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# CORRUPTION ASSESSMENT: SENEGAL

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# CORRUPTION ASSESSMENT: SENEGAL



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## ACRONYMS

ADC	Agence de développement communautaire (Saint Louis)
AMS	Association of Mayors of Senegal
ANCR	Association of Rural Councilors
ANE	Non-governmental Organization/ Association non-etatique
ANEC	Autonomous National Election Commission
ANEC	Autonomous National Election Commission
APCR:	Association des Presidents des Conseils Ruraux
APIX	Agence Nationale Chargée de la Promotion de l'Investissement et des Grands Travaux
APR	Association of Regional Council Presidents
ARMP	Agency for the Regulation of Public Markets
BTP	Bâtiment Travaux Public
CDSMT	Medium Term Sectoral Expense framework
CENTIF	National Centre for the Processing of Financial Information
CNCR	Conseil National de Concertation des Ruraux
CNES	Confédération Nationale des Employeurs du Sénégal
CNLCC	Commission Against Non-Transparency, Corruption and Embezzlement
CNP	National Council of Employers
CNTS	Confédération des Syndicats des Travailleurs du Sénégal
COF	Le Contrôle des Operations Financieres
CRI	Collectif des Religieux et Intellectuels
DG	Democratic Governance
DGL-Felo	USAID's Democratic Local Governance Project
ECOWAS	Economic Community for West Africa
EU	European Union
FENU	U.N Equipment Fund/ Fonds d'Equipeement des Nations Unies
GOS	Government of Senegal
IED	Innovation, Environnement et Développement
IGE	State General Inspectorate/ Inspection Général d'Etat
IGF	L'Inspection Générale des Finances
IMF/ FMI	International Monetary Fund
MSI	Management Systems International
NGO/ ANE	Non-governmental Organization
NRM / GRN	Natural Resource Management
ONEL	Observatoire national des élections
PAEL	Elected Official Support Project (Canada)

PCRBF	Projet de Coordination des Reformes Budgétaires et Financières
PCRPE	Projet de Construction et de Rehabilitation du Patrimoine Bâti de l'Etat
PDS	Senegalese Social Democratic Party
PEFA	Public Expenditure and Financial Accountability program
PEFA	Public Expenditure Financial Assessment
PETS	Public Expenditure Tracking Survey
PNBG	National Program for Good Governance/Programme National de la Bonne Gouvernance
PNDL	National Local Development Project
PNDL	National Local Development Project/Projet National du Développement Local
PS	Socialist Party (of Senegal)
PSRP	National Poverty Reduction Strategy
UAEL	Union des Associations des Elus Locaux
UNACOIS	Union Nationale des Commerçants et Industrielles du Senegal
UNDP/ PNUD	United Nations Development Program
UNESCO	United Nations Economic, Social and Cultural Organization
UNSAS	Union of Autonomous Labor Unions of Senegal
USAID	United States Agency for International Development
WAEMU	West African Economic and Monetary Union
WB	World Bank

## EXECUTIVE SUMMARY

It is widely acknowledged that a lack of transparency in public affairs and financial transactions, as well as chronic corruption plague Senegal today. These phenomena can be seen both in everyday dealings with governmental official (petty corruption) and in major national government contracts (grand corruption). Together, they increase chronic poverty and the gap between citizens and their state. In recent years, donors have stepped up the pressure for greater transparency and administrative reforms to limit this behavior and create a more favorable environment both for more efficient use of external aid and for domestic and foreign private investment. Pressure has also grown from pro-reform elements within Senegal, including an increasingly vocal civil society led by several prominent specialized non-governmental organizations that have made good financial governance and transparency their particular areas of focus.

In 2000, Senegal experienced a major regime change that ousted the incumbent president and his party and brought Abdoulaye Wade and a broad coalition of opposition parties to power. Abdoulaye Wade openly favored a more liberalized modern economy and seemed committed to rapidly modernizing the industrial sector and the bureaucracy. With regime change, there was renewed hope and high expectations that the President and the new regime would increase transparency in government operations and stamp out corruption. To a large extent, these high expectations have not been met. On one hand, the government has created new institutions to promote good governance and combat corruption – e.g. National Program for Good Governance (PNBG), the Anticorruption Commission (CNLCC) and the Good Governance Ministry), new laws to reform the public procurement process (the 2007 Code de Passation des Marchés Publiques), and has promised to institute a more thorough and independent internal auditing process through the General State Inspectorate and the Cour des Comptes. While some of these reforms have been in place for several years, they have yet to produce solid results. For others, it is too early to form a judgment. It is clear, however, that Presidential authority may limit the effectiveness of these procedures until a serious effort is made to allow them to operate transparently and effectively.

Meanwhile, although several indicators show that public perceptions of corruption have improved slightly in recent years, surveys of public opinion continue to show that corruption remains a major occurrence. Many Senegalese still tolerate different forms of corruption as a routine way of doing business.

Senegal is a country in which significant democratic rights have developed and are exercised, and in which citizens report high levels of satisfaction with the way democracy is working. At the same time, one finds an extreme concentration of power in the executive branch and in the person of the current President. This pattern has emerged after a movement towards a more decentralized or pluralist set of institutional arrangements led to a major regime change. An extensive analysis of the legal and institutional arrangements in Senegal today reveals that many good laws and institutions are in place, but many suffer from serious gaps and limitations, are heavily oriented toward maintaining executive power, offer few checks on abuse of executive power and have few provisions for ensuring the autonomy of regulatory institutions. Moreover, the type of liberalization that the Senegalese economy has experienced is far from being a liberal economy. The State still controls most of the formal economy and increasingly conducts its operations through semi-autonomous “agencies” that are formally outside direct government control and regulation. The combination of these developments has produced an environment in which certain types of non-transparency and corruption still flourish.

The current assessment seeks to identify the major issues and corruption vulnerabilities within the government as a whole. It also looks at corruption vulnerabilities within specific sectors and functions of government and non-state actors and offers a strategic vision of how to deal with these governance issues. It then formulates a set of programmatic options which USAID might consider in developing its own approach to reducing corruption in Senegal, and some guidance as to how to prioritize the choice and combination of these programs to constitute a coherent strategic approach with some prospect of making a difference.

### **Why is There Corruption in Senegal?**

There are a number of factors that facilitate non-transparent and corrupt governance practices in Senegal. These include:

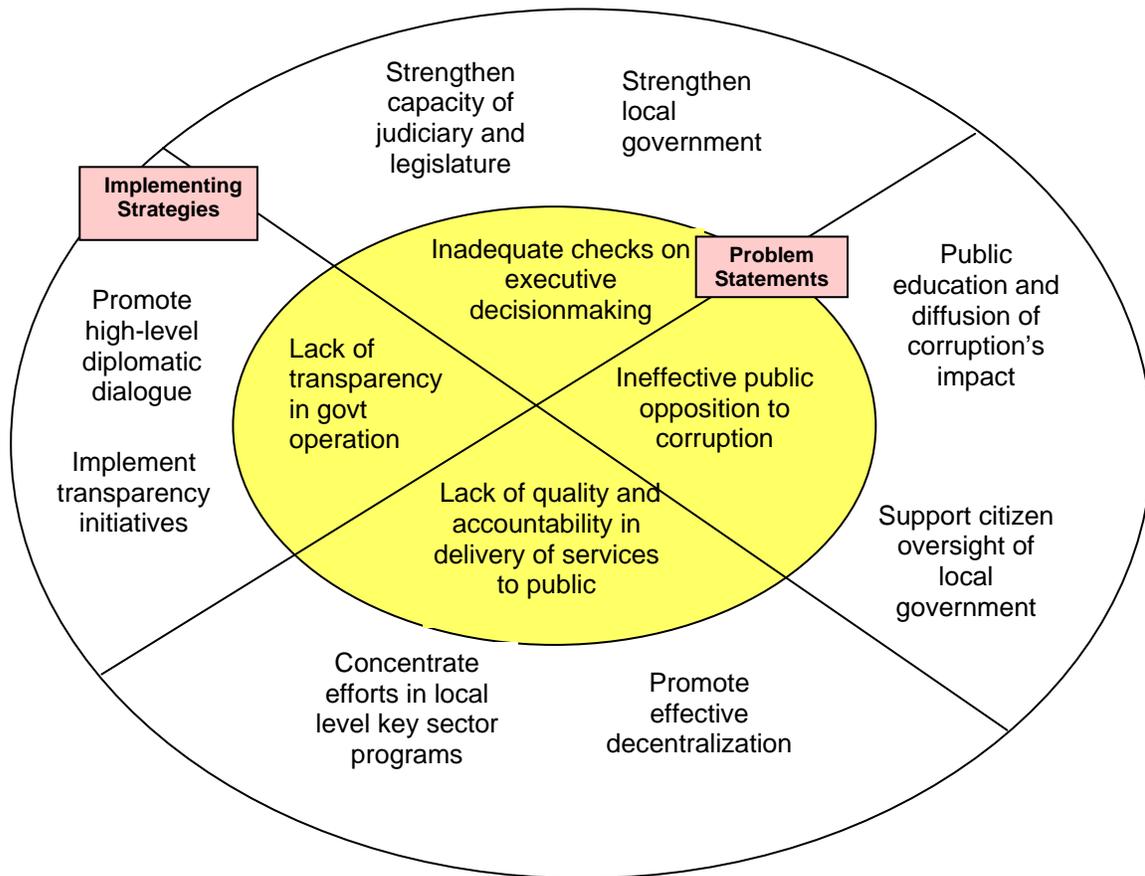
- Lack of sufficient regard for the law and inadequate application of existing laws
- The politicization of the State bureaucracy and its inability to effectively deliver basic public services
- Weak accountability mechanisms
- Limited transparency and access to governmental information
- Resistance to decentralization
- The limited scope and capacity of civil society organizations involved in anticorruption activities
- Widespread public tolerance and acceptance of corruption based on cultural and social norms and traditions.

Based on an analysis of Senegal's political, institutional, legal and cultural context, the report identifies four major, overarching problems that need to be addressed to significantly improve governance and reduce corrupt behavior:

1. Inadequate checks on executive decision-making resulting from the pattern of extreme concentration of power in the presidency
2. The lack of transparency in government operations and lack of autonomy of control and regulatory institutions charged with monitoring public expenditures
3. Lack of service orientation in delivery of services to the public
4. Inadequate and ineffective public opposition to corruption.

The analysis also suggests what the strategic options might be for reducing corruption given this particular set of problems. The figure below summarizes Senegal's main corruption problems and the implementing strategies needed to address them. The most important questions that it poses are:

- What are the most promising options given this context?
- How can these options be strengthened and made more effective?
- How are these options linked in a strategy that together might be capable of addressing Senegal's corruption conditions?



### Corruption in Sectors and Cross-Cutting Governmental Functions

The study then turns to an analysis of several key sectors in which the State operates: local government, private sector, health, justice, and natural resources, and it examines cross-cutting governmental functions such as the control of public expenditure and the procedures for public procurement. The purpose of this analysis is to identify where the most serious vulnerabilities to corruption lie and what opportunities may exist to reduce these vulnerabilities. Basic conclusions in each of these areas are summarized below:

**Judicial Sector.** Key activities should include strengthening the independence of the judiciary, reform and simplification of the penal code, development of a code of ethics for judges and prosecutors, and design of a witness and whistleblower protection program.

**Health Sector.** Emphasis should be put on improving the monitoring of fees and expenses in local health posts and greater involvement of civil society in health center and post administration. In addition, health professionals need a code of ethics and stricter penalties for corruption.

**Education Sector.** It is important to support citizen oversight of the education budget and of school management at the local level, improvements in the status and salaries of teachers, and school partnerships to monitor the use of public resources.

Local Government. Efforts should be made to strengthen participatory planning and budgeting, training of local elected officials and civil society members in budget monitoring, and the integration of citizens' committees into the local government structure.

Natural Resource Management. Strengthen community management of resources through local government. Broaden consultations on environmental policy to include civil society. Help establish co-management partnerships between the State, civil society and business, and local government.

Public Finance. Establish a legal framework for the semi-autonomous agencies. Establish improved systems of control for public expenditures not currently covered. Strengthen institutions of financial control. Reinforce the capability of the Public Market Regulatory Agency.

### **Options for Reducing Corruption in Senegal**

The analysis of corruption in key sectors and functions points to the development of a set of reform options. Each of these options is linked to one or more of the core problems identified above. These are:

- **Core Problem: Inadequate Checks on Executive Decisionmaking**
  - Strengthen capacities of local government to more effectively participate in controlling of resources
  - Mainstream good governance programs in different sectors (health, education, NRM) so that they become part of community-wide participation in financial management and control
- **Core Problem: Lack of Transparency in Government Operations**
  - Support the Anticorruption Commission (CLNCC) to educate the public about public expenditures
  - Create an independent watchdog center to monitor public contracts and publicize their findings
  - Initiate and sustain on-going policy dialogue at the highest level concerning lack of transparency, private sector rules, taxation policies, and development of independent and functioning regulatory and auditing agencies
- **Core Problem: Lack of Service Orientation in the Delivery of Public Services (Health, Education, Forestry and Water)**
  - Support the involvement of government officials and employees in workshops to discuss the costs to the public and the nation resulting from petty and grand corruption and to promote professionalism and professional ethics.
- **Core Problem: Ineffective Public Opposition to Corruption**
  - Develop a culturally-relevant concept and approach to understanding and resisting corruption
  - Support civil society's capacity to produce studies and collect data that can be used to generate discussions in various fora. Involve media and the university community in these discussions to advocate for better control of public expenditures

### **What Should USAID Do?**

USAID has engaged in a number of programs to improve governance in Senegal through its prior Democratic Governance Strategic Objective, and through its other sectoral objectives in Education, Health, Natural Resource Management, and Economic Growth. These have taken the form of technical assistance to the Cour des Comptes, to the budgetary process of the Ministry of Finance and Economy, and the reform of laws governing private sector enterprises and partnerships. USAID has promoted citizen participation and strengthening local level governance through its local governance support project (DGL-Felo) and incorporated good governance practices and training in its service delivery programs in

health, education and forestry that have emphasized planning and citizen participation. It has also engaged in a high level policy dialogue with the Senegalese government both alone and in conjunction with other donors. How should USAID now prioritize its contributions to resolve the problem of corruption and reduce its impact on growth and poverty reduction in Senegal?

The study suggests that given the limited resources likely to be available, USAID needs to prioritize its efforts based on the following principles:

- Focus on program options that clearly relate to one or more of the core problems
- Select an approach that is context-specific (deal with the current and near-term character of the patterns of decision-making and corruption)
- Choose options that are logically linked to one another because they offer the possibility of addressing issues at different levels or sectors that are interlinked
- Incorporate options that are based on “best practices” – approaches that have already been shown to produce some positive effect in the Senegalese context
- Choose options that can build on and are compatible with the major existing concerns of donors and of the GOS as expressed in the Accelerated Economic Growth Strategy, the National Poverty Reduction Strategy (PSRP-2), and the Program for Local Development (PNDL)
- Choose programs that work with state, non-state, and external stakeholders who demonstrate the political will and interest in supporting reform.

On the basis of these criteria, the study proposes that USAID concentrate its anticorruption program on:

1. Strengthening local governance through the development of culturally relevant concepts and tools
2. Mainstreaming transparency and corruption control into its existing sectoral programs by adopting a more community-wide (*cadre de concertation*) approach to addressing specific problems like forestry management, school maintenance and management, and health center management, thus adding value to existing governance aspects of these programs
3. Strengthening citizen demand for better governance, a more plural and balanced state decision-making process, and transparency and corruption control through a grant program to develop data, impact analysis, cost analysis on state financial expenditures and public market procurement. Also, involved would be grants to widely diffuse the findings of these studies and the sponsorship of a series of debates and workshops at the national, regional and community local government levels.
4. Improving the quality of governmental services by assisting with the re-professionalization of civil servants involved in service delivery. This would be done in two ways: by involving them in workshops and debates on the transparency and corruption problems identified and documented in the studies (see 3 above); and by assisting in the development of ethical and professional codes and the commitment of groups of government workers to maintain these norms.
5. Support the government’s anti corruption program by involving the National Anticorruption Commission where possible in the public dissemination of these studies and in subsequent debates and workshops
6. Support greater transparency in public market allocation through one or more of the following mechanisms:
  - Support and monitor the work of the tripartite Agency for the Regulation of Public Markets (ARMP);

- Support the establishment of a politically and economically autonomous watchdog center for the tracking of public contracts at various levels;
  - Support the proposed electronic database project and website to track public market contracts.
7. Continuing the high level policy dialogue with regard to transparency in budgeting and procurement and in laws, rules and tax structures governing state and private sector business.

# 1. INTRODUCTION

At the request of USAID/Senegal, Management Systems International (MSI) fielded an expert team to conduct a corruption assessment in Senegal with a goal of assisting the USAID Mission in formulating a new strategic approach to dealing with the lack of transparency and the prevalence of corruption in Senegal today. Following the methods developed in the *Corruption Assessment Handbook*,<sup>1</sup> a four-person team conducted the study, which included field work in Dakar and a number of other sites in Senegal between 24 June and 19 July 2007. The team consisted of Robert Charlick and Sheldon Gellar, both political scientists with long experience in francophone West Africa, joined by Abdou Salam Fall, a sociologist and researcher at IFAN and Sémou Ndiaye, a law professor at Cheikh Anta Diop University Dakar. During this period, the team gathered documents, conducted a series of interviews with experts on corruption in Senegal, conducted group meetings and interviews with a wide variety of Senegalese and representatives of the international donor community in Senegal, and conducted brief field visits to five sites (Goreé, St Louis and the rural communes of Gandon and Mpal, Fissel, a rural commune in Fatick region, and Grand Yoff and Yeumbeul Sud, urban communes in Dakar and Pikine, respectively).

The team prioritized key governmental sectors and functions for further investigation and detailed the types and prevalence of corruption, as well as possible options for addressing them, in each of these sectors. Finally, integrating all of this material, the team developed a proposed strategic direction for USAID/Senegal to consider in defining its objectives and approaches to dealing with governance and corruption issues in Senegal in its next planning cycle.

The report which follows provides background information that helps situate the issue of corruption in Senegal within a specific political and legal institutional framework. Within this context, corruption appears throughout the Senegalese political system and economy. The report discusses the evolution of anticorruption laws, institutions and programs and explains why to date they have had such little effectiveness. It identifies a series of root causes of corruption that foster and propagate this form of governance behavior in every sector and function of government. The analysis leads to the identification of four major problems in governance all of which fuel corruption at various levels (petty or grand). These problems are further explored in various sectors including Justice, Health, Education, Local Government, Natural Resource Management, Private Sector Growth, Public Procurement, and Public Expenditures where not only are vulnerabilities to corruption identified, but potentially promising ways to deal with it are reviewed. The report examines these potentially useful approaches and develops a set of programmatic options that are specific to the Senegalese case. It then provides guidance as to how USAID can focus its resources on several of these options to maximize its impact as a pro-reform force. We call this strategy, “Building for the Future,” because changing poor governance practices and corrupt behavior in Senegal is going to be a long-term proposition that must build on people’s experience and participation in managing public affairs and shifting the attitudes of citizens and government officials and employees that may accompany this process.

The team would like to extend its thanks to USAID/Senegal, particularly to Abdoul Wahab Ba and Kathryn Lane (DG) and to all of USAID/Senegal’s sector team leaders and to a number of their implementing partners working in various sectors.

The content and conclusions of this report are the authors and do not necessarily reflect the policies or opinions of the United States Agency for International Development (USAID).

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<sup>1</sup> Management Systems International, *Corruption Assessment Handbook-Final Report*. Washington, DC, May 8, 2006

## 2. OVERVIEW OF CORRUPTION IN SENEGAL

The election of a new government and leader (Abdoulaye Wade and the PDS) in 2000 brought with it fresh hope for better governance in Senegal. Every major candidate and party ran on a platform promising to fight grand corruption and to enhance transparency and good governance practices.<sup>2</sup> Following Wade's election, a number of laws were passed and institutions created, such as the Ministry for Good Governance, the National Program for Good Governance (PNBG), and the Commission Against Non-Transparency and Corruption (CNLCC), designed to promote good governance and attack corruption.

Despite this hopeful beginning, the incidence and impact of corruption has remained substantial and may even have grown since the regime change in 2000. Although the degree of corruption is extremely difficult to measure precisely, there is a widely shared perception as reported in interviews with donors, non-governmental actors and even in some government circles, that corruption is widely prevalent. This broad consensus concerning the prevalence of corruption in Senegal is based not only on popular perceptions and experiences reported in recent studies and surveys<sup>3</sup> but is confirmed by a variety of expert observers including those contributing to the World Bank Institute's Control of Corruption index

Although the World Bank's Control of Corruption Index has in fact shown some improvement in this measure of governance over the past nine years, this may not indicate real improvement across the board. These improved scores may be primarily responsive to the establishment of laws and new institutions which, as we shall see below, have either not entered into force or are very weakly implemented.

Senegalese respondents indicate that they encounter administrative corruption on a daily basis in their dealings with routine government services such as the police, the courts, the land titling agency, as well as service delivery agencies such as the Ministries of Health, Education, and Water and Forestry. For many, including the media and the educated elite, the most disturbing form of corruption and mismanagement is "grand corruption" often reported in the media to involve the use of State funds and foreign loans in government contracting, particularly in large public works projects.

This study attempts to address the question why corruption is so widespread and what can be done about it by the Government of Senegal (GOS) with the assistance of donors including USAID. Applying the methodology developed by MSI in the *Corruption Assessment Handbook* (2006), this report addresses the nature of corruption in Senegal in two ways. First, it examines the overall pattern of governance behavior of which corruption is a major dimension. This will be analyzed both in terms of the overall political and economic situation in Senegal today and an analysis of the laws and institutions in place to limit and combat corruption, leading to a corruption characterization that best fits the case of Senegal.<sup>4</sup> Second, it explores the deeper causes of various kinds of corruption in Senegal that may well derive from the specific context, thus offering reformers a basis to better target their efforts and more realistically assess their prospects for success.

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<sup>2</sup> Mamadou Jean-Charles Tall, "Les Chantiers de Thies, Prétextes à une réflexion sur les marchés publics," in Forum Civil, Bonne Gouvernance et Refondation de l'Etat, Les Cahiers du Forum, n.d.

<sup>3</sup> Blundo, Georges, et Oliver de Sardan. La corruption au quotidien en Afrique de l'Ouest : Approche socio anthropologique comparative : Benin, Niger et Sénégal. Rapport final. Brussels and Geneva : Commission des Communautés européennes et la Direction du développement et de la Coopération Suisse, Octobre, 2001, Cabinet ORGATECH (Dakar). « Enquête sur les Manifestations de la Corruption au Sénégal : Enquête aux Près des Entreprises ». Dakar: Forum Civil, 2001.

<sup>4</sup> Michael Johnston. *Syndromes of Corruption*. New York: Cambridge University Press, 2005.

## SENEGAL –THE BROAD POLITICAL AND ECONOMIC CONTEXT

### The Emergence of a More Pluralist and Balanced State

During the last two decades of the past century, Senegal steadily moved towards a more pluralistic society with the decline of the one-party state and the rise of more autonomous decision-making centers not directly attached to the state or the party in power. Structural adjustment programs coupled with political liberalization measures created public space for nongovernmental institutions and groups to emerge that took a more independent and often critical stance towards government. More competitive political parties, private sector business associations, private independent media, and urban civil society organizations emerged that increasingly criticized corruption and the lack of transparency in government operations.

During the 1990s, the electoral process became increasingly transparent as the government adopted an electoral code acceptable to opposition parties and created an electoral commission (ONEL) that won praise for its objectivity in supervising elections. At the same time, opposition strength grew in the National Assembly while some opposition parties entered the government for the first time. Independent print and radio media became a force to reckon with as a watchdog over electoral processes and critic of government policies while the opposition was granted greater access to state media. Independent trade unions (UNSAS), business associations (CNP, CNES, and UNACOIS), and rural producer organizations (CNCR) also became more active during this period and engaged the government in dialogue.

While the presidency remained the dominant institution, it was clear that Senegal was moving away from the highly centralized presidential regime and one-party dominance characteristic of the first decades of independence. The 1996 decentralization code freed local government from state tutelage and gave elected officials rather than representatives of the administration direct control and responsibility for elaborating and executing budgets. By the end of the 1990s, the opposition was demanding constitutional reforms that called for reducing the powers of the president, strengthening the powers of the prime minister and the National Assembly, and affirming the independence of the judiciary branch of government. By 2000, the regime itself was seriously considering initiating reforms to reduce the powers of the presidency.

The growing institutional pluralism of the Senegalese political system reflected a strong trend towards greater democratization and political and economic decentralization which included more and regular consultation between the state and other sectors of society in negotiating political and economic reforms and policies. The various reforms described above also set the stage for the historic regime shift which took place during the 2000 presidential elections when Abdoulaye Wade defeated Abdou Diouf, the incumbent president, in fair and open elections and assumed power through the ballot box.

### Trends towards Reinforcing and Concentrating Presidential Power

Although Wade and his coalition partners ran on a platform calling for reduction of presidential powers and strengthening Parliament and the Judiciary, the 2001 Constitution actually reinforced presidential power. The departure of Moustapha Niassé, Wade's first Prime Minister, weakened the office of the prime minister while the 2002 national legislative elections provided Wade with a huge majority in the National Assembly and reduced its capacity to serve as a counterweight to presidential power.

The election of President Wade in 2000 marked a sharp shift in governance styles. Wade's predecessor had risen to power as a technocrat and sought to improve the efficiency of the state bureaucracy. He also was cautious in initiating and implementing reforms. Wade, on the other hand, distrusted the state bureaucracy which he regarded as a tool of the old regime. As a populist charismatic leader with a strong

sense of mission and a product of Jacobin political traditions, Wade strove to strengthen and personalize the power of the presidency and exercise greater control over state institutions. To achieve these goals, he created a series of new agencies and institutions directly under the control of the presidency or accountable to him. As he did so, he broke with the logic of pluralist and institutional pluralism or horizontality and weakened the efficiency of the state bureaucracy by constantly changing ministers, naming political appointees with little experience, and hesitating to delegate power to ministers and other officials to implement policies.

Wade's style of governance and populism has weakened external and institutional checks on his power. In gaining financial support from Middle Eastern countries and China, he has managed to reduce the influence of the international donor community in pushing political and economic reforms. He has also used his legitimacy and personal authority to sidestep or override conventional norms for conducting state business and to intimidate other sources of potential power in the system.

Neither the media nor civil society, more broadly, has been able to effectively check this movement toward increasingly personal power. Meaningful popular participation seems less present in governmental decision making. Instead, the image now is of a regime led by a strong leader who demands personal loyalty from government officials and political allies while seeking to buy support through personal generosity and government funding. Although responsive to public opinion, the Wade regime seems increasingly less interested in consulting with the political opposition, private sector, and civil society organizations concerning new policies and reforms

## UNDERSTANDING THE POLITICAL-ECONOMIC CONTEXT OF SENEGAL

The corruption literature strongly suggests that policymakers need to analyze the political-economic dynamics of a country to develop effective and well-targeted remedies that address the underlying causes of the problem, not just treat its symptoms. USAID's corruption assessment methodology provides several approaches to do this. Using the analysis of Senegal's political-economic evolution outlined above, Senegal can be described as a mixture of two types described by Johnston's corruption typology.<sup>5</sup> The first type is characterized by the transitional and perhaps cyclical nature exhibited by the regime since the 1990s and through the early 2000s: Senegal has clearly moved over the years from a more closed and authoritarian (hierarchical or vertical) regime to a more open and democratic regime, thanks to a wide range of political and economic liberalization measures. It still exhibits characteristics of the pluralism that made the alternation of power at the top possible.

At the same time, Senegal shows strong elements of a second type, described in terms of centralizing trends and personalization of decision making that has become increasingly prevalent since the early 2000s. Characteristics of the emerging regime that fit this second type are:

- The increasing domination of the regime by a single figure—the President who is recognized as both the initiator of policy and its final arbitrator.
- The hierarchical nature of decision making expressed through the combination of control over initiatives and decisions. This type of governance reinforces the powers of the executive over the legislative, leaving only marginal room for social mediation by institutions like the Council of the Republic.
- The extension of executive power over institutions that previously had some characteristics of pluralism, such as the ANEC and HCA. These institutions as a consequence have lost a lot of their visibility and credibility.

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<sup>5</sup> Johnston, 2005, op cit.

- The consolidation of power by a single party (the PDS) which now has control over parliament and most local government institutions.
- The dominance of the President simultaneously over both the ruling party and the State leaving him in a position to alter and rearrange institutions and to appoint and dismiss leaders as he sees fit with little open discussion or debate.

Some of these characteristics reflect leadership style of a very dynamic and popular leader who often acts as though he was the sole force capable of rapidly energizing a weak and unresponsive state bureaucracy and modernizing at least some sectors of the economy. Others derive from contemporary constitutional law and French centralization models inherited from the colonial era that support concentration of power in the executive branch of government. Certainly the Constitution of January 2001 accords the President an extraordinary legal capacity to accumulate power (see “Policy and Legal Framework” section below). Moreover, cultural patterns of power incorporating the personalization and concentration of power in the ruler or superior have not given way completely to more pluralist Western notions of democracy.<sup>6</sup>

On the other hand, Senegal retains many of the characteristics of newly democratic regimes, and its people appear to be highly supportive of how its democratic system is working.<sup>7</sup> The current President himself came to power through open competitive elections in 2000 which ousted the party that had been in power since independence. Political competition has remained vigorous. The 2007 presidential elections were very competitive and the result hotly contested by the opposition, although they were marked by relatively little political violence. The President’s personal popularity and populist style, effective use of clientelism, and the fragmented nature of the political opposition, rather than repression and massive electoral fraud seem to have accounted for his victory. Although in decline, the political opposition has demonstrated some strength in mounting a relatively successful boycott campaign during the June 3, 2007 legislative elections. The low turnout pointed to limited public interest in parliamentary elections and growing dissatisfaction of many Senegalese citizens with the regime.

Civil society is much more developed and tolerated than what might be expected in a highly centralized and personalized regime. Freedom of association, expression, and the press is still strong in Senegal. The government does not repress trade unions but seeks to control them through cooptation and patronage. Civil society organizations and the media have been free to openly criticize the regime. In some instances, public opinion and effective lobbying by civil society organizations have obliged the president to limit or reverse unpopular policies, practices and abuse of power. Despite some incidences of intimidation, the press has continued to express a variety of opinions and to inform the public about corruption and misuses and abuses of government power.

An analysis of the legal-institutional structure of Senegal (see next section and Annex 4 below) reveals that many of the legal safeguards for both democratic governance and good governance, defined in terms of well managed, transparent and accountable systems, are in place but are limited in various ways and may not be implemented adequately or impartially.

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<sup>6</sup> See Annex 5 for a perspective on how traditional norms have been adapted to a new context and therefore distorted and manipulated from their original intent.

<sup>7</sup> Lydia Polgreen and Marjorie Connelly, “Poll Shows Africans Wary, but Hopeful about Future,” *New York Times*, July 25, 2007, p. A6. According to the Pew Global Attitudes/New York Times Survey Senegalese express the highest level of satisfaction of the ten African countries polled “with the way democracy is working in (their) country” with 72% stating that they are “somewhat satisfied” or “very satisfied.”

## THE NATURE OF CORRUPTION IN A REGIME IN TRANSITION

The key question in describing the current regime and understanding the patterns of corruption associated with it is related to whether and to what degree the Senegalese people have opted or will opt for a return to the emerging pluralism of the late 1990s in which they had an increasing role in controlling symbolic, economic, political and social resources.

Some analysts see the current governance pattern as transitional while others regard current governance trends as a radical break from the emerging pluralism that will, if unchecked, establish an enduring pattern that will compromise democratic reform. Still others see it in terms of cycles, swinging from an emphasis on one governing tendency (pluralism) to another (power concentration). Clearly some new patterns have replaced the institutional pluralism and power-sharing that had begun to emerge. Those markers can be summed up by the affirmation of a spirit of guardianship embodied in a populist President who claims leadership gifts that will enable him to demonstrate visible achievements that reinforce his claims to legitimacy

Although Senegal is nominally a rapidly liberalizing economy, in practice the uncertainty of application of rules and judicial processes make its degree of economic liberalization problematic rendering it less than an attractive environment for both foreign and domestic investment. Rules and institutions promoting a market economy are limited and their application is weak and subject to partisan considerations. The creation of a series of para-statal agencies directly accountable to the President reflects how public enterprise and financial control is managed largely outside other governmental instruments of potential control. Some observers note that despite the regime's ideological commitment to economic liberalism, state intervention in major sectors of the economy remains strong and subjected to considerable personal control. Other economic actors call for more regulation in order to create a more level and favorable playing field. In addition, the economic conjuncture is not favorable with growing economic inequality, persistence of poverty, rising government and trade deficits, key sectors of the economy in difficulty, and a possible decline in economic growth rates.

### Describing Characteristic Corruption in Senegal

Specific cases of corruption are difficult to prove, particularly in a context of weak institutional control and judicial ineffectiveness. This report makes no attempt to document or provide evidence demonstrating the reality of official corruption in Senegal. Instead, it bases its conclusions on perceptions of experts we consulted, on public opinion surveys (Blundo, 2001, ORGATECH, 2001, Afrobarometer, 2005), and the views expressed by a wide variety of Senegalese who participated in workshops such as those run by the World Bank in Senegal during 2006-2007.<sup>8</sup> These sources consistently identified a number of forms of corruption that they perceived as being characteristic of those taking place in Senegal today.

At the national level, competition for political power and capture of the state is intense and the stakes are high. Corruption not only involves personal enrichment and the enrichment of family and loyal supporters and clients, but the generation of resources to win and maintain power. A major battlefield is the national elections, particularly the Presidential election where contenders need significant resources to attract and keep supporters. Grand corruption involving the allocation of state resources and the awarding of contracts particularly in the sector of public works construction serves to fuel political competition and potential domination. This corruption involves clan leaders, religious leaders (marabouts), government

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<sup>8</sup> The World Bank, Strengthening World Bank Group Engagement on Governance and Anticorruption- Consultation Feedback, Senegal December 12 & 22, 2006, January 12, 15, 23, 24, 2007. and Amdemba Ndiaye, "Comment s'assurer que l'argent arrive chez le bénéficiaire sénégalais," Les Echos de la Banque mondiale, 7, Mars 2007.

officials, and entrepreneurs who are vital parts of the political machine. The dominant form of linkage between the state and the population in this neo-patrimonial system is based on personal relationships through which resources and privileges flow from person to person rather than from state to citizen or community. As predicted by Johnston's corruption clusters, grand corruption in Senegal is thought to be growing in the fastest liberalizing sectors of the economy, such as the mining and construction sectors. Increasingly, there is the perception that corruption is taking the form of personal stakes in extractive industries and land ownership.

Secondary forms of corruption involve officials at all levels who are able to use their discretion and the slow and awkward functioning of the bureaucracy, particularly public service delivery and access to courts, to generate additional income. Since lower level officials are not well paid, they see these forms of administrative corruption as routine supplements to their income while victims often see these payments as conveniences to facilitate favorable decisions and to avoid onerous expenses, such as the repair of vehicles that could not otherwise pass inspections. These forms of corruption are common to both of the corruption clusters in which Senegal falls. They are important as they help undermine confidence in the regime and in the public's mind help maintain the sense of separation of the state from its citizenry.

Opposition to corruption in Senegal has been growing but has not been very effective. At the elite level, the effort to reduce corruption has been increasingly vocal, particular with the public presentations and discussions of studies by the Forum Civil. Although public expression of opposition to corruption is growing on the part of the business community, Senegalese firms remain heavily dependent upon the state for contracts and business opportunities, a situation which creates the conditions for corruption. At the mass level, opposition to corruption is weak and disorganized. Public opinion polls reveal that the people are quite tolerant of corruption and accept it more or less as part of doing business with the state, although they also see it as part of a system of governance removed from their interests and control. This may be due in part to cultural factors that will be discussed below in the consideration of root causes of corruption.

## **CORRUPTION VULNERABILITIES IN THIS REGIME**

What is clear is that today the dominant observable patterns of governance having strong implications for corruption vulnerabilities in Senegal include the following:

- Greater personalization and concentration of power in the presidency and the president's inner circle, and the use and control of the instruments of the state to consolidate the power of the president and those close to him, leading to the prevalence of grand corruption that benefit top leadership and its kin and allies.
- Personal loyalties dominate over loyalties to the state, political organizations or the economy leading to misallocation of public resources to build and maintain patron-client networks all through the system.
- Increased movement toward the use and exercise of power to achieve personal wealth replaces public interest with material private interest.
- The weakening of parliamentary and the judiciary as checks on the power of the president, reduces any real limits on top executive corruption.
- Frequent changes in the top governmental team and rapid rotation of people at the top of public institutions reduce the probability of professionalism in providing services and limits institutional checks on corrupt top level decisions.
- Lack of credibility of the bureaucracy, courts and police reduces the deterrent effects of law enforcement.

- Legal threats against opponents of the regime reduce the prospect of effective political and civil society checks on the executive.
- Lack of transparency in the management of public expenditures resulting in frequent scandals leads to alienation from the state and cynicism about its probity.
- An increasingly partisan press reduces the credibility and effectiveness of civil society’s protests against corruption.
- The increasing use of para-statal agencies tending to create a set of organizations parallel to the state and the awarding of public sector contracts on a non-competitive bases (gré à gré) reduces the effectiveness of public financial management institutions and increases cynicism about state procurement.

These observations, validated through interviews with a large number of informed Senegalese, correspond closely with one of the typical patterns of corruption described in Johnston’s typology.

### 3. POLICY AND LEGAL FRAMEWORK<sup>9</sup>

#### THE CONSTITUTIONAL FRAMEWORK

In describing the legal-institutional context in which corruption is manifest in Senegal today, it is important to note that the current constitution (January 2001) provides an extraordinary amount of power to the President, particularly if his party dominates both the Presidency and the Legislature. Under this constitution, the President has such extensive powers as the exclusive right to name all civil and military personnel, members of his government including the Prime Minister and members of “independent” administrative authorities. He has the formal power to dissolve parliament and he can informally dominate it as head of the Party to instruct top parliamentary leaders as to the roles he wants them to play in the new parliament. He can name 65 of the 100 members of the second house, the Senate. He presides over the Supreme Council of Judges (Conseil Supérieur de la Magistrature) which appoints all judges and has vital influence over their careers. Through his influence over the Minister of Justice and thus indirectly over the Prosecutor, he can influence the initiation or lack of initiation of judicial proceedings. Under Article 52, he can even evoke “exceptional” virtually dictatorial powers after declaring a “state of emergency.” These powers confer on the President not only an exceptional amount of legal authority, but the principal responsibility to combat corruption.

#### THE LEGAL FRAMEWORK FOR ANTICORRUPTION

Although laws are not always the best indicators of modal behavior, particularly in a transitional regime, it is important to understand what laws are on the books and how they relate in actuality to the struggle to control and reduce lack of transparency and corrupt behavior. Table 1 reveals that while there is a substantial body of law designed to deal with various aspects of official corruption these laws often have serious deficiencies or are only weakly implemented.

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<sup>9</sup> See Annex 4 for a more detailed analysis of the legal and institutional framework

**TABLE 1. THE LEGAL FRAMEWORK FOR ANTICORRUPTION**

<b>Indicator</b>	<b>Expert Evaluation of Existence of Provisions</b>	<b>Legal Analysis</b>	<b>Expert Evaluation of Actual Implementation and Effectiveness</b>
<b>Laws Empowering Investigation</b>	yes	Few agencies have an autonomous power of investigation or can initiate them on their own	Very ineffective
<b>Laws regulating gifts and hospitality</b>	No		Not at all
<b>Law regulating prosecution of corruption</b>	Yes	Law provides for harsh penalties to both parties, but is rarely applied	Weakly enforced
<b>Law Against Illicit Enrichment</b>	Yes	Not enforceable and eventually withdrawn. Provisions to seize assets illegally acquired has been thwarted by transfer of assets abroad	Non-existent
<b>Laws that Govern Public Contract Approval (see Section 6 below) Can Ministers exercise final decision on ordinary contracts?</b>	Yes	Limited only by National Committee for the Administration (CNCA) which has only advisory power. If over 200 million cfa Prime Minister must approve	Weak control
<b>Rules require competitive bidding on all major contracts</b>	Partially, Under 15 million CFA can be by mutual agreement (gré à gré)  2007 law theoretically eliminates exceptions and provides for a regulatory mechanism (ARMP)	Under 2002 law there were many exceptions and in general awards are not publicly available. It is estimated (IMF) that up to 93% of contracts were awarded on a non-competitive basis	Very weak  Too early to tell how effective it will be
<b>Laws that Prohibit Money Laundering</b>	Yes	Will depend on the functioning of the National Center for the Processing of Financial Information (CENTIF) which has yet to deal with concrete cases. May also come under the influence of the Minister of Finance	Very weak

<b>Indicator</b>	<b>Expert Evaluation of Existence of Provisions</b>	<b>Legal Analysis</b>	<b>Expert Evaluation of Actual Implementation and Effectiveness</b>
<b>Laws that Protect Witnesses and Whistleblowers</b>	no		
<b>Laws that define conflict of interest for public officials</b>	yes	In practice conflicts of interest are common and are not sanctioned. Often avoided through involvement in proxy companies or through third parties.	Somewhat –very weak
<b>Laws for Disclosure of Assets</b>	yes	Only the President and members of Cour des Comptes are required to declare. For the President the law is unclear and no sanctions are provided.	Somewhat, weak
<b>Laws that establish ethics standards of public officials</b>	No	Civil service jobs are highly politicized and professional conduct is not punished creating a culture of impunity	Non-existent
<b>Laws that Protect People who Report corruption</b>	No		Non-existent
<b>Laws Limiting Political Party Funding</b>	Yes, 1981 law	During the election cycles parties clearly obtain funding outside the law, including from abroad with no audits or sanctions. Donations are not made public	Ineffective

## **INSTITUTIONAL FRAMEWORK**

Institutions are important both in the way they structure incentives and in the way they reflect power realities. Table 2 below demonstrates that most of the institutions that might counter the power of the executive branch cannot in fact do so because of the way authority is structured and because of practices that minimize their ability to impact policy and pursue violators.

**TABLE 2. THE INSTITUTIONAL FRAMEWORK**

<b>Indicator</b>	<b>Expert Evaluation of Existence of Institution</b>	<b>Legal Analysis</b>	<b>Expert Evaluation of Actual Implementation and Effectiveness</b>
<b>Parliament Acts as Check on Executive Budget Expenditures</b> (see Section VI below)	Yes, legislature is required to approve budget annually	In fact this decision only comes after the fact. No budget reconciliation law has been passed in seven years .  Legislature lacks technical competence to perform this task  In fact President can get funds without any limitation	Non-existent
<b>IGF- General Inspection of Finance (Ministry of Economy and Finance)</b>	Yes	No autonomy from Ministry. Reports are not public	Very limited
<b>COF- Financial Control Mechanism (President's Office)</b>	Yes	No autonomy, no authority over National Assembly expenditures	Very limited
<b>Agency for Control of Financial Operations</b>	Yes		
<b>Conflict of Interest Laws for Members of Parliament</b>	No		Non-existent
<b>Independent Judiciary (see section 6 below)</b>	In theory	The President can exert strong influence over the Magistracy High Council that controls judges careers	Weak
<b>Judicial Review of Administrative Decisions</b>	Yes	May be heard in regional Tribunals. Many such cases	somewhat
<b>Corrupt Judges Prosecuted</b>	Yes	Penal code applies to them but only one judge has ever been dismissed, and two warned	Very weak

<b>Independent Electoral Commission</b>	Yes	ANEC supervises elections under authority of the Ministry of Interior. It is nominally independent of Political Parties	somewhat
<b>Cour des Comptes</b>	Yes	Hampered by limited material and human resources, and questionable independence under the Ministry of Finance. Weak sanctions for violations.	Very limited

**TABLE 3. ANTICORRUPTION INSTITUTIONS AND PROGRAMS**

<b>Indicator</b>	<b>Expert Evaluation of Existence of Institution/Program</b>	<b>Legal Analysis</b>	<b>Expert Evaluation of Actual Implementation and Effectiveness</b>
<b>Independent Ombudsman</b>	Yes	He is really independent, but finds it difficult to obtain information from the government agencies. His reports go to the President	Somewhat
<b>Independent Anticorruption Commission</b>	Yes (CNLCC)	Can not initiate investigations, reports have never been published but are referred to the President	Very weak
<b>National Anticorruption Program</b>	Yes (PNBG)	Only concrete action has been the creation of the anticorruption commission (CNLCC). No comprehensive action plan exists.	Weak, thus far

## THE PRINCIPAL LEGAL AND INSTITUTIONAL CONSTRAINTS

### A. The Weaknesses of Independent Institutions

While the weaknesses of independent institutions can be partly ascribed to deficiencies in the law, they are also a result of the monopoly that some civil servants exert on institutions. This relates not only to Justice, but also to such control bodies as the State General Inspectorate (IGE). This control is often used to hush up embezzlements rather than fight corruption and bad governance. An example of this was the investigation by the Inspectorate of the Administration and Justice in a case against several judges. This investigation resulted in convictions and symbolic punishments against the judges who took bribes. One judge was forced to resign. Those who offered the bribes, however, have yet to be judged.

Another less obvious example is how the President can make use of his powers to influence the judiciary. Since he has de facto power over the appointment and career ladder of judges, he can influence lawsuits.<sup>10</sup>

## **B. Inadequate Human and Financial Resources**

The judiciary has insufficient human and financial resources. The same holds true for the legislative branch where many parliamentarians lack the skills needed to perform their duties effectively, as well as the staff and information needed to initiate legislation on their own or to evaluate laws initiated by the executive branch. This lack of means affects other control institutions such as the Cour des Comptes. For this reason, monitoring of government institutions and personnel is often carried out on a much more limited sample of public services than should be controlled. The uncertain character of control reduces the risk of being identified for corruption offenses and therefore, prosecuted.

## **C. Immunities and Judicial Privileges**

Immunities and judicial privileges can constitute hindrances to effectively prosecuting and deterring corruption. This situation is all the more paradoxical since these privileges and immunities are enjoyed by officials with particular responsibilities for leading the State. Immunities are used, therefore, without considering how they will impede the ability to curb corruption. The person with the greatest immunity is the President himself. He cannot be prosecuted except in the case of high treason. Governmental officials can be prosecuted for corruption but they have some judicial privileges as they are judged by the High Court of Justice. The extreme politicization of that court represents a major obstacle to effectively curbing corrupt practices perpetrated by ministers while they are part of the parliamentary majority. National Assembly deputies can be prosecuted but the judicial proceedings can be hampered by the National Assembly which has to give its assent to the prosecution of any sitting Deputy.

## **D. Insufficient International Cooperation**

Some developed countries may have little incentive to see anticorruption policies succeed given the fact that the fruits of corruption may be transferred to them and to their banks. This ambiguity and conflict of interest on the part of some developed countries may limit international cooperation needed to curb corruption. This appears to be the case with Switzerland, which has refused to sign taxation conventions that would help curb corruption in developing countries.

For its part, if the Government of Senegal were to sign and enforce the African Union's Anticorruption Convention and the United Nations Convention against Corruption it could help eliminate these tax havens.

## **E. Lack of Coordination Among Institutions**

Beyond the shortcomings noted within various control bodies, there is a general lack of coordination among the various bodies in Senegal responsible for curbing corruption and notably between the IGE and the Cour des Comptes. Redefining the mission of these organs as to their main duties could allow for streamlining the control process. If this were done, the Cour des Comptes would probably be the sole governmental agency with judicial authority in cases of public financial corruption.

There is also a need for better coordination between the Anticorruption Commission (CNLCC) and the CENTIF given that there clearly are connections between corruption and money laundering. For

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<sup>10</sup> See Annex 4 for a more complete explanation of the president's powers over the courts and legislature.

example, every case of corruption that the CNLCC investigates could be brought to the attention of CENTIF for investigation. Since the State Prosecutor is authorized to act when cases are brought to him by CENTIF, this coordination should help make the fight against corruption more effective.

## 4. STRATEGIC IMPLICATIONS

Identifying the patterns of political governance and legal-institutional structures and deficiencies present in Senegal can contribute to an understanding of factors facilitating and spreading corruption. This configuration coupled with underlying cultural patterns that have adapted to the kind of governance noted produce a series of proximate causes of corruption and to a strategic outlook for understanding and attempting to control corruption in this context.

### THE LOGIC OF CORRUPTION AND ITS ROOT CAUSES IN THIS CONTEXT

#### Corruption as Rational Behavior

In Senegal's current context, corruption appears to be a rational calculated behavior. It is profitable and meets a strong need for income to maintain a desired lifestyle and clientelistic networks. For many of those involved in petty corruption, it offers the opportunity to earn a minimally acceptable income and meet basic family needs. At the same time, abuse of power, rent-seeking behaviors, and other corrupt actions are not very risky because prosecution and punishment are infrequent and unpredictable. What prosecutions do occur are mainly seen as a political risk if corrupt officials fall out of favor with those in position of concentrated power. Management and supervision, internal and external audits, and checks and balances are relatively weak in most sectors and functions of government which makes it possible for public officials to engage in corrupt activity with impunity. At the same time, the public's high tolerance and acceptance of corrupt practices and low priority given to corruption as a serious problem when compared with the struggle for survival makes it even more difficult to enforce norms and controls.<sup>11</sup>

Beyond the inherent logic of corruption, there appear to be a number of factors that contribute to the widespread pattern of corruption and that limit its control. These are based in a culture with insufficient regard for the rule of law.

#### Laws without Teeth and Inadequate Enforcement Mechanisms

Despite the generally adequate formal legal framework for dealing with corruption, there are still laws in force that permit the government to evade monitoring and control. This is most notable in the way the awarding of public contracts was governed by the May 2002 law that provided a number of bases for non-competitive awards of contracts. A new law making it more difficult for government to award contracts without public competitive bidding has been approved but has not yet come into force. Other laws also need to be revisited, such as the legal framework for the National Commission Against Non-Transparency, Collusion and Corruption (CNLCC) which has little power to initiate investigations or to subpoena officials.

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<sup>11</sup> See Cabinet ORGATECH, 2001 for public acceptance of corruption.

## Inadequate Application of Existing Laws

Laws that are on the books that might help in controlling corruption are either not invoked or selectively invoked for political reasons, or are ineffectively invoked because the instruments of control (auditing agencies, courts) are under-resourced. The legal framework as it relates to corruption, transparency, accountability and integrity requires major revisions, amendments and additions. According to the Forum Civil more than 28 laws need to be modified and/or adopted anew. Drafts of many of these legal changes have been on hold in the Parliament for years while public discussion and debate on these needed reforms has been limited.

## The Politicization of the State Bureaucracy and Its Inability to Effectively Deliver Basic Public Services

Although these characteristics were clearly present in the previous regime, the situation seems to have been exacerbated under the current regime. Politicization of the bureaucracy coupled with rapid turnover of ministers and other senior officials, among other factors, has fostered institutional instability and undermined the ability of the state bureaucracy to deliver public services efficiently and in a non-partisan manner. While it is common in democratic presidential regimes to base many high level appointments on primarily political criteria, this is usually accompanied by an effort to recruit people meeting merit standards for the post. With his populist style and suspicion of the state bureaucracy inherited from the Diouf regime, the president has reduced the autonomy of the administration and chosen ministers and high state officials who often lack the administrative experience and technical skills needed to effectively run their departments. The neo-patrimonial nature of the regime also encourages clientelism based on political loyalty and personal relationships in determining access to public services and reinforces conditions for corruption at all levels to flourish. High degrees of politicization and the lack of incentives and rewards for efficiently delivering public goods and services combined with the low salaries of local level officials undermine their professionalism and resistance to corruption (see the sectoral analyses for more details).

## Weak Accountability Mechanisms

The government has few effective internal accountability mechanisms. The effective accountability mechanisms are concentrated in the Presidency and the Ministry of Economy and Finance which in turn have few institutional checks on their activities. External guarantors of accountability through *a posteriori* audits and sanctions are weak and ineffective. Internal and external audits and inspections are not conducted frequently enough and are insufficiently funded. When abuses are identified, there is minimal follow-up authority within the judicial or administrative systems. Supervision and management within the civil service is generally ineffective. Citizen watchdog groups that monitor and oversee government departments and their use of the public budget rarely exist. Investigative journalists, often natural watchdogs of government operations, have not been a major force for transparency and accountability despite their efforts to expose corruption. Journalists also often lack sufficient knowledge of the law and legal system to make their case effectively.

## Uneven Transparency

Transparency in government decisions and activities is uneven. Public accessibility exists for some information, but not all. Even where there is public access, citizen awareness and interest in directly participating in monitoring and evaluating public sector performance is low, especially at the local level. The involvement of Forum Civil and other national level civil society and private sector organizations in advocating for more transparency are the exceptions to the rule.

## Resistance to Decentralization

Government operations and decisions in Senegal are highly centralized, which helps to maintain collusive practices among national and local level political and economic elites. Although the 1996 decentralization code transferred considerable formal powers and authority to local government units to manage and deliver public services, this has not been accompanied by the transfer of adequate financial and human resources to permit local governments to fulfill their new roles. The trend towards centralization of political and administrative power in the hands of the president also explains the failure to move more rapidly to implement 1996 decentralization reforms. Moreover, the President's generosity in providing key local government officials with cars and increased personal financial resources has provided incentives for them to abandon their political neutrality

## The Limited Scope and Capacity of Civil Society Organizations Involved in Anticorruption Activities

Senegal has thousands of community grassroots voluntary associations as well as hundreds of national urban-based civil society and private sector organizations operating in all sectors of society. Few, however, specifically focus on good governance issues or on exposing and controlling corruption. In the past decade, civil society groups like Forum Civil have expanded their capacity to monitor and document bad governance practices and to launch campaigns to inform the government and the public concerning their findings. Despite their efforts, these basically urban-based national level organizations led by highly educated men and women have had little impact in changing government policy and the behavior of corrupt officials. Moreover, they have also failed to reach and mobilize people at the grassroots level to participate in anticorruption campaigns and activities or to change public attitudes of tolerance and acceptance of corruption that is widely prevalent in Senegalese society. The failure to change government policy and behavior is due to their relatively small size and influence vis-à-vis the government. Their failure to mobilize public opinion to the anticorruption cause is due to their lack of outreach to grassroots urban and rural Senegalese whose interests and concerns are focused on concrete problems directly affecting their daily lives rather than grand corruption at the state level. Moreover, the way they frame corruption issues often means little to the generally less-educated grassroots publics who suffer directly from the negative consequences of corruption.

## Widespread Public Tolerance and Acceptance of Corruption Based on Cultural and Social Norms and Traditions<sup>12</sup>

Patrimonial modes and norms of governance based on clientelist relationships between rulers and ruled are deeply rooted in Senegal's pre-colonial past and are not easily transformed. Control over the state rather than engaging in productive economic activities provided the best means for generating personal wealth.<sup>13</sup> Rulers were expected to use state power to enrich themselves rather than to provide state services. However, rulers were also expected to be very generous to their immediate entourage and followers as the best means of retaining their loyalty. Wade's concentration and personalization of power coupled with a populist style that reflects little interest in rationalizing state bureaucratic institutions has sparked a resurgence in the kind of *ceddo* behavior found in Senegal's pre-colonial states. In this kind of

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<sup>12</sup> See Annex 3 for an expanded discussion of this issue. Our argument is not that Wolof or "Senegalese culture" is intrinsically more subject to corruption than others, but that corruption flourishes in this and other cultures in the presence of extreme poverty and economic inequality where traditional norms can be manipulated and distorted for personal gain.

<sup>13</sup> Thioub, Ibrahima, « Les Mouvements de la Société Civile globale : Dynamiques des campagnes internationales et mise en œuvre locale : La Lutte contre la Corruption (Senegal). Unpublished paper, 2007.

system, generosity in showering resources on clients trumps hostility to corruption. Although most Senegalese acknowledge that corruption is widespread and detrimental to society, only one percent of those polled in Forum Civil’s 2001 perception of corruption survey identified corruption as a major problem. Moreover, nearly a quarter of respondents maintained that corruption was acceptable as long as those involved redistributed some of their gains.<sup>14</sup>

## PRO-REFORM FORCES

Despite the powerful logic of corruption in Senegal today, there are forces that have a stake in reform and which, under the right circumstances, could assist in bringing it about.

### External Forces

Donors certainly have promoted governance reform in recent years, both in terms of their policy dialogue with the Government of Senegal and with their orientation of assistance towards financing “good governance,” “economic governance” or “public management reform” programs. On the other hand, donors have not *directly* targeted corruption as a major issue, (See Table 4) The major donors in this area have been the European Union, the United Nations Development Program, World Bank, CIDA Canada, and USAID, with smaller contributions by the Dutch, the Germans, and Luxembourg.

**TABLE 4. OFFICIAL EXTERNAL DONOR PROGRAMS IN ANTICORRUPTION AND GOOD GOVERNANCE**

DONOR	PROGRAM	ANTICORRUPTION COMPONENT
Canadian Aid (ACDI/CIDA)	Support to Finance and Budget Reform (PEFA), Parliamentary training program with Canadian NGO, Support to the Cour des Comptes, Elected Officials Training and organizational assistance, civil society support to Forum Civil and journalist training, Urban Mediation Centers	Comprehensive good governance program focusing on local governance and demand creation.(terminating) Also modest components of strengthening State financial management (New program in design phase)
Dutch Aid	Decentralized governance training, now focused on environmental management at local level	Strengthened community management to limit abuses by technical services and private sector

<sup>14</sup> Cabinet ORGATECH, Enquête sur les Manifestations de la Corruption au Sénégal : Enquête aux Prés des Entreprises. Dakar: Forum Civil, 2001.

DONOR	PROGRAM	ANTICORRUPTION COMPONENT
European Union	Major program in the 9 <sup>th</sup> FED. Support to the judiciary, training judges, improving court infrastructure and computerized record keeping, Technical Assistance to the Parliament, support to the Cour des Comptes and Land Registry Office (Cadastre), major grants program to non-state actors.	Approach is mainly to strengthen national institutions. NGO grant program is very non-specific— not tailored to anticorruption work. Support to the Technical Coordinating Committee (CTC) of the PNBG has been zeroed out.
France Development Agency (AFD)	Support to Regional and Municipal Development Authority (ADC) St Louis	Supports decentralized planning at neighborhood level in St Louis
French Embassy	Support to Judiciary (judges training and support to Final Appeals Court (Cassation) and Police. Anti money laundering (supports CENTIF), and small grants to Non-governmental actors. Supports some non-judicial mediation. Some budgetary support to Local Government through central Treasury	None explicitly, money laundering prevention makes it more difficult to transfer illicit earnings abroad. Small grant program is not oriented toward community governance
German Aid (GTZ)	Support to local government in 50 CLs in Kaolack and Fatick areas, strengthens local planning with training and matching grants for local infrastructure	No oriented to anticorruption. Participatory planning using Senegalese expert consultants as trainers.
Luxembourg Aid	Small program supporting participatory planning in local governments in the St Louis/ Matam area	Not expressly anticorruption. Strengthens local monitoring and procurement
Swiss Aid	Small program –supports three rural development specialist (Jacque Faye) to assist local community organization in planning and project implementation	None explicitly. Helps build local participatory management capacity
UNDP (FENU)	Not a governance program per se. Builds local capacity to manage resources through technical support to community equipment purchases and management	Decentralization of procurement and budgeting in context of PNDL getting away from external contracting control (AGITIP)

DONOR	PROGRAM	ANTICORRUPTION COMPONENT
UNESCO	No governance program. School partnership governance program	Not a corruption control program per se, but builds local community management of schools through “cadre de concertation” approach
World Bank	No “good governance” program per se. Focuses on Public Financial Management, budget preparation and expenditure control. Finances with direct budget subsidies, support to train journalists, and develop local governance through PNDL	Anticorruption through improving public financial management and control institutions. Indirectly support to strengthen local governance.

The information in Table 4 indicates that many of the international donors, including the World Bank with its lead role in the National Program for Local Development (PNDL), USAID with DGL-Felo, the Canadians, Germans, Dutch, Luxembourgish and Swiss, decided to focus their governance assistance on decentralization and training of local elected officials. In addition to the bilateral and multilateral external actors who support governance reform, Senegal benefits from a good deal of non-state foreign assistance, called “decentralized cooperation,” nearly all of which focuses on local level governance and infrastructure.

Recently, several of these donors have shifted their approach to include national level activities as well, following their analysis that working only at the local level is insufficient to promote system-wide change. Several have even resumed direct budget support as part of their “governance” portfolio.

In terms of policy dialogue, the major donors have jointly addressed their concerns to the Prime Minister and President on several occasions. Interviews with these actors indicate that they do not feel that the GOS has been particularly responsive to these appeals. While it is indisputable that donors constitute a force for reform, it is also clear that many of them express frustration about having an impact on the policies and behavior of the central state, and that donor coordination in the area of good governance and anticorruption is not very strong and is of questionable effectiveness. The most important achievement to date has been the passage of the 2007 Public Procurement Law with its accompanying monitoring capability in the ARMP. The mobilization for this took several years and significant donor cooperation, without which it is very unlikely that the law would have been passed. Now it remains to be seen how it will be implemented

### Internal Forces—within the State

Interviews conducted in the course of this study revealed that there are Senegalese who strongly support governance reform. These are essentially found in the specialized agencies, notably in the Anticorruption Commission, in the PNBG, and in the control organizations--the State Inspectorate General (IGE) and Cour des Comptes. In all of these agencies, many civil servants have expressed the desire for more authority and resources to do their job properly. There was no indication, however, that they have much capacity to influence decision making.

Perhaps more promising is the evidence that within technical ministries there are civil servants who want to re-establish the credibility and professionalization of their services and who have taken seriously the

studies that have recommended changes in the ways these services operate. This group may eventually become a force for change within the state.

Even more pro-reform sentiment can be found at the level of the “decentralized” state institutions, as for example, among Regional Assembly members (CRD) and Regional support organizations (ARD). Currently, they suffer from an extreme lack of resources and authority that frustrates their efforts.

The most dynamic pro-reform force within the state is at the level of local government.<sup>15</sup> Although local elected officials are subject to many of the same governance problems as are found at the top (see Section 6 below), in many places new capabilities to plan, monitor and even contract are growing, largely as a product of multiple experiences with decentralization programs sponsored both by donors and by non-state organizations through “decentralization cooperation.” Swiss, German and Dutch, as well as USAID programs are notable in this regard, as are programs sponsored by foreign NGO partners, such as Le Partenariat (Lille, France).

## Societal Forces

Civil society is well organized in Senegal and constitutes a potential source for reform. Specialized NGOs such as the Transparency International affiliate, Forum Civil, and Aide Transparence, are potential sources for mobilizing broader public awareness and demand for better and less corrupt governance. Their links to the scholarly community through such groups as the IFAN group in Development and Poverty Reduction are especially critical in producing the kind of data that can be the grist for public debate and discussion. Other groups are less clearly focused on corruption and governance reform, however they are emerging as parties to and often victims of state mismanagement when their interests are directly affected. These associations, such as the CNCR representing agriculturalists, connect with and can potentially mobilize many more people at the base. Typically, unions and student associations have not played a significant role in anticorruption advocacy because they are so politicized. There are indications, however, that that is changing as evidenced by the recent protests by the Customs Workers Union.

Private sector business groups have also not been at the forefront of anticorruption advocacy, in part because of their precarious position vis-à-vis the State. Our discussions, however, revealed a strong concern among the smaller and less formal firms for governance reform and a fairer, less biased playing field. It is possible that this group will become an open pro-reform advocate as well.

The media, both print and electronic, is free in Senegal and plays a major role in sensitizing public opinion to corruption and mismanagement. It is limited by its weak resource base and limited audience, but it continues to be a major source calling for reform.

## PROPOSED STRATEGIC DIRECTIONS FOR USAID

The political, legal and institutional context of Senegal, coupled with an understanding of the current and potential pro-reform forces, lead to an understanding not only of the strategic context, but to the options or approaches that are most likely to succeed in this context.

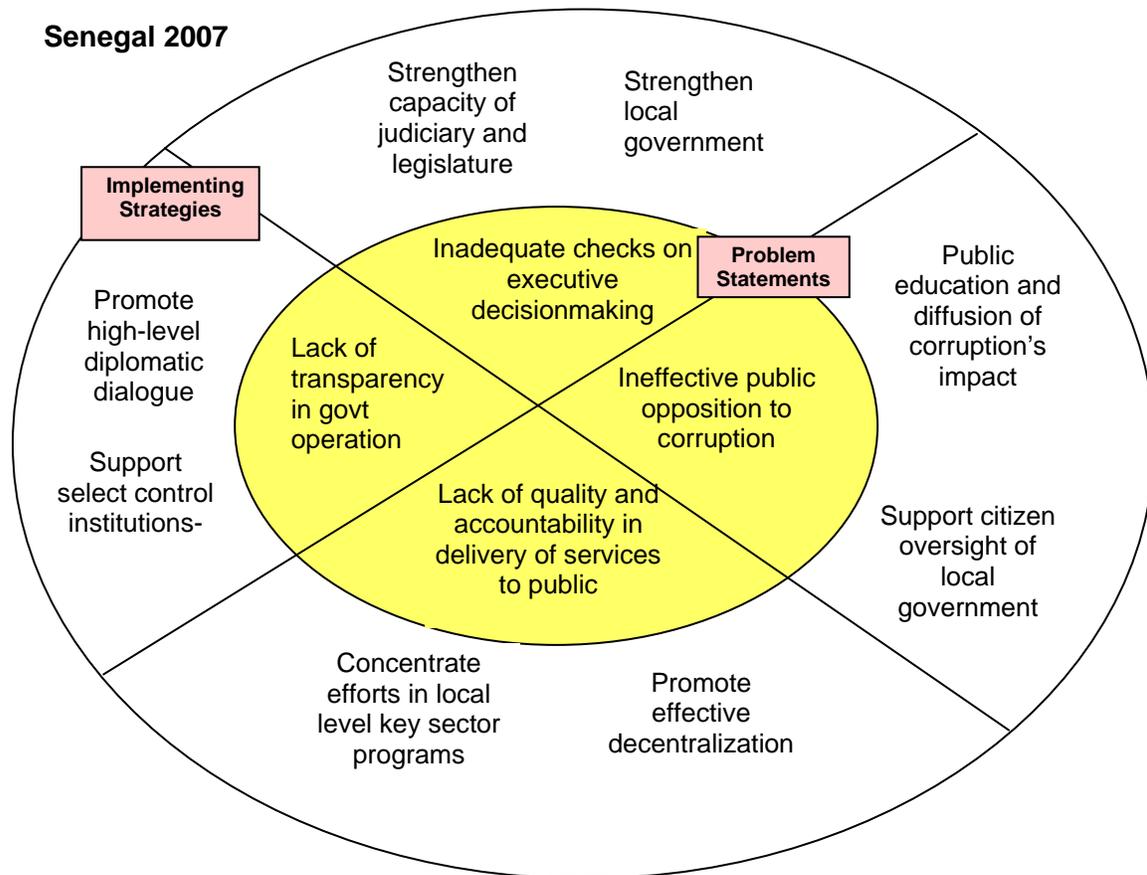
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<sup>15</sup> Senegalese do not seem to consider local government as part of the state, although it clearly is in terms of the control mechanisms placed upon its operation.

## The Strategic Outlook – Implications and Options

Figure 1 represents a general strategic approach to understanding corruption and options to deal with it in the Senegalese context. Each quadrant is based on one of the four core problems identified earlier. In the outer circle of each are options that might be pursued. Clearly, given the analysis that has preceded, some options seem more likely to succeed in a shorter time frame. In Sections 5 and 6 that follow, the report turns to an analysis of corruption vulnerabilities and potential opportunities to address them in specific sectors, as well as in cross-cutting functions. An understanding of these more specific analyses will lead in turn to a more refined set of programmatic recommendation for USAID to consider.

**FIGURE 1. STRATEGIC IMPLICATIONS**



## THE CORRUPTION CLUSTERS AND CORE GOVERNANCE PROBLEMS

### The Corruption Clusters and Options for Reform

The analysis above has demonstrated that Senegal can best be characterized by a mixture of two types of regimes, both weakly institutionalized. The first has significant elements of pluralism or “horizontality.” The second that seems to be becoming increasingly prevalent, demonstrates far more concentration or “vertically” of power in the hands of a narrow leadership group and its loyal clients. Together, these regime types demonstrate a particular pattern of corruption and exhibit typical core problems. These

problems, illustrated in Figure 1, suggest a number of possible implementing strategies (outer circle). Not all of them are equally likely to succeed, however, in this context. Comparative research from across the world suggests that institution building in this type of regime, particularly in public management, the judiciary and law enforcement are vital, but are unlikely to succeed because they lack political backing.<sup>16</sup> Civil society and a free media are worth fostering but will be weak and under pressure. Improving private sector rights and public regulations that can reduce market risks can pay dividends, but will have limited success given limited state-economy boundaries and weak institutions like the courts. Mobilizing demand on the part of ordinary citizens, farmers and entrepreneurs will be challenging, but over time can help build the strength of these societal groups. Massive morality and anticorruption campaigns are likely to accomplish little. The question for USAID and other donors, then, is what to invest in that has good prospects in the short to medium term and might be capable of producing long-term gains

## The Core Problems

1. The most important core problem of this regime in terms of corruption is the over-concentration of power in the hands of the President and the top executive branch. The key corruption implication is that inadequate checks and limits on top leadership decisions facilitate strong resistance to transparency and monitoring, and support the logic of corruption, particularly “grand corruption.”

The classic strategy for dealing with this problem entails strengthening the capacity of other political institutions to check presidential power, i.e., the legislature and an independent judiciary. In the current context, however, these steps are unlikely to be effectively implemented given the virtual one-party, one-leadership group character of the regime.

An alternative approach is to strengthen the role and functioning of local government and promote an increasing reliance on local elected officials and citizen participation in local level decision making and monitoring of local government and the delivery of public services. This will not influence grand corruption, but it may help reduce administrative corruption and eventually could affect government procurement.

2. A second core problem concerns the limited functioning of state organizations designed to control expenditures and procurement, particularly in major projects. In general, the rules and institutions are in place, but these institutions are insufficiently independent of the Presidency and have limited capacity to audit and sanction violations of the law.

In this type of system, it will be difficult to change this pattern and will require persistent high level dialogue with the leadership of the regime on the part of the major donors (USA, EU, World Bank). This can be combined with technical assistance to institutions designed to monitor and control public spending and procurement, such as the Cour des Comptes and the Public Market Regulatory Agency (ARMP), as well as conditionality on the part of donors to get the government to increasingly allow these institutions to function properly.

3. A third problem is the limited number and power of pro-reform actors within the state itself. As discussed above in Section 3 and in Annex 4, institutions like the PNBG and the CLNCC are marginal in the system. Within the technical services, like health and education, the vast bulk of resources are consumed by salaries and much of the rest is used by the top bureaucracy with little accountability for transfer of funds to lower levels.

This pattern cannot be addressed directly in the existing context. Programs to raise the transparency and level of professionalism of the bureaucracy are likely to encounter obstacles. Instead, long-term efforts to

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<sup>16</sup> Based on MSI, *Corruption Assessment Handbook*, Annex, Step 4.

move more resources to the local level can be built into specific assistance programs in sectors like health and education, and over time a more professional ethic may develop within the bureaucracy as its members confront the dysfunctions of their own services and a growing public demand for more and better service orientation.

4. Finally, the general public also lacks strong and effective motivation to demand better and less corrupt government. Thus far, anticorruption activities are primarily conducted by a few specialized NGOs that have limited outreach. In addition, most Senegalese are unaware of the real cost to them both individually and collectively of corruption, both in terms of grand and administrative corruption.

Given the incentive structure, it will not be easy to build public awareness and intolerance for corruption. A next step might be to support groups that exhibit the interest and capacity to carry out corruption impact studies, and more importantly to conduct a broad and participatory education/information program based on their results and in terms that the broad public can understand.

## 5. ANALYSIS OF CORRUPTION ISSUES IN KEY SECTORS

In a series of interviews with ten highly informed Senegalese and with US government personnel working in Senegal, the MSI team solicited information and opinions as to which public sectors were the most vulnerable to corruption. A large number were identified. The team collated this information to develop a high priority list, based on these interviews, the programmatic interests of USAID/Senegal in its current program, and the sectors for which it was ascertained that suitable information would likely be available. Assignments to conduct the sector analyses were allocated according to the background and interests of the team members. Not all sectors received the same level of attention due to data availability and time constraints.

Overall, it is important to understand that the resulting sectoral analyses which follow are meant to show how corruption manifests itself in the sector and possible options to remedy these vulnerabilities, not to provide a comprehensive vision of the way the sector functions or its governance difficulties.

### THE JUSTICE SECTOR

Public opinion surveys indicate that Senegalese consider the judiciary to be among the most corrupt and politicized branches of government. This is ironic because judges and prosecutors are at least nominally chosen on the basis of extensive professional training and merit. What is the reality of judicial corruption and what are the specific conditions that lead to this perception and reality?

#### Vulnerabilities

It is well established that corruption is widespread and reaches all components of the justice process. First, criminal police investigators are tainted by corruption. It is routine that someone summoned by the prosecutor does not respond because he/she has been tipped off in advance by the criminal police investigators in exchange for a bribe and the person flees the country.

When paid off by violators some criminal police investigators will close the case arguing that the investigation was just unsuccessful or that the summoned person could not be located. In other cases, legal files which the investigator has been ordered to develop never reach the police station and therefore the case must be dropped.

Legal clerks engage in two corrupt practices. They simply lose or hide files or they only produce the minutes of the court's decision in exchange for a payment. Alternatively, they never deliver the minutes to prevent the execution of the decision from taking place. Some clerks embezzle public funds. Some judicial procedures never get resolved. They just languish in the courts for want of payments

Sitting judges and prosecutors are not exempt from corruption. They take advantage of their position to render decisions favorable to the corruptor, in contradiction of the law. Prosecutors can block prosecutions by refusing to transfer the files necessary to carry out investigations. Judges and prosecutors who engage in these behaviors are well known and are not held accountable for their actions.

Lawyers are also involved in corruption, often playing a role of intermediary between the corrupting party and the corrupt magistrates.

Given the frequent involvement of judges it is difficult to proceed with corruption cases. In a recent case, the magistrates who were incriminated were only submitted to a disciplinary action while those offering the bribes were jailed while awaiting a final disposition of their case.

There is no well developed code of professional ethics governing the behavior of judges and prosecutors, but the texts that regulate them do contain mechanisms needed to attain at least a minimal level of professional discipline. For example, Article 13 of the organic law that bears on the status of judges does require them to render impartial judgments without consideration of their personal interests. Article 15 of the same law states that it is a punishable offense for a judge to fail to perform any action with honor and dignity.

In addition, the judiciary lacks the same budgetary independence as the Parliament, even though it is discussed in the Constitution as being on the same level.

## Recommendation for Reform

First, resources, both financial and human, provided to the judiciary must be increased. Several positive signs can be noted with regard to the judiciary. It should be pointed out that the budgetary situation of the judiciary has improved as a result of the pilot project on decentralization of the budget in the context of the Medium Term Sectoral Expenditure Framework (CDSMT). This program has resulted in a clear increase in the judiciary's financial resources. In recent years, there has been a significant increase in the recruitment of judges and clerks, and improvement in the material conditions of judges.

Second, the Association of Magistrates needs to become a force for reform. There are indications that this may be happening. When a recent case arose concerning judicial corruption, the Association of Magistrate supported the principle that the facts of the case be fully aired so that those involved could be identified. The problem is far from resolved, however, since judges promoting the prosecution of these corruption cases were intimidated by the judicial hierarchy and eventually ended up keeping quiet.

Other recommendations for reform of the judiciary that might help limit corruption involve:

- strengthening the independence of the judiciary. This will no doubt raise questions of political will and will be difficult to accomplish in the current context.
- reform of the penal procedure so that in alleged corruption cases, prosecutions can go forward with less political interference.
- eliminate the right of the Attorney General to choose the investigating judge to whom a corruption case will be assigned whenever more than one such judge is available in a given jurisdiction.
- witness and whistleblower protection laws should become part of the penal code.

- authorize the Anticorruption Commission (CLNCC) or the Cour des Comptes to initiate prosecutions when prosecutors are not available to do so.
- end the special treatment of judges implicated in corruption cases. A specific provision in the penal code should make this clear and prescribe more serious sanctions for guilty judges than for other individuals.
- adopt a code of ethics and professional behavior for each of the specialized bodies of the judicial branch (judges, prosecutors, lawyers, etc).
- adopt a law on the declaration of assets covering all judges.
- reduce the immunity of governmental offices and members of parliament in cases of alleged corruption.

### SUMMARY OF ANTICORRUPTION PROGRAM OPTIONS– JUSTICE SECTOR

Anticorruption Program Option	Major Counterparts	Potential Obstacles	Potential Impact on Corruption	Short-term success	Impact Timing
Strengthen independence of the judiciary	Ministry of Justice, President, EU	Political resistance	High	Low	Long term
Adopt code of professional behavior	Assoc of Judges, Ministry of Justice, donors	Some judges	Medium	Medium	Medium term
Reform penal codes to make prosecution easier	Justice Min. Chief Prosecutor,	Corrupt judges, political allies	Medium	Medium	Long-term
Improve material conditions of judges	Donors, EU, Ministry of Justice,	Underway at present	Low	Low	Long term

## HEALTH SECTOR<sup>17</sup>

The health system offers an ideal combination of factors to facilitate widespread corruption at all levels. It combines scarce resources allocated according to complex and rigid rules with clients who desperately need services, are afraid, and lack the information and skills to control the process. In addition, the users (the potential victims of corruption) are generally in a position of social and economic inferiority with regard to the health care providers. Corruption builds on a widespread set of cultural norms that express gratitude for important services and respect for authorities. All of this adds up to a health system that is “pathogenic,” where corruption is pervasive at every level of the system, and users and community members lack effective control over public medical services. Corruption is so pervasive in the health system that it is seen as the routine way for getting things done. This pattern is not only in gross violation of the constitutional rights of citizens and the international norms for health care that the Government of Senegal has publicly subscribed to, it has created and intensified a crisis in health care.

<sup>17</sup> Based heavily on research conducted for Fall, Abdou Salam and Babacar Gueye (eds.). *Gouvernance et Corruption dans le Systeme de Santé au Sénégal : Rapport Final*. Dakar : Forum Civil, and Centre de Recherches Pour le Developpement International (CRDI), May 2005.

It should be noted that the legal structure for the provision of public health care in Senegal is generally good. The problem is that these laws are not implemented and many have never been the subject of implementing decrees. This leaves health workers and people needing health services in a world of informality in which everything is done outside the law. The poor and ill are the biggest victims of this informality. The winners are not individuals, but elaborate networks that collude to benefit from corrupt behaviors collectively and which link the very low-level support staff and nurses at the community health post level to the highest level of medical and administrative personnel and hospitals.

Paradoxically, it is both shortage and abundance which feeds this system. It is estimated that the health system currently lacks at least 3000 trained medical personnel. There are communities in greater urban Dakar where no health facility is available for over 100,000 residents. On the other hand, funds from governmental and non-governmental donors earmarked for programs like HIV/ AIDS prevention and treatment provide ready sources of funding and material that are misallocated for personal benefit.

At the heart of this crisis are two major issues: an almost total lack of control and accountability for resources from the top down, and a culture of group corruption that seems to have replaced or at least displaced any sense of professional responsibility and obligation to the public. A National Forum on Health took place in 2006 in which health workers and officials gathered to discuss these issues and to see what remedies and reforms might be put into place. A resulting “reform” program based on three principles was affirmed there consisting of a multi-sectoral approach in which issues like environment would be included in health planning; a participatory approach in which citizens could effectively participate in health planning and monitoring; and a “customer focused” orientation. Thus far, however, these reforms seem to be no more effective than previous efforts. The system is still marked by a near total absence of effective participation on the part of organized health service users or socio-professional organizations that might be capable of checking, at least in part, the power and authority of the highly corrupt medical professionals.

## Vulnerabilities

A recent and extensive study involving months of field observations actually observed and documented a variety of corrupt practices at three levels of the medical system: the public hospitals, the Health Centres, and the local level Health Posts.<sup>18</sup> Not only does this study serve to identify particular vulnerabilities, it contends that corruption at all levels is not an unusual practice. Rather, it is linked to underground networks that operate in the interest of health service personnel from the lowest staff support to the Medical Directors of Centers and Hospitals (although the latter are often better protected against direct observation of their corruption).

At the hospital level:

- The triage racket, in which patients are charged illegal fees to be seen, and charged depending on how ill and how fearful they or their loved one appear to be
- Low level staff personnel extract fees for beds and other basic services and provide no receipts
- Patients are overcharged or even double charged, with the staff pocketing the difference
- The sale of health certificates for a variety of administrative requirements (such as to get a drivers license)
- Theft of food from kitchen supplies, drugs from pharmacies, and appropriation of these resources for family or kinship group needs
- Solicitation and acceptance of gifts for services provided.

At the Health Center level:

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<sup>18</sup> Fall and Gueye, op cit.

- Overcharging for medicines not used
- Illegal charges for treatments offered by unqualified personnel
- Illegal charges for a variety of birth delivery services
- Sale of health certificates
- Use of public equipment by Chief Medical personnel for private consultations
- Failure to provide hours of public service and charges for “private services.”

At the Health Post (Community) level:

- Giving local influential religious leaders and their families preferential treatment access in exchange for gifts
- Treatment of foreigners, often followers of a marabout from a different area or country, at higher than posted rates
- Sale, often on the open market by petty merchants, of medicines that are supposed to be distributed free
- Overcharging or double charging for services
- Misappropriation of HIV/AIDS subsidies.

Since the decentralization of administrative services, and its implication in the Bamako (user fee) system, the health post level has become more important. The 2005 study contends that the major dysfunctions at this level are due to the operation of corrupt practices and networks at higher levels of the health system and to their own dysfunctions, to the near total lack of transparency in the allocation of health resources and lack of effective monitoring and control from above, and the limited success in making use of community health committees as a way of fostering participation and improving accountability.

According to that study, these committees rarely involve more than one or two (President, Treasurer) local notables who often collaborate with the Health Post nurse (*infirmier*) and the Chief Doctor at the District level to keep access to information limited and to keep the “racket” going to the benefit of those few in a position to know and influence how health resources are actually being used.

## Principal obstacles

Given the character of corruption in the health sector, there is likely to be strong resistance to reform. The medical corps sees corruption as a well tested and accepted survival strategy that is actually an extension of values and obligatory reciprocity practices in an environment marked by scarcity and inequality. Convincing the medical corps to rid itself of this spiral of corruption would amount to rehabilitating them as professionals and placing them in a management system that provided incentives for more public-minded behavior. Getting the State to allocate more resources to the health sector and to reduce the shortage of available health care professionals could help, but it would have to be part of a general reform of public sector budget management and control. It is not at all clear that the Government of Senegal is ready to take on this level of administrative reform and budget transparency.

## Recommendations and Opportunities

Given the systematic, collective, networked and highly entrenched and tolerated nature of corruption in the health system, there are no quick fixes that are likely to impact corruption in this sector in the short run. The following recommendations could contribute to an improvement in the situation, if they were implemented effectively:

- Greater involvement of organized civil society and socio-professional groups in the implementation of the reform at all levels

- Clarifying roles and authority between the national, regional and community levels and the greater formalization of rules and procedures, while still respecting the principles of decentralization
- A multi-sectoral planning approach to health involving a broad stratum of the population in health planning and monitoring (recasting Health Committees as Commissions of Local Government rather than as autonomous local bodies attached to a particular technical service)
- The promotion of a code of ethics and clarification of the status of health care professionals
- Stricter penalties and zero tolerance for corruption.

### SUMMARY OF ANTICORRUPTION PROGRAM OPTIONS – HEALTH SECTOR

<b>Anticorruption Program Option</b>	<b>Major Counterparts</b>	<b>Potential Obstacles</b>	<b>Potential Impact on Corruption</b>	<b>Short-term success</b>	<b>Impact Timing</b>
Improve and formalize status of health workers and improve their salaries	Min Health, unions, Treasury and Min Finance	Informal practices in service, insufficient resources	Reduce motivation for corruption among health workers	Yes, if done and accompanied by other reforms	Middle to long term
Ethical training of health professionals	Min Health, Training Institutes	Curriculum heavily programmed, senior personnel could resist new material	Change relationship between health worker and users	Needed and could alter perception of service	Middle to long term
Apply strict sanctions on health workers for violations including dismissal	Min Health, Judiciary	Unions, clientelist networks	Questionable	Limited	Long term
Improve citizen control over medical supplies and drugs	Min Health, Local Government, Pharmaceutical companies	Merchants benefiting from illegal circuits, medical personnel involved in limiting access	High Impact	Yes, if applied rigorously	Short to medium term
More transparency in financial management of local health committees including recruitment and political criteria	Local Government, projects,	Limited capacity for training and implementation apart from pilot project areas. Resistance by political parties	High	Yes	Short term

## EDUCATION SECTOR

The education sector in Senegal is generally not regarded as one of the most corrupt although there are numerous technical and administrative problems and practices which make the system vulnerable to corruption and which render it less effective than it might otherwise be. Unfortunately, in contrast with health and national resource management, no national study has yet been conducted of corruption in education.

The scope of grand corruption in the allocation of the huge education budget (reportedly over 40% of the Government's operations budget) is not established due to a poor or non-existent public expenditure tracking system. Grand corruption in education has not been a major public issue, largely because the biggest source of grand corruption is infrastructure and donors (notably USAID, the Japanese, and the World Bank) tightly control the contracting process for much of the school construction and repair. Much of the remaining infrastructure is funded through "la coopération décentralisée," where non-state actors closely follow and supervise expenditures. Still, there are reports about the poor quality of construction work suggesting that contracts may not always be awarded on the basis of past performance or capability. Apart from infrastructure, most of the education budget goes to pay salaries and here the issue is not financial corruption but the quality of work performed by teachers. Poor teacher performance and the contrast between the lifestyles of many teachers and their pupils is one of the factors that result in the alienation of students and parents from the school. Many parents who can afford it, including the "elite" parents of urban children, prefer to simply opt out of the public schools and send their children to religious schools or to non-religious private schools instead. Since private school fees are largely beyond the reach of the poor, this tendency increases the gap between rich and poor.

### Vulnerabilities

The most common forms of corruption that are reported in the Senegalese education system involve various forms of petty corruption at the school level and serious concerns about the allocation of resources at the level of the Regional Inspections. Teachers and principals also report that they rarely see Pedagogical Inspectors and almost never get any help from them. This raises questions about what happens to funding and staffing provided at the regional level. In specific programs where external donors have established close relationships with regional inspectors, the situation of teacher and school supervision appears to be much better.

There is also considerable concern and discontent over the availability of supplies and books that are supposed to be made available freely to students but which are often sold either in the school or on the open market. Some schools (Gorée primary schools, for example) have benefited from considerable foreign partnerships that provide school supplies and equipment, and according to graduates, provide a decent level of education. Nonetheless, even in Gorée, this privileged situation was not sustainable after the external support ended and low teacher salaries and poor living conditions resulted in teachers seeking to supplement their income through tutorial teaching often by reducing their instructional time in the classroom. This problem is made more severe by the increased reliance on young teachers (known as volunteers or *vacataires*) who now constitute a large proportion of the teachers in the primary and even in secondary or middle schools. Since these teachers are paid considerably less than teachers who have civil service status and who are unionized, their incentives to supplement their incomes through corrupt practices are great. As this corps of non-tenured teachers has expanded, however, they have unionized and become a force that has been able to negotiate for better conditions, thus reducing their incentives for corruption.

There is also a widespread perception that parents can obtain favorable grades for their students by bribing teachers, although the actual extent of this practice has not been documented. What is generally

agreed upon, however, is the deteriorated quality of the education afforded students at all levels. In primary schools, overcrowding and poor equipment are the norm. Even Senegal's main university now accommodates at least five times the number of students it was designed for, seriously affecting the quality of teaching. This also creates numerous opportunities for discrimination and corruption in the allocation of very scarce resources, such as scholarship support, lodging and restaurant privileges. The government has not remedied these practices but instead has permitted much of the allocation process to be conducted by the top leadership of student associations and political groups, excluding many from benefits. At the same time, just prior to the Presidential elections, the supplementary income of university processors (their indemnities) was increased markedly, while conditions of work and funding for university education overall continued to deteriorate. This kind of behavior, while neither illegal nor technically corrupt, promotes a culture of poor performance and discrimination that can often result in ad hoc resolution of problems, such as individual departments imposing unauthorized supplementary fees on students simply to continue to operate.

Some anecdotal evidence exists of corruption in contracting and textbook distribution, based on interviews with former school inspectors and members of school committees. Corruption in contracting takes place largely around the failure of contractors to provide the quality required in the contract and the lack of sanctions for poor work or work not completed. Textbook corruption takes place mainly when books are not made available to schools at all and are instead sold on the market, or when teachers sell books instead of distributing them free and threaten students with poor grades if they fail to buy the books.

Overall, the three most important corruption vulnerabilities that the educational system confronts today are the lack of adequate means to track and monitor expenditures, the lack of clear rules and procedures as to how things are supposed to be done, and the weak or non-existent monitoring that can be undertaken by actors outside the official bureaucracy, such as community members and beneficiaries. In the absence of these elements, the risks of corruption at all levels are high and the sense of citizen ownership of the system is low as reflected by weak citizen support for the schools in financial terms and in terms of willingness to participate in school management.

## Opportunities and Obstacles

A number of donors, including UNESCO and USAID, have demonstrated that it is possible to support partnerships at the local level to improve school performance and to deal with some of the governance issues that arise. Clearly, some parents are vitally interested in the success of their children and in the improvement of both access to and the quality of formal schooling. There are certainly teachers, principals and inspectors who want to do a better job of addressing the needs of children, contributing to the reduction of poverty through the skills and knowledge that education can bring, and who are ashamed of the poor results that public education is now producing. Thus, there is a constituency for reform supported by external donors, including many NGOs.

The most important questions to be addressed in the reform process are how to best involve the community, how to improve the funding of schools, and how to create a structure that can sustain better education. Here there is a significant debate and potential conflict of interest. On the one hand, many development projects approach the matter strictly as a question of improving school management and financing without dealing with the broader social and power relationships at the local government level and above. On the other hand, there are those who feel that the issue of education must be tackled as part of a general set of community issues and cannot effectively be addressed separately. For the latter, the possibility of reform lies in building from community needs as expressed in a plan that has wide community support, and in assisting the community to address technical issues and financial issues through training and experiential education that deals broadly with social issues, such as gender

discrimination and community monitoring. The ability of the community to work in partnership with principals and teachers to monitor the progress of a school toward its educational objectives (see proposed UNESCO Plan), and eventually to draw Ministry of Education Regional Inspectors into the evaluation and monitoring process, is the key to linking reform elements in the community, the school and the state. For this later group (see example of Ile de Saint Louis Project), sustainability can only come through the capacity of the local community to address not only their educational and infrastructure needs but their ability to generate income and revenue to support activities that the community genuinely wants.

Resistance to reform can be found at every level where the exercise of discretionary and unchecked power can translate into personal gain. Thus, officials in the Ministry of Education show little interest in devolving school technical and financial management to lower levels, particularly to the communal level. Many Inspectors resist the kind of partnerships mentioned above both because it may require them to be more productive (some teachers interviewed stated that they rarely see inspectors in their schools), and because it could reduce their own power to allocate resources and potentially benefit from these allocations themselves. As elsewhere in Africa, there is a major struggle going on between the needs of local communities and the interests of teachers as unionized state civil servants. With decentralization, primary school and to some degree middle school teachers are threatened with losing their status and at least a portion of their privilege. Students in the Grandes Ecoles and universities, who have always been led to believe that achieving the pinnacle of “western” education would afford them a life of elite status and relative affluence, are not likely to be responsive to arguments about the reallocation of resources away from them in the “public good.” And politicians who court these students are not likely to make the hard decisions that could more rationally allocate the pie. These will not be easy resistances to overcome, yet each of these problems brings with it a serious matter of misallocation, if not overt corruption, in the use of public resources.

## Recommendations

The education system poses a whole set of possibilities for reform and better governance. The best practices from African and other developing country experiences suggest that many may be appropriate for Senegal.<sup>19</sup> Some of these are:

- Improving the accountability of school administration through greater parental involvement (El Salvador- EDUCO)
- Creating complaint channels and counseling facilitates whereby parents and students can bring alleged violations of norms, rules and codes of ethics to the attention of school authorities and the community
- Improving teacher salaries and living conditions
- Involving teachers more fully in the life of the community so they understand the perspectives of parents and become stakeholders in improving community life
- Regularizing the status of the corps of teachers to eliminate a hierarchy of status and salaries
- Improving the professional and ethical training of all teachers including the “volunteer” and “vacataire” teachers
- Training community members to be watchdogs and to monitor the educational rights of parents and students
- Creating or reinforcing community lobbying to influence higher levels of the technical bureaucracy and political representatives (Russia-Tomsk and Samara)

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<sup>19</sup> Christian Michelsen Institute. Corruption in the Education Sector, Ch. Michelsen Institute U4 Anticorruption Centre, 2006, [www.u4.no](http://www.u4.no).

- Enhancing educational budget transparency through the use of simple Public Expenditure Tracking Surveys (PETS) and training local people in budget literacy broadly, not just as part of the educational reform (Uganda-EMIS project)
- Greater donor coordination of approaches to improve school budget transparency and performance (Uganda PAF project).

Our analysis of the most promising areas of educational governance reform in Senegal points primarily to the Inspection level and the local government level. Resistance and the current political situation at the national level seem to make real change at the post-secondary level (particularly at the university) much less likely to succeed. Reform of the budget process and implementation of an effective expenditure tracking system are systemwide solutions that must be pursued but which concern all the technical sectors. Educational budget reform is unlikely to be successful or meaningful in the absence of a broad reform of public sector expenditure control and procurement monitoring.

## SUMMARY OF ANTICORRUPTION PROGRAM OPTIONS FOR SENEGAL – EDUCATION SECTOR

Anticorruption Program Option	Major Counterparts	Potential Obstacles	Potential Impact on Corruption	Short-term success	Impact Timing
Strengthen demand-side pressure and oversight of education budget; promote budget transparency	Ministry, Public Management Reform Program, Civil Society Actors like FC, and CSOs	Capacity and political will needs to be developed at National Level, and community leaders and associations need to be willing to become involved, need to develop simple budget and expenditure tracking systems.	Medium to high.	Mid- to long-term	Mid- to long-term
Enhancing school monitoring partnerships (School, Community, Inspectors)	Regional Level Min Educ, Principals, CL commissions, CSOs, CBO level associations.	Ministerial and Inspector level intransigence, ability to develop approach based on local needs, simple monitoring mechanisms	Medium to high and perceived nationwide by almost every family.	High impact in short-term	Mid-term

## LOCAL GOVERNMENT SECTOR

There are great differences in governance styles because of the great variety of local government institutions and differences in conditions and populations at the local level. Regional, municipal, and rural councils have much power concentrated in the hands of the presidents and mayors, and generally weak councils to check the power of the local executives. At the local government level, citizens are less likely to use courts to resolve conflicts and local level courts are relatively rare. Moreover, national level institutions, like the *Cour des Comptes*, rarely have the resources or the will to effectively monitor and audit local government financial transactions.

Municipal communes are highly politicized in Greater Dakar and in the larger cities where high levels of political patronage and corruption prevail. In the Dakar metropolitan area, urban civil society elites focus primarily on national level corruption and grand corruption rather than getting directly involved with local government, except for rare examples like the *Mouvement Citoyen* led by Penda Mbow who ran for mayor in her *commune d'arrondissement* in Dakar.

The Regional Councils and Commune d'Arrondissement Councils, originally created in 1996, are relatively new institutions and lack the human and financial resources needed to carry out their missions. The Regional Councils tend to be dominated by major political leaders from the ruling party closely allied with the president. Although the mayors of the communes d'arrondissement are also politicians, they tend to be more representative of their constituencies.

Senegal's Rural Councils have few resources and no professional staff outside of the Community Secretaries. The Rural Communities vary markedly in population size, area, level of financial resources, and degree of politicization and partisan politics. The Presidents of Rural Councils are often more representative of their communities than the mayors of Municipal Councils. Their smaller resource base offers fewer opportunities for corruption at the local government level.

Local Government is not represented within national anticorruption institutions like PNBG and CLNCC. The local government section of the *Cour des Comptes* lacks resources and personnel to report on local government finances.

Although, highly centralized, the regime exercises little direct control over local government institutions, especially in rural areas. The scale of corruption is much higher at the national state levels because that is where all the money is. The failure to transfer larger percentages of national budgetary resources to local government reduces the potential for grand corruption.

The levels and forms of corruption and anticorruption activities vary considerably. Efforts are very uneven throughout the country and vary because of differences in scale and environment. The corruption situation depends on several factors: the political will of local leaders, the degree of interest and participation of local citizens in municipal and rural government, expectations concerning the delivery of public services, and the degree of politicization of local government institutions.

Although donors in Senegal do not have local government anticorruption programs per se, they have increasingly sponsored programs to enhance citizen participation in local government planning and training for local government issues including references to transparency and accountability as necessary for good government. USAID has been supporting decentralization since the mid-1990s and has supported good governance practices in their sectoral programs as well.

Although the national government since 2000 has increased the amount of resources made available to local government, it has not transferred the human and financial resources directly to local government entities needed for local government to carry out its mission. Moreover, major projects affecting larger cities like Dakar and Thiès are controlled by the central government, often without consulting local government officials, while large-scale sectoral donor programs often operate with minimum of involvement of local government

Although decentralization often entails the replication of corruption patterns found at the national level at the local government level, it also provides opportunities for citizens to control corruption at this level because citizens are closer to their elected officials than is the case for national level officials.

## Vulnerabilities

The concentration of power in the office of Mayors and Council Presidents often creates a situation in which there are few checks on executive power by weak municipal and rural councils. Politicization of recruitment processes, especially in large cities, leads to hiring on the basis of political criteria rather than merit and the use of public office to reward political supporters and enhance the political position of the party controlling local government.

The frequent and large turnover of local government officials and the lack of knowledge of local government rules and procedures by local officials and local inhabitants opens the way for manipulation of the rules and misuse of power, while the lack of transparency and demand for transparency in local government financial operations provides opportunities and incentives for corruption. Limited public interest and participation in local government affairs, especially in Dakar and larger towns, reduces checks on abuse of power. Many city dwellers and urban elites who are well-versed in national politics do not know the name of the mayor of their commune d'arrondissement or those of their municipal councilors.

Public acceptance of certain forms of petty corruption—e.g. payoffs for getting public services, licenses, etc. or for reducing taxes, fines, etc.—is relatively high. The exchange of money for services is often regarded as normal and part of doing business with local officials, an attitude that makes it difficult to fight corruption at the local level. This is compounded by the failure of the government to sanction the actions of corrupt public officials. Cultural norms relating to mutual reciprocity, solidarity, and obligations related to family, kin, friends, political allies, etc. support certain forms of corruption—e.g., hiring and favoring family and friends, providing gifts for services, reluctance to impose sanctions when called for.

Although agents of deconcentrated technical government services are theoretically under the authority of local government, local government officials have few levers to exercise controls and sanctions for poor performance and corruption by local technicians—e.g. forestry agents, health workers, school teachers, etc.. As long as their salaries are paid by the state and their career paths determined by their superiors in the central technical ministries, local level technical officials have few incentives to become more accountable to elected local government officials and local communities.

## Opportunities

The legal framework contained in the 1996 Local Collectivity Code provides specific mandatory mechanisms for insuring transparency, accountability, and public participation in decision-making. Surveys show that the public has more confidence in local government than in national level political institutions like the National Assembly and political parties. Local government in rural areas are more likely to remain non-partisan than national government and often more responsive to their constituents. The number of civil society activists elected to local government offices has been steadily increasing. In some areas, local government has served an important role in providing a school for democracy, especially when citizens are directly involved in local government affairs.

As a result of the decentralization reforms, citizens and elected officials are acquiring greater understanding and knowledge as to how local government ought to work. They are becoming more sensitive to and aware of the costs of petty corruption at the local level and the fact that certain forms of corruption—e.g. *ger* or imposing payment for services that ought to be given free—violate cultural norms.

Donors are increasingly recognizing the importance of good governance and citizen participation at local level as essential for effectively implementing anti-poverty and local development programs and are providing resources for training local government officials and citizens at local levels and collaboration in preparing local development plans. Pro-reform elements promoting good governance at local level include:

- National level associations representing and lobbying for local government such as UAEL, APCR, etc.
- Direction of Local Government in Decentralization and Local Government Ministry
- Representatives of local civil society concerned with improving good governance at local level.

- National media reporting on corruption at local level and community radio stations
- Local government officials committed to the development of their communities
- Elements within technical services promoting professionalism.

Effective mechanisms for promoting good governance and reducing corruption include establishing *cadres de concertation* between different levels of government and civil society organizations (Saint Louis), participatory budgeting involving citizen participation in elaborating and monitoring the budgetary process (Fissel), and depoliticization of local government operations (Gorée),

## Recommendations

- Extend training and information concerning the functioning of local government to include municipal and rural councilors and local civil society.
- Support participatory budgetary processes developed by IED in Fissel
- Support and strengthen mechanisms like *cadres de concertation* (Saint-Louis) to
- promote greater collaboration between different levels of local government, local civil society, and local media (community radio)
- Tailor local government anticorruption interventions to local political, social, cultural, and economic contexts.
- Promote and support participation of national urban-based elites in local government in their areas (e.g. Mouvement Citoyen).
- Support integration of anticorruption components in USAID Health, Education and Natural Resources programs.
- Develop mechanisms to ensure sustainability of anticorruption programs at local government levels after completion of project.
- Work for better harmonization and coordination of local government components in local development and anti-poverty programs.

## SUMMARY OF ANTICORRUPTION PROGRAM OPTIONS – LOCAL GOVERNMENT

Anticorruption Program Option	Major Counterparts	Potential Obstacles	Potential Impact on Corruption	Short-term success	Impact Timing
Participatory Budgeting	Local government officials Local civil society Community radio Local technical services USAID and donors NGOs	Resistance of Presidents and Mayors Lack of public interest	High Impact	moderate	Medium term
Training of Municipal and Rural councilors	Local Councils, Donors, Min Local Government	Local elites, partisan political leaders, limited capacity of Min Local Government.	.moderate, training much broader	Moderate	Medium term
Promote urban demand for better governance by supporting citizens' movements	Movements like Movement Citoyen, donors through grant programs, Senegalese NGOs	Urban political leaders and partisan disputes, interest and time available	. High	Moderate	Medium

## NATURAL RESOURCE MANAGEMENT SECTOR <sup>20</sup>

Like most sub-Saharan countries, Senegal is experiencing an unprecedented environmental crisis caused by the persistent degradation of natural resources—forests, fisheries, wildlife, arable land, biological diversity, and mining resources. Progressive degradation of the environment has taken place despite the adoption of numerous codes--e.g., Wildlife (1986); Forestry (1998); Environment (2001); and Mining (2003)--and regulatory mechanisms accompanied by the government's increased commitment to elaborate and implement sustainable development strategies to protect the environment.

Effective management and regulation of Senegal's natural resource base is vital not only for avoiding damage to Senegal's physical environment. It is also critical to sustaining and developing the Senegalese economy and the provision of livelihoods for the country's rapidly growing populations. Fishing and mining constitute two of Senegal's leading export sectors. Declining fishing resources and mismanagement of Senegal's major mining sectors--e.g. ICS—threaten the future of these two sectors while rapid rates of deforestation caused by the growing demand for charcoal in urban areas and arable land in rural areas are reducing soil fertility and productivity and undermining the rural economy. Growing demand for urban land for housing is pushing up land prices, sparking speculation, and making it more difficult for Senegalese of modest means to pay for decent housing.

Increasingly fierce competition for access to increasingly scarce natural resources, inadequate and non-transparent control and regulatory mechanisms, and lack of understanding of the complexity of laws and regulations governing natural resource use and the high costs of degrading the environment provide a propitious climate for corruption.

The 1996 Decentralization Code transferred authority to local government units for managing natural resources. Although local government theoretically has legal responsibility in this area, in fact, the state continues to play the dominant role in regulating access to and use of most of Senegal's natural resources and in imposing sanctions on those violating the law.

### **Vulnerabilities**

As in many other sectors, there is a wide gap between the law and the application of the law. Senegal's diverse natural resource codes are generally well-written. However, there is a severe shortage of personnel and resources to insure enforcement of the codes and punishment of those violating the law. For example, there are not enough forestry agents to patrol all the protected forests, inland waterways, and national parks and wildlife reserves or enough maritime agents and boats to adequately patrol and prevent over fishing of Senegal's offshore fisheries. Insufficient personnel decrease the risk of law violators getting caught.

The level of corruption is directly related to the economic stakes involved. Grand corruption is more likely to be found in sectors where the economic stakes are high—e.g. large-scale mining industries, major off-shore fishing activities involving well-equipped foreign fishing boats, allocation and titling of large tracts of urban land, etc. Petty corruption is more widespread and results from illegal agreements between natural resource users and government officials charged with regulating access to and use of land, forestry resources, wildlife, etc.

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<sup>20</sup> For a detailed study of corruption in this sector, see Abdou-Salam Fall (Ed.), *Gouvernance et corruption dans le domaine des ressources naturelles et de l'environnement au Sénégal, Rapport final*, Dakar: Forum Civil, October, 2006.

The politicization and lack of transparency of different government ministries and departments involved in natural resource management coupled with a high degree of discretionary power on the part of ministers and department heads in making decisions concerning quotas, licensing, and punishment for violators of the rules offer temptations to engage in corrupt practices. For example, the allocation of charcoal quotas are still taken at the national level despite the fact that quotas have been officially abolished and that responsibility for allocating licenses has been transferred to the presidents of the rural councils.

Opportunities for corruption exist at many levels because government regulations are costly for entrepreneurs who seek to reduce their costs of doing business and increase their profits by increasing the amount of natural resources they are exploiting. Petty corruption occurs when officials accept bribes for not enforcing rules concerning the use of illicit fishing nets, overloading trucks with firewood and charcoal, hunting and grazing in protected areas, cutting protected species, operating without licenses, etc. Corrupt officials can also impose fines on those caught violating the rules and keep the money collected for themselves or sell confiscated goods and keep the money. Land speculators have been known to bribe officials to gain title to coveted property in urban areas while urban mayors have been known to favour their electoral supporters in allocating lots.

As in other sectors, ordinary citizens caught violating the law or seeking to reduce their costs see little harm in engaging in petty corruption and view this as a necessary part of life and often essential to their economic survival. Moreover, many citizens and enforcement agents do not fully understand the existing laws or keep up with new changes in the law while many citizens are not aware of their rights and procedures to take when these rights are violated to defend their interests.

## Opportunities

Given the existing political climate in the country, the best opportunities for reducing corruption seem to lie in working at the local government level and facilitating greater citizen participation in managing natural resources. The 1996 Decentralization Code and the 1998 Forestry Code for example, provide a solid legal framework for community management of local forests. Local communities can also work in other areas involving management of grazing lands, inland fisheries and fishponds, wildlife reserves, road construction materials, etc.

Although local government and community regulatory and management mechanisms will entail relatively small-scale activities and simple control mechanisms, they can have a major impact in reducing petty corruption at the local level and lead to a more efficient management of resources and greater economic returns to the community in the form of increased incomes and services. Government officials often forget that local communities often have a large stock of indigenous knowledge concerning their natural resources and traditional management methods which can be adapted to changing conditions and technologies.

However, what is needed is more training of local government officials, technical agents, and citizens in understanding the new rules governing natural resource management and their rights to managing these resources.

Given the growing consciousness on the part of the government, private sector, and national level civil society concerning the importance of preserving the environment and the threat that wide-scale corruption in the natural resource sector presents to Senegal's economic future, opportunities also exist to build support for reform by supporting studies documenting trends and highlighting the costs of mismanagement and corruption. These results can then be widely disseminated.

## Recommendations

These recommendations are based on the assumption that community management of natural resources is the best approach towards ensuring good governance practices and curtailing corruption at the local level. This approach also seeks to build partnerships between all of the different stakeholders—state, local government, concerned technical services, private sector, community, and resource users to ensure rational management of existing resources and consensus as to how resources should be used and benefits distributed. These recommendations include:

- Involving local populations and local government in negotiations concerning sectoral policies related to access, use and distribution of benefits and types of sanctions to be imposed in case of violation of the rules.
- Adapting and harmonizing existing laws to eliminate contradictions and to be more in line with local strategies and practices. Local conventions which reflect these strategies should be recognized as binding and their legal status strengthened.
- Advancing the decentralization process by strengthening the role of local communities in decision making for the use of the resources as well as in the distribution of profits resulting from their management in giving local communities more power in prescribing rules and allocating resources. Efforts will also be made to strengthen the capacity of local government officials and community stakeholders to manage local resources more efficiently.
- Reinforce control mechanisms by investing more in human resources and providing greater material and financial support.
- Strengthen collegiality and collaboration among different state administrative and technical services charged with regulating natural resource environment.

### SUMMARY OF ANTICORRUPTION PROGRAM OPTIONS– NATURAL RESOURCE MANAGEMENT SECTOR

Anticorruption Program Option	Major Counterparts	Potential Obstacles	Potential Impact on Corruption	Short-term success	Impact Timing
Strengthen Community (CL) management of resources	Projects, Local Government, NGOs, IED, Dutch Aid, USAID- WulaNafaa	International agreements for free access, commercial interests, political allies of businesses and cartels, availability of appropriate technical support	High in case of petty corruption	High	Medium term
Broaden consultation on defining environmental policies to include more actors including local associations and regional and national producer groups (CNCR)	Various Government ministries and Programs, CLs and Local Elected Official Organizations, Donors, decentralized partners	Bureaucratic competition, intergovernmental conflicts, limited knowledge and resources at regional level and below	Medium, if can be implemented (see Agrosylvopastoral code)	Medium	Medium to long term

<b>Anticorruption Program Option</b>	<b>Major Counterparts</b>	<b>Potential Obstacles</b>	<b>Potential Impact on Corruption</b>	<b>Short-term success</b>	<b>Impact Timing</b>
Co-regulation of resources in partnerships between State, Local Government, civil society and private sector	All local and regional interested parties, multiple Ministries and Direction in the GOS, Environmental groups such as IED, Private sector businesses such as Charcoal Cartel	Resistance between different program objectives, resistance from business interests who favor less regulation, limited knowledge and experience of CL level actors	Medium	Possible, but difficult	Medium
Put in place legal structure to recognize and enforce local resource use contracts	CL, Administration-préfet/ sous préfets, Min Justice, Min Environment,	Private interests with political allies may resist,	High	Yes, likely	Short to medium term
Strengthen Local government so that councils can play a more effective role in decision making and demanding a share of the benefits	Decentralization programs, donors, other partners, PNDL, PSRP-2, Local Elected officials, local level user /producer associations	Lack of resources for training on specific issues, lack of resources generally for CL, inadequate technical support to CL	High	Difficult but important	Medium term

## PRIVATE SECTOR ECONOMIC GROWTH

During the first two decades of independence (1960-1980), the Senegalese formal private sector was rudimentary and tightly under the control of the state while the economy was dominated by French and Lebanese business interests. Corruption was moderate. At that time, the Senegalese formal private sector was small and heavily dependent upon state contracts and licenses to function.

During the 1980s, one began to see the expansion of the Senegalese formal private sector, the rise of larger-scale, modern Senegalese modern industrial and service enterprises and the emergence of a strong informal sector which challenged the dominance of Lebanese and French firms in the commercial sectors. Despite the steady movement towards decreased state regulation of the economy and greater privatization of government enterprises and services under a series of structural adjustment programs, the Senegalese private sector remains highly dependent upon the state for contracts and business opportunities and therefore vulnerable to corruption.

Since the mid-1980s, the Senegalese private sector has become increasingly modernized, better organized, and asserting greater autonomy from the state. The Senegalese private sector has stepped up its demands for greater transparency and speed in government operations and a greater voice in elaborating Senegalese economic growth strategies. Three major business associations represent the interests of the Senegalese private sector:

- Conseil National du Patronat du Sénégal (CNP). The CNP represents some of the older large-scale industrial and service groups. It has traditionally enjoyed close and cordial ties with the state, had closer ties with foreign firms, and been more reluctant to criticize state policies than the other business organizations.

- Confédération Nationale des Employeurs du Sénégal (CNES). The CNES has been more vocal in criticizing the government's slow pace in implementing transparency measures, more critical of the privileged position of certain economic enterprises vis-à-vis the state, more apt to defend Senegalese firms against foreign competition, and more open to working closely with the informal sector in fighting corruption.
- Union Nationale des Commerçants et Industrielles du Sénégal (UNACOIS) UNACOIS represents the so-called informal sector. It has been more vocal in its criticism of government tax and customs policies and in calling for the end to monopoly practices and discrimination against informal sector businessmen.

Although President Wade and the Senegalese private sector have expressed their strong commitment to liberalize the economy, it is not clear that the private sector or the President want a wide-open market economy in which the state plays a minimum role in regulating the economy. The President has concentrated a great deal of discretionary power in agencies attached to the office of the president which have been able to avoid competitive bidding on major public works and infrastructure projects. For their part, the three main private sector organizations have expressed the need to receive some protection from foreign investors. UNACOIS is concerned about competition from Chinese merchants and investors while the other two associations which together cover most of the modern formal Senegalese sector want at least a piece of the action in being guaranteed sub-contractor status when government contracts are accorded to foreign investors or protection against foreign investors competing in the same area.

One of the major changes in Senegal in recent years has been the willingness of the state to publicly acknowledge that corruption is a serious problem hindering economic development and the growth of the private sector. Surveys conducted of Senegalese enterprises point to corruption as particularly serious in tax collection, access to credit, and obtaining permission to create a new business.<sup>21</sup> There is also a strong perception among the general public that there is a great deal of corruption involved in public-private sector contracts, although one has no direct evidence that this assertion is accurate because by nature this form of corruption is carefully hidden by both parties. This perception has been fuelled by the high degree of government contracts escaping public bidding. The IMF reported that over 90% of public contracts in the first quarter of 2007 did not entail competitive bidding as compared with 56% of contracts in 2006.

## Vulnerabilities

The state, rather than the Senegalese private sector, remains the dominant economic actor in the modern sector. Despite liberalization measures, the state continues to highly regulate private sector economic activities through taxing, licensing, and customs regulations while the massive inflow of foreign aid and sharp increases in government revenues and investments in infrastructure makes Senegal's private sector heavily dependent on the state for contracts and economic relief.

Corruption vulnerabilities take several forms:

- High degree of dependency of many private sector enterprises on government contracts State officials may demand kickbacks while businesses will offer bribes to get the contract. Interviews indicated that bribes ranged from 10% to 30% of the value of the contract. In a difficult economic climate, failure to offer a bribe may mean bankruptcy for firms experiencing economic difficulties. For Senegal, this phenomenon occurs at all levels and scales of activity from the

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<sup>21</sup> Cabinet ORGATECH, "Enquete sur les Manifestations de la Corruption au Sénégal : Enquete auprès des Entreprises,"Dakar: Forum Civil, 2001.

Chantiers de Thiès down to the construction of a rural school or health center by a local entrepreneur.

- Lack of transparency and information concerning terms of contracts and criteria for awarding contracts also enhances the climate for corruption. It is also difficult and politically risky for Senegalese private sector firms to openly challenge the lack of transparency when this is occurring in agencies attached to the presidency. Foreign investors dissatisfied with the lack of transparency can more easily look elsewhere.
- Inadequacy of existing institutional corruption control mechanisms within Ministries of Finance, Industry and Commerce, Mining, Water and Forestry, Maritime, Transportation, etc.; institutional instability caused by rapid turnover; and politicization of top-level government posts make it difficult to control middle and low level corruption involving kickbacks and bribes for speeding up procedures to obtain licenses, reducing taxes, faking invoices for imported goods, etc.
- A culture of tolerance of corruption in business affairs. Businessmen accept corruption as part of doing business and factor this into their accounting. Grand corruption by those in power is also tolerated by the general public as long as some money is spread around to public
- Onerous tax and customs duties that make it difficult for small and medium sized informal sector enterprises to survive if they paid the official rates levied on them. For example, paying taxes on volume of sales rather than on profit margins makes it difficult for merchants with low profit margins to survive if they had to pay taxes.
- Lack of knowledge of regulations concerning taxes, customs, official bookkeeping norms, registration procedures, etc. on the part of informal sector entrepreneurs that make them vulnerable to corrupt government officials and discourage them from entering the formal sector
- Limited understanding by judges of commercial law in judging conflicts involving the private sector and conflicts between the public and private sectors.
- Petty corruption - extortion, bribery, speed money, influence peddling, and favoritism - is common practice in most business-government transactions starting from business registration, numerous government permits issuing, inspections, and leasing of public property. These forms of corruption have the greatest impact on small and medium-sized businesses that feel insecure and helpless to confront authorities and bureaucrats.

## Opportunities and Constituencies for Reform

Senegal has several constituencies that seek reform to different degrees:

- Private sector umbrella organizations like CNP, CNES, and UNACOIS
- Civil society organizations like Forum Civil, Aide Transparence and the coalition of CSOs formed in 2003 to monitor public sector activities
- Women's groups like the association of women entrepreneurs involved in preparing the Diamniadio Industrial Platform and women's entrepreneur associations seeking equal access to economic opportunities
- Media which has widely reported and exposed private-public corruption
- Government agencies interested in reform such as PNBG, CLNCC, and APIX
- USAID and other donors interested in improving Senegal's business climate.

All three of the major business umbrella organizations have a common and direct interest in promoting greater transparency in public markets. Relatively conservative organizations like the CNP prefer to battle corruption by creating a business environment and conditions that make it more difficult for corruption to flourish, and by emphasizing good governance. Both the CNP and CNES are consulted by the government in discussing Senegal's accelerated growth policy. UNACOIS which has been the most vocal in attacking government private sector policies and corruption should also be involved in efforts to lobby for greater transparency. To the extent that the lack of transparency has detracted from some foreign investors coming to Senegal, APIX might also have an interest in promoting greater transparency to attract foreign and Senegalese investors. The PNBG and the CLNCC might also be government allies to support this kind of program.

While the business community should take the lead, civil society associations, women's entrepreneurial associations and the media should also be involved in efforts to lobby for greater transparency and to generate greater public support for transparency and other anticorruption activities.

## Recommendations

The fight against corruption constitutes one of eight main themes and actions adopted by USAID/EG to improve the business sector, increase growth and accelerate Senegalese enterprise competitiveness. Given the political realities, US Government priorities, and the resources available, the following recommendations should be considered:

- Support the establishment of a national observatory that would monitor public markets and the application of the new procurement code
- Provide training and technical assistance to informal sector enterprises to enhance their understanding of government rules and regulations and bargaining power vis-à-vis the government and offer the prospects of becoming formal private sector enterprises.
- Provide support for creation of mechanisms for collaboration between private sector, CSOs, and media to investigate, document and share information concerning corrupt practices in private-public sector relationships and measures to combat them.
- Provide training in commercial law and best practices to judges and state officials involved in hearing cases and mediating private sector conflicts and conflicts between the state and the private sector.
- Encourage high level diplomatic dialogue with the President concerning the need to accelerate good governance reforms and combat corruption more vigorously.

## SUMMARY OF ANTICORRUPTION PROGRAM OPTIONS- PRIVATE SECTOR

Anticorruption Program Option	Major Counterparts	Potential Obstacles	Potential Impact on Corruption	Short-term success	Impact Timing
<p>Support establishment of a national watchdog Organization for Public Procurement to monitor bidding processes, the application of the new procurement code, and the quality of the goods and services provided by suppliers as well as selective local Watchdog groups at the C.L level .</p>	<p>PNBG Commission de Lutte contre la Non-Transparence, la corruption, and la Concussion, CNP, CNES, UNACOIS CSOs, Researchers, and Media Collectivités Locales and Community -based Associations USAID partners, other donors</p>	<p>Resistance from state officials and private sector interests profiting from lack of transparency Refusal of government officials to provide information needed for Obervatoires to fulfill their role Lack of consensus among shareholders concerning organization and representation</p>	<p>High impact  Monitoring will increase risks of exposure and sanctions and can serve as a deterrent to corrupt practices, Conversely, credible evidence that public bidding follows the rules will help restore credibility of existing public-private relationships</p>	<p>Visible success can be obtained within mid-term period</p>	<p>Impact should be in a mid-term</p>
<p>Provide training and technical assistance to informal sector enterprises to understand government procedures, regulations, and requirements, to negotiate with government officials and to attain formal sector status.</p>	<p>Informal Sector Enterprises, UNACOIS and other informal sector associations Ministries of finance/industry, and commerce USAID private sector partners Other donors</p>	<p>Lack of trust between informal sector enterprises and state economic agencies. Reluctance on the part of informal sector enterprises to provide accurate information needed to become formal, when such information could entail high economic costs.</p>	<p>High impact- Impact should be significant over time. Reduction of Corruption and under the table negotiations . enterprises</p>	<p>Success should be visible and can be achieved within mid-term period</p>	<p>Results can be achieved within mid-term time period</p>

<b>Anticorruption Program Option</b>	<b>Major Counterparts</b>	<b>Potential Obstacles</b>	<b>Potential Impact on Corruption</b>	<b>Short-term success</b>	<b>Impact Timing</b>
Support collaboration between private sector, CSOs, and media to investigate, document and disseminate information exposing corrupt practices and the specific measures needed to combat them.	Business Community CSOs like Forum Civil engaging in Sectoral corruption studies Media interested in this issue and willing to gain competence in investigative reporting techniques USAID partners,	Reluctance of private sector to wash dirty linen in public or to expose govt. corruption for fear of losing favor with state Lack of competence of investigative journalists in commercial and legal matters	High impact - Impact should be visible and significant	Success mid-term period	Results can be achieved within mid-term time period
Provide more training in commercial law and best practices to judges and other state officials involved in hearing cases and mediating conflicts within the private sector and conflicts between the private sector and the government	Ministry of Justice Association of Magistrates  USAID	Limited incentives for magistrates to seek such training.	Medium impact	Success will not be very visible. Can be achieved within long-term period	Results can be achieved within long-term time period
High Level Diplomatic Dialogue with President concerning need to accelerate implementation of reforms	USAID/Embassy Donor private sector Coordinating group President	Low degree of donor leverage on president Lack of political will of donors	High if President can be convinced to accelerate implementation of reform	Success will be visible but problematic Can be achieved within mid-term period	Results can be achieved In mid-term

## OTHER INSTITUTIONS OF CONCERN IN THE CIVIL AND POLITICAL SPHERE

### Parliament

In addition to its roles of representing the people and voting on laws, the Parliament is responsible for controlling the actions of the Executive, including the management of public funds. It does this through its consideration of the annual budget law and the laws for budget revisions. The Parliament has others means as well, in particular through its representation in the Administrative Councils of some firms and public institutions.

The role of the Parliament cannot be reduced simply to control the management of public finances. It votes on laws including criminal laws that govern corruption. It is also the Parliament that approves of international conventions and treaties including those that involve the fight against corruption. It can effectively sanction the government if it finds that it engaged in poor management practices through a vote of censure which could even overturn the government.

Parliaments with weak powers and dominated by a strong executive have few opportunities to participate in grand corruption. In regimes like Senegal, where one party or coalition under the control of the president has a strong majority, decisions are generally taken with little deliberation and follow the lines laid down by the executive. Since independence, nearly all laws with few exceptions have been initiated by the executive despite the fact that the parliament is the legislative branch of the government. The parliament exercises little control and oversight over government activities. Commissions lack human and financial resources and the political will to conduct public investigations and inquiries on corruption in government. Most parliamentary corruption takes place in-house and focuses around misuse of National Assembly financial resources.

Nor has the Parliament shown any real desire to fight corruption. In practice it has rarely even exercised its financial monitoring role. The last time that the Parliament voted on a budget reconciliation bill was in the year 2000, covering the budgets for 1987 to 1996. The Executive is responsible in part for this situation as it delayed tabling the draft laws regulating the budget. But this does not excuse the parliament. The National Assembly has always operated with a clear majority. For many deputies, it is unthinkable that the majority party could overturn a government from the same party. On top of this, it is useful to note that the parliament is particularly handicapped by its lack of technical resources due to the low level of education of the majority of its members. The *Cour des Comptes* is hardly able to deal with these limitations.

## Political Parties and Elections

Senegal has a long-standing tradition in which opposition political parties explain their defeat in terms of electoral fraud. The 2000 presidential elections which ousted President Abdou Diouf and brought to power Abdoulaye Wade was a clear indication that the elections were not rigged. Since the 1990s, the Senegalese electoral system has increasingly become more transparent and opportunities for stealing elections on Election Day more difficult. The ONEL set up by the Diouf regime and administered with great rigor helped to restore public confidence in the electoral process and reduced fraud considerably. Although the new election control institution established by the Wade regime (CENA) has been accused by the opposition as being controlled by Wade, the evidence indicates that it has remained relatively neutral and carried out its functions more or less objectively.

The main form of electoral corruption and one which has dramatically increased during the Wade regime is the use of money, food, and other resources to buy voter support and the support of notables, small party leaders, and religious leaders. These methods are by no means new in Senegal. The electoral process is usually distorted by the fact that the party in power has a great capacity to mobilize state resources in an illegal and non-transparent manner to win support. Secret state political funds earmarked for *raison d'état* are often redirected to political campaigns and buying support. Increased economic inequality and deteriorating purchasing power of the population at large makes it increasingly difficult for individuals and groups to reject those who offer money and food in exchange for their votes. One explanation for the multiplication of political parties in Senegal which now number over 100 is the desire of politicians to negotiate the delivery of the supporters' votes in exchange for money and positions in government.

Although political parties, when in the opposition, have long demanded legislation to limit financial spending during elections, ensure greater transparency in use of state funds during election campaigns,

and guarantees for an equal playing field, little has come of these demands and the controls over the financing of political campaigns remains largely nonexistent.

One of the major forms of corruption plaguing political parties is the phenomenon of “transhumance” or the switching of individual or party alliances from the opposition to support the regime in power. Senegalese even use the term *corrompre/corrupt* to describe the process. Various means are used to entice political leaders and their parties to make the switch:

- Offering positions in the dominant party, National Assembly, or government in exchange for political support by party leaders
- Actual payoffs in money to party leaders who then share some of this with others
- Threats to use evidence showing that the person was involved in illegal activities that might lead to jail time and public disgrace unless the person rallies to the party in power.

Most of the major political parties have been tainted by the brush of corruption because most have at one time been in government. Senegalese have a strong distrust of politicians. In fact, the term for politician in Wolof implies dishonesty, speaking falsely, and other negative character traits. Hopes that the change of regime in 2000 would improve political behavior and reduce corruption were not fulfilled.

## Trade Unions

Senegal has three major trade union movements, the CNTS which traditionally had been aligned with the *Parti Socialiste*, the UNSAS, which led trade union resistance to the Diouf regime, and the CNTS-FC which is closely tied to the Wade regime.

Although unions may take a stand against government corruption for political reasons, unions have done little to control or fight corruption within their own ranks. This is especially true of unions whose members are state employees. The most pernicious forms of corruption are those involving relationship between public employees—teachers, health workers, forestry agents, local government officials, etc-- and the public. For example, when the Forum Civil study on corruption in the health study appeared, the public health sector union, UNSAS, denounced the study.

Trade unions also suffer from the same lack of transparency concerning the use of trade union funds, a situation which promotes corruption within the trade union movement. It has long been the practice of those in power or heads of major firms to make deals with trade union leaders to maintain quiet in the private sector or to avoid strikes in the public sector.

## Religious Institutions and Authorities

Senegalese society is profoundly religious. Surveys indicate that Senegalese generally have greater confidence in religious institutions and leaders than in political institutions and politicians. Most Senegalese are Muslims affiliated with the major Muslim brotherhoods—Tidjiani, Mouride, and Qadiri--operating in Senegal. A small number of urban-based intellectuals are members of modern Islamist groups. Christians, mostly Roman Catholics, constitute about five percent of the population.

The religious climate in Senegal is characterized by a high degree of religious tolerance, public respect for religious authorities, and efforts by religious leaders to maintain political and social peace. Senegal's leading religious authorities are often consulted by political leaders and government officials and their support solicited by politicians and others seeking political office.

Although the party in power has traditionally sought to win the support of prominent religious leaders by offering favors and privileges, this practice has become increasingly prevalent since 2000 as more of the

younger generation of marabouts has directly entered the political arena. The press and observers of the political scene in Senegal have argued some marabouts are overtly selling their electoral support in exchange for money. Some observers see marabouts who use their influence to solicit money and favors in exchange for political support as a major source of corruption.

On the other hand, some religious leaders have become increasingly vocal in condemning government corruption and misuse of state resources. Marabout-politicians like Bamba Dièye have run for office on anticorruption and reformist platforms. In the fall of 2006, prominent religious leaders like Abdoul Aziz Sy, Jr., Archbishop Adrien Sarr, and Moustapha Cissé delivered strong anticorruption sermons. Unlike urban civil society organizations attacking corruption using western concepts, Muslim and Catholic religious leaders attack corruption using references and quotes from sacred texts and commentaries that appeal more directly to the people. The Catholic Church has recently begun to organize peace and justice commissions while some Muslim and Christian religious authorities and laypersons have created the *Collectif des Religieux et Intellectuels* (CRI) to advocate for good governance and social justice. USAID anticorruption efforts should consider the feasibility of soliciting and supporting the involvement of prominent religious authorities, media religious commentators, and religious associations. The positive supportive role played by religious leaders in the campaign to fight AIDS offers an interesting precedent and model.

## 6. ANALYSIS OF CORRUPTION ISSUES IN CROSS-CUTTING GOVERNMENTAL FUNCTIONS

The seriousness of corruption in the management of public funds has a special dimension in the context of a developing country characterized by the scarcity of financial resources where everything is a priority. Preventing corruption in the management of public funds has become a high priority. This implies budget transparency and the setting up of procedures to efficiently control expenditures including putting into place efficient and transparent procedures for awarding public market contracts.

### BUDGET TRANSPARENCY

Senegal has passed a number of reforms concerning the management of public funds to harmonize its laws and budget procedures with those laid out in ECOWAS (Economic Organization for West Africa) agreements and under pressure from international donors. The legal framework governing the management of public funds is defined by law n° 2001-09 passed on October 15, 2001 relating to finance laws. This law, which cancels the former organic law n° 75-64 passed on June 1975, is indeed the translation in internal law of the directive n° n°5/97/CM/UEMOA relating to finance laws amended by the directive n°2/99/CM/WAEMU passed on December 21, 1999.

The previous organic law contained provisions for transparency (Law n° 75-64 of June 28, 1975 as amended by the Laws n°91-24 of March 30, 1991 and n° 98- 45 of October 10, 1998). Indeed, for a long time the finance law had been governed by traditional budget procedures involving, among other things, the principle of yearly recurrence, budget continuity and the principle of universality. Besides, the implementation of the expenditure complied with the principle of the segregation of duties between those entitled to authorize payments and the accountants. All these principles were designed to render the management of public funds transparent and rigorous. Nonetheless, in reality the management of public funds is still characterized by a lack of transparency.

In theory, the new organic law sought to introduce several significant innovations that should have made public spending more transparent. First, in that law, public debt is included in the ordinary expenditure section, including also the budgeting of medium and long term loans. The duration of the authorization to collect taxes including program authorizations are now limited and must be renewed annually in the budget law for that year while program authorizations have to be renewed every six years. A second innovation involved the presentation of the budget law which contains the annual authorization to collect taxes and the requirement that the budget be presented in great detail with compulsory documentation. The third innovation concerned the requirement that the executive report to the legislature annually at the end of each budget year

For their part, the donors have strongly promoted budget transparency and conducted a diagnostic study of public finances and public procurement that was supposed to lead to a series of reforms.<sup>22</sup> This study was intended to be an evaluation and not an audit of the financial management and accounting practices in the private sector. It was oriented primarily to evaluate the financial risks rather than assessing the degree to which resources covered by the financial and accounting systems were employed as intended. In July 2003, at the conclusion of this study an action plan improving public finance was adopted by the Interministerial Council. As part of this plan, the Ministry of the Economy and Finance put in place the *Projet de coordination des réformes budgétaires et financières* to implement and follow-up on the recommendations of the plan. It became operational in 2004. An evaluation was conducted by ECORY consulting firm in July 2006.<sup>23</sup> It found that 52% of the recommendations detailed in the plan had been adopted or were in the final stages of adoption. Eighteen percent had reached an advanced level of implementation and 30% had not even begun to be put into place.

In terms of corruption prevention, two measures seemed particularly important: -- the Integrated Public Financial Management System (SIGFIP) and the reinforcement of the financial control mechanisms. Today, the SIGFIP makes it possible to know in real time precisely what is the state of budget execution. This computerization of the budget has presumably made it much more transparent, which has in turn theoretically strengthened internal budgetary control within each of the divisions of the Ministry of Finance.

In practice, however, the impact of these reforms has been very limited. This can be explained in part by the fact that some of the proposed reforms have not yet been implemented. In particular, the reform of public financial control mechanisms is not yet effective in such key institutions as the Cour des Comptes and the Parliament.

The management of public finances in Senegal therefore remains characterized by a lack of transparency. Budgetary control and auditing should be the most effective tools for preventing corruption and having a deterrent effect, if they are conducted properly. But budget projections are very often unrealistic since the information on expenditure and proceeds are not exhaustive; sectoral Ministries often do not cooperate in providing the data. The enforcement of the budget law is very weak and the actual budget is often out of line with budget forecasts due to the extensive use of “exceptional procedures.” According to the PEFA report,<sup>24</sup> the level of off-budget expenditures, apart from those financed by external assistance programs that are not included in the budget reports, constituted between five and ten percent of total expenditures for 2006. It estimated that for 2007 it would rise to over ten percent.<sup>25</sup>

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<sup>22</sup> Voir Banque mondiale, Banque africaine de développement « Evaluation de la gestion des Finances publiques et des pratiques comptables du secteur privé », rapport du 3 juin 2003

<sup>23</sup> Voir ECORYS, Etude d'évaluation de la mise en oeuvre des réformes budgétaires et financières, rapport final, juillet 2006- une étude financée par l'Union européenne

<sup>24</sup> Voir le rapport sur la performance de la gestion des finances publiques, juillet 2007

<sup>25</sup> Voir le rapport PEFA, page 16

In addition, there is a lack of available financial information. For example, the level of resources that are made available to service units at the local level is simply unknown.

Internal audits are not exhaustive and are not available on time because of the low level and untimely exchange of information between the departments. In addition, the training of the auditing staff is insufficient and there is significant turnover of the most qualified staff.

There are, theoretically, a number of places where the budget is supposed to be controlled. First, of course, parliament has final control through its examination of the previous year's expenditures through the reconciliation law. Then, there are numerous other places where control is supposed to take place, including the internal auditing departments of the ministries, the General Inspectorate of Finance of the Ministry of Finance, the financial control department, the State General Inspectors Corps which reports to the President of the Republic, and the State Accounts Court. But these internal and external controls are insufficient to assure that public expenditures are managed transparently and honestly. The reasons for the limited effectiveness of the Cour des Comptes and the State General Inspectors Corps (IGE) are analyzed in greater detail in Annex 4. The control by parliament is almost nonexistent. No budget reconciliation law has been passed since 2000.

## Vulnerabilities

The most serious problems that contribute to lack of financial transparency and thus to the possibilities of corrupt practices are to be found in the dominant role that the Presidency plays in this system and to the lack of accountability for many categories of expenditures. The President is authorized to make loans that are beyond the control of parliament for purposes that are not clearly specified. This also applies to procedures used to spend public funds. It is extremely difficult to trace expenditures at the level of the Treasury. This situation has led to the systematic practice of regularization which shows that the procedures are not respected. In addition, the management of the funds coming from the debts contracted by the state on behalf of some agencies is a source of problems. Indeed, these resources are used without informing the appropriate governmental departments. Some public funds cannot be controlled at all, notably political funds expended by the President. These control deficiencies also apply to the parliament and the Cour des Comptes. The parliament has in fact never exercised its financial control role, and no control is effectively carried out on the management of the State Accounting Court.

In addition, specific corrupt practices and embezzlement of public funds are frequently reported. It is common practice that collected state revenues are simply not deposited in the Treasury. Investigations by the Cour des Comptes have shown that public funds have been used to finance electoral campaigns and to buy votes from those able to significantly influence the voting of their followers. Poor revenue collection and thus inadequate funds account in part for slow payment by the Treasury. This may account in part for the fact that some suppliers feel obliged to offer bribes to some government officials in order to get paid. Unplanned expenses in the budget are made. When they are registered, the amounts allocated are often exceeded or the payments made without producing supporting documents.

## Recommendations

Faced with these malfunctions that favor corruption, public finance reform has to be accelerated and control reinforced. An initial report on financial reform was expected to be produced by the end of July 2007. In theory, the report will obligate the government to adopt every recommendation. Three measures appear to be the most urgent. First, there is an urgent need for a very precise legal framework for the "autonomous" agencies. Second, a system for controlling public expenditures that have not yet been the subject of control mechanisms needs to be put in

place. Third, the organizations of government that control public expenditures need to be substantially reinforced both in terms of their authority and their human and financial resources.

### SUMMARY OF ANTICORRUPTION PROGRAM OPTIONS – CROSS-CUTTING FUNCTION: MANAGING PUBLIC EXPENDITURES

Anticorruption Program Option	Major Counterparts	Potential Obstacles	Potential Impact on Corruption	Short-term success	Impact Timing
Establish a legal framework for “autonomous” agencies	Agencies, CNP, Ministry of Justice, Ministry of Finance, Presidency	Existing economic interests, Top Leadership interests	Low	Low	medium
Establish a system for tracking public expenditures not currently covered	Delegation Management Public, Ministry Finance,	Top leadership interests and control, weak auditing capacity	High	Low	Long-term
Strengthen financial control agencies- IGE, Cour de Comptes, training, physical resources	IGE, Cour des Comptes, other donors (EU, WB)	Presidential interests and control	Moderate	Low	Long-term

## TRANSPARENCY IN PUBLIC PROCUREMENT

Given the magnitude of public funds that transit through public markets, corruption in this sector affects the quality of infrastructure through increases in costs and depriving the Government of resources that would otherwise have been used to finance activities in other sectors. The demand for reform was expressed first by the private sector, followed by financial backers, especially the World Bank.

The awarding of public markets is governed by decree No. 2002-550 of 30th May 2002-- the public markets law. This law is about to be abrogated and replaced with a new one. This fact alone validates the persistence in the past of corrupt practices, which the new law is meant to contain. The most widespread sources of corruption under the old law were in the misuse of exemptions within the framework of the PCRPE. Under this provision, non-competitive “mutual agreement” contracting (*gré à gré*) became the rule in awarding public contracts. The PCRPE urgency which legally justified the recourse to this procedure was often invoked by administrators for operations that had been planned a long time ago.

The agencies for which the applicability of the markets code was uncertain have had recourse to exemptions, especially mutual agreement contracting, although they received public funding. Certain markets were attributed even before sending out requests for tenders. In these cases, the objective of the tender was just to control the situation. In other cases, although public funds were committed, the market was not signed. In these cases, bidders and market attribution commissions have been in collusion to rig the bidding process and to disadvantage potential competitors.

Cases of misappropriation of public funds have equally been noted. Certain administrations ask bidders to furnish them with reams of paper as well as fees provided for by the public markets law. The destination of these fees is unknown. Added to that is the fact that some markets were pre-financed in flagrant violation of the markets code which requires the prior existence of sufficient credits.

Defects in the law itself explain some of the deviant practices in assigning markets. The same is true of exceptional procedures, the ultimate example being the PCRPE, which authorized non-competitive agreements of up to 150 million CFA.

The persistence of exceptional practices was also due to generalized impunity. Certain corrupt officials of the administration even confessed their crimes to unsuccessful bidders, convinced as they were that they would not be punished. Many bidders express their lack of confidence in the agencies that are supposed to control this process.

Learning lessons from the application of code 2002, the new code, while maintaining its achievements, brings some fairly interesting judicial and institutional innovations. At the judicial level, the new code extends its area of application to agencies, some of which have applied for special procedures. The transparent management of these agencies should be reinforced to better combat some the corruption that has been prevalent.

The strict framing of non-competitive (*gré à gré*) agreement procedure deserves to be underlined. This is now limited only to cases where it is likely that only one bidder will be qualified or where there is an issue of secrecy or national defense. In this way, the code has put an end to the misuse of recourse to exceptional procedures which are sources of all kinds of deviations from established procedures, including corruption. These exceptional procedures were in the process of becoming the rule in the Administration, with the justification advanced by certain individuals close to the President being that the formal procedures for competitive bidding delay the execution of the government's plans.

The re-asserted requirement that funds be available before requests for bids are solicited will equally help avoid the problems encountered in the Chantiers de Thiès affairs, where entrepreneurs pre-financed the construction sites. The creation of a regulatory organ for public procurement (ARMP), instituted in the new markets' code, should contribute to the better observance of the prior existence of credits requirement before any invitations for tender.

At an institutional level, the new code provides for the creation of a market regulation body whose main duties will be the following:

- To host a new jurisdictional body in charge of settling disputes that break out particularly at the time when contracts are awarded;
- To propose the necessary regulatory adjustments and reforms to be made on the basis of the requirements imposed by economic development;
- To train public buyers as well as other involved staff on market award techniques;
- To centralize the statistical data and to assess the impact of public procurement on the national economy;
- To ensure the *a posteriori* control of public markets through audits and surveys and to follow the recommendations that result from it.

This body could be important since its independence will be guaranteed by the presence of both civil society and the private sector. Transparency of the market will be thus increased and the risk of corruption reduced.

The reliability of the system could be strengthened by the quick resolution of conflicts in case of defect or noncompliance with procedures. This will reduce the number of legal cases and the need to rectify defects after contracts have been awarded. The ARMP would be able to help prevent the fraudulent awarding of

public contracts and will have the authority to suspend the implementation of the purchase under certain circumstances.<sup>26</sup>

The code is not yet being enforced but it is already raising some reservations. The most serious concerns are about the role of the Central Directorate in charge of markets within the Ministry of Finance. That body is charged with providing training, information and advice on public procurement and on regulations and applicable procedures. Its relevance is questionable since these tasks can be fulfilled by the market regulation body (ARMP). The Directorate, moreover, will never be in a position to give an objective point of view on the Ministry of Finance's purchases since it depends on that Ministry. In such a case there will be a clear case of conflict of interest.

A second concern is about the funding of the ARMP itself. This body will manage very large sums coming from various sources which could itself pose a threat of temptation of corruption.

Even with all these concerns in mind, there is room for optimism. This optimism is shared by many analysts who think that the enforcement of the code in Senegal will help the country be in line with international best practices. However, only the observation of actual practice will allow for a final judgment on the effectiveness of the new code.

## Recommendations

It is early to make recommendations with regard to a law that is not yet enforced. Its enforcement must strictly observe the provisions of the code. It is desirable, however, that this reform be assessed to evaluate how well founded the reservations raised turn out to be.

### SUMMARY OF ANTICORRUPTION PROGRAM OPTIONS – CROSS-CUTTING FUNCTION: PUBLIC PROCUREMENT

Anticorruption Program Option	Major Counterparts	Potential Obstacles	Potential Impact on Corruption	Short-term success	Impact Timing
Strengthen the auditing and investigation capacity of the ARMP	Donors, ARMP, Ministry of Finance	Potential conflict with Min Finance Central Directorate, Political considerations in allocation of markets	Potentially high	Moderate	Short- to medium
Support the creation and operation of a Autonomous Watchdog Agencies to monitor Public Procurement	Donors, Civil Society, Forum Civil, media	Potential conflict with ARMP, Ministry of Finance, political interests	Potentially high	Moderate	Medium term

<sup>26</sup> Article 88 of decree 2007- 545 of April 25, 2007 governing the public markets code

## 7. STRATEGY FOR PROGRAMMING ANTICORRUPTION SUPPORT

### OVERALL RECOMMENDED GOVERNANCE AND TRANSPARENCY STRATEGY FOR USAID: “BUILD FOR THE FUTURE”

Our analysis of the broad strategic political and institutional context, and of the problems and potential reform measures that might be undertaken to address corruption in specific sectors, leads us to identify a series of principles that USAID should consider in formulating its Good Governance and Anticorruption Support Strategy:

- Focus on program options that clearly relate to one or more of the core problems (identified earlier) and to the specific political and institutional context identified in sections 2 and 3. The context that we have identified is one in which power is highly concentrated at the national level, while retaining a significant political space for participation in society. This has produced a context that concentrates corruption at the top and in large scale projects while control of public expenditures and procurement is weak. This context also facilitates or maintains networks of corruption that link all levels of the political system and which maintain a culture of routine petty corruption that compromises effective use of public resources.
- *Choose options that are logically linked to one another because they offer the possibility of addressing issues at different levels or sectors that are interlinked.*
- *Prefer options that are based on “best practices,” that is, on approaches that have already been shown to produce some positive effect in the Senegalese context.*<sup>27</sup> Our fieldwork in Saint Louis, Fissel, and elsewhere has revealed that a number of lessons have been learned and are being practiced in communities all over Senegal based on:
  - Broadly participatory planning and monitoring;
  - Partnerships for local development that involve the State, civil society, technical services, and external non-governmental partners (called *cadre de concertation*);
  - The use of formal agreements and contracts between partners and government agencies to make the rules and expectations clear;
  - Technical support to local level actors from agencies such as the ADC in St Louis, or the Regional Development Agencies, or expert consultants in the UNDP FENU program, etc.
- *Choose options that can link to the major existing concerns of donors and of the GOS as expressed in three frameworks – the Accelerated Economic Growth Strategy, the National Poverty Reduction Strategy (PSRP-2), and the Program for Local Development (PNLD)*
- *Choose programs based on the existence of stakeholders, including external actors (state and non-state) who show interest in supporting reform.*

Following this guidance, we offer six programmatic options that will be described briefly. These options flow from the four core problems identified in Section 4. Each option is linked to addressing one or more core problems. Each attempts to address an aspect of corruption that is prevalent in Senegal today.

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<sup>27</sup> See Annex 5 for further development of the “best practices.”

## Core Problem: Ineffective Public Opposition to Corruption

**Program Option 1.** Develop a culturally relevant concept and approach to understanding and resisting corruption<sup>28</sup>

Discussions of corruption in Senegal are often based on Western concepts and values that are not necessarily shared by most Senegalese. Language and concept gaps between Senegalese urban elites and citizens can hinder efforts to formulate anticorruption strategies and programs designed to win broad popular support and participation. For example, one prominent marabout argued that using Western languages and abstract concepts made it difficult for the people to take corruption seriously. On the other hand, he noted that when religious leaders denounce state corruption in terms of theft and religious values based on the teachings of the Koran, people are more likely to listen, understand, and take action.

USAID/Senegal should explore the possibility of enlisting the support of Senegalese religious authorities in conducting anticorruption programs, especially those addressing petty corruption.

A precedent exists in the participation of prominent Senegalese religious leaders in the anti-SIDA campaign.

There are no words in Wolof to describe what we call grand corruption, which is related to using the public resources of the modern state for private gain.<sup>29</sup> There are numerous words however to describe reciprocal relationships. A neo-patrimonial political culture based on clientelism and deeply rooted in the past explains why many Senegalese are more willing to tolerate grand corruption as long as they feel that political leaders are generous in sharing the fruits of what we call grand corruption.

Civic education campaigns concerning the role and functioning of the modern democratic state and the rights of citizens to demand transparency and accountability from government will need to consider how to explain why neo-patrimonial norms are not valid.

Anticorruption campaigns to reduce certain forms of petty corruption in the provision of public services would be also well-advised to use indigenous terms like *ger* as well as other concepts rooted in Senegalese cultural and social traditions. For example, *Ger* in Wolof defines what we call petty corruption as demanding payment for services which ought to be rendered for free.

The above examples underscore the need to incorporate an understanding of Senegalese religious, cultural and social values and traditions to elaborate more effective anticorruption strategies and programs in the Senegalese context.

**Program Option 2.** Support demand for good governance by supporting civil society's capacity to conduct studies, analyze data, and disseminate that data. The purpose of these studies would be to stimulate public interest and awareness of issues of public expenditure and corruption in procurement.

The primary actor with whom USAID can work on this is the Forum Civil which currently has on-going studies in a number of areas financed by other donors. These include a major study of corruption in the education section, a study to monitor national government expenditures, and the development of an

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<sup>28</sup> See Annex 3 for a fuller discussion of the role of "culture" and the distortion of culture in promoting corrupt practices

<sup>29</sup> Peter Eke's classic article describing differences in African cultural norms towards the modern state and indigenous institutions helps explain why financial rigor is demanded in the management of indigenous institutions while pillage of the state is considered more acceptable. See Peter Eke, "Colonialism and the Two Publics in Africa: A Theoretical Statement," *Comparative Studies in Society and History*, Vol. 17, No.1 (January 1975), pp.91-113.

electronic database of public markets (already financed by the World Bank, Canadian Aid and Dutch Aid). The Forum Civil works closely with a team of university professors at IFAN to conduct this research. In addition, there are other civil society associations, such as AID Transparency, that can conduct particular studies relevant to corruption in the region and in Senegal. The media could also be associated in the diffusion of these studies

### **Core Problem: Inadequate Checks on Executive Decision-making**

**Program Option 3.** Strengthen capacities of local government to more effectively participate in the control of resources.

Designing a program to combat corruption at the local level should draw on “best practices.”<sup>30</sup> These practices require extensive citizen participation and involvement in elaborating and monitoring local government budgets and activities. Citizen participation and control requires training in understanding rules concerning local government functions and mechanisms for ensuring transparency; motivating, mobilizing and including all the diverse elements within local civil society; and creating mechanisms (*cadres de concertation*) that will bring together different institutional and community actors to work together to solve local development problems.

Widening the base of citizen participation in local government affairs means that honest and effective local government is no longer primarily dependent on the character and skills of the mayor or rural council president. Citizen involvement in all phases of the budgetary process promotes greater transparency and confidence in local government and contributes to preventing or reducing petty corruption in local government operations and the delivery of public services. Greater participation of citizens in budgetary processes also can stimulate and reinforce community participation in sectoral activities, increase support for the local tax system, and create an environment that will better ensure the equitable delivery of public goods and services.

**Program Option 4** Mainstream good governance programs in different sectors (health, education, NRM) so that they become part of community-wide participation in financial management and control

The activity here would involve building on the “best practices” for involving local level actors in community-wide decision making and monitoring of public finance and quality of public services. This would include the incorporation of culturally relevant materials in explaining and adapting concepts of transparency and corruption, and the use of well-established techniques for community-wide organization such as those developed in the “cadre de concertation” approach in St Louis and Fissel. This option would not involve replacing existing good governance components of existing sectoral projects, but adding value to them so that communities more fully become stakeholders in their activities as part of community-wide development and investment plans.

### **Core Problem: Lack of Quality and Accountability in Delivery of Public Services (Health, Education, Forestry and Water)**

**Program Option 5.** Promote a greater sense of professionalism and pride in one’s profession within the civil service, liberal professions, and other professions serving the public to improve standards and combat corruption.

This will be achieved by working with their associations to assess the negative impact of corruption and lack of transparency on their professional life, reputation and society. This approach should result in the

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<sup>30</sup> See Annex 5

establishment of professional codes of ethics that will create a more favorable environment for the provision of ethical and quality public services.

## **Core Problem: Lack of Transparency in Government Operations, Particularly in Finance and Procurement**

### **Program Option 6. Support for select government agencies working to reduce corruption.**

There are several possible ways that this might be accomplished. The program would select one or more of the following agencies:

- Support the Anticorruption Commission (CLNCC) in its efforts to diffuse its reports and educate the public about corruption
- Create an independent watchdog center to monitor public contracts and publicize their findings
- Support and monitor the work of the Agency for the Regulation of Public Markets (ARMP), a tripartite structure involving the Government, civil society and the private sector in *a posteriori* monitoring of contracts
- Policy dialogue to see that the ARMP is made operational as soon as possible and with the maximum independence from the State. Policy dialogue would be on three key points involving public finance—the inclusion of all public expenditure in control mechanisms; a legal framework for agencies; and the strengthening of institutions of financial control
- Support for studies of the impact of corruption
- Training for particular agents working in public financial accountability, notably the Cour des Comptes.

## **RECOMMENDED NEAR-TERM GOVERNANCE AND TRANSPARENCY STRATEGY FOR USAID**

USAID has engaged in a number of programs to improve governance in Senegal through its prior Democratic Governance Strategic Objective, and through other sectoral objectives in Education, Health, Natural Resource Management, and Economic Growth. These have taken the form of technical assistance to regulatory agencies (such as the Cour des Comptes), to the budgetary process of the Ministry of Finance and Economy, and to the reform of laws governing private sector enterprises and partnerships. It has promoted citizen participation and strengthening of local level governance through its dedicated local governance support project (DGL-Felo). It has incorporated good governance practices and training in its service delivery programs in health, education and forestry that have emphasized planning and citizen participation. And it has engaged in a high level policy dialogue with the Senegalese government, both alone and in conjunction with other donors.

How should USAID now prioritize its contributions to resolving the problem of corruption and reducing its impact on growth and poverty reduction in Senegal?

- First, it should consider its interests and potential resources, as well as what other donors are doing. Among these interests are its current and likely near-term Strategic Objectives and Programs.

- It should then decide whether it wants to put together a set of programmatic options that constitute a strategy, linking issues of corruption at various levels or whether it wants to focus primarily on one level (national, regional, local)
- It should consider how the unique Senegalese context (political, economic, legal-institutional and cultural) is likely to condition the prospects for success in the near-term time frame.

On the basis of these criteria, a strategy called “Building for the Future” is recommended.

This approach is based on the belief that in the current context it will be very difficult to substantially control or reduce grand corruption, particularly at the national level. Small steps may be possible, however, that can prepare for a more conducive environment. Trying to substantially affect the principal cross-cutting functions of budget control and transparency and public procurement, however attractive these may be and however much they may affect all other levels and sectors, are very unlikely to yield results in the short term.

The most important and realistic opportunities for reducing corruption in the short to medium term lie with improvement of **good governance** practices at the local government level (*collectivité local*) by strengthening and deepening participation and by mainstreaming good governance aspects of existing sectoral programs through the use of best practices and a common add-on methodology. This will do little in the short and medium term, however, to reduce national level procurement and expenditures that lead to grand corruption, but it will eventually build the basis for **demand for better governance** at *all levels*, while improving governance and reducing corruption at the level where most Senegalese feel it the most.

To build for the future, however, also implies two additional programmatic options. First, it requires building **demand for good governance** among national level and largely urban elites who can affect public opinion and political will, based on solid information and extensive conversations and debates about where the Senegalese want their government to go. Modest programmatic options to foster the development of studies and to help diffuse them will not have a short-term effect on the corrupt behavior of top leader leaders and public officials. It may, however, bring the debate and the demand to a new level. To the extent that public officials, particularly from the technical services like health and education, can be involved in these debates, they may be capable of beginning the process of the reprofessionalization of these bureaucracies.

Finally, investing in the future can and probably should result in efforts to engage the government through support to its own reform efforts. In this regard, a **modest support program to the ARMP** may be a high leverage activity. It will at least test the will of the government to practice cleaner procurement processes and may help provide capability when the political will exists to actually see that procurement rules are fairly and competently followed.

## ANNEX 1. LIST OF PEOPLE INTERVIEWED

### Senegalese National Government Institutions \*

Aidara, Adama. Secretary-General, Ministry of Education  
Ba, Oumar El Foutiyou, DMP  
Collin, François, Inspecteur Général d'État (IGE)  
Diagne, Mohamed El Moustapha, Inspecteur Général d'État  
Diop, Mamadou, IGE et Commission de Lutte Contre la non-Transparence, la Corruption et la Concussion  
Diop, Mamadou. Journalist and Member of the CNLCC  
Dioume, Mountaga Tall, CENTIF  
Guèye, Khalifa. Division Head, Direction des Collectivités Locales, Decentralization and Local Government Ministry  
Mangara, Birima, IGE  
Ndaw, Boubacar, Programme National de Bonne Gouvernance  
Ndiaye, Ousmane. Inspecteur Général d'État  
Ndoye, Ibrahima, Permanent Secretary of the CNLCC  
Ngom, Nafi Keita. Inspecteur Général d'État. President of IGE Assembly  
Sakho, Aminata, Organization Specialist, Délégation du Management Public  
Sylla, Abdoulaye, IGE  
Thiam, Sohibou, Ministère de l'Economie et des Finances, spécialiste des finances publiques au Projet de coordination des réformes budgétaires et financières  
Wade, Ibrahima, Secretary-General, Accelerated Growth Strategy Commission (SCA)

\*Several civil servants and judges interviewed preferred to remain anonymous.

### National Level Political Parties, Institutions, and Associations

Fall, Papa Nalla General Rapporteur, Conseil de la République Pour les Affaires Economiques et Sociales  
Lo, Alé, President, Union des Associations des Elus Locaux(UAEL), President of the Association of Presidents of Rural Councils (APCR), PDS deputy in National Assembly  
Thiam, Alioune, Cellule d'appui à UAEL  
Thiam, Serigne Mbaye, Spokesperson, Parti Socialiste (PS), Deputy in National Assembly and accountant  
Thiam, Iba der, Vice President, National Assembly (PDS)

### Senegalese Local Government Institutions and Grassroots Level Civil Society

Gorée  
Guèye, Assane, ASC, Gorée  
Gueye, Hasan. Primary School Teacher,  
Hazoumé, Clarissa, Treasurer of the Health Committee, President of Les Filles de Sacre Coeur de Marie (Religious Society) Gorée.  
Ngom, Charlotte, President of the APE of Gorée  
Séne, Matthieu, Syndicat d'initiative, Gorée

### Yeumbeul Sud(Pikine)

Gadio, Cheikh Tidjiane, Conseiller municipal, Yeumbeul Sud (Pikine), President of the Rassemblement des Organisations Communautaires de base de Yeumbeul Sud (ROCBYS) and 15 members and representatives of various committees.

### **Grand Yoff (Dakar)**

Dramé, Mohamadou Lamine, Conseiller Municipal, Grand Yoff and President of the Local Development Committee (CDL) of Grand Yoff, and 15 members of various CDL committees

### **Fatick**

Diouf, Sagur, President, Fissel Communauté Rurale  
Diouf, Fara, Rural Councillor (Fissel) and member of planning commission  
Séne, Khady, Rural Councillor (Fissel) and member of Health Commission  
Faye, Bacalar, Community Secretary, (Fissel)

### **Saint-Louis**

Boun, Daouda Soumara, Program Coordonator,ADC (St Louis)  
Boye, Mamadou, Local monitoring Committee of Gandon Communauté Rurale (Saint Louis)  
Dia, Amat Secretary-General of Regional Council of Saint-Louis  
Dia, Mamadou, Program Officer, Agenda 21, ADC (Saint-Louis)  
Permanent Secretary for the Regional Development Council (St Louis)  
Guèye, Fatou Bintou, Projet Aire du patrimoine Agence regional de développement(ARD) Saint-Louis  
Kane, Mahmoud Elimane, Head of Environment and Local Development Division of ARD(St Louis).  
Niang, Demba. Former Directeur of Agence de développement municipal (ADC)  
Sall, Amadou Moctar, Program Officer,Agence régionale de développement (Saint-Louis)

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Sarr, Aliou. President of Communauté Rurale de Mpal, (St Louis)  
Seck, Moussa. President of the CLS of Mpal

### **Senegalese Scholars and Consultants**

Diop, Momar Coumba, Sociologist and Researcher, Institut Fondamental d’Afrique Noire (IFAN)  
Fall, Samba. Former teacher and curriculum specialist.Currently consultant on production of middle school texts  
Faye, François, Agronomist and Natural Resource Management specialist  
Faye, Jacques. Rural sociologist and advisor to Conseil National de Concertation Rurale(CNCR)  
Faye, Magatte. UNESCO/ BREDA. Former Teacher and Inspector for Minister of Education  
Guèye, Babacar, Professor, Social Sciences, Cheikh Anta Diop University  
Kanté, Babacar, Law Professor, Gaston Berger University  
Mbacké, Khadim, Islamologue, IFAN  
Ndiaye, Sambou. Teacher/researcher (Sociology) Gaston Berger University (Saint-Louis).  
Sarr, Fatou Sow, researcher, IFAN, Gender and Education  
Sidy Sissokho, civil society specialist  
Thioub, Ibrahima. Professor and Chair of History Department, Cheikh Anta Diop University

### **Senegalese Civil Society**

Dial, Lamine, Director of Programs for the Forum Civil. Engineer Expert in Telecommunications  
Diop, Assane, CNTS, Local Government Employees Union  
Diop, Cherif, Religious commentator,and Islamic specialist, TOSTAN  
Diop, Mamadou Castro, Secretary-General of UDEN and deputy Secretary-General of UNSAS  
Fall, Dié Maty , Journalist  
Guero, Mody, Secrétaire-Général, CNTS  
Mbodj, Mouhammadou. General Coordinator of Forum Civil (Section of Transparency International)  
Mbow, Penda, founder of Mouvement Citoyen  
Ndiaye, Abiatou, President of the Fédération des Associations Féminines au Sénégal et former Inspector of Education

Ndiaye, Ndéné, Avocat à la Cour  
Ndiaye, Théodore, Présence Chrétien  
Niang, Pape Alé .Journalist, Sud Quotiden.  
Niasse, Lamine Sidy, Directeur of Wal Fajdri newspaper, radio , and TV and Islamist  
Sarr, Monsignor Théodore Adrien, Archbishop of Dakar  
Seck, Birahim, Forum Civil  
Seck, Mamadou. Executive Director of Forum Civil,  
Sy, Junior, Abdoul Aziz, Religious Leader, Tivaouane  
Sy, Habib J. Executive Director of Aide Transparence  
Turpin, Fatou Ndiaye, Coordinnator of Réseau Siggil Jigeen(RSJ)

### **Senegalese Private Sector**

Baye, Ibrahima Diagne. President of the Good Governance Commission of CNP, and Director General of Innovations  
Cissé, Patricia. General Director of AFIBA. African Investment and Business Advisors.  
Diagne, Bedi. Member of Conseil National du Patronat (CNP)  
Dieng, Baidy, Auditor, Ernest & Young  
Dieng, Mamadou, Union Nationale des Commerçants & Industriels du Sénégal(UNACOIS)  
Diop, Youssoupha, Deputy Executive Director, Conseil National des Employeurs du Sénégal  
Diouf, Aida, member of UNACOIS  
Fall, Papa Nalla. CNP  
Guèye, Cheikh Tidjiane, UNACOIS  
Ndao, Papa Alboury. Cabinets Partenaire(RMA)MA Senegal. Account  
Ndiaye, Ousemane Sy, Secrétaire Exécutif, UNACOIS  
Ndongo, Serigne Dia- Secrétaire-Général UNACOIS  
Sakho, Mamadou , President, UNACOIS  
Sow, Adja Djeynaba, Presidente des Femmes de UNACOIS

### **Senegalese Development NGOs**

Cissé, Moundiaïe, ENDA-3D  
Diallo, Sonia, ARED –specialiste en education non-formel et alphabestisation  
Diouf, Silmang, ENDA-3D,  
Engelberger, Gary, ACI , specialist, anti-AIDs educational campaigns  
Guèye, Bara, Directeur, Innovation, Education et Développement (IED)  
Ndione, Emmanuel, Directeur de ENDA-GRAF

### **US Government Officials, Contractors, and Consultants.**

#### US Embassy Dakar and Department of State

Bain, Wallace R. Economic Counselor Officer. U.S. Embassy Dakar.  
Dees, Learned. Desk Officer for West African Affairs. U.S. Department of State  
Jacobs, Janice L. U.S. Ambassador to Senegal  
Jackson, Robert. Deputy Chief of Mission, U.S. Embassy, Dakar  
Sarr, El Hadj, advisor, Political Section, US Embassy  
Towers, Karen, Country Development Specialist for Mali, Niger, Burkina Faso

#### USAID/Senegal and Contractors

Ba, Abdou Wahab. Governance Specialist, USAID/Senegal  
Cobb, Mary. Health Sector Head, USAID/Senegal  
Diallo, Abdrahmane, Program Officer, USAID/Senegal  
Diop, Matara. Health Sector Specialist, USAID/Senegal.

Lane, Kathryn. Governance Specialist, USAID/Senegal  
Mbengue, Abdoulaye. USAID, Trade and Investment Specialist, USAID/Senegal  
Sané, Ousemane. Economist, Economic Growth Team, USAID/Senegal  
Sow, Pape Momar, Education Sector Team Leader/USAID/Senegal  
Brown, Regina. Chief of Party IRG Private Sector/ Economic Growth Sector  
Denakpo, Lorraine. AED. Chief of Party for USAID PAEM Education Project  
Diop, François Pathé. ABT Associates (Health Sector)  
Heerman, John. IRG, Chief of Party Wula Nafa Natural Resource management Project  
Ndour, Mame Cor. ABT Associates (Health Sector)  
Trenchant, Peter. Natural Resource Sector Head, USAID/Senegal  
Ribot, Jesse. World Resource Institute, Washington, D.C.

## **Foreign Donors**

### **Non-Governmental- Cooperation décentralisée**

Dupey, Nicolas, Coordonnateur du Partenariat Nord Pas de Calais

### **Canada**

Cissé, Medoune Diama. Local Governance and Public Finance Specialist  
Diop, Dauda. Development Counselor  
Montabes, José. M., Deputy Director and First Secretary for Cooperation

### **France**

Berthomeau, Stephanie, Cooperation, Institutional Sector

### **European Union**

Diallo, Seynabou. Program Officer, Economic Section.  
Schadek, Hans-Peter. Head of Operations for Senegal.  
Ba, Moussa, coordinator of Programme d'appui au programme national de bonne gouvernance (UGP/ANE)

### **Germany (GTZ)**

Guèye, Awa, Director of Project in Kaolack and Fatick. (in absence of Regina Ecker)

### **World Bank**

Diaité, Bourama. Senior Procurement Specialist  
Ndione, Mamadou. Economist.  
Ndiaye, Mademba. Communications Specialist  
Seye, Serigne Mbaye. Communications Specialist  
Thiam, Moctar, Head of Task Team

### **UNDP/FENU**

Fall, Boubacar, Program Officer, Deputy to Resident Representative Responsible for FENU.  
Diallo, Mouhamadou. Regional Director the UNDP's Poverty Reduction Program (PAREP) St. Louis.

### **UNESCO**

Faye, Magatte, UNESCO, Division of Literacy and Primary Education

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## ANNEX 3. CULTURE, CUSTOM AND CORRUPTION<sup>31</sup>

Poor countries continue to be stigmatised as the cesspool of corruption. This perception tends to magnify the vulnerabilities engendered by the precariousness of living conditions and present cultural traits as being carriers of strong susceptibilities to the drift toward bad governance. Such an interpretation has to be rectified especially when one elaborates a strategy aimed at supporting the effort to install good governance and to curb corrupt practices.

Intrinsically, there is no culture that is more inclined to corruption than others. Bad governance is not programmed into the functioning of the societies of the South. The bottlenecks that societies in the South have experienced have disrupted the proper regulation of these societies. The consequence is a readjustment of these societies to the secular Western democratic model presented as the unique reference point. To join the world, societies in the South are moving towards a democratic transition. Institutions and mechanisms supporting this trend are being built in the long term. But the short-term imperatives are causing upsets and distortions of their values. In adjusting, the actors can be made to use shortcuts and to adopt simplistic practices. It is important to examine corruption as one of the consequences of inadequacy and the ineffectiveness of governing and regulatory institutions. Corrupt practices get intertwined with pre-existing practices to such an extent that they are perceived to constitute the very essence of that identity or even of that culture.

In Senegal, numerous societies are organised according to a hierarchical model, which leaves little space for intergenerational communication. Intense relationships among peer groups are contrasted with the social distance among generations and genders. Seeing that, social mediation becomes a regular recourse in social life. It does not necessarily bear the germs of manipulation and abuse. When actors try to corrupt others, they avoid losing face by having recourse to mediation. Social mediation is certainly more present in some societies more than in others. This does not mean that social mediation is used to encourage corruption. However, the corruptor tends to take unfair advantage of its social mediation by creating networks and treating two actors separately while ensuring that both of them do not get into direct contact with each other. In this way, the corruptor controls a grey area that confers on him the power to act and to manipulate.

Within the framework of public services and sometimes private services, actors are often uncomfortable with the anonymous character of institutions characteristic of the secular model that keeps users at a distance. They seek to remove this anonymity by identifying a mediator within the public service in order to facilitate access and quality of expected services. The mediator is recruited within the peer group. In actual fact, when one approaches a government service it is among individuals thought to be in an identical condition, so one expects to have a more sympathetic hearing and more support. The hierarchy is even reproduced in the choice of the mediator. The link with the mediator is implied while the desired facilitation is outside the normal functioning of this service and therefore outside its normal operational procedures. It is therefore a favor in itself which, when it is well paid for, enters the corrupt practices nomenclature.

The fact that the actor gets used to and ends up trivialising small corrupt practices has become constant to the point where it is convenient to intervene upstream on the anonymous character of public services. It is therefore necessary to build public institutions organised to adapt to the dynamics of strong interpersonal ties, considering that the service, which is engendering this exchange remains an opportunity to activate relationships with the aim of converting the professional relationship into a personal one. In principle, the

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<sup>31</sup> This section was written by Senegalese sociologist Abdou Salam Fall.

public and private services' critical conditions of access and quality ought to take precedence over the relational aspects and social communication.

It is therefore not the social mediation that is in question but the use to which it can be made. Mediation as well as negotiation are coherent options for a rigid system of social service delivery to insure that the user gets important needs satisfied.

The same holds true for reciprocity in social relationships. The corruptor takes unfair advantage by referring to reciprocity as an incentive for transactions. There are many local terms devoted to these exchanges: *Loxo caxoor day weeselloo* (people of the same network owe each other reciprocities), *niyu murid* (the Mouride greeting, suggesting the perpetual offering from a disciple to his marabout), *ku ëmb sa sanqal, ëmb sa sutura* (he who has his grain bin full of millet assures his own security), “*kuy xalam di ca jaayu*” (it goes without saying to play the xalam (musical instrument), one has to feel pride in one's instrument; “*Ku am kuddu du lakk*” (*he who has a spoon, ought not to burn his fingers*), “*le njëgu guro*” (the price of the cola).

The terms are suggestive of the relational intensity, of the process to be prioritized, and of the types of actions in negotiation. This dense popular semiology has nothing to do with corruption. Actors use them during corrupt practices, surfing diverse social registers. The context is displaced, the term indicating transaction keeps its suggestive effect of the implicit character of the instigated relationship. It is now not the social reciprocities which would contain the germs of corruption. It is evidently the corruptor and his accomplices, who displace the sense of the social register to give social legitimacy to their deviant practice. By defining corruption as poorly paid deviance, we integrate its various manipulations and changes of social register as the modalities for conferring on petty corruption character it is assumed to possess.

We should not lose sight of the fact that the corruptor as well as the person corrupted skilfully create disruptions within institutions or in the social exchanges to make corruption networks operational.

The corruption networks that we have identified in sectors like health, environment and natural resources are not society-centered. They are rather egocentric, that is to say that most often than not there is a central figure or a homogeneous group of actors, who control most of the resource resulting from corruption while limited others in the network obtain to only meager gains. The principal losers in the corruption mechanism are homogeneous and are generally at the bottom of the ladder of the control of resources and instruments of power.

Power and money are the main motivation and stakes behind corruption and cut across all societies. When democratic and responsible control mechanisms are put in place, the more obvious forms of corruption disappear, petty corruption becomes rare or limited, and corruption is more subtle and less easily perceived. However, Grand Corruption persists in advanced democratic societies with a written and formal culture.

In Senegal, as in other countries in the South, the value of integrity fades away when the paradigm of the supremacy of profit imposes itself on social relationships. Societies retain greater social cohesion when common goods are regulated by the communities concerned and in an inclusive manner. Corruption occurs when the actors involved in corruption appropriate and undermine the integrity of institutions designed to regulate and manage the general interest.

Senegal is also a country where the religious brotherhoods appear to be instruments supporting social integration and mobility. Networks founded on membership in religious brotherhoods act as structures of support and of social protection. Research has proved that these networks offer the most opportunity for migrants to integrate in urban settings. Access to housing is made even easier through networks built on

political ties. Generally peer group networks are more effective in helping people find professional positions for actors from middle class networks. Networks organised according to other types of social relationships are also well embedded in these societies. In the various cases, the control of relational capital becomes discriminating. The selectivity of social networks affords more opportunities to those who benefit from the protective wing of someone wielding resources and power. The *savoir-faire* of some is a logical source of patronage in favor of others. Actors are also members of multiple social groups. They can act on this relational flexibility to emancipate themselves from guardianship, when they consciously elaborate winning strategies through other less coercive ties. This impetus of attracting favours from central important persons to oneself facilitates patronage relationships.

It is perfectly possible to identify the kind of subordination that these types of relationships induce. From these one can deduce that when inequitable access to resources and positions of power become the rule, social actors develop individual assistance mobilisation strategies and even protection through individual or group lobbying. Subordination creates dependence. Protectors excel in camouflaging the deviances of their protégés. The short ladder strategy tends to generalise itself and creates impunity. Certain religious leaders, political officials, numerous leaders are active in this domain and do not hesitate to use their influence to avoid sanctions, differ decisions, and shield their protégés from the need to obey general rules designed to be applied to everybody.

The corruptor and his accomplice are skilful in the way they manipulate areas of uncertainty and deliberate vagueness. Senegalese cultures in fact reward the management of ambiguities. Does *masala* (tolerance) reflect a culture lacking in the value of transparency? As Solange Cornier explained, the “tolerance of ambiguity” (easily assimilated to *masala*) remains a mark of democratic culture in the sense that it reserves space for subtlety in interpersonal relationships in which differences are internalised in inter-cultural relationships. As a counter point, let it be noted that the corruptor tends to explain his deviant practices as an important behavioural by-product of the non acceptance of the modes of governance. Within this framework, we can consider that ambiguities and the things that are not said pave the way for non transparency.

Cultural phenomena are not homogeneous. Within certain social groups, socialization remains heretical. Some exceptions are allowed for lower castes. These social groups make rules for themselves, which exempt them from certain ethical rules that generally apply in the societies in which they live. This differential socialization is obligatory. Counter values recognised amongst certain social groups can also spread beyond their proper circle.

Culture is not a static substratum. It is a social construction and an evolutionary process. Identity values are reinterpreted from one group to the other, from one generation to another. The evolution of identities derives from social actors, who, through their practices or their visions and symbols, give renewed interpretation of winning strategies for a determined period. Such is the case with the present representations of successful social models among the young generations. Success figures are more and more perceived as miracle performers who start from unfavorable circumstances and who end up succeeding in a fairly spectacular manner. The show biz celebrity, the international footballer, the famous dancer, the icon of traditional wrestling, the migrant investor replaces the success model of individuals who succeeded through long studies, experience in high government positions, officially recognised apprenticeships, and accumulating resources over time. More and more social groups do not worry about conditions of accumulation, but have their eyes glued essentially on wealth and the modes of redistribution. Risk taking has also evolved because the chances for impunity are by far higher.

Short term imperatives for seeking resources contribute to the weakening of integrity as tolerance of social deviance (corruption) becomes stronger and virtuous circles of individuals become increasingly peripheral to the functioning of many political, economic, and social institutions.

## ANNEX 4. LEGAL AND INSTITUTIONAL ANALYSIS<sup>32</sup>

### Anticorruption Laws

#### Criminal laws

The penal code punishes corruption as well as related offenses. Even though it does not provide a comprehensive definition of corruption, it however addresses both active and passive corruption. The approach adopted by the code is the one according to which corrupt practices tend to be divided into two, resulting in this case into two distinct offenses. This approach provides that a corruption offense is committed when an agreement is reached between the person offering the bribe and the corrupt official, but also when the corrupt official or the briber makes an offer, no matter whether the other party accepts it or not. The law however focuses on the corrupt official (person receiving the bribe) as the main perpetrator in an effort to suppress corruption rather than just punish it. Thus the law does not cover such related acts as influence peddling, misappropriation of public funds and as illicit enrichment.

The penalties provided for under the law can be quite severe including prison terms of two to ten years and fines of at least 150,000 cfa. These harsh penalties, however, are often not applied. The law on illicit enrichment is a clear example of this situation. Since it was adopted, it was applied only once due to pressure from religious figures and powerful political actors on former President Diouf.

The nonenforcement of the law on illicit enrichment is partly due to the fact that offenders have transferred their gains to tax havens, such as Switzerland that have no tax conventions with Senegal.. Additional problems with enforcement of anti-corruption laws include the wide discretion of the public prosecutor to decide whether or not to follow up in the cases of members of the executive branch, and the power of the President to override legal proceedings by influencing the decisions of judicial police officers. The President can in fact make certain that the investigating judge assigned to the case will be someone favorable to him. It is this general lack of independence of the judiciary which renders criminal prosecution of corruption by executive branch members highly problematic..

#### Professional codes of ethics

Corruption poses questions of individual conscience and integrity. That is why the promotion of the professional code of ethics must be a priority in preventing corruption. Ethics involve rules that do not have legal character and for which there may be no sanctions attached.. Instead a code of ethics merely gives legal approval to professional norms.

In Senegal there are, in fact, no professional codes of ethics among the overwhelming majority of administration workers. The lack of enforcement of sanctions for professional misconduct has led to a culture of impunity. There is also no organizational culture of rewarding government workers for jobs well done. Instead government jobs have for a long time been highly politicized. This adds up to a social environment that legitimizes illicit enrichment with no sense of violation of professional ethics. The return to ethics and professional codes of ethics will only be possible through the effective enforcement of sanctions and through education and awareness raising.

#### Laws on conflict of interests

When the individual interests of a public servant are in conflict with those of the State there is a high risk of sacrificing the latter. Private interests here can be in connection with a relation of the public servant. A

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<sup>32</sup> This sector relies heavily on the analysis of Prof. Semou Ndiaye of Cheik Anta Diop University (Dakar)

typical example is when a public servant is a member of public contract awarding commission in which his wife has submitted a bid.

A body of several laws, notably Article 157 of the penal code), regulate and try to prevent such conflicts of interests of civil servants as well as members of the executive branch and of members of parliament. The penal code condemns the violation of incompatibilities of roles and responsibility and prohibits active or retired government workers with particular interests in a matter from producing documents and awarding contracts, in either private or state-owned companies under their management or supervision. A penalty of at least one year to five years imprisonment sentence and a fine are attached to this prohibition. People convicted of such offenses may no longer hold civil service positions. In practice, conflicts of interest are common practice because of the lack of penalties. Individuals often escape prosecution through their involvement in proxy companies or through third parties who represent their interests.

### **Laws on the Disclosure of Assets**

The declaration of personal properties is an essential instrument for preventing corruption, as it allows for determining whether increases in individual assets are in line with legal incomes. In Senegal only some people are subject to the obligation of declaring their assets when taking up a position, notably only the President and the magistrates of the Government Accounting Office.

In any case the laws governing these declarations are hampered by some legal deficiencies. For example, the Constitutional provision for Presidential declaration of assets fails to specify which assets must be declared, and provided for no penalty in case of non-compliance. Judges working for the Cour des Comptes are covered by more specific and stringent laws but here the problem is the independence of the person to whom the declarations must be made- to the head of their own organization instead of a more impartial body such as the State Council.

## **Anticorruption Institutions**

### **Legal Institutions**

According to the terms of the article 92 of the Constitution, the legal power is exercised in Senegal by the Constitutional Council, the State Council, the Cour de Cassation and the Cour des Comptes. As regards specifically the fight against corruption, we can make a distinction between criminal jurisdictions and the Cour des Comptes that is a specialized jurisdiction.

### **Criminal Jurisdictions**

In Senegal, there is no specialized criminal jurisdiction addressing corruption. Cases are tried based on the general rules governing criminal proceedings. Considered as a misdemeanor, corruption is dealt with by regional tribunals. A case can be referred to the Court of Appeal when an appeal is lodged, or to the Cours de Cassation as a last resort.

In theory, judges do have some legal protection from executive or legislative pressure because they are protected from removal without their consent. This proclaimed independence is limited however, since there is provision for “provisional removal” of a judge if the High Council of the Public Prosecutor’s office (an executive agency) so decrees. The High Council is in fact chaired by the President, and seconded by the Minister of Justice, his appointee. Concerns about the independence of the judiciary are in fact well founded. Some magistrates have been reassigned without their consent in violation of the principle of immovability. The interference of the Executive in the running of the judiciary takes many different forms. One such form is the fact that the officers of the judiciary often report to the Minister of Justice before informing judges about the findings of their investigations.

## **Cour des Comptes**

The Government Accounting Office is the highest organ for controlling public funds. It was created by organic law n°99-70 on February 17th 1999 and was designed to have four basic functions: the legal control of public accounts; the control of the implementation of the financial law; the control of the semi-public sector; and the punishment of management mistakes. Its main task, however, is to insure that public funds are used transparently and efficiently. The law confers on it the power to conduct investigations including those into possible corrupt use of resources. It also has the right to undertake investigations even of the President, the Parliament or the Finance Minister on its own initiative or on the initiative of those actors. The law also provides that it is to support the Parliament in its annual review of the previous year's budget, a role it has not played since 2000.

Apart from its limited human resources, this body is limited by the fact that it is technically under the authority of the Ministry of Finance placing into question its true independence. In addition, the sanctions that it can invoke for violation of procedures are ridiculously low and even if applied would not serve as a deterrent. For example, one high-profile civil servant convicted of mismanagement and forbidden by the Accounting Court from holding future high level positions of governmental responsibility is now the manager of one of the biggest state-owned companies..

## **Administrative Institutions**

### **State Inspector General Corps (IGE)**

The IGE, created in 1964 and currently operating under a recent (June 2007) decree, is the highest organ of administrative control over public expenditures. It is placed under the direct and exclusive authority of the President. Nominally, however, it is independent since its inspectors cannot be removed from office during their seven year non-renewable term and its budget is earmarked to it by the Treasury.

The essential mission of IGE is to fight fraud and corruption as well as promote good governance primarily through conducting audits of various public agencies. It also has the authority to propose reforms aimed at simplifying and improving the quality of the administration. In performing its role it has wide investigative power. State General Inspectors can have access to all documentation and information (even confidential or secret) sources, including documents referring to national defense.

In practice, the IGE's role in fighting corruption is limited by a number of factors. The main factor is its placement under the authority of the President. Under the 2007 reorganization the IGE is supposed to be more open to public scrutiny and to publish its audits and reports. Thus far, with one exception its reports have remained secret and destined only to the Head of State. That exception involved the case of the infrastructure building of Thiès, a major scandal in which the President eventually acceded to public pressure and allowed the IGE's report to be published. In theory the President must refer all of the IGE's reports to the judiciary in cases of embezzlement, but political factors have intervened, as the President readily admitted when he acknowledged that he had evidence that some rural councilors had been involved in the illegal land deals, but that he would instigate no legal proceedings against them.

### **Financial Control Mechanism**

The Agency for Financial Control was created in February, 1978 as part of a general decree on the Public Accounting for the State of Senegal. It is under the authority of the Secretary General of the Presidency and has broad authority to exercise control over the management of all State finances as well as those of state and para-statal enterprises and local government authorities. Its approval is required for all financial

actions, notably including the authorization of foreign loans<sup>33</sup> It also may give advisory opinions on any action that has an implications of the budget of the State.

Based on its investigations it issues reports addressed to the President of the Republic. But the Financial Control Mechanism suffers for two major defects. First, it lacks any independence from the Presidency. Second, its authority overlaps with that of the Cour des Comptes, particularly for the verification of the accounts of public enterprises.

### **General Inspector of Finance (IGF)**

This agency was created in November 2000 to replace the old Inspections des Finances. It is the internal financial control mechanism for the Ministry of the Economy of Finance on the same level of the internal control mechanisms for other ministries. Article 3 of the arrêté creating it, however, confers on it the special responsibility of coordinating the activities of these other public financial control mechanisms, a role justified by its central position in the agency most responsible for managing public finance. In this capacity it can advise the Ministry of Finance on all draft laws, ordonances and decrets, and it formally charged with making sure that all recommendations of that Ministry are carried out.

The IGF has definite limitations. Its field investigations can only be authorized by the Ministry of Finance. Its reports, moreover, go exclusively to that Ministry which has no obligation to make them available to the public.. The IGF itself has no power to sanction violations or to enforce measures that fall under the authority of the Ministry of Finance.

### **The Agency for the Control of Financial Operations (COF)**

The Agency for the Control of Financial Operations (COF) was created in March 2003 by an decret and implemented by an arrêté in September 2004. It is a control agency attached to the General Office of Finance (Direction générale des finances). It is headed by the Controller of Financial Operations, named by a decree.

This agency is organized into divisions for both internal and external financial transactions and it is represented at the regional level and within each minitry. Its role is to exercise an *a priori* control over all budget expenditures, making sure that all public expenditures are obligated according to the rules. In theory no expenditure can be authorized by the Controller without its approval.

Similar to the IGF, the control which the COF is able to exercise is limited. While it theoretically controls both the operational and investment budgets, it has no authority over the expenditures voted by the National Assembly. It lacks independence vis-à-vis the Minstry of Finance, leading one to doubt that it is able to exercise objective and rigorous control over that ministry's expenditures.

### **The Ombudsman**

An Ombudsman can play an important role in curtailing corruption by contributing to transparency and equity within the administration. In Senegal the ombudsman is an autonomous administrative authority governed by the law 99-04. His independence is preserved in theory by the difficulty in removing him from office. He can only be removed from office before the end of his term by a decision the President of the Constitutional Council, the President of the State Council, and the President of the Cours de Cassation after the case is referred by the Head of State.

The Ombudsman can receive complains by individuals about the operation of public administrations, local governments, public establishments and any other public service body. The Ombudsman also has

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<sup>33</sup> Article 11 du décret n° 78-085 portant organisation du Contrôle financier

an important power to initiate investigations on his own. In theory cabinet Ministers are required to cooperate with the Ombudsman by authorizing that the civil servants under their authority respond to the Ombudsman's request for information. Based on his investigation he can recommend to the authority concerned that a disciplinary procedure be taken against any public servant who seriously breaks their professional obligations, including acts of corruption, or he can refer the case to the judiciary for prosecution self refer a case and to investigate it

Every year, the Ombudsman produces a report that he releases after submitting it to the President. The revelations made in that report about embezzlement cases involving civil servants are intended to serve as a deterrent to others.

The role of the Ombudsman has some limits, however.. The public knows very little about this institution and how to best make use of it. This seriously limits his contribution in the fight against corruption.

### **The National Center for the Processing of Financial Information (CENTIF)**

CENTIF is an institution that was created in 2004 pursuant to the ECOWAS agreement relating to the fight against money laundering. Corruption can be distinguished from money laundering but it clearly has some relationship to it, as when money derived corruptly is laundered

CENTIF is mainly aimed at collecting and processing information about money laundering.. In this way, CENTIF might play a key role in helping to prevention of corruption. Thus far, however, CENTIF has dealt with no concrete facts. Some of its operational rules, however, give grounds for doubts regarding not the intrinsic value of its members, but also how it is run. Although CENTIF is supposed to be financially autonomous it is under the tutorship of the Finance Ministry to whom it reports. Its members are chosen from among the agents of various State administrations, raising fears that when their investigations point the finger at some members of the Executive branch political considerations might hinder legal action.

The management of the term of CENTIF members also constitutes a flaw that can impact on its efficiency. In fact, the terms of all of its members expire on the same date. As CENTIF is entirely renewed, the experience acquired by former members is not transmitted to new members. Besides, no protection is provided for members while they are exposed to risks in the pursuit of their missions.

Although these flaws seem to weaken this agency they are more appearance than reality. In fact the CENTIF is one of the most independent administrative authorities in Senegal. Its relationship to the Ministry of Finance is more as an institutional home than as a kind of subordination. The reports that it transmits to that ministry merely present statistics. For example, the law that defines its powers cannot be modified by national authorities. Its independence is based on its relationship to international law, particularly through the Financial Action Group (GAFI). Thus it responds to international law and standards that strengthen its capacity to conduct investigations with the help of similar institutions across the world

CENTIF already has the power to investigate banking practices and therefore to render them more transparent. Its major strength, however, resides in the fact that when it sends a case to the prosecutor that national authority is obliged to send the case on to a judge.

Still, CENTIF is little known to the general public in part because of the confidential character of its procedures. This confidentiality is explained as much by the need to preserve the privacy of the people involved as by its concern for the effectiveness of its actions.

## **The Autonomous National Electoral Commission (ANEC)**

National politics is an environment ripe for corruption.. That is the reason why institutions that contribute to the transparency of the electoral process are considered to be participating in the prevention of corruption. The Autonomous National Electoral Commission (ANEC) was instituted by the law n°3-2005 of May 3<sup>rd</sup> 2005. ANEC has replaced “ONEL” and corrects some of its institutional flaws while retaining its successful attributes. The mission of ANEC is controlling and supervising all elections and referenda. The logistical organization of elections is the task of the Interior Ministry. Generally, ANEC must enforce the electoral law so as to ensure the lawfulness, transparency and integrity of the polls.

According to these provisions, ANEC is an omnipresent and all-powerful structure. It is a permanent structure with legal entity and financial autonomy. The autonomy of ANEC depends on the choice of its members. In fact, the latter are chosen among independent officials exclusively of Senegalese citizenship and known for their moral integrity, their intellectual honesty, their neutrality and impartiality following consultations with some institutions and associations.

The autonomy of ANEC was, however, contested by part of the opposition who considered that the Head of State had not respected the provisions of the law that require that the officials chosen be impartial and that their institutional and associational affiliations be taken into account in determining this.. The President’s nominees were particularly contested because his wife, who was nominated to ANEC, was member of the ruling party. The State Council to which this case was referred ruled that the provisions of the law had not been violated. ANEC was also contested during the February 2007 presidential elections when some opposition leaders considered that ANEC was not in a position to fulfill its assignments

## **National Anticorruption Programs**

For a long time corruption has been recognized as a crime that can be punished by the criminal code. On the other hand no real national anticorruption program has been mapped out. Actions have been undertaken sporadically and in an isolated way.

In 1981, President Abdou Diouf upon being freshly elected expressed his desire to curb the issue by promoting a law against illicit enrichment. The results obtained were below expectations to such an extent that the anti-illicit enrichment Court created in this context was repealed..

Following the increasing demand of the civil society, President Wade created a National Commission against non transparency, corruption and embezzlement (CNLCC) in 2003.

## **The Commission in the Fight Against Non-Transparency, Corruption and Embezzlement (CNLCC)**

Instituted by the law n°2003-35 of November 24th 2003, the National Commission Against Non-Transparency, Corruption and Embezzlement (CNLCC) is essentially aimed at collecting complaints from individuals and legal entities relating to corruption cases on the one hand. It also is assigned the role of identifying the structural causes of the corruption and its related crimes in order to propose legislative and administrative reforms that can promote good governance.

Once an individual files a claim with the Commission, it has extensive investigative power. If at the end its investigations the Commission judges that it has sufficient evidence to warrant legal proceedings it transmits a detailed notice and recommendations to the President who can then choose whether or not to act.

The Commission does have some strength. Theoretically it is an independent administrative authority. In addition, its members can not be dismissed before completing of their term in office. .

It also suffers from a number of handicaps that limit its efficiency. Its members are unpaid which may reduce their commitment or ability to serve. All members serve simultaneous terms so that when that term is up the Commission is likely to have no experience or institutional memory. The Commission does not have the power to initiate an investigation on its own, and thus is powerless to deal with alleged corruption that is not referred to it. There are also fears that the reports submitted to the President might be subject to political consideration. On its own it has no power to refer a case to the Judiciary for prosecution. Only the President can do that. There is even some dispute over who can authorize the publication of the Commission's reports—the Commissioners themselves or the President. Thus far it has yet to publish any report. Its members also have no specific protection against retaliation from people they accuse of corruption. Nor is any protection offered to witnesses. Given these constraints it is generally agreed that the Commission is toothless.

### **The National Program for Good Governance (PNBG)**

This is one of the aspects of the National Good Governance Program (PNBG) initiated in 1999 which in turn is managed by the Public Management Delegation (DMP). Slotting corruption in the National Good Governance Program has a double meaning. First, it expresses a conception according to which corruption is a manifestation of poor governance. Then, it affirms the recognition of the scope of the phenomenon and the necessity to solve it. It is important, however, to underscore that among the set of measures set forth by the PNBG the only one which appears to have a tangible reality is the establishment of CNLCC.

The management of the PNBG poses questions of the coherence of the national anti-corruption program. The organization responsible for managing it, the Public Management Delegation (DMP) is attached to the Secretariat of the Presidency and not to the Ministry of Good Governance, created for this purpose. This problem may be mitigated by a careful division of responsibilities between these two institutions with the Ministry taking the lead in developing the broad conceptual framework for the policy and the DMP taking responsibility for its implementation.

## ANNEX 5. BEST PRACTICES: THE CASES OF “LES CADRES DE CONCÉRTATION” AT SAINT-LOUIS<sup>34</sup> AND PARTICIPATORY PLANNING AT FISSEL

The Commune of Saint Louis has a long tradition of representative democracy that goes back to the 19th century and its status as one of the four communes designated by the colonial power, France. In this city that was the prestigious capital of Senegal at the time, the election of the Mayor and the municipal government was always an exciting time. In 1998, Mayor Abdoulaye Diaw Chimère noted a gap between the elected officials and the general population, manifest by the low level of involvement of the citizens in the life of the city. The population seemed exasperated by the faction fighting within the Socialist Party that had been in power since 1960 causing the organization of rival groups and slowing down local development. In response the mayor attempted to introduce a new and non-conflictual urban development approach. He hoped that it would give greater legitimacy to the role of the elected officials. This approach relied on non-governmental aid offered by the city of Lille (France) and particularly by the region of Northern Pas de Callais.

### **A Series of Innovations**

With the financial support of the non-governmental assistance program (la coopération décentralisée) a Center for Project Coordination was put in place. At first it attempted to give some coherence to the various aid programs operating in the city. Then it provided an information service on municipal development. Finally, it undertook the task of promoting municipal development directly; relying on a technique of engaging a broad segment of the citizens in a process of information sharing that came to be known the “cadres de concertation.”

Neighborhood councils were established to facilitate the participation of a wide array of actors in the life of the city. Associations, called Economic Interest Groups, took charge of collecting trash in these neighborhoods because increasingly citizens had abandoned their civic responsibility to keep the city clean. Gradually people reengaged with the city government. Strengthened by this momentum the city officials convoked a Saint Louis Conference where citizens could openly question their government. People put their cards on the table. There were no longer things that were taboo to discuss. People started to get mobilized. The Center for Coordinating Non-Governmental Aid was transformed into the Agency for Municipal Development (ADC). The dynamic process of neighborhood councils proved that bottom up power was being created and needed to be supported by recognized social and technical institutions.

Decentralized assistance became ever more effective and the municipal association of Nord Pas de Callais and Saint-Louis took the name “the Partnership” (le Partenariat), and became the extension of the Municipal Development Agency, the first and only of its kind in Senegal today. Its slogan is well known now—“To exercise legitimate power, you have to share.”

The consultations have multiplied. Associations abound, the neighborhood councils have gotten stronger and have developed neighborhood development and investment plans through participatory processes that have involved a large number of citizens. Local groups have taken on neighborhood cleanliness projects sponsored by the French Development Agency that has paid for the collection and transport of trash. The

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<sup>34</sup> This section was written by Senegalese sociologist, Abdou Salam Fall (Saint Louis case) and by Sheldon Gellar (Fissel).

ADC (Municipal Development Agency) has played the role of supporting the management of these local groups with the goal of making sure that the procurement process is transparent and that the quality of the technical work remains high. In addition to trash collection, community groups have been encouraged to undertake small projects in the areas of school, library, market and transport infrastructure. The results of these projects have been uneven, but neighborhood development planning has overall been a major success with thirteen neighborhood councils functioning between 1994 and 2007. In some cases local aspirations have not been satisfied. In other cases the investment plans have resulted in the decentralization of municipal works.

In 2002, a new team was elected to run the city, with the PDS (Parti démocratique sénégalais) replacing the PS (Parti socialiste). Under this new administration the ADC has become less independent and is now organizationally within the Mayor's office. It has been maintained but the lines of authority have become more complicated. A new urban economic program has been put in place to make the city more attractive to business. More emphasis has been placed on the environment and on the rehabilitation of public property as part of UNESCO's program to restore and preserve the center of this traditionally important town.

### **Activities Undertaken**

The ADC remains a success as the heart of a social engineering program that serves as the intermediary for participation and for planning of development programs between the population and various external partners who wish to aid the city in various ways. It helps put in place the mechanism through which these external partners and local elected officials make development decisions. This method is now well established. Specifically, it manages the overall plan for the collection of trash with the support of Belgium Aid, and the environmental plan for the city with the support of the U.N program on housing.

It should be recognized that the local officials have in their hands an instrument put in place by the previous administration. Some observers doubt that the new managers of the city are equally committed to the use of the ADC and the neighborhood councils. But there are numerous examples of how, even if their style is different, they have continued to make use of the broad consultation process and how it is even growing. Some of the councils have collapsed while others have been maintained or been reinvigorated and new ones have emerged. The city government has had to devote a considerable period to holding public consultations on the creation of a large pedestrian mall around the Governor's Palace and Place Faidherbe which symbolize the colonial legacy. These information sessions currently involve discussions between the city and the business community about how the public space will be used.

### **Operating Procedures**

The ADC offers its methodological support to help elected officials plan public consultations that are now seen as critical to the success of urban planning. The experience with these public consultations has begun to become the trademark in the whole region surrounding the city of Saint Louis. Other French communities find that the Partenariat is a useful instrument for organizing their collaboration and twin city arrangements with other towns in the region. There has been a cumulative learning process of bottom up planning going on in rural communities near Saint Louis such as Gandon and Mpal. Leaders in these rural centers have been able to internalize the transparent management of their development efforts including an open and honest procurement process, despite the illiteracy that still characterizes much of rural Senegal.

Sometimes, of course, top-down planning does impinge on local efforts. But the partners in the development process have learned to play the role of negotiated planning. Luxemburg Aid, for example, has just launched a major program for financing a Local Development Fund that will be made available to local governments in the entire Saint Louis region. The consultation method (cadres de concertation) is

now in full swing. The Regional Council has found its place in this process as the facilitator of inter-community planning. Its technical instrument, the Regional Development Agency (ARD) is positioning itself to be the means by which communities can hold discussions to work out social and economic issues. Its approach is to encourage national government technical personnel to progressively give up part of their power in exchange for better technical results that can be obtained through the participatory consultation and negotiation process. What is at stake in these consultations is the changing of the top-down approach to decision making and the acceptance of a more open and transparent management style in the affairs of the community. The operational mode is to encourage the full involvement of the citizens.

### **Promising Results**

The brief experience in the Saint Louis area shows that the governance practices of towns can change in a positive direction through the use of bottom up approaches and the emergence of innovative intermediary institutions. The results are indisputable. The improvement in tax collection has been dazzling because citizens are better informed about how these revenues will be used locally. Communities are better able to prioritize and plan development and investment activities. They now generate five year plans with annual or biannual updates. External interventions are much better coordinated compared to the lack of coordination that characterizes national level development planning. Local development planning now takes place through a process of community self-organization which better takes into account the intercultural dimension. Finally, local public services have regained some respect.

Of course, this local development process needs to be consolidated and developed so that it is less constrained. It is possible to note the unevenness of development due to the different access to opportunities on the part of different communities. The entire process of consultation is fragile since it was clearly initially stimulated by external actors and not through a process of self organization by the local communities. Although tax collection has improved, the budgetary process for the commune is still not transparent. A more open style of governance stimulated by the consultation process remains limited to specific sectors and operational tasks. And decentralized aid continues to run the risk of producing uneven and unequal results depending on which local communities in the Saint Louis region are able to attract this kind of support.

### **Another Case---Fissel**

The participatory budgetary process initiated by Innovations, Environnement et Développement (IED) in the rural community of Fissel in 2006 provides another example of best governance practices in Senegal which can contribute to reducing corruption at the local government level.

The key to Fissel's success is community participation and involvement in all stages of the budgetary process and transparency.

- Phase I: Local village animators discuss budgetary priorities with all 28 villages in the rural commune. Men and Women are interviewed separately and list their top five priorities, a process which gives women an equal voice.
- Phase II: A committee representing the four major zones in the rural community takes note of different priorities, sorts them out, identifies priority sectors listed by populations and comes up with allocation recommendations to be incorporated in the budget.
- Phase III: The President of the Rural Council incorporates these recommendations into the budget and presents the budget to the Rural Council for discussion and approval.
- Phase IV: A monitoring committee consisting of rural councilors and community representatives monitors the execution of the budget. Unlike many Rural Councils, the Finance and other

technical committees play an important role in monitoring the activities of diverse technical services operating in the Rural Community—e.g. Forestry and Water, Health, Education, etc.

- Phase V: The information contained in the Rural Council's report on the execution of the budget is disseminated to all of the member villages in the Rural Community budget and discussed to see how the next budget can be improved.

The Fissel Rural Council has eleven functioning committees dealing with specific activities and sectors. In contrast with the situation in many Senegalese Rural Councils, where the President dominates the budgetary process and makes decisions with little consultation with the rural councilors, the president of Fissel's Rural Council delegates considerable authority to rural councilors and makes a strong effort to consult with representatives of all segments of local civil society. Broad community participation in all phases of the budgetary process combined with a high level of transparency in local government operations have generated a climate of mutual trust between the community, elected local government officials, and the local technical services and sharply reduced opportunities for corrupt practices to take place.