribute to a significant improvement of the situation of migrant workers from the concerned countries.

16.2.1 Unemployment

In an environment characterized by endemic unemployment and economic underdevelopment, with Senegal being one of the Least Developed Countries (LDCs), it is hardly surprising to notice that the country has not integrated a social security scheme dedicated to unemployment into its social security system. Hence, there is no actual mechanism to deal with the risks of unemployment.

According to the National Agency of Statistics and Demography (ANSD 2013b) the unemployment rate in the second quarter of 2017 amounted to 12.5%. Nevertheless, this figure does not really give any additional information on the number of unemployed people because it is known that the majority of the active people evolve in the informal sector. Of a working age population estimated at 7,827,009 individuals, at least one out of two is inactive (Ndione 2018).

16.2.2 Health Care

The public health system is open to all individuals regardless of nationality, race or origin. Everyone benefits from the same provisions at the same cost. However, the Social Security Fund, whose resources come mainly from employers' contributions and refunds from the State budget, covers occupational diseases and accidents at work only. As a result, only victim workers, regardless of nationality, are covered. In their case, two types of services are provided: benefits in kind and cash benefits.

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[7] On the material side, the Convention covers invalidity benefits, old-age benefits, survivors' benefits, benefits in the event of accidents at work and occupational diseases, family benefits, maternity benefits, medical care and sickness benefits and unemployment benefits.

[8] It includes, in addition to Senegal, Benin, Burkina Faso, Cameroon, Central African Republic, Congo, Cote d'Ivoire, Gabon, Equatorial Guinea, Madagascar, Mali, Niger, DR Congo, Chad, Togo, Union of Comoros.

Regarding benefits in kind, the employer is obliged to provide first-aid.[9] If the state of the victim requires treatment, care and additional benefits are covered by the Social Security Fund. This includes medical care, pharmaceutical costs, successive surgical procedures, functional rehabilitation, among others. The benefit of these provisions is subject to reporting the conditions of the illness or accident at work within 48 hours by the employer to the Labor Inspector, providing a medical certificate indicating the condition of the victim.

As for cash benefits, they consist of a replacement income paid to the victim (or his/her dependents in case of death) to compensate for the loss of salary during the period of total temporary incapacity for work or his/her workforce resulting from the permanent partial disability. These benefits, calculated on the basis of the base salary, are done either in the form of a daily allowance in case of temporary incapacity for work, or as a pension in case of permanent incapacity for work. Annuity is obtained by multiplying the annual salary by the rate of permanent disability. These annuities are subject to a revaluation to adapt to the cost of living when the disability is greater than 10%. Similarly, aggravation or attenuation of permanent disability may result in revision. The buy-back of annuities is possible in the form of a capital paid by the Fund. Moreover, the buy-back is mandatory if the victim has a permanent disability of less than 10%.

The management of non-occupational diseases of workers and their families is done through compulsory health insurance managed by Health Insurance Institutions (IPM). The resources of the MPIs come mainly from the contributions that are owed to them as well as from workers and employers. The amount of contributions depends on the gross salary as defined for the general income tax base. These institutions cover 50% to 80% of medical, pharmaceutical and hospitalization costs. To fill the gap, some companies take out additional insurance for the benefit of their staff. Others, more affluent, choose a health insurance on a flat-rate tax with a company with a refund rate of 100%. During the period of incapacity for work, the employer bears all the compensation, the amount of which depends on the duration of the incapacity and the length of service in the company.

The creation of IPM is justified by the low means of workers, the importance of the health needs and the high cost of the healthcare. It is therefore a response to the needs of health insurance not borne by the Social Security Fund. Participants registered in an MPI, i.e. workers and their family members, can only claim benefits after a two-month period of contributions.

One can infer from this that nationals and foreign residents who are excluded from this compulsory health insurance cannot therefore integrate it on a voluntary basis. It is possible, however, for some emigrants to subscribe to some companies for family insurance for the benefit of their family members who remain in the country.

[9] The Labor Code requires employers to set up a corporate or inter-company medical service in the case of small size entities. But this service mainly fulfills a preventive role. This is why medical examinations are meant for the verification of the aptitude or adaptation of the worker to employment.

The disability benefit, which covers for total and permanent loss of ability to work, can be granted to any worker regardless of nationality. The disability needs to be certified by a doctor and the Medical Advisor of the IPRES. However, one must contribute for a period of 10 years or have at least 1000 points, otherwise one is only entitled to a refund of the contributions already paid. In addition, nationals residing abroad in principle are not entitled to claim this benefit.

In case of confirmation, the employee is immediately admitted to retirement and is exempted from the allowance for the remaining years of work.

16.2.3 Pensions

Retirement benefit institutions are regulated by Law of 3 April 1975, which concerns all social welfare provision institutions, whatever their purpose. A decree[10] makes it compulsory for all employees and employers to join a pension plan managed by the Retirement Pension Institute of Senegal (IPRES).[11] Every employer is obliged to join this institution and failing to do so can lead to criminal penalties.

Workers in a broader sense are the beneficiaries of the scheme: former employees, adhering members, individuals eligible for the retirement allowance, participating members with an age between the minimum age of retirement and who have ceased to be engaged in paid employment and receive an allowance, the participating members recognized as unfit for work at any age between the minimum age of anticipation and the normal retirement age and who receive an allowance, surviving spouses of deceased members in active or retired service, dependent children of deceased participating members, children who lost their father or mother (the latter benefit from a survivor's benefit).

In fact, only migrant workers affiliated to a pension scheme established by other legislation are excluded from the scheme. The old-age pension is not subject to a nationality requirement. The conditions of admission to retirement include the need to have contributed at least one year, to be aged 60 years and to have ceased all professional activity in the country.

The departure from the country does not result in the loss of the right to pensions as it is possible for the migrant worker to collect them in his/her country of origin, in Senegal or in any other country of his/her choice. The costs of making the pensions available are borne by the affiliated organization. In this context, social security agreements or technical coordination agreements concluded with other social security organizations are significant in that they facilitate the settlement or

[10] Decree 75–455 of April 24, 1975, JORS No. 4422 of May 17, 1975, p. 627, amended by Decree 76–017 of 9 January 1976, JORS No. 4480 of 2 March 1972, p. 422.

[11] Order No. 3043 approving the statutes and rules of procedure of IPRES and conferring upon it the management of the general pension scheme applicable to all employees and the supplementary executive retirement scheme, JORS No. 4638 of 3 June 1977, p.709.

payment of the entitlements acquired (or in the process of being acquired) for a given person, a migrant worker and his/her family.

Nationals who have acquired the right to a retirement pension in a foreign country and who choose to return to Senegal may continue to receive their pension on the assumption of bilateral or multilateral agreements.[12] The aggregation of contribution periods when the migrant worker has carried out his/her career in different countries also depends on such agreements. Nationals entitled to claim their right to retirement and who choose to settle abroad may also, at their request, receive their pension provided that they have a bank account where the transfers will be made.

In any case, the basic general scheme covers two contributory benefits (retirement allowance and survivor's allowance) according to the contributions paid and the earned points and two non-contributory benefits (solidarity allowance and social fund) without any reference to the contributions or years of service of the beneficiaries. The retirement allowance depends on the duration of the contribution and the level of salary. It is calculated by multiplying the number of points credited to the person's account at the date of settlement by the value of the pension point. The following are taken into account: all contributory periods of service from the age of 18 to the age of 60, and provided that the services have been done for a minimum of 30 days at a member institution, and that they are certified by regular work certificates. Periods of suspension of the contract without consideration of the reasons are also taken into account. The number of points awarded for each year of contributions is obtained by dividing the contribution by the reference salary for the year. The total number of pension points is increased by 10% for each dependent child at the time of retirement. Nevertheless, the overall increase in points, as such, is limited to 30%.

The retirement age is currently 60, but the participant is free to apply for early settlement, starting at age 55 but in which case the rate of the allowance is reduced by 5% per year of anticipation.

16.2.4 Family Benefits

Family benefits are introduced for workers with one or more dependent children. They consist of the allocation of sums of money or the provision of goods or services to the head of the family in order to partially compensate the financial burdens resulting from the occurrence/birth of children. Their benefit is subject to general conditions among which nationality is not a requirement.

There are several types of family benefits in Senegal. The prenatal allowances are granted to any female employee whose husband is unemployed or spouse of a paid worker as well as to any unmarried female employee. Maternity benefits are

[12] Such an agreement exists between France and Senegal so that any Senegalese who have acquired the right to a retirement pension in France and who decide to return to the home country to perceive their due from there.

provided from the birth of the child until the age of 2. Family allowances are paid from the child's second birthday up to the age of 14 (or 18 if the child is studying or 21 in case of further education, disability or incurable illness), up to a maximum of 6 children. The daily maternity leave allowances due to the pregnant female employee on maternity leave for a period of 14 weeks, including 8 weeks subsequent to the delivery. This leave can have an extension of 3 weeks in case of consequent disease. They amount to 100% of the last salary received.

For accessing family benefits, it is important to be a worker in line with the Labor Code and the Merchant Marine Code. However, workers whose children benefit from a more favorable benefit scheme are not covered. The status of worker implies a professional activity over a period of 3 consecutive months with one or more employers, and a minimum working time of 18 or 120 days in the month, being understood that this time may be spread over a period of 2 years or 3 months in occupations and jobs which involve intermittent or irregular work schedules. The entitlement to benefits is retroactive to the date of the commitment. The worker must also have dependent children, meaning that he/she must provide, generally and permanently, housing, food, clothing and education of the child (this corresponds to the duties of the person exercising paternal authority).

However, workers can claim family benefits only if they and their dependent children live in Senegal. Nevertheless, those who perform in another State for the execution of their contract, a temporary stay of 6 months maximum (renewable once), continue to receive benefits. The same applies for those who perform abroad a training or professional development, regardless of the duration of the internship. On the other hand, the family benefits of the Social Security Fund cannot be granted to employees who have their habitual residence abroad and who, for the performance of their contract, have a six-month stay (renewable once) in Senegal. The residency requirement also applies to beneficiary children.

16.2.5 Guaranteed Minimum Resources

Senegal does not have a general framework guaranteeing minimum resources for the most vulnerable group of the population. However, the National Family Safety Scholarship Program (PNBS) was launched in 2013. It is based on the reconstruction of solidarity and redistribution of resources based on equity, social justice corresponding to forms of social assistance that can mitigate the risks and poverty shocks on the most vulnerable groups. The aim of the program is to fight against vulnerability and social exclusion of families through integrated social protection with a view of promoting their access to social transfers and strengthening, among other things, their educational and productive capacities. The social security bursary amounts to Francs CFA 100,000 (about 152 Euros) per year, paid to the most vulnerable families. The implementation of this program is accompanied by the establishment of a consultation mechanism at the national and regional levels in order to cover the social demand for the benefit of the most vulnerable families. Circumscribed initially to some 25,000 families, family grants are intended to be applied gradually to the poorest households.

16.3 Conclusions

Due to the limitation of the legal texts to the national framework, the Senegalese system of social protection has a limited material scope. Most services generally aim to either restore the health of the victim by means of pharmaceutical products, or compensate the increase of expenses or reducing income in the form of, for example, family benefits or old-age pension.

Spatially, unless an agreement or convention waives residency requirements, the compulsory social security scheme applies only in Senegal, in accordance with the principle of territoriality of social security laws. On a personal level, the system exclusively benefits employees, regardless of their nationality, as well as members of their families, in order to protect them against the economic and social risks that may result from the partial or total loss of income, their temporary or permanent capacity to gain or their means to satisfy essential needs. This means that the guarantee of the enjoyment of social security guarantees for workers and their entitled dependents is not subject to nationality requirement. Nevertheless, migrants who intervene in the so-called informal sector and who are by far the most numerous, are left behind. The fact is that the existence of an employment contract is the *sine qua non* condition for the applicability of the national social security system to the individual and his/her family.

However, the principle of territoriality of the social security laws results in non-taking into account the non-resident nationals as well as the members of their families remaining in the country. The non-applicability of social security benefits is likely to dissuade immigrants currently residing in Senegal from returning to the countries of nationality either during their career or retirement, to give up the idea of no longer being able to collect the benefits for which they have contributed over years. The question of the applicability of social security benefits for foreigners is therefore crucial and must therefore catch the attention of public authorities.

Bilateral or multilateral social security agreements can overcome these difficulties. Conventions are only a good part of the solution in that they can make up for discrepancies between national laws and establish rules for coordination, but also for integration. At the regional or sub-regional level, many social security conventions are still not implemented. Despite their normative importance for migrant workers, bilateral agreements procrastinate on the difficulties that have on their effectiveness. First of all, they are often not well-known by their recipients: labor professionals and migrants. Secondly, the institutions responsible for their monitoring and enforcement lack oftentimes means and capacities. Still, in the absence of social security agreements signed between home and host countries, migrants who work in another country cannot benefit their family members who stay in the country. Similarly, those who decide to leave the host country run the risk of losing their acquired rights or those to be acquired.

It is true that coordination between social security institutions is not easy. Their cooperation is often hindered by a weak development of the social security system in some countries, the fact that not all benefits are offered by the host country, differences between the social security systems of home and host countries and, finally, the insufficiency of the administrative capacities to prove and guarantee that all the necessary conditions are satisfied on the one hand, and to ensure efficiently the transfer of the benefits during several years, on the other hand.

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