

REPUBLIC OF SENEGAL



LAWS, REGULATIONS AND COMMUNITY MEASURES RELATIVE TO THE

PERSONAL DATA PROTECTION IN SENEGAL

**COMPILATION OF THE SPECIFIC FOR THE PROTECTION OF
PERSONAL DATA IN SENEGAL**

**1. LAW N 2008-12 OF JANUARY 25TH, 2008 CONCERNING PERSONAL
DATA PROTECTION**

**2. DECREE N 2008-721 OF JUNE 30TH, 2008 CONCERNING LAW
ENFORCEMENT N 2008-12 OF JANUARY 25TH, 2008 CONCERNING THE
PERSONAL DATA PROTECTION**

**3. LAW N 2008 - 11 OF JANUARY 25TH, 2008 CONCERNING THE
CYBERCRIME**

LAW N 2008-12 OF JANUARY 25TH, 2008 CONCERNING THE PERSONAL DATA PROTECTION

PREAMBLE

With the development of computer science and its applications, the traditional domain of privacy grows and is daily enriched by new items. Integral part of these elements, personal data turn to be highly desired resources. Their treatment must take place "respecting the rights, fundamental freedoms, and the dignity of the individuals". Therefore, the legislation on the personal data turns out to be an instrument of general protection towards the fundamental rights and freedoms.

Despite starting of the governmental Intranet, the development of the appeal to IT in the administration, in the private sector and its use by the people, the digitalization of the electoral file and the national ID card, so pulling the generation, the collection and the personal data processing, the Senegalese substantive law does not fix the frame and the legal regime of these operations.

The aim of the present bill is to fill this gap in the law.

Taking as a basis the guiding principles for the regulations of computerized files containing personal data promulgated by the UN General Assembly in 1990, the European requirements regarding data transfer to third countries and the fundamental principles dedicated by the guidance law on the information society, the present bill on the personal data protection indicated abbreviated as (LDPC) offers another high level of protection.

The bill on the personal data protection organizes diverse diets of protection and settles the question of the institutional anchoring by creating an independent authority loaded with the implementation of the diets of protection.

The present bill includes seven (7) chapters.

The **first chapter**, on general arrangements relative to the personal, fixed data protection the object of the law, confined its scope and defines the various used terms.

The **chapter II** establishes an independent called authority "Committee of the Personal data" (CDP). She guarantees the respect for private life in the processing of personal data.

The **chapter III** fixes the various modalities of personal data processing.

The **chapter IV** concerns the rights of the person the personal data of which are the object of a treatment.

The **chapter V** is concerning the obligations of the person in charge of personal data processing.

The **chapter VI** is concerning the penal capacities. Unless otherwise stipulated, the present bill sends back to the penal code for the incrimination and the repression of breaches of its capacities.

The **chapter VII** puts the passing and final capacities. By these, dispensations are put for certain existing files and the effective date of the personal data protection law is indicated according to the type of considered data.

FIRST CHAPTER: GENERAL CAPACITIES

SECTION PREMIERE: OBJECT OF THE LAW ON THE PERSONAL DATA

First article:

The present law has for object to set up a device allowing fighting against invasions of privacy susceptible to be engendered by the collection, the treatment, the transmission, the storage and the use of the personal data.

She guarantees that any treatment, in any form whatsoever, respects the liberties and the fundamental rights of the physical persons; she also takes into account the privileges of the State, the rights of local authorities, interests of companies and civil society.

She watches that the technologies of information and the Communication (ICTS) do not strike a blow to personal freedoms or public, in particular in the private life.

<i>Article 71 of the decree:</i>
<i>When the Committee of the personal data notices that the implementation of a personal data processing, pulls a violation of the fundamental rights and the liberties mentioned in the 1st article of the law on the personal data, his President can call out, by every possible means, to the person in charge of the aforementioned treatment.</i>
<i>Article 72 of the decree:</i>
<i>When a treatment is made for the State, of a legal entity of public law or a legal entity of private law managing a public service, the President of the Committee of the personal data informs, as soon as possible, the Prime Minister of the noticed violation.</i>

SECTION II: SCOPE OF THE LAW ON THE PERSONAL DATA

Article 2:

Are subjected to the present law:

- 1) Any collection, any treatment, any transmission, any storage and any use of the personal data by a natural person, by the State, the local authorities, the moral persons of public law or private law;
- 2) Any automated treatment or not of data contained or called to appear in a file, with the exception of treatments mentioned in the article 3 of the present law;
- 3) Any implemented treatment by a person in charge such as defined in the article 4.14 of the present law on the Senegalese territory or in any place where the Senegalese law applies;
- 4) Any implemented treatment by a person in charge, established or not on the Senegalese territory, which resorts to ways of treatment situated on the Senegalese territory, with the exception of the ways which are used only for purposes of transit on this territory. In the cases aimed at the previous paragraph, the person in charge of the treatment has to appoint a representative established on the Senegalese territory, without prejudice of actions which can be introduced against him/her;
- 5) Any data processing concerning the law and order, the defense, the search and the pursuit of penal breaches or the safety of the State, even bound to an important economic or financial interest of the State, subject to the dispensations which defines the present law and specific provisions on the subject fixed by other laws.

Article 3 :

This Act does not apply to:

- 1) Data processing carried out by an individual in the exclusive setting of personal or household activity, provided that the data are not intended for systematic communication to third parties or dissemination;
- 2) Temporary copies made in the course of technical transfer activities and providing access to a digital network for the automatic, intermediate and transient data and the sole purpose of allowing other recipients of the service the best access possible to the transmitted information.

SECTION III: DEFINITIONS

Article 4:

In the sense of the present law, we hear by:

- 1) Code of conduct: any project rules, in particular the charters of use, developed by the person in charge of the treatment, in accordance with the present law, to establish a correct use of the computing resources, the

Internet and the electronic communications of the concerned structure and approved by the Committee of the Personal data;

- 2) Electronic communications: broadcasts, transmissions or receptions of signs, signals, papers, images or sounds, by electronic or magnetic way;
- 3) Temporary copies: data copied temporarily in a dedicated space, for a time-limited duration, for the needs for the purposes of the operation processing software.
- 4) Consent of the person concerned any event will express, unequivocal, free, specific and informed by the person concerned or his legal representative, legal or conventional, agrees that his personal data are subject to manual processing or mail;
- 5) Recipient of a treatment of personal data: Any person entitled to receive such data other than the data subject, the controller, the processor and the persons who, by reason of their duties, are responsible for processing the data. However, public authorities legally empowered within a particular mission or exercise a right of communication may request the controller to communicate their personal data ;
- 6) Personal data: any relative information for one person identified or recognizable physical appearance directly or indirectly, in reference to a number of identification or in reference to one or several elements, appropriate to his physical, physiological, genetic, psychic, cultural, social or economic identity;
- 7) Genetic data Any data concerning the hereditary characteristics of an individual or a group of related individuals ;
- 8) Critical data: all the personal data relative to the opinions or the religious activities , philosophic, political, labor-union activities, to the sexual or racial life, to the health, to the measures of social order, to the pursuits, to the penal or administrative penalties;
- 9) Data in the field of health: Any information relating to the physical and mental state of a person, including genetic data above;
- 10) File of personal data: Any structured set of data accessible according to specific criteria that whether centralized, decentralized or dispersed on a functional or geographical basis;
- 11) Interconnection of personal data: any connection mechanism consisting linking of data processed for a specified with other data processed for the same or purposes or linked by one or more controllers purpose;
- 12) Third country: any State other than Senegal;
- 13) Nobody concerned: every natural person who is the object of a personal data processing;
- 14) Direct prospecting: any request made by means of the sending of message, whatever is the support or the in particular commercial, political or charitable nature, intended to promote, directly or indirectly, the properties, the services or the image of a person selling the properties or

- supplying with services;
- 15) Responsible for the processing: the natural or legal person, public or private, any other organism or association which, alone or jointly with others, decides to collect and to process personal data and determines the purposes.
 - 16) Subcontractor: any natural or legal entity, public or private, any other body or association which processes data for the person in charge of the treatment;
 - 17) Remote service: any value-added service offer, leaning on telecommunications and/or on computing, to allow, in an interactive way and at a distance, for one person physical or moral, public or private, the possibility of making activities, steps or formalities, etc.
 - 18) Third: any natural or legal entity, public or private, any other body or association other than the concerned person, the person in charge of the treatment, the subcontractor and the people which, placed under the direct authority of the person in charge of the treatment or the subcontractor, are authorized to process the data;
 - 19) Personal data processing: any operation or set of operations planned in the article 2 of the present law made or not by means of automated processes or not, and applied to data, such as the collection, the exploitation, the recording, the organization, the preservation, the adaptation, the modification, the extraction, the protection, the copy, the consultation, the use, the communication by transmission, the distribution or any other shape of provision, the link or the interconnection, as well as the locking, the encryption, the disappearance or the destruction of the personal data.

<i>First article of the decree:</i>	
<i>We hear by:</i>	
1)	<i>Charters of use: any document setting the general out the terms and conditions of personal data processing as well as the rights and the obligations of the person in charge of the treatment and the user of this one;</i>
2)	<i>Committee of the personal data: the name of the Committee of personal Data protection (CDP) planned by the article 5 of the law on the personal data;</i>
3)	<i>Anonymous personal data: data that can be correlated with an identified or identifiable;</i>
4)	<i>Coded personal data: the data can be correlated with an identified or identifiable person only through a predefined code ;</i>
5)	<i>Personal data processed for historical, statistical or scientific purpose: any transaction collection and processing of personal data for scientific purposes, General information, assistance in planning and decision-making;</i>
6)	<i>Access right: the right for every person to obtain information on data concerning him and to obtain a copy;</i>

7) <i>Right to information: The right of every person whether data relating to him are being processed and to obtain from the controller the information thereon ;</i>
8) <i>Right of rectification: The right of everyone to require the data controller to rectify, complete, update, lock or delete data relating to him that are inaccurate, incomplete, ambiguous, outdated or whose collection, use , communication or storage is forbidden ;</i>
9) <i>Later treatment of personal data: the hypothesis where the person in charge of a personal data processing, in the context of its usual and legitimate activities, wishes to reuse himself these data or communicate them.</i>

CHAPITRE II: COMMITTEE FOR THE PROTECTION OF PERSONAL DATA

SECTION FIRST: STATUS, COMPOSITION AND ORGANIZATION

Article 5:

It is created a Committee of Personal Data Protection called "Committee of the Personal data" in summary the "CDP".

The Committee of Personal Data is an independent authority asked to ensure that the personal data processing is implemented in accordance with the provisions of the present law.

She informs concerned people and the persons in charge of treatment of their rights and duties and makes sure that ICT do not contain in terms of civil liberties and privacy.

Article 6:

The Committee of the Personal is composed of eleven (11) members, selected because of their legal and \or technical skill, as follows:

- 1) Three (3) personalities appointed by the President of the Republic;
- 2) One (1) deputy appointed by the President of the National Assembly;
- 3) One (1) senator appointed by the President of the Senate;
- 4) One (1) representing employers' organizations appointed by the Secretary in charge of professional organizations, subject to provisions of the article 9 of the present law;
- 5) A magistrate member of council of State indicated on proposal of the President of the Council of State;
- 6) A member magistrate of the Highest Court of Appeal indicated on proposal of the First President of the Highest Court of Appeal;
- 7) A lawyer indicated by the President of the bar of the order of the lawyers of Senegal;
- 8) A representative of the organizations of defense of man's rights indicated by Minister of Justice, Lord Chancellor, on proposal of the High commission to human rights and to the Promotion of the Peace;

9) The Branch manager Of the Computing of the State (ADIE).

Members of the Committee of Personal data are appointed by decree.

Government Commissioner, appointed by the Prime Minister, is registered with the Committee of the Personal data. Government Commissioner is summoned to all the sessions of the Committee, in the same conditions as the members of this one. He informs the Committee about the orientations of the government and about the motivations of the administration concerning the implementation of treatments but does not vote.

Article 7 of the decree:	
<i>In application of the paragraph 3 of Article 6 of the law on personal data, Government Commissioner is registered with the Committee of the personal data in particular for:</i>	
1)	<i>Receive a copy of the request for an opinion or authorization presented for the State, a legal entity under public law or private entity of private law managing a public service;</i>
2)	<i>Provide upon request, a copy of any statement, notice or request permission</i>
3)	<i>Provide upon request, written or oral observations on any statement, notice or request permission;</i>
4)	<i>Establish annually, before December 31st, a report to the Prime Minister on the personal data processing made for the State, of a legal entity under public law or a legal entity in private law managing a public service.</i>
<i>In case of absence or in case of hindrance, Government Commissioner is replaced by a substitute appointed according to provisions of the article 6 of the law on personal data. Summoned under the same conditions as other members of the Committee of the personal data, its absence cannot prevent the holding of the works of the Committee.</i>	
<i>Government Commissioner is appointed for a term of two (2) the years, renewable only once.</i>	

Article 8 of the decree:	
<i>The proposals for appointment of members of the Commission of personal data referred to in Articles 6 and following of the law on personal data, for the appointment of new members and the reappointment of the members in office, should be addressed within six months prior to the expiration of the term thereof.</i>	

Article 7:

The President of the Republic appoint among the members of the Committee of Personal data, the President of the aforementioned Committee. The President is assisted by a vice-president elected by the Committee of the Personal data.

The Committee of the Personal data has services placed under the authority of his President. She has; besides, a staff provided by the State and can provide in agents recruitment according to the provisions of the Labor code.

The sworn agents, according to the paragraph 2 of the article 11 of the present law and who can be called to participate in the implementation of the missions of check mentioned in the article 25 of the present law must be authorized by the Committee there. This authorization does not dispense the application of capacities defining the procedures authorizing the access to the secrets protected by the law.

Article 3 of the decree:

The members of the Committee of the personal data meet in plenary session on summons of the President. Failing that, the summons is of right at the request of the majority of the members of the Committee of the personal data.

The summons, specifying the agenda, can be made by electronic way.

The sessions of the Committee of the personal data are not public.

Article 4 of the decree:

The election of the vice-president has to take place during the first meeting of the Committee of the personal data.

The President of the Committee of the personal data can delegate some of his powers to the vice-president or to his collaborators, the members of the aforementioned Committee.

Article 8:

The mandate of the members of the Committee of the Personal data is four (4) the years renewable once. With the exception of the President, the members of the Committee of the Personal data do not perform their function on an exclusive basis. The members of the Committee of the Personal data are irremovable during the duration of their mandate.

He can be ended the functions of member, that in case of resignation or in case of hindrance noticed by the Committee of the Personal data in the conditions planned by decree.

The members of the Committee of the Personal data are subjected to the professional secrecy according to the current texts.

The Committee of the Personal data establishes an internal rules which specifies, in particular, rules relative to deliberations, to instruction and to presentation of files.

Miss an arrangement on the renewal of the members;

Rules relative to the organization and to the functioning of the Committee are fixed by decree.

Article 2 of the decree:

The President of the Committee of the personal data assumes the daily management of the aforementioned Committee, manages the secretarial department, chairs the meetings in his various trainings or delegates another member to this end.

[...]

Article 5 of the decree:

The Committee of the personal data establishes its internal rules, according to the paragraph 4 of the article 8 of the law on the personal data within one month after its installation.

Article 6 of the decree:

The Committee of the personal data can validly deliberate that if the majority of his members at least are present. The votes take place freehand and all the decisions are adopted in the absolute majority of the present members.

In case of parity of votes, that of the President or, if he is prevented, of his deputy, is dominating. Every session of the Committee of the personal data gives rise to a report signed by the members of the Committee having sat.

Article 9:

The membership of the Committee of the Personal data is incompatible with the membership of the Government, the exercise of the functions of company directors, the detention of participation in the companies of the IT sector or the telecommunications.

Any member of the Committee of the Personal data has to inform this one of the direct or indirect interests that it holds or comes to hold, functions which it exercises or comes to practice and of any mandate which it holds or comes to hold within a legal entity.

Where necessary, the committee takes all the useful capacities to assure the independence and the impartiality of his members. A code of conduct is set up by the committee for that purpose.

Article 10:

If in the course of mandate the president or the member of the Committee of the Personal data stops performing its functions, he is preceded to his replacement in the conditions planned by articles 6 - 8 of the present law.

The mandate of the successor so indicated is limited to the period remaining to run. The latter can be indicated for a single mandate.

Article 11:

The members of the Committee of the Personal data, before their taking office, lend in front of the Court of Appeal of Dakar sitting in solemn audience the oath by which the content follows: "I swear solemnly of well and faithfully to fill my function of member of the Committee of personal Data protection, in any independence and impartiality in a deserving and loyal way and to keep the secret of deliberations".

Other agents chosen by the Committee of the Personal data take the oath in front of the regional court of Dakar in these terms: "I swear of well and loyally to fill my functions of agent of the" Committee of the Personal data "in any independence and impartiality, and to keep the secret of deliberations.

<i>Article 2 of the decree:</i>
[...]
<i>He (the President of the Committee) is in charge of organizing, as soon as possible, in application of provisions of the article 11 of the law on the personal data, the swearing-in of the members and agents were chosen by the Committee of the personal data.</i>

Article 12:

The members of the Committee of the Personal data enjoy a total immunity for the opinions emitted in the exercise or on the occasion of the exercise of their function.

In the exercise of their allocation, the members of the Committee of the Personal data receive instruction of no authority.

Article 13:

The members of the Committee of the Personal data perceive compensations fixed by decree.

Article 14:

The Committee of the Personal data enjoys the autonomy of management. The budget is prepared by the President and adopted by the Committee of the Personal data.

The President of the Committee of the Personal data is the regulator of the budget, he applies the rules of the public accounting.

Article 15:

For the fulfillment of its missions, the Committee of the Personal data receives a budgetary subsidy of the State.

The Committee of the Personal data can receive from gift or subsidy of an individual, a body or a foreign State that through a structure of cooperation of the State of Senegal.

SECTION II: ATTRIBUTIONS OF THE "COMMITTEE OF THE PERSONAL DATA"

Article 16:

The Committee of the Personal data exercises the following missions:

- 1) She watches that the personal data processing is implemented according to the capacities of the present law.
- 2) She informs the concerned people and the persons in charge of treatment of their rights and duties. For that purpose,
 - a) She receives the preliminary formalities in the creation of personal data processing;
 - b) She receives the complaints, the petitions and the complaints relative to the implementation of the personal data processing and informs their authors of consequences given to these;
 - c) She informs immediately public prosecutor of the breaches whose knowledge she has;
 - d) She can, by particular decision, ask one or several of her members or agents of her services to proceed to checks concerning any treatment and, where necessary, to obtain copies of any document or information medium useful for her mission;
 - e) She can, in the conditions defined to articles 29 - 32 **of the present law** to pronounce a penalty towards a person in charge of treatment;
 - f) She answers any demand of opinion.
- 3) She approves the charters of use which are presented to him;
- 4) She holds a directory of the personal data processing at the disposal of the public;
- 5) She advises the people and the bodies which resort to the personal data processing or which proceed to tries or experiences likely to end in such treatments;
- 6) She authorizes, in the conditions planned by the present law, the cross-border transfers of personal data;
- 7) She presents to the government any suggestion susceptible to simplify and to improve the legal and statutory framework towards the data processing;
- 8) She cooperates with the authorities of personal data protection of the third countries, participates in the international negotiations regarding personal

- data protection;
- 9) She publishes the granted authorizations and the notices emitted in the directory of the personal data processing;
 - 10) She establishes every year an annual report put back to the President of the Republic and to the President of the National Assembly.

Article 10 of the decree:
<i>The Committee of the personal data is competent to formulate any useful recommendations to watch that the personal data processing is implemented according to the provisions of above-mentioned law as well as those of the present decree.</i>

Article 11 of the decree:
<i>With the exception of the information interesting the safety of the State, the defense or the law and order, the directory of the personal data processing, is open to the public according to the following modalities:</i>
1) <i>The consultation in premises of the Committee of the personal data according to days and hours fixed by the President of the aforementioned Committee;</i>
2) <i>The consultation by means of a demand, in an form of extract, sent to the Committee of the personal data;</i>
3) <i>The consultation on quite different support planned by the Committee of the personal data.</i>

<i>The consultation of the directory of the personal data processing is free.</i>

SECTION III: FORMALITES PREREQUISITES HAS THE IMPLEMENTATION OF THE DATA PROCESSING HAS CARACTERE STAFF

Article 17:

Are exempted from the preliminary formalities planned to following articles:

- 1) Treatments mentioned in the article 3 of the present law;
- 2) Treatments having for only object the maintained of a record which, by virtue of legal or statutory measures, is exclusively intended for the information of the public and is opened to the consultation of this one or every person proving a justifiable interest;
- 3) The implemented treatments by an association or any non-profit organization and with religious, philosophic, political or labor-union character since these data correspond to the object of this association or this body, since they concern only their members and since they should not be communicated with thirds.

Article 22 of the decree:

The exemption of preliminary formalities planned by the article 17 of the law on the personal data does not exempt the person in charge of the treatment to respect the principles put by the above-mentioned law to guarantee the rights of the concerned people.

Article 18:

Except the cases planned to articles 17, 20 and 21 of the present law, the personal data processing are the object of a statement with the Committee of the Personal data. The Committee gives evidence by an acknowledgement of receipt of any statement. She frees, within one (1) month, a receipt which allows the applicant to put in work the treatment without exempting him however from any of the responsibilities. This deadline can be once extended on decision motivated of the Committee.

The statement, in compliance with a model established by the Committee, contains the commitment which the treatment satisfies the requirements of the law. However, only the reception of the receipt gives the right to the implementation of a treatment.

Article 21 of the decree:

The person in charge of the treatment undertakes to realize a statement in compliance with the reality of the envisaged treatment.

Article 24 of the decree:

When the statement satisfies the prescriptions of the law on the personal data, the Committee of the personal data frees the receipt planned in the article 18 of the above-mentioned law.

The declaratory formalities are considered carried out as from the delivery of the receipt aimed at the previous paragraph of the present article. The treatment can then be implemented by the declarer under its responsibility.

When the receipt is freed by electronic way, the person in charge of the treatment can ask for it for a copy on paper base.

Article 19:

For the most common categories of personal data processing of which the implementation may not infringe on privacy or in the liberties, the Committee of the Personal data establishes and publishes standards intended to simplify or to exempt the obligation to report.

These standards can take into account the codes of conduct approved by the Committee of the Personal data.

Article 23 of the decree:

Can be the object of a simplified statement the implemented personal data processing:

- 1) *By the bodies public and deprived for the management of their staffs;*
- 2) *On the scene of work for the management of the access controls in premises, schedules and the restoration;*
- 3) *Within the framework of the use of services of fixed and mobile telephony on the scene of work.*

Article 26 of the decree:

The Committee of the personal data can define models of forms simplified for the demands of opinion, ratification of the charters of use, statements and authorization, matched, where necessary, appendices intended to complete the information. The standards intended to simplify or to exempt the obligation to report established by the Committee of the personal data in application of the article 19 of the law on the personal data are published to the Gazette.

Except as otherwise provided, forms can be removed free of charge with the Committee of the personal data

Article 431-17 Penal code:

Whoever will have, even by carelessness, proceeded or makes proceed to personal data processing without having respected the preliminary formalities in their implementation statutory on the personal data, will be punished for a detention of one (1) the year in seven (7) the years and of a fine from 500.000 francs to 10.000.000 francs or one of these two punishments only.

Article 431-19 Penal code:

When he was proceeded or made proceed to a personal data processing in the conditions planned by the article 19 of the law on the data personal aforesaid, whoever will not have respected, including by carelessness, the simplified standards or exemption established for that purpose by the Committee of the Personal data, will be punished for one of the detention of one (1) the year in seven (7) the years and of a fine from 500.000 francs to 10.000.000 francs or one of these two punishments only.

Article 20:

Are implemented after authorization of the Committee of the Personal data:

- 1) The personal data processing concerning genetic data and search in the field of the health;
- 2) The personal data processing concerning data relative to breaches, condemnations or measures of security;
- 3) The personal data processing having for object an interconnection of files, such as defined in the article 54 of the present law;

- 4) Treatments concerning a national number of identification or quite different identifier of general reach;
- 5) The personal data processing containing biometric data;
- 6) The personal data processing having a motive for public interest in particular in fine history, statistical or scientific.

Article 431-20 Penal code:

Whoever will have, except the cases where the treatment was authorized in the statutory conditions on the data personal aforesaid, proceeded or made proceed to a personal data processing including among the data which concerns the number of registration of the people in the national directory of identification of the physical persons, will be punished for a detention of one (1) the year in seven (7) the years and of a fine from 500.000 francs to 10.000.000 francs or one of these two punishments only.

Article 431-25 Penal code:

Whoever will have, except the statutory cases, put or kept on support or IT report of the personal data concerning breaches, condemnations or measures of security, will be punished for the same punishments.

Article 431-30 Penal code:

Whoever will have collected, on the occasion of their recording, on the occasion of their classification, on the occasion of their transmission or on the occasion of another shape of treatment, personal data the disclosure of which would have the effect of striking a blow in view of the interested or at the intimacy of its private life, carried, without authorization of the interested, these data in the knowledge of a third which has no quality to receive them, will be punished for a detention of one (1) the year in seven (7) the years and of a fine from 500.000 francs to 10.000.000 francs or one of these two punishments only.

When the disclosure planned in the previous paragraph of the present article was committed by carelessness or carelessness, the person in charge will be punished for a detention of six (6) month in five (5) the years and of a fine from 300.000 francs to 5.000.000 francs or one of these two punishments only.

In the cases planned in both paragraphs of the present article, the pursuit can be exercised only on complaint of the victim, her legal representative or his legal successors.

Article 21:

Except the cases where they must be authorized by the law and contrary to previous articles, treatments automated of name specific information operated for the State, for the public institution or for the local authority or for the legal entity of private law managing a public service are decided by statutory act taken after opinion motivated of the Committee of the Personal data.

These treatments carry on:

- 1) The safety of the State, the defense or the law and order;
- 2) The prevention, the search, the observation or the pursuit of the penal breaches or the execution of the penal condemnations or the measures of security;
- 3) The population census;
- 4) The personal data revealing, directly or indirectly, the racial, ethnic or regional origins, the filiation, the political, philosophic or religious beliefs or the labor-union membership of the people, or who are relative to the health or to the sexual life of these when they are not of the article 22.3 of the present law;
- 5) The treatment of salaries, pensions, taxes, taxes and other liquidations

Article 25 of the decree:

L be authorization requests, presented in application of articles 20 or 21 of the law on the personal data, have to contain, where necessary, in appendix, the statutory act authorizing the envisaged treatment.

Article 431-24 Penal code:

Whoever will have, except the statutory cases, put or kept on support or IT memory, without the express consent of the interested, personal data which, directly or indirectly, reveal the racial or ethnic origin, the political, philosophic or religious beliefs, or the labor-union memberships, or which are relative to the health or to the sexual orientation of this one, will be punished for a detention of one (1) the year in seven (7) the years and of a fine from 500.000 francs to 10.000.000 francs or one of these two punishments only. The capacities of the first point of the present article are applicable to treatments not automated of personal data the implementation of which does not limit itself to the exercise of exclusively personal activities.

SECTION IV: COMMON CAPACITIES

Article 22:

The demands of opinion, the statements and authorization requests have to specify:

- 1) The identity and the address of the person in charge of the treatment or, if this one is not established on the national territory, those of his representative duly appointed;
- 2) One or several ends of the treatment as well as the general description of its functions;
- 3) The envisaged interconnections or any other forms of getting in touch with other treatments;
- 4) The handled personal data, their origin and the categories of people

- concerned by the treatment;
- 5) The shelf life of the handled information;
 - 6) One or several services asked to put in work the treatment as well as the categories of people who, because of their functions or for the needs for the service, have directly access to the registered data;
 - 7) The addressees authorized to receive communication of the data;
 - 8) The function of the person or the service beside of which practices the access right;
 - 9) Capacities taken to assure the safety of treatments and data;
 - 10) The indication of the appeal to a subcontractor;
 - 11) The transfers of personal data envisaged aimed at a third country, subject to a reciprocity.

The person in charge of a treatment already declared or authorized introduces a new demand with the Committee of the Personal data in case of change affecting the information mentioned in the previous paragraph. Besides, he has to inform the Committee of the Personal data in case of abolition of the treatment.

Article 27 of the decree:

The demands of opinion, ratification of the charters of use, statements and authorization are presented by the person in charge of the treatment or by the person having quality to represent him.

When the person in charge of the treatment is a natural person but acting for a legal entity, the authority of which he recovers must be mentioned.

Article 31 of the decree:

The person in charge of the treatment informs the Committee of the personal data within one month and according to the modalities defined in the article 28 of the present decree of any abolition of the treatment.

In case of modification, affecting the information mentioned in the article 22 of the law on the personal data, the person in charge of the formless treatment the Committee of the within a fortnight working personal data.

Article 431-29 Penal code:

Whoever, holding personal data on the occasion of their recording, on the occasion of their classification, on the occasion of their transmission or on the occasion of any other shape of treatment, will have diverted this information of their end such as defined by the legislative arrangement, the statutory act or the decision of the Committee of the Personal data authorizing the automated treatment, or by the preliminary statements in the implementation of this treatment, will be punished for a detention of one (1) the year in seven (7) the years and of a fine from 500.000 francs to 10.000.000 francs or one of these two punishments only.

Article 23:

The Committee of the Personal data pronounces within two (2) month as from the reception of the asking for opinion or authorization. However, this deadline can be once extended on decision motivated of the Committee. When the Committee of the Personal data did not pronounce for these deadlines, the authorization is considered favorable.

Article 29 of the decree:

The date in the opinion of reception, in the opinion of the signature of the discharge or the electronic acknowledgement of receipt fixes the starting point of the deadline which the Committee of the personal data has to notify its notices and authorizations in application of the article 23 of the law on the personal data. In case continuation of this deadline, the Committee of the personal data notifies it to the person in charge of the treatment.

Article 24:

The opinion, the statement or the authorization request can be sent to the Committee of the Personal data by electronic way or by mail way. The Committee of the Personal data frees a receipt of reception, if necessary by electronic way.

The Committee of the Personal data can be seized by every person, acting by itself, by the intervention of its lawyer or by anybody else physical or moral duly appointed.

Article 28 of the decree:

*The demands of opinion, ratification of the charters of use, statement and authorization are sent to the Committee of the personal data, either by registered letter, or by electronic way but with acknowledgement of receipt which can be sent by the same way.
Failing that, they can be directly put down with the Committee against receipt*

Article 30 of the decree:

*Any decision of the Committee of the personal data is motivated and notified to the person in charge of the treatment as well as to all other concerned people, according to the modalities defined in the article 28 of the present decree.
The deliberations of the Committee of the personal data are published to the Gazette.*

SECTION V: CONTROLS AND ADMINISTRATIVE PENALTIES AND PECUNIARY**Article 25:**

The members of the Committee of the Personal data as well as the sworn agents of service have access, in the conditions planned by the article 45 and following ones of the Code of criminal procedure, for the exercise of their missions, to places, premises, surrounding walls, installations or establishments being of use to the

implementation of a personal data processing and who are business, with the exception of the parts of these allocated to the private place of residence.

Territorially competent Public prosecutor is beforehand informed about it.

Article 15 of the decree:

In case of operation of control, territorially competent Public prosecutor is informed about it beforehand at the latest twenty four (24) hours before the date in which the control on the spot has to take place. This opinion specifies the date, the hour, the place and the object of the control. The people in charge of the control have to present their orders and, where necessary, their authorization to proceed to that controls

Article 12 of the decree:

The Committee of the personal data fixes the list of the people asked to proceed to the controls planned by the article 25 of the law on the personal data. This list can be reorganized at any time by the Committee of the personal data.

Article 13 of the decree:

The operation of control, that it is on site or on summons, is decided by a decision of the Committee of the personal data which specifies:

- 1) The name and the address of the person in charge of the concerned treatment;*
- 2) The name of the reporter and the other controllers in charge of the operation;*
- 3) The object as well as the duration of the operation.*

Article 26:

In case of opposition of the person in charge of places, the visit can take place only with the authorization of the President of the Regional Court in the spring of which are situated premises to be visited or of the judge delegated by him.

This magistrate is seized at the request of the President of the Committee of the Personal data. He rules by a motivated prescription, according to capacities planned to articles 820-1 - 820-9 of the code of civil procedure. The procedure is without compulsory representation.

Article 14 of the decree:

No controller can be indicated to control with a body in the breast of which he held, during 5 years preceding the control, a direct or indirect interest performed the functions, the professional activity or the elective mandate.

Article 16 of the decree:

Every control, that it is on site or on summons, has to be the object of a report which expresses the nature, in the daytime, the hour and the place of the made controls. The report indicates the object of the operation, the members of the Committee of the personal data having participated in this one, the met people, where necessary, their statements, the demands formulated by the controllers as well as the possible met difficulties.

The inventory of rooms and documents the people of which in charge of the control took copy is annexed to the report signed by the people in charge of the control and by the person in charge either of places, or of treatments, or by every nominee by this one.

In case of refusal or in case of absence of the person in charge of places or treatments, he is mentioned it in the statement of insolvency established by the controllers.

When the visit was not able to take place, the report mentions the motives which prevented or hindered his progress.

When the visit takes place with the authorization and under the control of the judge according to the article 26 of the law over the personal data, a copy of the report of the visit is sent to him by the President of the committee of the personal data.

Article 17 of the decree:

When the Committee of the personal data proceeds to controls, at the request of an authority of a third country exercising skills similar to his, she informs the person in charge about it of the treatment.

Article 18 of the decree:

The people in charge of the control can summon and hear every person susceptible to supply them any useful information or justification for the fulfillment of their mission.

The summons, sent by registered letter or delivered personally against receipt, has to reach at least seven days before the date of the hearing.

The summons reminds to the summoned person that it is entitled be attended of an advice of its choice.

The refusal to answer a summons of the people in charge of the control must be mentioned on report.

Article 19 of the decree:

When a person questioned within the framework of the controls made by the Committee of the personal data brings into conflict the professional secrecy, he is mentioned this opposition on the established report.

The Report has to mention legal or statutory measures governing the called professional secrecy.

Article 431-31 Penal code:

Will be punished for detention from six months to two years and for a fine from 200.000 francs to 1.000.000 francs or for one of these two punishments only, whoever will have hindered the action of the Committee of the Personal data:

- 1) Either by opposing the exercise of missions entrusted to his members or to the agents authorized in law enforcement on the personal data;*
- 2) Either by refusing to communicate with his members or with the agents authorized in law enforcement on the personal data, the information and the documents useful for their mission, or by hiding the aforementioned documents or the information, or by removing them;*
- 3) Either by communicating information which are not in accordance with the contents of the recordings such as he was as the demand was formulated where which do not present these contents under a directly accessible shape*

Article 27:

The members of the Committee of the Personal data and the agents mentioned in the article 25 of the present law can ask for communication of any documents necessary for the fulfillment of their mission, whatever is the support, and to take it copy. Ils peuvent recueillir, sur place ou sur convocation, tout renseignement et toute justification utiles. Ils peuvent accéder aux programmes informatiques et aux données, demander la transcription de tout traitement dans des documents appropriés directement utilisables pour les besoins du contrôle. Ils peuvent être assistés par des experts choisis par la Commission des Données Personnelles.

Article 9 of Decree :

The President of the Commission of the personal data may involve one or several experts under Article 27 of the law on personal data. Experts whose assistance is requested by the Commission of personal data are compensated according to the provisions of the Procurement Code. When control operations require access to personal medical data, the Commission Personal Data means a doctor on a list provided annually by the College of Physicians of Senegal to require the disclosure of such data. The expert report submitted to the President of the Commission of personal data with a copy to the controller.

Article 28 :

It is prepared contradictorily minutes of verifications and surveys conducted under the preceding articles.

Article 29 :

The Commission Personal Data may impose the following measures :

- 1) a warning to the controller does not comply with the obligations under this Act.
- 2) an injunction to stop the alleged breach within the time fixed.

Article 67 of Decree :

The notice provided for by Article 29 of the Law on personal data, or specify the deficiencies found, sets the time after which the controller is required to have been discontinued or deficiencies found . If the controller is domiciled in a third country, the Commission shall take into account and apply to the competent administrative authorities. This period runs from the date of receipt, by registered letter, the controller of the notice.

Article 30 :

If the controller does not comply with the notice that was sent to him, the Commission Personal Data may pronounce against him after an adversarial procedure, the following sanctions :

- 1) temporary withdrawal of the authorization granted for a period of three (3) months from the expiry of which the withdrawal becomes final ;
- 2) a monetary fine of one (1) 1000000-100 (100) million CFA Franc ;

Recovery of all penalties shall be in accordance with the laws relating to the collection of debts owed to the State.

Article 68 of Decree :

The Commission may impose personal data in respect of any data controller has not met its obligations, a penalty, as provided by Article 30 of the Law on personal data, except where the processing is implemented by the State, a legal entity under public law or a legal person in private law managing a public service.

Article 69 of Decree :

The penalty imposed by the Commission of personal data under Article 68 of this Decree shall be reasoned and notified to the controller.

Article 70 of Decree :

When the Commission issues a personal data penalty became final before the criminal court final decision on the same facts, it may order that the penalty imposed is added to or deducted from the fine he utters.

Article 431-18 Penal Code:

Whoever even negligently undertaken or to a treatment that has been the extent provided in paragraph 1 of Article 30 of the Law on personal data, shall be punished with imprisonment of one (1) year seven (7) years and a fine of 500,000 francs to 10 million francs or one of these penalties.

Article 31 :

In an emergency, when the implementation of a treatment or use of personal data implies a violation of rights and freedoms, the Commission on Personal Data, after an adversarial procedure, decides :

- 1) Interruption of implementation of treatment for a maximum of three (3) months ;
- 2) lock certain personal data processed for a maximum period of three months ;
- 3) Temporary or permanent treatment contrary to the provisions of this Act prohibition.

Article 73 of Decree :

The Commission may request personal data to the competent courts to order any necessary security measure. In case of emergency, in accordance with Article 31 of the Law on personal data, the Chairman of the Commission may request personal data, by way of interim order, the order of competent jurisdiction, if any under penalty, any security measures necessary to protect the rights and freedoms protected.

Article 74 of Decree :

If risk of sanctions other than warning, the controller is informed of the date of the meeting of the Commission for personal data agenda of which is inscribed his case and the faculty is offered to be heard, he or his representative. The convening of the data, performed under the terms of Article 28 of this Decree, must be received at least fifteen days before the date mentioned in the preceding paragraph. In case of emergency, call the controller must to have been received no later than eight days before the date of hearing before the Board of personal data.

Article 75 of Decree :

Any decision to sanction by the Commission of the personal data sets considerations of law or fact on which it is based as well as ways and time limits. Publication in the Official Journal of the penalty decision made within the period of one month from the date on which the sanction becomes final.

Article 32 :

Sanctions and decisions taken by the Commission Personal Data are subject to appeal before the Council of State.

CHAPTER III: REQUIREMENTS FOR TREATMENT OF CONDITIONS OF PERSONAL DATA

SECTION ONE : BASIC PRINCIPLES GOVERNING THE PROCESSING OF PERSONAL DATA

Article 33 :

The treatment of personal data is considered legitimate if the data subject gives his consent.

However, there may be exceptions to this requirement of consent when processing is necessary:

- 1) For compliance with a legal obligation to which the controller is subject ;
- 2) The execution of a task in the public interest or in the exercise of official authority vested in the controller or the third party to whom the data are disclosed ;
- 3) The execution of a contract to which the data subject is party or in the execution of pre-contractual measures taken in the application;
- 4) To safeguard the interests or fundamental rights and freedoms of the person concerned.

<i>Article 32 of Decree :</i>
<i>Any processing of personal data is prohibited where the consent of the person concerned is not obtained.</i>

Article 34 :

The collection, recording, processing, storage and transmission of personal data must be lawfully, fairly and not fraudulent.

<i>Article 431-22 Penal Code:</i>
<i>Whoever collected personal data by fraudulent means dishonest or illegal shall be punished by imprisonment of one (1) year seven (7) years and a fine of 500,000 francs to 10 million francs or one of these two penalties.</i>

Article 35 :

The data must be collected for specified, explicit and legitimate purposes and cannot be further processed in a way incompatible with those purposes.

They must be adequate, relevant and not excessive in relation to the purposes for which they are collected and further processed.

They must be kept for a period that does not exceed the period necessary for the purposes for which it was collected or processed. Beyond the period required, the data cannot be a conservation view that responds specifically to a processing for historical, statistical or research under the law.

Article 20 of Decree :

The purpose of the proposed treatment and the nature of the data collected determine the rules applicable to any treatment.

Article 37 of Decree :

When the responsible treatment of personal data collected for specified, explicit and legitimate communicate this data to a third party called for further processing in particular for historical, statistical or scientific purposes, such data are prior to their communication, anonymised or coded by said officer or by any competent authority.

Article 38 of Decree :

The results of the treatment of personal data for historical, statistical or scientific purposes shall not be made public in a form which permits identification of the person concerned, unless:

- 1) The person concerned has given express consent ;*
- 2) Publication of non-anonymous data and unencrypted personal information is limited to data which are manifestly made public by the data subject.*

Article 39 of the Decree :

Commission of personal data is competent to decide on the historical, statistical or scientific nature of personal data.

Article 40 of the Decree :

Articles 37 and 38 of this Decree shall not apply to any processing of data concerning public security, defense, investigation and prosecution of criminal offenses or the security of the State.

Article 43 Decree :

Transfer, provided within a group of companies or address multiple recipients for the same categories of data and the same purpose, may be a joint statement.

Article 431-27 Penal Code:

Whoever kept of personal data beyond the time necessary character under Article 35 of the Law on personal data, unless this is done to conservation of historical, statistical or scientific purposes as provided by law, shall be punished by imprisonment of one (1) year seven (7) years and a fine of 500,000 francs to 10 million francs or one of these penalties.

Article 431-28 Penal Code:

Whoever, except in cases provided by law, treaty for purposes other than for historical, statistical or scientific use of personal data stored beyond the period required under Article 35 of the Law on Personal Data Staff will be punished with the same penalties.

Article 36:

The data must be accurate and, where necessary, updated. All reasonable measures should be taken to ensure that inaccurate or incomplete, having regard to the purposes for which they are collected and further processed, are erased or rectified.

Article 37:

The principle of transparency requires mandatory information from the controller on the personal data.

Article 38 :

The personal data shall be treated as confidential and shall be protected in accordance with Article 71 of this law, in particular where the processing involves the transmission of data over a network.

Article 39:

When processing is implemented on behalf of the controller, it must choose a processor providing sufficient guarantees. It is the responsibility of the treatment as well as sub-contractor to ensure compliance with the security measures defined by section 71 of this Act.

Treatment conducted on behalf of the controller must be governed by a contract or legal act documented binding the processor to the controller and stipulating in particular that the subcontractor acts only on the single instruction of the controller and that the obligations under this section shall also be borne by the latter.

Article 64 of Decree :

A data controller can process personal data by a subcontractor character when said data protection is guaranteed. However, it remains responsible and must ensure that the data are processed in accordance with the provisions in force, particularly with respect to their use and disclosure.

SECTION II: SPECIFIC PRINCIPLES FOR THE TREATMENT OF CERTAIN CATEGORIES OF PERSONAL DATA

Article 40:

It is forbidden to any collection and treatment revealing racial, ethnic or regional affiliation, political opinions, religious or philosophical beliefs, trade union membership, sex life, genetic or more data generally those relating to the health of the person concerned.

Article 41 :

The prohibition laid down in the preceding article shall not apply to the following types of treatments when:

- 1) Processing personal data relates to data which are manifestly made public by the data subject;
- 2) The data subject has given his consent in writing, regardless of the medium, such treatment and in accordance with the legislation in force;
- 3) The treatment of personal data is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving consent ;
- 4) Processing is necessary for the establishment, exercise or defense of legal claims. However, genetic data may only be processed to verify the existence of a genetic link under the administration of evidence in court, for the identification of a person, the prevention or suppression of an offense specific criminal ;
- 5) Judicial proceedings or a criminal investigation is open;
- 6) The treatment of personal data is necessary for reasons of public interest, particularly for historical, statistical or scientific ;
- 7) The processing is necessary for the execution of a contract to which the data subject is party or performance to take steps at the request of the person concerned during the initiation ;
- 8) The processing is necessary for compliance with a legal or regulatory obligation to which the controller is subject ;
- 9) The processing is necessary for the performance of a task in the public interest or is made by a public authority or assigned by a public authority to the controller or a third party to whom the data are disclosed ;
- 10) Processing is carried out within the framework of the legitimate activities of a foundation, association or any other non-profit organization with a political, philosophical, religious, fraternal or union. However, treatment must relate only to members of the body or to persons who have regular contact with her connection with its purposes and that the data are not disclosed to third parties without the consent of the persons concerned.

Article 42:

The processing of data relating to offenses, criminal convictions or security measures may be implemented by :

- 1) Courts, public authorities and corporations managing a public service, acting within their legal powers ;
- 2) Judicial officers for the strict requirements of carrying out the tasks entrusted to them by law.

Article 43 :

Processing of personal data for the purposes of health character is legitimate only when:

- 1) The person concerned has given his consent;
- 2) It relates to data which are manifestly made public by the data subject ;
- 3) Necessary to protect the vital interests of the data subject or of another person where it is physically or legally incapable of giving his consent;
- 4) Necessary for the achievement of a goal set by or under the law ;
- 5) Necessary for the promotion and protection of public health, including screening ;
- 6) It is necessary for the prevention of a real danger or the suppression of a specific criminal offense ;
- 7) It is necessary for the establishment, exercise or defense of legal claims ;
- 8) It is necessary for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment or the person concerned, or his parent or when the health care act in the interests of the person concerned. The data are processed under the supervision of a professional health care that is subject to professional secrecy.

<i>Article 33 of Decree :</i>	
<i>The file requests for review or approval of treatments personal data on genetic data and research in the medical field includes:</i>	
	<i>1) The identity and address of the controller and the person responsible for the research, their titles, experience and duties, the categories of persons who will be called to implement the treatment and those who have access to data collected;</i>
	<i>2) The research protocol or relevant elements, including specifying the objective of the research, the categories of persons concerned, the method of observation or investigation chosen, the origin and nature of personal data collected and justification the use thereof, the duration and modalities of organization of research, the method of analysis;</i>
	<i>3) appropriate, opinions previously rendered by scientific bodies or ethical ;</i>
	<i>4) characteristics of the proposed treatment;</i>
	<i>5) where appropriate, scientific and technical justification of any request for waiver of the requirement of encoding data for the identification of stakeholders and the justification of any request for exemption from the prohibition of said data storage beyond the time required to search.</i>
<i>Any modification of these elements is brought to the attention of the Commission of personal data.</i>	

Article 34 of Decree :

The starting point of the period fixed by this provision was postponed to the date of receipt of additional information requested by the Commission of personal data when the file is incomplete.

Article 431-26 Penal Code:

When processing personal data have to end research in the field of health, shall be punished with the same penalties, anyone who has completed a treatment:

- 1) without first individually informed persons on whose behalf the personal data is collected or transferred their right of access, rectification and opposition of the nature of the transmitted data and the recipients thereof as well as arrangements for their treatment, preservation and protection;*
- 2) despite the opposition of the person concerned, or when required by law, in the absence of informed and express consent of the person, or in the case of a deceased person, despite the refusal expressed by it in his lifetime.*

Article 44 :

The personal data relating to health are collected from the person concerned. They can be collected from other sources only if the collection is necessary for the processing or that the person concerned is not able to provide the data itself.

Article 35 Decree :

Unless waived by the Commission of the personal data, the collection of information under Article 44 of the Law on personal data takes place under the following conditions:

- 1) When personal data are collected directly from people interested in writing questionnaire thereof or if the covering letter is marked read this information;*
- 2) When personal data are collected orally, the person who conducts the survey give or previously sent to interested persons a document containing such information;*
- 3) Where the personal data were originally collected for a purpose other than the proposed treatment, the health professional responsible for its therapeutic inform the person concerned in writing.*

Article 45:

The treatment of personal data carried out for purposes of **journalism**, research or artistic or literary expression is recognized when it is implemented solely for literary and artistic expression or exercise, on a professional basis, of activity journalist or researcher, in compliance with the ethical rules of the profession s s.

Article 46 :

The provisions of this Act shall not preclude the application of the laws relating to the press or by broadcasting and the Penal Code which stipulate the conditions for

exercising the right of reply and prevent, hinder, repair and, appropriate, penalizing offenses against privacy and reputation of individuals.

Article 47:

It is forbidden to carry out direct marketing using all means of communication using any form whatsoever, the personal data of an individual who has not expressed its consent to receive such surveys.

Article 48 :

No court decision involving assessment the behavior of a person cannot be based on automated processing of personal data intended to evaluate certain aspects of his personality.

No decision which produces legal effects in respect of a person may be taken based solely on automated processing of personal data for defining the profile of the person concerned or to evaluate certain aspects of his personality.

Are not regarded as taken based solely on automated processing of personal data, the decisions taken in the context of the conclusion or performance of a contract and for which the person concerned has been able submit its comments or those satisfying the demands of the person concerned.

Article 49 :

The data controller cannot transfer personal data to a third country if the state provides an adequate level of protection of privacy, freedom and fundamental rights of individuals with regard to the treatment of these data are or may be subject.

Before any transfer of personal data to a third country, the controller must first inform the Commission of Personal Data.

Before any processing of personal data from abroad, the Commission Personal Data must first verify that the controller provides an adequate level of protection of privacy, freedom and fundamental rights of individuals with regard to the treatment under this Act.

The adequacy of the level of protection provided by a controller is assessed according including security measures which are applied thereto as provided in this Act, the characteristics of the treatment, such as its purpose, duration and the nature, origin and destination of the processed data.

Article 42 Decree :

Pursuant to Article 49 of the Law on personal data, the controller enters in the manner set out in Article 28 of this Decree, the Commission personal data before the first data transfer to a third countries. Statement of the controller must specify :

- 1) *The name and address of the person submitting the data;*
- 2) *The name and address of the recipient of the data;*
- 3) *The name and the description of the file;*
- 4) *Categories of personal data transferred;*
- 5) *The people involved and their approximate number;*
- 6) *The purpose of data processing carried out by the recipient;*
- 7) *Mode and frequency of planned shipments;*
- 8) *The date of the first transfer.*

Any change in the information reported by the controller must be declared to the Commission of personal data within fifteen working days.

Article 50:

The data controller may transfer personal data to a third country does not meet the conditions laid down in Article previous spot if the transfer is not massive and that the person to whom the data relate has expressly agreed to transfer or if the transfer is necessary for one of the following conditions :

- 1) To safeguard the life of this person ;
- 2) to safeguard the public interest;
- 3) Compliance obligations for ensuring the establishment, exercise or defense of legal claims;
- 4) Execution of a contract between the data controller and the person concerned, or to take steps at the request of the latter.

Article 51:

The Commission Personal Data may authorize, on the basis of a reasoned request, a transfer or a set of transfers of data to third countries which do not ensure an adequate level of protection, this when the controller provides adequate with respect to the protection of privacy, freedom and fundamental rights of the persons concerned and the exercise of the corresponding rights guarantees.

Article 44 Decree :

Commission of personal data establishes a list of states that have legislation on personal data equivalent and makes it available to anyone who wishes to transfer personal data to third countries. This publication does not relieve the controller of any of its responsibilities

Article 52:

Any person acting under the authority of the controller or in the subcontractor and the subcontractor himself, and who has access to personal data must not process them except on instructions from the controller.

SECTION III : INTERCONNECTION OF FILES CONTAINING PERSONAL DATA

Article 53 :

The interconnection of files referred to in section 22.3 of this Act within one or more legal entities managing a public service and whose aims correspond to different public interests should be subject to authorization by the Commission Personal Data.

It is the same for treatments implemented by the State for the purpose of making available to users of the administration one or more remote services within the framework of e-government.

The interconnection of files within individuals whose main purposes are different is also subject to Commission approval of Personal Data.

Article 54 :

The interconnection of files must achieve legal or statutory objectives of legitimate interest to those responsible for treatment. It cannot lead to discrimination or reduction of rights, freedoms and guarantees for the persons concerned or be accompanied by appropriate security measures and shall take into account the principle of relevance of data subject to interconnection.

Article 55 :

The application for leave to interconnection under section 22.3 of this Act includes any information :

- 1) The nature of the personal data on interconnection ;
- 2) The purpose for which interconnection is considered necessary ;
- 3) The period for which interconnection is permitted ;
- 4) Where applicable, the conditions and terms under the more effective protection of rights and freedoms, including the right to privacy of the persons concerned or third parties.

Article 56 :

The authorization may be renewed after a request from the controllers.

Article 57 :

The applications for leave to interconnection and interconnection authorizations are included in the repertoire of treatments mentioned in Article 16-4 of this Act.

CHAPTER IV : RIGHTS GRANTED TO THE PERSON WHOSE DATA SUBJECT TO TREATMENT

FIRST SECTION: RIGHT TO INFORMATION

Article 58:

When personal data are collected directly from the data subject, the controller must provide it, at the latest, during the collection and whatever means and media used the following information:

- 1) The identity of the controller and, where appropriate, his representative;
- 2) The purpose or purposes of the processing for which the data are intended;
- 3) Categories of data concerned;
- 4) Or the recipients or categories of recipients to whom the data might be disclosed;
- 5) Knowing if the answer to the questions are obligatory or voluntary, as well as the possible consequences of failure to reply ;
- 6) Being able to ask not to be included in the file ;
- 7) The existence of a right of access to data relating to and correction of data ;
- 8) The duration of data retention ;
- 9) If necessary, transfer personal data envisaged to abroad.

Article 36 Decree :

Those admitted in institutions or centers that are engaged in the prevention, diagnosis and treatment giving rise to the transmission of personal data to a treatment whose end medical research are aware of the particulars prescribed by Articles 58 and following of the law on personal data by submitting a document or by any other appropriate means. However, this information may not be issued if, for legitimate that the doctor appreciates reasons, the patient is left in ignorance of a serious diagnosis or prognosis. Exemptions from the obligation to inform individuals of the use of their data for research purposes Medical mentioned in the application for authorization to the Commission of personal data.

Article 45 of Decree :

The information to be provided by the controller, in accordance with Article 58 of the Law on personal data can be delivered by any means, including by:

- 1) *E-mail or on paper;*
- 2) *Display or electronic form;*
- 3) *Announcement in a suitable medium;*
- 4) *Or during a personal interview.*

Article 46 of Decree :

If the data are collected by questionnaire, the following information must be listed on the questionnaire:

- | |
|--|
| 1) <i>The identity of the controller, or that of his representative;</i> |
| 2) <i>The aim pursued by the treatment;</i> |
| 3) <i>The compulsory or optional nature of the responses;</i> |
| 4) <i>Access, opposition, rectification and deletion rights.</i> |

Article 47 of Decree :

When the data were originally collected for another purpose, the controller shall inform the person concerned, unless it is already informed. When the controller is unable to do so, he must prove to the Commission of personal data.

Article 59 :

When personal data are not collected from the data subject, the information referred to in Article 58 of this Act shall be transmitted to that person at the time of data recording or, if their communication is envisaged, the later during the first communication.

Article 60:

The provisions of section 58 of this Act shall not apply:

- 1) the data collected and used during treatment implemented on behalf of the State and the security interests of the State, defense, public safety or the object the enforcement of criminal convictions or security measures , to the extent that such limitation is necessary to meet the purposes of the processing;
- 2) When the processing is necessary for the prevention, investigation, detection and prosecution of any offense;
- 3) When treatment is necessary to take into account an important economic or financial interest of the State, including in, monetary budget areas, customs and taxation.

Article 61 :

Anyone using electronic communications networks must be informed clearly and comprehensively by the controller or his representative :

- 1) The purpose of any action to access, by electronic transmission, the information stored in the terminal equipment connection, or to register, in the same way, information in the terminal equipment connection ;
- 2) Means at its disposal to oppose it.

These provisions do not apply if access to the information stored in the terminal equipment of the user or the inclusion of information in the user equipment :

- 1) Or has the exclusive purpose of enabling or facilitating electronic communication ;
- 2) Is strictly necessary for the provision of a service online communication at the express request of the user.

SECTION II : RIGHT OF ACCESS

Article 62 :

Any person proving his identity has the right to request, in writing, regardless of the medium, the data controller of personal data, to provide:

- 1) Information to know and challenge treatment;
- 2) Confirmation that personal data relating to him are or are not subject to this treatment;
- 3) Communication in an accessible form of personal data concerning him as well as any available information as to the origin thereof;
- 4) Information about the purposes of the processing, the categories of personal data processed and the recipients or categories of recipients to whom the data are disclosed ;
- 5) Where applicable, information on transfers of personal data under consideration to a third country.

Article 48 of Decree :	
<i>Everyone has the right to be informed of the data concerning it, by sending a written request for access to information, signed and dated, regardless of the support request:</i>	
	1) <i>Either the controller or his representative in Senegal or any of its agents or employees;</i>
	2) <i>Or subcontractor processing of personal data, which shall communicate the appropriate character, one of the persons mentioned in paragraph 1 of this Article.</i>
<i>However, any improper application will be deemed inadmissible, either by the controller or by the Commission of personal data, in accordance with Article 66 of the law on personal data.</i>	

Article 49 of Decree :	
<i>The application referred to in Article 48 of this Decree shall contain : Name, surname, date of birth, nationality of the person concerned, and a photocopy of the identity card, passport or document in lieu thereof. The access to information request also contains and to the extent that the applicant has this information:</i>	

- 1) *The circumstances or cause of making knowledge of disputed data and corrections may require ;*
- 2) *The designation of the authority or department concerned.*

The Commission may request personal information to the person concerned any additional information it considers useful.

Article 50 of Decree :

Failing elements referred to in Article 49 of this Decree, the demand for access to information may be considered inadmissible. The response of the controller of the data must be made in writing.

Article 51 Decree :

If multiple controllers data jointly manage one or multiple files, the right of access to information can be exercised at each of them, unless one of them is considered responsible for all treatments. If the person sought is not authorized to disclose the information requested, it shall transmit the request to the appropriate person as soon as possible.

Article 63:

A copy of the personal data concerning him is issued to the person concerned at his request. The controller can make the issue of such copy to the payment of a sum not exceeding the cost of reproduction.

If risk of concealment or disappearance of personal data, the person concerned may inform the Commission of Personal Data taking any measure to avoid such concealment or disappearance.

Article 64:

Any person who in the exercise of his right of access has serious reasons to assume that the data have been communicated are not consistent with the data processed may inform the Commission of Personal Data which makes the necessary checks.

Article 65 :

The right to access a patient is exercised by the patient himself or through a physician designated. In case of death of the patient, the spouse not legally separated and children, in the case of a minor, his parents may exercise through a doctor appointed by them, the right of access.

Article 66 :

The controller may oppose grossly unfair demands, including their number, repetitive or systematic. In case of dispute, the burden of proof of patent unreasonableness applications is the responsibility of the treatment to which they are addressed.

Article 67 :

Notwithstanding Articles 62 and following of this law, when treatment interested in security, defense or public security, the right of access is exercised under the following conditions :

- 1) The request is sent to the Commission on Personal Data who shall appoint one of its members who belong or have belonged to the State Council or the Supreme Court to conduct the necessary investigations. It may be another agent of the Commission on Personal Data attends. It is notified that the applicant has carried out the checks ;
- 2) When the Commission Personal Data in accordance with the controller finds, that the communication data contained therein do not question its aims, the state security, defense or public safety, these data can be communicated to the applicant ;
- 3) When treatment is likely to include information the disclosure of which would not put into question the purpose assigned to it, the regulatory act establishing the file may provide that such information may be communicated to the applicant by the file handler directly entered.

Article 41 of Decree :

Pursuant to Article 67 of the Law on personal data, when the controller opposes the communication to the applicant of all or part of the information concerning, rectification or deletion of such information, the Commission Personal data shall inform the person concerned of the audits. The Commission mentions this opposition personal data in its annual report.

Article 53 of Decree :

Equitable participation fee in favor of the Commission of personal data may exceptionally be requested when:

- 1) *Requested information has already been communicated to the applicant within six months preceding the application, and that it can justify a legitimate interest, such as the modification of said data;*
- 2) *The submission of information causes a considerable amount of work for the Commission of personal data.*

The detailed rules for the fee shall be determined by decision of the Commission of personal data.

Article 54 Decree :

Pursuant to Article 65 of the Law on personal data, viewing data of a deceased person is granted when the applicant has established an interest in the consultation and no overriding interest of relatives of the died or third parties otherwise. Interest is established in case of close relationship or marriage with the deceased.

Article 55 of the Decree :

At the conclusion of any audit, the Commission personal data can rectify, erase the personal data already processed or insert other. It can also prohibit disclosure of personal data or recommendations it deems necessary.

Article 56 of Decree :

Minutes prepared by the Commission of personal data shall specify the period after which the controller is required to have been discontinued or deficiencies found. At the expiration of this period, the controller concerned shall notify in writing to the said Commission of the action taken in the decisions that were taken.

Article 57 of Decree :

Commission of personal data has a period of four months from the date of notification to decide on any request for access to information. In case of request for additional information to the applicant, the period defined in this Article shall run from the date of receipt by the Commission of such personal data such information. When the Commission personal data seek advice from an authority exercising similar powers to his own in a third country, the same period runs from the receipt by said Commission the information requested.

SECTION III : RIGHT OPPOSITION

Article 68:

Any individual has the right to oppose, for legitimate reasons that the personal data relating to him being processed.

She has the right, on the one hand, to be informed before personal data are concerning for the first time to third parties or used on behalf of third parties for exploration and, secondly, to be expressly offered the right to object free of charge to such disclosures or uses.

The provisions of the first paragraph of this Article shall not apply if the treatment meets a legal requirement.

Article 58 of Decree :

When personal data are collected by writing to the person concerned, the controller asks it on the document by which it collects data, if it wishes to exercise the right of objection under Article 68 of the law on personal data.

Article 59 of Decree :

When personal data is collected from the person other than in writing, the controller asks it if it wishes to exercise the right to object. In this case, the application must be achieved no later than

one month after the collection of these data by any technical means, which keeps evidence that the person concerned has had the opportunity to exercise his right to object. In the absence of communication of this document, the right of opposition applies right.

Article 60 of Decree :

When personal data are not obtained from the data subject, the controller asked, regardless of the medium, whether it wishes to exercise the right of opposition.

Article 61 of Decree :

When personal data are intended to be used by the controller for the purposes of prospecting, including commercial, the right of opposition may be exercised without any justification.

Article 431-23 Penal Code:

Whoever undertaken or to a processing personal data relating to an individual despite the opposition of the person in accordance with Article 68 of the Law on personal data, where treatment meets marketing purposes including commercial, or where the opposition is based on legitimate grounds, shall be punished by imprisonment of one (1) year seven (7) years and a fine of 500,000 francs to 10 million francs or the one of these two penalties.

SECTION IV : RIGHT OF RECTIFICATION AND DELETION

Article 69 : Any person proving his identity may require the data controller that are, as appropriate, rectified, completed, updated, deleted or locked the personal data relating to him which is inaccurate, incomplete, equivocal, or whose collection, use, disclosure or storage is prohibited.

When he so requests in writing, regardless of the medium, the controller must justify, without cost to the applicant, it has made the operations required under the preceding paragraph within a period of one (1) month after the registration of the request.

In case of dispute, the burden of proof is on the controller to which exercise of the right of access.

If data has been transferred to another party, the controller must perform the necessary procedures to notify him of the transactions it conducted in accordance with the first paragraph.

Article 52 Decree :

Requests for rectification, cancellation or prohibition of personal data or communication of an opposition based on the provisions of the law on personal data, shall be submitted to the same

persons mentioned in Article 48 of this Decree. Applications under this section shall be addressed to the persons concerned in accordance with Article 28 of this Decree.

Article 62 of Decree :

When a person makes an application to rectify or delete data relating to the controller or the Commission of personal data must notify in writing the arrangements.

CHAPTER V: OBLIGATIONS OF RESPONSIBLE FOR TREATMENT OF PERSONAL DATA

FIRST SECTION: DUTY OF CONFIDENTIALITY

Article 70 :

The treatment of personal data is confidential. It is performed only by persons acting under the authority of the controller and only on his instructions.

To carry out the treatment, the manager must choose people with, in terms of preserving the confidentiality of data, all warranties as technical and legal knowledge of personal integrity. E OMMITMENT written persons required to process such data to comply with this Act shall be signed.

The contract between the subcontractor to the controller includes an indication of the obligations of the subcontract for the protection of the security and confidentiality of data and provides that the subcontractor can act only on instructions from treatment.

Article 63 of Decree :

The controller of personal data ensures the confidentiality, availability and accuracy of data collected in order to guarantee the appropriate protection of data processed

SECTION II: SAFETY REQUIREMENT

Article 71:

The controller shall take all necessary precautions regarding the nature of the data and, in particular, to prevent them from being distorted, damaged, or that unauthorized parties have access. It shall, in particular, any measure to:

- 1) Ensure that the use of an automated data processing, authorized persons have access only to personal data under their jurisdiction;
- 2) Guarantee that can be verified and ascertained the identity of the third parties to whom personal data may be transmitted;

- 3) guarantee that can be checked and recorded a posteriori identity of persons having access to the information system and what data has been read or entered into the system, when and by whom ;
- 4) prevent any unauthorized person from having access to premises and equipment used for data processing;
- 5) Prevent data media from being read, copied, modified, destroyed or removed by unauthorized persons;
- 6) Prevent the unauthorized use of any data in the information system and introduction unauthorized inspection, modification or deletion of stored data;
- 7) Prevent processing systems data can be used by unauthorized persons using data communication equipment people;
- 8) Prevent, in the data communication and transport of data media, the data can be read, copied, modified or deleted in an unauthorized manner;
- 9) Safeguard data by creating backup copies of security ;
- 10) Cool and if necessary convert data for long-term storage.

Article 65 of Decree :

The controller of personal data takes security measures to protect computer systems and networks against the risks:

- 1) *Accidental or unauthorized use of personal data destruction;*
- 2) *Technical errors ;*
- 3) *Forgery, theft or misuse of personal data.*

Article 431-21 Penal Code:

Whoever undertaken or to a processing personal data without implementing the measures prescribed in article 71 of the Law on personal data above, shall be punished by imprisonment of one (1) year seven (7) years and a fine of 500,000 francs to 10 million francs or one of these penalties.

SECTION III: KEEPING REQUIREMENTS

Article 72:

The personal data may not be retained beyond the time necessary in order to be processed for historical, statistical or scientific purposes.

Article 66 of Decree :

At the expiration of the period of retention provided for treatment relating to personal data, said data must be destroyed, erased, deleted or archived as provided by the laws in force concerning archiving of administrative documents.

Article 73 :

Without the express consent of the data subject, the personal data collected by providers of certification services to the needs of the rescue and conservation certificates related to electronic signatures must be directly from the person concerned and can be processed only for the purposes for which they were collected.

SECTION IV OBLIGATION TO SUSTAINABILITY

Article 74 :

The controller shall take all appropriate measures to ensure that personal data processed can be exploited regardless of the support used. It should particularly ensure that the evolution of technology will not be an obstacle to exploitation.

CHAPTER VI : CRIMINAL PROVISIONS

Article 75 :

Infringements of the provisions of this Act are defined and punishable under the Penal Code and the Law on cybercrime.

CHAPTER VII TRANSITIONAL AND FINAL PROVISIONS

Article 76:

As a transitional measure, the data processing made on behalf of the State, a public institution, a local authority or a legal person in private law and managing a public already created services are not subject that a declaration to the Commission Personal Data in accordance with Article 18 of this Act.

Article 77:

As of the date of entry into force of this Act, all data processing shall meet the requirements thereof, within the time hereinafter :

- 1) two (2) years for data processing made on behalf of the State, a public institution, a local authority or a legal person in private law managing a public service
- 2) one (1) year for the treatment of personal data carried out on behalf of persons other than those subject to the provisions of the preceding paragraph.

Article 78 :

Due to the specificity of the material, the application of this Act to the law establishing the national identity card scanned Senegalese measures will be a special regulation.

The modalities of application of this Act shall be made by decree.

Made in Dakar, January 25, 2008

Abdoulaye WADE

By the President of the Republic

Prime Minister
Sheikh Hadjibou SOUMARE