

PL-11X 107
14 06 25

U.S.A.I.D./O.M.V.S.
INTEGRATED DEVELOPMENT PROJECT
PROJECT No. 625-0621

VOLUME III
SECTION 3.6.
TECHNICAL ANALYSIS
ON COOPERATIVE DEVELOPMENT

USAID/RBDO
October 1982
DAKAR - SENEGAL

TABLE OF CONTENTS

3.6.	TECHNICAL ANALYSIS OF COOPERATIVE DEVELOPMENT	1
3.6.1.	INTRODUCTION	1
3.6.1.1.	Purposes of the Cooperative Development Analysis	1
3.6.1.2.	Definitions	1
3.6.2.	SENEGAL STATUTORY SCHEME	2
3.6.2.1.	Overview	2
3.6.2.2.	Groupement Powers	3
3.6.2.3.	Mandatory Powers of Groupement	3
3.6.2.4.	Optional Powers of Groupement	4
3.6.2.5.	Mandatory Powers of Cooperatives	5
3.6.2.6.	Mandatory Powers of Government	5
3.6.2.7.	Organizational, Social and Political Considerations	5
3.6.2.8.	Specific IDP Goals for Organizational Structure and Function	7
3.6.2.9.	Cooperative Charter	8
3.6.2.10.	Groupement Charter	10
3.6.2.11.	Role of Committee	11
3.6.2.12.	Hiring of General Manager	11
3.6.2.13.	Transition from the Present Status to the New Law	11
3.6.2.14.	Relationship of SAED, the GOS and the Cooperative	13
3.6.3.	MAURITANIA STATUTORY SCHEME	27
3.6.3.1.	Overview	27
3.6.3.2.	Recommended Structure	28
3.6.3.3.	Committee System	29
3.6.3.4.	Other Variations Between Senegalese and Mauritanian Cooperatives	29
3.6.3.5.	Relationships Between the GIRM, SONADER and the Cooperatives	29
3.6.3.6.	Enforceability of Contracts	31
3.6.3.7.	Present Contractual Relationship between SONADER and Cooperatives	31
3.6.4.	MALI STATUTORY SCHEME	31
3.6.5.	LEGAL ISSUES FOR ALL THREE COUNTRIES	32
3.6.6.	CONCLUSION	38

APPENDICES:

A.	List of People Interviewed	39
B.	Figure 1. Articles of Incorporation - Senegal: Cooperative Unit	40
C.	Figure 2. Articles of Incorporation - Senegal: Groupement Structure	41
D.	Figure 3. Mauritania: Cooperative Structure	42

3.6. TECHNICAL ANALYSIS OF COOPERATIVE DEVELOPMENT

3.6.1. Introduction

.1 Purposes of the Cooperative Development Analysis:

1. To propose an ideal organizational structure of the village cooperative. This structure is designed to meet the statutory guidelines contained in the individual laws of each member state to advance the overall goals and specific objectives of the IDF.
2. To discuss the role of the village cooperative vis-à-vis the RDAs, emphasizing the existing legal contractual relationship and recommending changes.
3. To discuss the legislative authority of RDAs and how their governments perceive their role in development.
4. To highlight legal issues of overall importance to the IDP that will require further research.

Since each country is unique in its statutes and organizational structure, the three countries will be discussed separately.

.2 Definitions:

1. Articles of Incorporation: The legal document submitted along with the proposed charter of the cooperative to the government during the process of application for certification as a cooperative.

This document will define the basic organizational structure of the cooperative, stating, for example, that:

- the ruling body is the General Assembly and that the managerial body is the Council of Administrators; it would also specify the number of members of the council and the person designated to take control in case of the cooperative's failure.
2. By-laws: These regulations relate to the operational aspects of the organizations. Such rules exist in some groupements, but do not appear to be included significantly in Senegal's new statutory scheme.
 3. Charter: This is probably the most vital document as it defines the operational rules and regulations of the structure. It determines specific rights and responsibilities of members; more impor-

tantly, it distinguishes village sections (or groupements) from cooperatives. It also specifies protocol in terms of conduct of meetings, requirements of notice, quorums, and other items.

4. Statutory Scheme: Two or more separate laws closely interrelated in terms of subject matter and passed by legislative authority.

3.6.2. Senegal Statutory Scheme

3.6.2.1. Overview

Senegal is in the process of instituting a new statutory framework for the structure and operation of cooperatives. The new laws, although fully developed and in print, have neither been passed by the legislative authority nor signed into law as of yet. They are presently being reviewed by the various interested governmental bodies. We have indications that they will be passed within the next six months with only minor modification. Once the new laws are approved, signed, and dated, existing cooperatives will have one year's time in which to conform to the new framework.

The overall scheme consists of two statutes. The first relates to general structural considerations "Loi N° Portant statut général des Coopératives" (hereinafter referred to as Coop Law \$1), while the second defines specific operational aspects of cooperatives "Décret fixant les conditions d'application de la Loi N° portant statut général des Coopératives" (hereinafter referred to as Coop Law \$2).

The primary purpose of the law is to create a universal framework to apply to all cooperatives in the country with special considerations for "rural cooperatives". This paper will concentrate on these considerations, since the coops which concern this project fall into the rural category. Rural cooperatives are defined as those whose members live in rural communities and derive their primary resources from any of the following or from related activities:

- agriculture
 - animal husbandry
 - fishing
 - forestry
 - rural artisans
- (Art. 62 - Coop Law \$1)

Rural crops, as envisioned by the statutory scheme, will be composed of several village sections, hereinafter called groupements. The cooperative unit should cover a geographical area defined in the articles

of incorporation, and should include all villages or quartiers within that area. Each village or quartier within the defined geographical area will be organized into its own groupement. There will be no overlapping of cooperatives so that an individual may belong to only one cooperative. The cooperative unit will have its own decision making and managerial bodies (the General Assembly and Council of Administrators, respectively). Each groupement will have a General Assembly as a decision making organ. Individual groupements will not have a Council of Administrators.

The General Assembly of the coop, the primary decision making body, will be composed of representatives from each groupement. These representatives will be chosen at the local level by the General Assembly of the groupements.

The cooperative unit is a recognized legal entity with financial independence (Art. 8 Coop. Law §1). As such, it has all the powers granted to any individual or private organization, provided it confines its activities to areas defined in its articles of incorporation and charter and consistent with the statutory scheme. Among the powers granted the coop is the right to borrow money.

The flexibility of this scheme lies in the area of division of rights and responsibilities between the groupements, the cooperative unit, and the government.

3.6.2.2. Groupement Powers

The statutory scheme outlines certain powers that must be granted to the groupement and others that are optional and may be granted to either the groupement or the coop. These optional powers allow for a certain flexibility and address important political, social, and organizational considerations.

3.6.2.3. Mandatory Powers of Groupements

Art. 37 of Coop, Law §2 defines the following powers that must be given to the groupements:

1. To examine the reports and accounts of specific activities engaged in by the groupement;
2. to determine the method of distribution of net profits;
3. to make all decisions relative to financial obligations of the groupement;
4. to make decisions relating to lending money, seeds, equipment, or other products or materials to groupement members;

5. to explain and/or propose groupement activities to the General Assembly or Council of Administrators of the Cooperative;

6. to elect a Consultative Committee to serve in an advisory capacity to the coop's Council of Administrators with regard to decisions affecting the specific groupement (Art. 38 Coop. Law §2 authorizes this Consultative Committee to have a decision making capability at the Council of Administrators level in areas involving activities to take place in their sector. This is an optional power which may or may not be granted in the Charter.);

7. to elect representatives to serve on the General Assembly of the cooperative;

8. to form and elect members of various committees;

9. to borrow money. The credit reform accepted by the Government establishes the groupement as the basic unit, which can borrow money.

3.6.2.4. Optional Powers of Groupements

Art. 66 of Coop. Law §1 appears to give the coop the authority to delegate many more powers to groupements than those mentioned in Article 37 of Coop. Law §2. Article (66) cites some examples, including the following:

1. granting of credit;
2. management of savings;
3. management of seeds;
4. production and marketing of new products;
5. formation of collective equipment programs.

Conclusion of this section of the article with "etc." implies that there is no fixed number of powers that could be assumed by the groupement. However, Art. 38 of Coop. Law §2, it appears to indicate that the coop has the option, either through its charter or by vote of the General Assembly, to give the individual groupements decision making authority in all matters affecting activities within their section. This article discusses the role of the Consultative Committee elected by each groupement as an auxiliary organ to the cooperative's Council of Administrators. It states:

"the decision making powers of the Committee are limited to only those operations of groupement activities over which the groupement has been given exclusive control by either the Charter or the General Assembly of the Cooperative."

The statute's ambiguity in defining the level of authority of a groupement vis-à-vis the coop can work in favor of as well as against more power for the groupement.

3.6.2.5. Mandatory Powers of Cooperatives

Statutes require that the cooperative maintain a central accounting and keep the accounts of the individual groupements. The exact structure and function of this system will be determined by government decree.

The General Assembly and Council of Administrators of the cooperative are responsible for all decision making relative to the cooperative as a whole.

3.6.2.6. Mandatory Powers of Government

The government is mandated by the statutes to maintain general oversight over the coops, notably in the following areas:

1. approval and certification of all cooperatives;
2. conformity with all applicable laws;
3. control over accounts and accounting procedures;
4. ultimate dispute resolution capacity;
5. approval authority over grants and bequests;
6. approval of comptrollers for each cooperative;
7. control over liquidation and dissolution process.

3.6.2.7. Organizational, Social, and Political Considerations

Whether and to what extent a groupement can achieve sufficient autonomy to maximize decision making at the grass roots level will be determined at two different levels in the organizational process, described below.

1. Level of Village Organization

The division of power between the coop unit and the groupements should ideally be debated and decided at the village level. As soon as

the new laws go into effect, groupements and coops will have to undergo some reorganization. During this time, villages should be made aware of the options available to them under the new statutory scheme, and should be given the opportunity to discuss and debate the issue of how much power should be granted to the coop and how much to groupements. They should be aware that increased rights imply increased responsibility. USAID could play an important role in this process. (USAID/Dakar is currently designing a plan for the use of P.V.C.'s in cooperative development efforts.)

Statutory schemes should provide for sufficient flexibility to encourage maximum participation at the village level in the decision making processes. Once the villagers have decided how they want to structure their cooperatives, they must then proceed to the next step of securing government approval of that structure.

2. Level of Government Approval

According to statute, before a cooperative is recognized and certified as a cooperative, its articles of incorporation and charter must be approved by the government.

Through its appropriate ministries (in the case of rural cooperatives, the Ministry of Rural Development) the government develops model articles of incorporation and model charters for coops. The statutes require that the coop's articles and charter be consistent with these models. In view of variations from coop to coop, however, the statutes allow for a certain amount of flexibility, which may lead to social and political problems for some coops in securing government approval.

3. Evolution and Process

To avoid or respond most effectively to potential problems at both levels described above, this project should promote a process of gradual evolution toward the ideal coop structures. We can thus accept a less than ideal beginning structure, which should facilitate general agreement among members as well as government approval with the knowledge that the statutory scheme encourages constant evolution and improvement in coop structure through amendments to the charter.

Articles 32 of the Coop Law §1 and 8 of Coop Laws §2 define the procedure for making amendments to the coop charter. The General Assembly of the cooperative must approve the amendment by a 2/3 vote. It must then be approved by the government and registered and certified in official records. As time passes and the coop and the groupements gain more experience, they should be able to demonstrate a greater capacity for self management, thus increasing chances that the government will agree to their proposed changes.

3.6.2.8. Specific IDP Goals for Organizational Structure and Function

1. Overall Goals:

- a. to restructure the technical role of RDAs by including more training and extension activities and less decision making;
- b. to encourage maximum participation of the rural population in all phases of agricultural development;
- c. to restructure relationships between RDAs and cooperatives and clearly define contractual rights and responsibilities;
- d. to increase private sector involvement.

2. Specific Objectives for Coops and Groupements:

- a. to promote organization;
- b. to participate in design planning;
- c. to encourage involvement in implementation, evaluation, and resource management;
- d. to increase decision making responsibility;
- e. to take greater risks;
- f. to reduce government subsidies;
- g. to manage profit sharing;
- h. to consider inter-village variations;
- i. to allow for flexibility in the growth-evolution process;
- j. to include women in the process;
- k. to create a mechanism for conflict resolution.

Figures 1 and 2 illustrate a structure for accomplishing these goals.

3.6.2.9. Cooperative Charter

In addition to the powers to be conferred by the model charter, the coop charter should authorize the following functions:

	<u>Statutory Authority</u>
- Central control of all accounts	Article 66 Law §1
- Purchase of equipment	" 63 "
- Bulk purchase of selected seed stock	" 63 "
- Borrow money	" 63 "
- Development of storage capability	" 63 "
- Purchase insurance	" 63 "
- Development of processing capability	" 63 "
- Marketing capability for selected crops	" 63 "
- Development of information system	" 63 "
- Development of data collection system	" 63 "
- Development of evaluation system	" 63 "
- Development of monitoring function of recommendations arising out of evaluation	" 63 "
- Membership open to women	Article 65 "
- Institution of youth committee & procedures for youth involvement	Article 24 Law §1 §46 & 54
- Determination of sanctions for members who fail to adhere to responsibilities	Article 21 Law §1
- Criteria for dealing with non-members	Article 23 Law §1
- Cost of membership shares	Article 25 Law §1
- Method of payment of membership shares -cash or in kind	" 25 "
- Authority to hire a general manager & terms	Article 51 Law §1

- Authority for committee framework Article 52 Law §1
- Authority given to groupements to deal with all matters assigned to them under their charters Article 66 Law §1
Article 68 Law §2
- Framework for savings system for members Article 15 Law §2
- The authority to enter into contracts or behalf of the groupements**

****Footnote:** Although the statutory scheme provides the groupements the potential authority to enter into contractual relationships to carry out their responsibilities under the cooperative charter, the scheme does not clearly state that groupements have a separate legal identity independent of the cooperative as a whole. The groupements may thus face some obstacles in entering into contracts with members of the private sector. To respond to this problem, the coop charter could require the cooperative itself to enter into contracts on behalf of the individual groupement if the latter makes such a demand. This provision would be accompanied by the proviso that the groupement agrees to reimburse the cooperative for any losses suffered as a result of the contract.

3.6.2.10. Groupement Charter

In addition to the rights granted to the groupements under their model charter, their charter should provide authority for:

	<u>Statutory Authority</u>
- Selection of Leadership	Article 30 & art. 3 Law §2
- Selection of sites for all projects	Article 66 Law §1
- Perimeter construction	" 66 "
- Selection of crops	" 66 "
- Designation of laborers to specific section of plots	" 66 "
- General allocation of tasks	" 66 "
- Selection of which agro-techniques to utilize	" 66 "
- Pump control and repair	" 66 "
- Management of groupements projects	Article 63 Law §1 Article 37 Law §2
- Marketing of select crops	Article 63 Law §1 Article 37 Law §2
- Processing	Article 37 Law §2
- Debt control-both borrowing and repayment	Article 63 Law §1
- Ability to lend to members and terms of guidelines	Article 63 Law §1
- Scheme for distribution of profits	Article 37 Law §2
- Participation in Accumulation of Capital (materials - equipment)	Article 37 Law §2
- Responsibility for payment of inputs, seeds, fertilizers, gas, oil, etc.	Article 63 Law §1
- Responsibility for provision of Labor	" "

- Responsibility for water management and perimeter maintenance Article 66 Law §1
- Conflict resolution mechanism " 66 "
- Establishment of fund for pump and equipment maintenance or replacement Article 30 Law §1
- Authority and scheme for payment of skilled labor; including a general manager when appropriate Article 66 Law §1

3.6.2.11. Role of Committees

Article 52 of the Coop Law §1 authorizes setting up various committees at the coop level, while articles 68 of Coop Law §1 and 40 of Coop Law §2 authorize setting up committees at the groupement level. Both cooperatives and groupements should set up committees by subject matter, delegating all responsibility for developing policy and making recommendations for policy implementation surrounding a particular issue to the appropriate committee. Such a committee structure allows one person or group of persons to take primary responsibility for a particular subject area, thus improving accountability and leading to greater chances of success for the coop.

At the Groupement Level, the only decision making organ is the General Assembly, headed by a President. Leaving all matters open to general discussion and debate at the General Assembly level would not be conducive to coherent direction for groupements.

3.6.2.12. Hiring of General Manager

The greater the responsibilities of the coop or groupement, the more important effective management becomes. Experience shows that successful coops have highly efficient management capabilities. Although hiring an experienced professional manager may constitute substantial expense to the coop or the groupement, we feel that they should be authorized, and under appropriate circumstances, encouraged to do so.

3.6.2.13. Transition from the Present Status to the New Law

Today there are two types of cooperative organizational structures in the Senegal River Valley.

In the Delta region and areas with large perimeters, most villages are organized into development cooperatives, independent, government-

recognized structures with a legal identity. These coops are composed of several groupements known as the "Cellule de base" of the cooperative. Groupements have an average of 20-30 members, and coops are composed of an average of 10 groupements. About 50 such coops exist in the Delta region.

Each groupement is responsible for a designated area of the perimeter and has the authority to make decisions relating to its operation. The coop makes its own decisions regarding the entire perimeter through its General Assembly, comprised of all the members of the groupements. As provided in the new law, the management responsibility for the coop is granted to a Council of Administrators elected by the General Assembly. Also as outlined in the new law, the management responsibility for the coop is granted to a Council of Administrators elected by the General Assembly. Also as outlined in the new law, the coop's charter defines the structure of the coop and the responsibilities of the groupement. The only immediate effect of the new law on these development cooperatives is that it will enable the groupements to take on more responsibility as appropriate or desirable. Because groupements as well as coops in the delta share the space on a large perimeter, the need for a greater degree of independence for the groupements is less pressing than for groupements in other types of coops.

Individual "groupements de producteurs" or "groupements villageois" own and operate most small perimeters in the upper valley and are recognized under the present law as "pre-cooperatives". These structures have no legal identity, but are recognized by the existing statutory scheme in Senegal as organizations operating in a cooperative fashion yet lacking the capability and sophistication to be considered true, independent cooperatives by the government.

Lacking recognition as a legal entity, a pre-cooperative's power in Senegal is severely limited at present. In fact, these structures have no more legal power than any other group of self-organized individuals. Pre-coops serve a vehicle for the government to organize farmers at the village level and to work with these groups in agricultural and cooperative development until they are capable of becoming independent coops with legal status.

The present statute requires that any group wishing to become a true cooperative operate for at least two years as a pre-coop before applying for government recognition. Pre-coops in the upper valley today are composed of anywhere from 100 to 500 villagers, each owning and managing a separate perimeter or perimeters. The pre-coop relies on RDAs for advice in most decisions relating to management of these perimeters and distribution of profits.

Another structure that exists in some areas of the valley (Bakel,

for example) is the federation of groupements. This federation represents the interested groupements over a broad geographic region. Individual groupements grant only selected powers to these federations, which perform such functions as interceding with the RDAs on regional issues. They also have a dispute resolution capability. Like the groupements, federations have no clear legal status but appear to function well for practical purposes.

The new law envisions that each of the existing pre-coops will become legally recognized entities as sub-components of a larger regional cooperative. Groupement organizers will determine the size of the geographical region and the number of component groupements to be included. In practical terms, the new law will cause little real change, if, in fact, the existing federation of groupements becomes the cooperative and the individual groupements become its component parts. In legal terms, however, the law will require a clear articulation of respective rights and responsibilities of the groupements; most importantly, it will provide the groupement potential for a legal capacity that they have not had previously. This legal capacity will allow the coop and/or groupements to enter into contracts that can be enforced through normal civil process, greatly enhancing the coop's opportunities to interact with the private sector.

Existing coops will have one year to conform to the new law once it is passed. During that period, and throughout the early phases of this project, the groupement should be made aware of their potential rights under the new statutory scheme, with particular stress on their capacity to enter into legally enforceable contract either as individual groupements or through the coops with an indemnification provision in the charter. Although the coop unit itself is already capable of such legal contracts, if the groupement lacks this capacity opportunities for such private sector involvement will be diminished.

3.6.2.14. Relationship of SAED, the GOS and the Cooperative

1. Legal Overview

The coop's relationship with RDAs is linked to its independence and autonomy as a legal entity. The closer the coop's structure is to the ideal outlined in the previous section, the stronger its autonomy vis-à-vis RDAs.

At present, the coops have no bargaining power; any contracts between coops and RDAs are imposed by the RDAs. Such "contracts of adhesion", though signed by both parties, historically are not effective;

the underdog party, lacking input into the terms of the contract, does not feel ethically or morally bound by it.

Increasing a coop's autonomy and independence will naturally increase its bargaining power vis-à-vis such contracts, enabling it to enter into contracts not only with RDAs but with private organizations. Granting coops the power to negotiate terms in a contractual relationship encourages both their feeling of obligation and their adherence to the contract.

To better understand the present relationship between SAED and the groupements, it is important to compare how SAED and the Government of Senegal (GOS) view the farmer's role in the coop process.

2. SAED's Relationship with the GOS

SAED's relationship with the GOS is determined by two documents. The first is the statute authorizing the existence of SAED and defining its legal authority, "Décret N° 65-026 du 20 Janvier 1965, fixant l'organisation et les conditions de fonctionnement de la Société d'Aménagement et d'Exploitation des Terres du Delta du Fleuve Sénégal" (SAED) (hereinafter referred to as "SAED Statute").

The second document describes in more detail what the GOS and SAED each perceives their respective roles to be. This document is entitled "Lettre de Mission entre le Gouvernement du Sénégal et la SAED", hereinafter referred to as "Lettre de Mission".

3. SAED Statute

SAED's overall mandate, as outlined in its enabling legislation, is to control and manage all development activities in the river basin, including but not limited to the development and assistance of cooperatives and groupements (Article 4 SAED statute). To fulfill this mandate, SAED is granted extensive powers, such as the following:

- a. to receive grants, loans, subsidies, etc.
- b. to acquire the means (equipment) necessary to accomplish goals;
- c. to maintain and manage a supply depot;
- d. to engage in seed production;
- e. to develop cooperatives;
- f. to recruit necessary administrative and technical personnel, including expatriates;

- g. to contract for insurance for themselves and for cooperatives;
- h. to control all public funds destined for the coops;
- i. to acquire and distribute the means of production;
- j. to make advances, loans, and allocations of service, free of charge;
- k. to guarantee loans to coops from B.N.D.S.;
- l. to market the produce produced by the coops and to set up processing facilities;
- m. to provide a framework for agricultural development;
- n. to provide technical assistance to the coops;
- o. to handle all matters related to development of agriculture in the river basin.

Although the statute does not mandate SAED to engage in each of the above activities, one should view this list as indicative of the extensive role the GOS envisioned for SAED in 1965, when this statute was enacted.

The Statute also provided control over land in the river basin to which the government could make a claim under the National Domaine Law (Art. 6 - SAED Statute). Briefly, this law grants the GOS ownership and disposition rights over all land not being utilized. Determining whether or not land is being utilized is only one in a series of complex issues dealing with land tenure, which this paper will only touch on briefly at a later point.) The salient point is that the statute gives this very important power to SAED along with the power to award the land to the coops or the villages. (Art. 6 - SAED Statute).

The remainder of the statute relates to the organizational structure of SAED and the division of responsibilities therein. Basically, the "Conseil d'Administration" (hereinafter called Council) has oversight administrative authority, acting in generally the same capacity as a board of directors. This Council is comprised of the Minister of Rural Development (as President), the Minister of Planning, the Minister of Finance, the Minister of Commerce and Industry, a representative of the President of the GOS, a representative from the Legislature, and representatives from other ministries and organizations involved in development in the river valley. The Council also has three positions

for representatives from the cooperatives (Article 8 - SAED Statute).

A board of this size clearly does not actually administer SAED; the Director General serves this function. The role of the Council is basically to approve management decisions and to provide management with general policy and direction.

Each of the ministers on the Council has veto power in terms of acceptance of grants, general programs of investment and development, loans, fees charged to coops, marketing schemes involving more than 25 million CFA, sale and acquisition of buildings, classification, recruitment, and salaries of personnel.

4. Lettre de Mission

This document, signed in early 1982, represents a rethinking of the rights and responsibilities of SAED by the GOS since 1965.

a. Duration

The present "Lettre de Mission" will remain in effect until 30-6-84.

b. Scope of authority

SAED will have authority over the following activities as they relate to any development projects entrusted to them by the State.

- (1) planning, authority, and control of all development projects within the indicated zone;
- (2) management and control of all equipment;
- (3) coordination of all development activities within the zone;
- (4) support and advice to village units;
- (5) coordination of the supply of necessary means of production;
- (6) gathering, processing, and marketing produce delivered by the village units;
- (7) generally facilitating the development goals of the projects entrusted to them by managing water resources, coordinating of research, and organizing cooperatives in the villages (Art. 3 - Lettre).

At this point we see that the GOS still grants SAED an extensive role in the development of irrigated perimeters in the valley.

c. Function

SAED's function is redefined to include:

(1) planning and control of all rural development in the zone;

(2) advice and coordination of all development projects carried out by local village units and/or third party units. (Art. 3 - Lettre).

d. Objectives

SAED spells out concrete objectives in terms of number of hectares expected to be developed or rehabilitated by 1984, with a specified quota of small, medium, and large perimeter units. (See Art. 4 - Lettre de Mission).

e. Responsibilities

SAED guarantees that it will provide to villages the necessary organizational structure, supply of water for irrigation systems, pumping stations, and protection dikes to meet the goals of their projects as per Article 5-2.

This section envisions contractual agreements between the SAED and the village groups and/or third party units (Art. 5 - Lettre).

f. Responsibilities of the GOS

- Article 6

The GOS is committed to providing the institutional and financial means necessary to accomplish the following goals:

- codify by statute the existence of the SAED and its goals;
- make all necessary contributions in terms of capital and manpower;
- set up a revolving fund.

The government also agrees to handle unforeseen fees that arise in the course of the project. Article 6 specifies amounts to be available for budget, reimbursement, and the revolving fund. The government also agrees to assume the cost for transfer of personnel and to maintain a production price that contains an incentive for production.

Article 7 of the Lettre expresses the revised policy of the GOS relating to powers of cooperatives and groupements. The basic philosophy underlying this policy is a recognition of cooperatives' and groupements' need for greater responsibility and decision making authority in areas directly affecting their own agricultural projects. Although this policy is consistent with our interpretation of the new statutory scheme for cooperatives, we question whether it goes far enough.

- Article 7

This section states that farmer units must be given greater control over the projects and the means of production. It provides that the farmers be given control over the following:

- (1) drainage equipment (pumping station) (Materiel d'exhaure);
- (2) farming supplies;
- (3) decision as to when to start a project;
- (4) decision as to project site;
- (5) decision as to method of development;
- (6) decision as to type and structure of their organizations;
- (7) management and development of their own plots;
- (8) farming plans and techniques;
- (9) disposition of surplus crops.

The farmers will also be furnished information relating to real cost of production and the amount of produce going to the state. They will receive credit assistance.

- Article 8

This article describes SAED's role of intervention when the cooperatives wish to enter in contractual relationships with third parties.

Although the language of the article is not entirely clear, it appears to give SAED approval authority over all such contracts. This approval authority appears to be only for the purposes of assuring that the contract purposes are consistent with overall development policy within the area, however.

g. SAED's Relationship with Groupements

Now that we have seen how the GOS and SAED view their roles in the coop process, it is important to look at the specific relationships between SAED and the cooperatives and groupements and to consider how this project should modify or influence that relationship.

As we saw in the 1965 enabling legislation for SAED, the organization has historically had an extremely persuasive role to play in the development process, while farmers have served in little more than a labor capacity.

As time passed, relationships between SAED and the farmers worsened, to the point where it became common belief among the farmers that SAED was operating purely for its own benefit to maximize rice production and had little concern for the farmers or their needs. Gradually the government began to recognize that more attention should be paid to the farmers and that they should be allowed more control over the operation of their own perimeters.

At first SAED made all decisions in terms of where the perimeters would be located, what crops would be grown, how they would be marketed, etc. Some progress has since been made in delegating more power to the farmers; yet again we question whether these efforts have gone far enough.

h. Present contractual relationships between SAED and Cooperatives

Legal relationships relating to the rights and responsibilities of both SAED and the groupements are defined by a written contract between SAED and the cooperative or the groupement.

SAED uses two different model contracts, one for the Delta region and one for the upper valley region. Since this project concerns primarily the middle and upper valley, we will limit this discussion to the contract used in that area.

All the members of the groupement or the cooperative are listed in an appendix to the contract. Each member is individually liable for all debts contracted by the groupement through this contract (Article 1 + 12), which is for a term of one year (Art. 4).

i. Rights and responsibilities

(1) Perimeter management

SAED

- final approval of site proposed by groupement;
- determination of placement of dikes and water flowage;
- provision of technical advice relating to proper method of constructing perimeters
- assistance to groupement in "découpage de périmètre";
- furnishing of necessary tools for perimeter construction;
- provision of necessary transportation;
- provision of a stone mason when necessary.

GROUPEMENTS

- construction of canals and necessary structures;
- supply of necessary materials;
- distribution of parcels among the members by lottery;
- care and management of each parcel and its surrounding dikes;
- maintenance of all canals and accessory structure.

(2) Pump purchase

SAED

- provision of the groupement with a complete motor pump system in working order; at the time the perimeter construction is completed the pump becomes the property of the groupement.

SAED reserves the right to reclaim the pump if the groupement does not care for it properly (Art. 13).

GROUPEMENTS

- maintenance of a repair and replacement fund for the pump;
- supplementing of a specified amount each year to the fund;
- drawing from the fund only for replacement of pump, or pump parts.

(3) Functioning of Motor Pump

SAED

- periodic maintenance control;
- repair of the pump as soon as possible following notification of its malfunction;
- loan of a pump to the groupement in instances where repair requires removal of the pump;
- training of the groupement's pumpist;
- review of the group's capability to maintain the pump each year;
- provision of all these services at no cost during the first three years of the agreement.

GROUPEMENTS

- designation of a pumpist;
- daily verification of the oil;
- notification of SAED in case of malfunction;
- transportation of the fuel from SAED to the pump site;
- payment for costs of operating the pump;
- protection of the pump from theft, rust, and flooding;
- maintenance of the pump in good working order;
- residence of the pumpist close to the pump.

(4) Agricultural production

SAED

- provision of technical assistance and advice on:
 - choice of crops;
 - use of seeds;
 - farming techniques;
 - water flow;
 - pest control/plant health;
- delivery of the seeds at the beginning of the season which have been requested by the farmers (If a zone supply depot exists, the groupement is responsible for getting the seeds from the supply depot to the perimeter);
- provision of plant health products and pulverisateurs requested by the farmers.

GROUPEMENTS

- production of at least 10 hectares, even during hivernage;
- following the advice of SAED counselors;
- payment of credit obligations.

(5) Marketing

SAED

- purchase of rice, wheat, and corn from the groupements at government-controlled prices and the payment of the groupement on delivery after deduction for debts owed.

GROUPEMENTS

- the sale to SAED of the totality of its production of rice, wheat, and corn after self use;
- the sale of only marketable produce;

- the protection of produce in storage;
- the loading of produce on SAED trucks.

For other produce, marketing is decided on a case by case basis.

(6) Payment for services and supplies

Gas, oil, and farming tools should be paid for on receipt. Other items can be paid for by credit. The groupement is required to maintain a fund for payment of all debts, which should be paid at the end of a growing season.

(7) Dispute Resolution

An arbitration commission will resolve all disputes arising between SAED and the groupement. This commission will consist of:

- Préfet of the relevant department;
- Chef de périmètre of SAED;
- President of groupement;
- Coop representative from SAED's Council of Administrators;
- One other representative from SAED's Council of Administrators.

An analysis of the foregoing contract reveals that SAED still has tremendous control and authority over the operation of village perimeters, although their role is much more limited than it was in the early 1970's.

5. Possible Modifications

The existing contract is quite comprehensive, covering most aspects of the SAED/coop relationship. We recommend that project planners examine several issues closely, however.

An ideal contract from the standpoint of IDP goals should contain the following changes:

a. Pump repair

One of the principal obstacles to perimeter development is malfunctioning pumps. Farmers complain constantly of SAED's failure to

repair the pump in a timely manner. Pump breakdowns are linked to a variety of factors, ranging from problems with installation (such as poor quality of the floats causing the pumps to operate on a less than level surface) to failure of the pumpist to check the oil level. It is not fruitful to apportion blame between SAED and the groupement for the breakdowns and or to determine why SAED fails to live up to its repair responsibilities. We feel, rather, that since the groupement owns the pump system, it should assume full responsibility and accountability for its operation, maintenance, and repair. If the pumpist knows he will be responsible for repairing the pump if it breaks down, he will be more apt to take better care of it. If villagers realize that they will have to pay for pump repairs, they are apt to take more care in selecting a pumpist.

SAED's role should be limited to providing the pump and offering high quality training for pumpists.

b. Seed provision

Although farmers have expressed no great outcry of dissatisfaction with the seed distribution system, they have expressed a desire for flexibility in purchasing their seed stock. In practice, some of the groupements already purchase seed from sources other than SAED.

We propose that the contract eliminate SAED's role in seed provision and allow groupements to purchase all seed from the private sector. Consistent with the cooperative structure envisioned by the new law, the coop would serve as an ideal unit for carrying out the function of bulk seed purchase after consulting with individual groupements as to their needs.

If in some cases SAED could secure a better deal on seed price, there is no reason why that "deal" could not be assigned to the cooperatives.

c. Technical assistance

While this is one of the areas of greater potential for SAED to play an important role, it is the source of many problems at present. The most serious problem appears to be the lack of high quality technical assistance. The extension agents sent into the perimeters are fewer than necessary and poorly trained. In addition, many of them do not speak or understand the local language.

We propose that the contract require SAED to provide a negotiated number of extension agents to each perimeter; that the agents be properly trained and certified as such, and that they speak and understand the local dialect. The contract should also require that the technical

assistance be offered in the following areas:

- agricultural techniques;
- financial management;
- literacy;
- mechanical repair;
- water management;
- perimeter maintenance;
- evaluation systems.

Finally, the contract provision requiring to always follow the advice of the agents should be eliminated. Experience has demonstrated that in many instances the farmer's practices were superior to those recommended by the agents. If the advice of the agents is sound, in most cases farmers will follow it voluntarily.

d. Marketing

Although the present contract requires that the groupement market all its rice, wheat, and corn through SAED, in reality only the sale of rice is being channeled through SAED. Other produce is either being sold behind SAED's back or kept in storage on the pretext that it is necessary for auto-consumption. We do propose, however, that the contract eliminate the requirement that groupements sell their corn and wheat to SAED, and that we continue to work toward a time when farmers will also be free to sell their rice on the open market.

e. Processing

If cooperatives are to ever make a real profit in their agricultural ventures, at some point they must acquire a processing capability. This is particularly important, because traditionally, in agribusiness, profit is made only at the processing stage. When forced to sell a raw product, the farmer always receives the smallest portion of profit generated by the commodity.

Even though involvement in processing requires large capital investment at the level of village perimeters, we can envision many other potential levels of processing. Under the new coop law, the cooperative unit is ideally suited to play a role in processing certain commodities. Even the purchase of hand hullers for rice would be a start. It is proposed that the contract contain a provision authorizing groupements to establish processing facilities as soon as they are able to make the necessary capital investment.

f. Enforceability of the contract and dispute resolution

The proposed new contract, which would turn over many of SAED's responsibilities to the groupement, would eliminate potential areas of dispute but create others. Issues that might come under fire include for example, SAED's authority to reclaim the pump in the case of groupement misuse or improper care and its responsibility to deliver gas and oil for the operation of the pump. Disputes might also arise over the competence of the extension agent sent to the village.

The present contract's use of an arbitration commission is a good idea and should be maintained. This measure prevents unnecessary litigation and usually results in fair resolution of disputes. We propose that the article be expanded, however, to make it clear that the commission's decision is final and to define explicitly the commission's powers in enforcing orders in the case of dispute. Powers that should be clearly defined in the contract include the commission's power to assess damages against SAED for failure to provide gasoline which resulted in subsequent partial or total crop failure, as well as its authority to order SAED to replace an incompetent extension agent.

g. Cooperative development services

If SAED is seriously committed to working with the groupements in cooperative development, as expressed both in its enabling legislation and its Lettre de Mission, it will have to demonstrate that commitment in practice. Presently only three agents handle cooperative development for the entire river valley. In the past farmers often complained that SAED's sole interest was to develop rice production on hectares, and that little attention was paid to helping coops to organize. In light of the new legislation and flexibility in the cooperative structure, SAED should now be able to serve in a more meaningful development capacity. A provision should be added to the contract requiring that a properly trained and certified coop development agent be assigned to each coop.

h. Development of evaluation and information center

The contract should require SAED to develop an evaluation system encouraging farmer participation and evaluating and reporting on each

perimeter project. The results of these evaluations should be reported to the groupement and kept in a designated information center. SAED should be required to monitor the implementation of recommendations arising out of these evaluations.

i. Conclusion

It is understood that many of these recommendations will be difficult to implement due to social and political constraints. We believe, however, that they are all possible within the existing or soon to be existing legal framework. The changes proposed here can obviously not be carried out in the near future, but they should be viewed as worthy objectives consistent with expressed goals of this project, particularly with regard to 1) limiting SAED's role and increasing farmers' control and accountability, and 2) improving SAED's capacity to provide services and technical assistance in cooperative development.

3.6.3. Mauritania Statutory Scheme

3.6.3.1. Overview

The statutory scheme in Mauritania is quite different from Senegal's new laws but is similar to the old law under which Senegal has been operating.

The overall scheme consists of only one statute, entitled "Loi N° 67-17 du 18 Juillet 1967 portant statut de la Coopération" (hereinafter referred to as the "Coop Law"). This law creates the authority for two separate kinds of cooperative organizations. The first is a true cooperative recognized and certified by the government and possessing separate legal identity with full authority to:

- 1) enter into contracts;
- 2) borrow money; and
- 3) engage in all commercial activities, including receiving grants and loans.

The second type of organization is the pre-cooperative which, although recognized by the government, has no legal independence and is subject to tight government supervision (Art. 25-36-Coop Law). All organisations must serve at least two years in a pre-cooperative status before they become eligible to apply for true cooperative status.

At present, the only true cooperatives in Mauritania are located in the lower valley. Most perimeters in the upper valley are owned and managed by pre-cooperatives; only one village applied for and was

granted cooperative status (Balou) just recently.

The Mauritanian statute actually provides more options than does the Senegalese one, since it does not require that a cooperative be made up of village units. In principle, each pre-cooperative could graduate to full cooperative status, thus achieving at the village level the legal independence so important in obtaining the control and decision making authority promoted by this project.

The Mauritanian statute also allows for cooperatives to join together and form cooperative unions that would function in a similar manner to those in the Senegal statutory scheme. The union of cooperatives would take on responsibilities that could be most efficiently accomplished through economies of scale. Individual cooperative would serve as the "cellule de base" of the union of cooperatives, maintaining their own specific rights and responsibilities.

Such a union of cooperatives appears to provide the best opportunity for the village groupements to apportion the rights and responsibilities between the union and its cooperative parts as they are divided in Senegal's cooperative groupement system. Unlike Senegal, however, Mauritania does not require any special apportionment of powers between the union and its cooperative parts. Further, in a union cooperative structure in Mauritania, each cooperative has a complete and separate legal identity. Therefore, its activities and ability to deal with the private sector are restricted only by the Statute and the terms of the charter establishing the union cooperative's organizational structure. The most important consideration in the organizational process of going from pre-coop to coop status in Mauritania will be making the farmers aware of their rights under the law. As in Senegal, once villagers organize themselves into a cooperative structure of some sort, they will have to obtain government certification and approval for that organization.

3.6.3.2. Recommended Structure

It is recommended that pre-cooperatives qualifying for cooperative status be allowed to apply as early as possible.

This project should provide assistance in organization. The recommended structure of the cooperative, illustrated in Figure 3, is similar to that presented for Senegal.

3.6.3.3. Committee System

Although the Mauritanian statute does not specifically provide for the institution of committees, it also does not prohibit them. The General Assembly possesses the authority to make all decisions relating to policy and operation and as such, should also have the power to institute a committee system.

As the process evolves, cooperatives should move towards merging with other cooperatives within a geographical area. As Senegal has recognized in its statutory scheme, economies of scale make such a union the most efficient form of organizational structure for fulfilling the farmers' needs.

The structure proposed for this union contains a similar division of rights and responsibilities between the union level and the cooperative level, as appears in the structure recommended for Senegal.

3.6.3.4. Other Variations Between Senegalese and Mauritanian Cooperatives

1. Cooperatives in Mauritania are exempt from the following taxes (Art. 24 Coop Law), including:

- Patent
- Import on agricultural products
- Apprenticeship
- Stamp tax for publication in Official Journal
- Registration tax
- Municipal tax

2. Cooperatives in Mauritania have the right to appeal disputes between themselves and the Ministry to which they report, to the courts. (Art. 16 Coop Law)

3.6.3.5. Relationships Between the GIRM, SONADER, and the Cooperatives

As in Senegal's case, it is important to discuss first SONADER's authority vis-à-vis the GIRM.

SONADER derives its authority from one statute titled Décret N° 75-237 du 24-7-75, modifié par le Décret 76-036 du 12-2-76 et le Décret 78-183 du 22-6-78 portant création et organisation de la SONADER, hereinafter called SONADER Law.

SONADER has a legal identity and a financial autonomy (Art. 2 - SONADER Law). It is charged with the responsibility and authorization to plan for and execute all rural development projects assigned to it by the Ministry of Rural Development (Art. 4 - SONADER Law).

As specifically related to their assigned projects, these tasks including the following:

1. to study, execute, and control all work related to irrigated agriculture;
2. to organize the necessary framework;
3. to popularize the concepts;
4. to furnish the means of production;
5. to train the farmers and extension agents;
6. to manage and maintain all projects.

SONADER does have statutory authority to subcontract for provision of these services (Art. 5 - SONADER Law). It also has financial autonomy and as such can be a direct recipient of loans, subsidies, and grants, both domestic and foreign (Art. 6). As such it would be legally competent to enter into contracts with third parties including donor agencies. As SAED, SONADER is administered by a very large board of directors which determines basic policy and control all project involvement and financial undertakings. Its membership is composed of representatives from all ministries involved in agricultural development, as well as representatives from the legislature, President's Office, labor and farmers' union and a representative of the World Bank (Art. 8).

SONADER is responsible to the Ministry of Rural Development and the Minister appoints the Director of SONADER who is in charge of managing the RDA (Art. 13, 14 and 17). All SONADER's financial undertakings and commitments, including its annual budget, are subject to the approval by the Ministry of Finance (Art. 23).

The GIRM has expressed SONADER's mandate in agricultural development in its statutes. Although its operations are subject to the control of the Ministries of both Rural Development and Finance, SONADER is somewhat independent and as such competent to enter into contracts.

The role of the two ministries vis-à-vis contracts entered into by SONADER is not clear, however. We recommend that both the Ministry of Rural Development and Ministry of Finance be made signatories to any contracts SONADER might be required to enter into with the donors.

3.6.3.6. Enforceability of Contracts

A major concern of the Mauritanian system is the enforceability of contracts entered into between SONADER and the pre-cooperatives. While true cooperatives have juridical status and therefore access to normal civil process for enforcement, pre-cooperatives have no juridical status; thus it is not clear how they would go about enforcing their contracts.

3.6.3.7. Present Contractual Relationship between SONADER and Cooperatives

Presently SONADER uses a document called "Contract de Campagne d'Hivernage" to define their relationship with both cooperatives and pre-cooperatives. Unfortunately, this document does not clearly define their relationship, but only states the items SONADER is expected to supply to the cooperative, the quantity and cost of each item, and the terms of payment by the cooperative. Because of this ambiguity, it is difficult at present to examine the relationship between the two groups. As a condition precedent to this project, we recommend that a new contract document be drafted for use by SONADER in defining its relationships with cooperatives and pre-cooperatives.

The terms of this contract should be similar to the terms of the contract presently used by SAED, with the proposed revisions outlined above. In addition, the contract to be used by the pre-cooperatives should have a section clearly resolving the enforceability issue. In that section, SONADER should agree to submit itself to the dispute resolution mechanism with the full understanding that the pre-cooperative has no legal capacity.

3.6.4. Mali Statutory Scheme

The only document available on Mali was the statute relating to cooperatives, Law No. 6321 dated January 1963. According to the terms of this statute, the Malian scheme is, for most intents and purposes the same as Mauritania's, except that it lacks any provision for pre-cooperative organization.

Following is a list of questions that should be answered relating to Mali:

1. Do any other statutes exist relating to cooperatives?
2. Do para-cooperative groupements exist in the Mali area of the River Basin? If so, how are they organized and to what statutory authority are they pursuant?
3. Does OVSTM have any written contractual relation with these organization?
4. What is OVSTM's enabling legislation?
5. Do any other legal document define OVSTM's legal authority?

3.6.5. Legal Issues for All Three Countries

A. Land Tenure Issues for All Three Countries

1. RESOLUTION OF LAND TENURE ISSUES AS TO EACH INDIVIDUAL SITE MUST BE RESOLVED PRIOR TO COMMENCEMENT OF PERIMETER CONSTRUCTION.

POSSIBLE SOLUTIONS--

a. Use of Senegal's administrative reform law and Communité Rurale system. Although Senegal's system envisions a registration/deed process within this system, at present there exists no framework for its implementation. The project may want to consider some sort of limited financing in the geographic area of perimeter construction.

b. Use of ad hoc negotiated contracts between the RDAs and the village groups. Under the national land laws of both Mauritania and Senegal, the state has the right to condemn land not being utilized. SAED and SONADER are both given authority to dispense this land to village groups for agricultural production. These contracts must be negotiated with, rather than imposed on, the land owners; they should be specific and provide for a system of fair compensation to land owners whose land is confiscated.

The fact that these contracts have little or no statutory framework to which they can attach themselves signifies that although the contracts can clearly establish rights between the signatories, they have questionable effect as to third parties who might subsequently make a claim to the land. This problem presents a major roadblock in terms of pastoralist's rights, especially in Mauritania, where

the national land law subjects the state's right to land to traditional and customary usage of rights.

2. ISSUE OF HOW PERIMETERS WILL BE DEVELOPED WHEN THE LAND IS OWNED BY VILLAGES ON THE OPPOSITE SIDE OF THE RIVER

Classical land law dictates that the country wherein the land lies controls access to that land. This law must be respected as stated; it should not, however, hinder development of project parcels.

POSSIBLE SOLUTIONS--

a. The RDAs of the country wherein the land lies would be responsible for its overall development through a contractual agreement with the village owning the land. This contract would specifically recognize their ownership rights as well as the fact that they were citizens of another country. The contract would specifically state that for the purpose of the development project, inhabitants of the village would be treated for all intents and purposes as if they were nationals. Such a statement should be a condition precedent to beginning a project in that area.

b. The RDA of the country wherein the land lies could subcontract its development responsibilities to the RDA of the country where the village is located. This could be done via a protocol, which would be consistent with an OMVS' resolution, proposed but not yet passed, requiring harmonization of all river basin projects and development activities by the three RDAs.

3. THE ALREADY APPROVED AID PROJECT ON LAND TENURE STUDIES FOR MAURITANIA SHOULD BE A FIRST STEP IN DEVELOPING A NATIONAL LAND TENURE LEGAL FRAMEWORK FOR ALL THREE OMVS COUNTRIES

This project envisions training four members of Mauritania's Ministry of Rural Development in land tenure issues and resolutions. The trained members would then return to the Ministry, where they would comprise a Division of Land Tenure and Land Use. The results of this project could then be transferred to the other two countries, involving a possible role for OMVS. After a period of time, the three countries could pool their resources, and, with some USAID assistance, develop a plan for a national legal framework for land tenure reform in their respective states.

Note - For the present project we feel that in order to deal effectively with problems indigenous to the river basin, at least two of the four trainees selected should be Africans rather than Moors.

4. IN THE ABSENCE OF LAND TENURE REFORM, ALL RESULTS OF AGRICULTURAL DEVELOPMENT GO TO THE RULING CLASS.

Reform must not take the path of least resistance; it must assure access of production benefits to all classes.

5. REFORM MUST DEAL WITH

- inheritance rights;
- alienability;
- dispute resolution - intra-group and inter-group;
- compensation - how much; how determined; who gets it; source and money.

6. REFORM MUST ADDRESS ISSUES OF PAST USES AND RIGHTS DERIVED THEREFROM.

7. MAJOR POLITICAL ISSUE: GOVERNMENT ENTITY IS USUALLY THE ONE TO ARBITRATE DISPUTES. GOVERNMENT IS USUALLY IN POWER BECAUSE OF SUPPORT OR RULING CLASS. FAIR RESOLUTION WILL REQUIRE DISPOSSESSION OF THE RULING CLASS.

POSSIBLE SOLUTION--

Arbitration must be carried out by a commission composed of representatives from government and all interested groups.

B. International Law Issues

1. OMVS Structure

Two basic legal documents establish the OMVS statutory framework. The first is entitled "Convention on the Status of the Senegal River (River Statute)". The second is the Convention of March 11, 1972 on the Establishment of the OMVS (OMVS Statute). Both statutes were signed on March 11, 1972.

The first statute declares the Senegal River to be an international (Art. 1 - River Statute). Article 3 states that each state may exploit the river, but that:

"No project likely to modify in a noticeable way the characteristics of the river regimen, its conditions of navigability of agricultural or industrial exploitation, the sanitary quality of the water, the biological characteristics of its flora or fauna, its water level can be carried out without prior approval by the contracting stages, after discussion and justification of eventual obligations." (Art. 4 - River Statute)

Article 5 states that a special convention must be passed by the member states whenever a project involves construction and operation of works of common interest or mutual obligations of the member states. Articles 6-9 relate to navigability and transport of the river, requiring the formulation of a common approach and prohibiting discrimination among the states vis-à-vis access to and navigation of the river. The convention provides for dispute resolution through the Organization of African Unity, with final appeal rights to the International Court of Justice in the Hague (Art. 18 - River Statute). Any party can withdraw from the convention after a period of 99 years (Art. 17 - River Statute, Amended December 16, 1975).

The OMVS statute creates the organization and entrusts it with:

- the application of the river statute;
- promotion and coordination of studies and works for the development of the SRB resource "on the rational territories" of the member states (Art. 1 - OMVS Statute).

The supreme authority of the OMVS is the Conference of the Heads of State, which defines cooperation and development policy (Art. 3 - OMVS Statute).

The Council of Ministers is the concept control body of the organization. It elaborates general policy, defines priority projects, and determines contributions of member states for approved and recurrent budgets and for approved studies. The decisions of the Council of Ministers are binding on member states (Art. 8 - OMVS Statute).

The High Commission is the management organ of the OMVS. It acts only according to authority delegated to it by the Council of Ministers (Art. 12 - OMVS Statute).

The Secretary General is the number two management organ of OMVS, which assumes the responsibility of running the organization's different divisions and departments as well as any other authorities delegated by the High Commission. Dispute resolution is the same as under the river statute (Art. 24 - OMVS Statute).

2. Relationship of USAID to OMVS

A major objective of this project should be to clearly articulate the role envisioned for OMVS. Once this role has been clearly defined, a contract with terms of reference will have to be developed clearly stating OMVS responsibility in terms of this project. If OMVS is to be a major conduit for funds, this document must define the specific methodology and formula for distribution.

This document can take the form of an USAID grant agreement or any other contractual form. Regardless of the form of the agreement, however, it will have to be approved by a formal vote of the Council of Ministers. Only a resolution passed by the Council of Ministers is binding on OMVS according to the terms of their organizational statute. In addition to this documents being required by sound legal principles, it is also required by sound legal principles, it is also required by Article 5 of the river statute, which states:

"A special convention between the contracting states shall define precisely the conditions of construction and operation of the works of common interest as well as the mutual obligations of the states" (Art. 5 - Riv. Stat.).

Although the construction activities will take place within the sovereign states, certain activities of the OMVS will involve mutual obligations of the states thereby bringing the article into play.

Another important issue is the timing of such an OMVS resolution. At a recent meeting with an OMVS representative from the Division of Planning (March 30, 1982), the OMVS representative indicated that he would not want to present this project to the Council of Ministers until such time as it had received final USAID approval. This may present an obstacle to final USAID approval if passage of any necessary resolution or conventions by the Council of Ministers is made a condition precedent to any execution of the grant agreement.

3. Possible Role for OMVS

- a. to coordinate and plan all long-term development activities in SRB;
- b. to develop a centralized training system for agricultural extension workers - Both RDA people and village people;
- c. to coordinate and harmonize RDA activities in SRB;
- d. to develop and implement an evaluation an ongoing monitoring system (villagers should be involved in developing and implementing this system;

e. To develop a central clearinghouse for information relevant to all projects, including technical assistance, financial assistance, marketing assistance, and coop development;

f. To develop feasibility studies for other projects in the SRB to be presented to other donors for possible funding.

It is significant that under the terms of its charter, OMVS has the authority to work on only those projects approved and assigned to it by the resolutions of the Council of Ministers. In terms of what role OMVS can play at this moment without further action on the part of the Council of Ministers we must have a comprehensive list of, and access to, all resolutions passed by the Council of Ministers since its inception.

4. Policy Constraints That Could Be Eventually Resolved Through an OMVS Resolution

This section involves the question of tariffs and customs problems. At present an OMVS resolution entitled "Statut relatif aux ouvrages communs" applies to the construction and operation of the dams at Manatali and Diama, specifically defining the rights and responsibilities of the member states vis à vis this project. This resolution in effect removes all trade, customs, and immigration obstacles to the construction and operation of the dams. OMVS could pass such a resolution relating to irrigated perimeter projects, which would international trade obstacles that now exist in the river valley, thus easing problems involving transportation, monetary issues, immigration and other issues.

Working through its own legal authority or through the framework of the Economic Community of West African States (ECOWAS) (which in principle supports such concepts) OMVS could ideally turn the whole river valley into a free trade zone, which would greatly improve this project's chances of success. The "statut relatif aux ouvrages communs" basically sets up such zones in all areas involved in the construction and operation of the dams. If the OMVS were to declare irrigated perimeter projects "ouvarage communs", could then apply the existing statute to our projects.

Realizing the political problems such an idea presents we recommend a step-by-step process and encourage USAID to join forces with other donors to induce OMVS toward this goal.

5. OMVS Relationship with the RDA's and Member States

OMVS will have to have certain ties with the RDA's and the member states as sovereign entities. From a legal point of view it is important that the terms of these relationships be clearly spelled out.

For example, if OMVS is to play a training and coordination role for all three RDA's an OMVS Council of Ministers resolution should be signed and approved by either side as of yet.

We feel that an active OMVS representatives in each state. These "Instate" representatives should actively fulfill the function of:

a. Reframing liaison by keeping the national government fully informed of all OMVS activities both national and regional level;

b. Monitoring and evaluating OMVS activities underway the particular state.

3.6.6. Conclusion

From a legal point of view most problems that must be resolved prior to project implementation involve a lack of specific guidelines defining respective rights and responsibilities among all the participating entities.

Project personnel must therefore strive to respective rights and responsibilities and then create the legal documents in which to articulate them. Project staff should work closely with the national governments of each country in this endeavor.

Figure 1

Articles of Incorporation

Senegal: Cooperative Unit

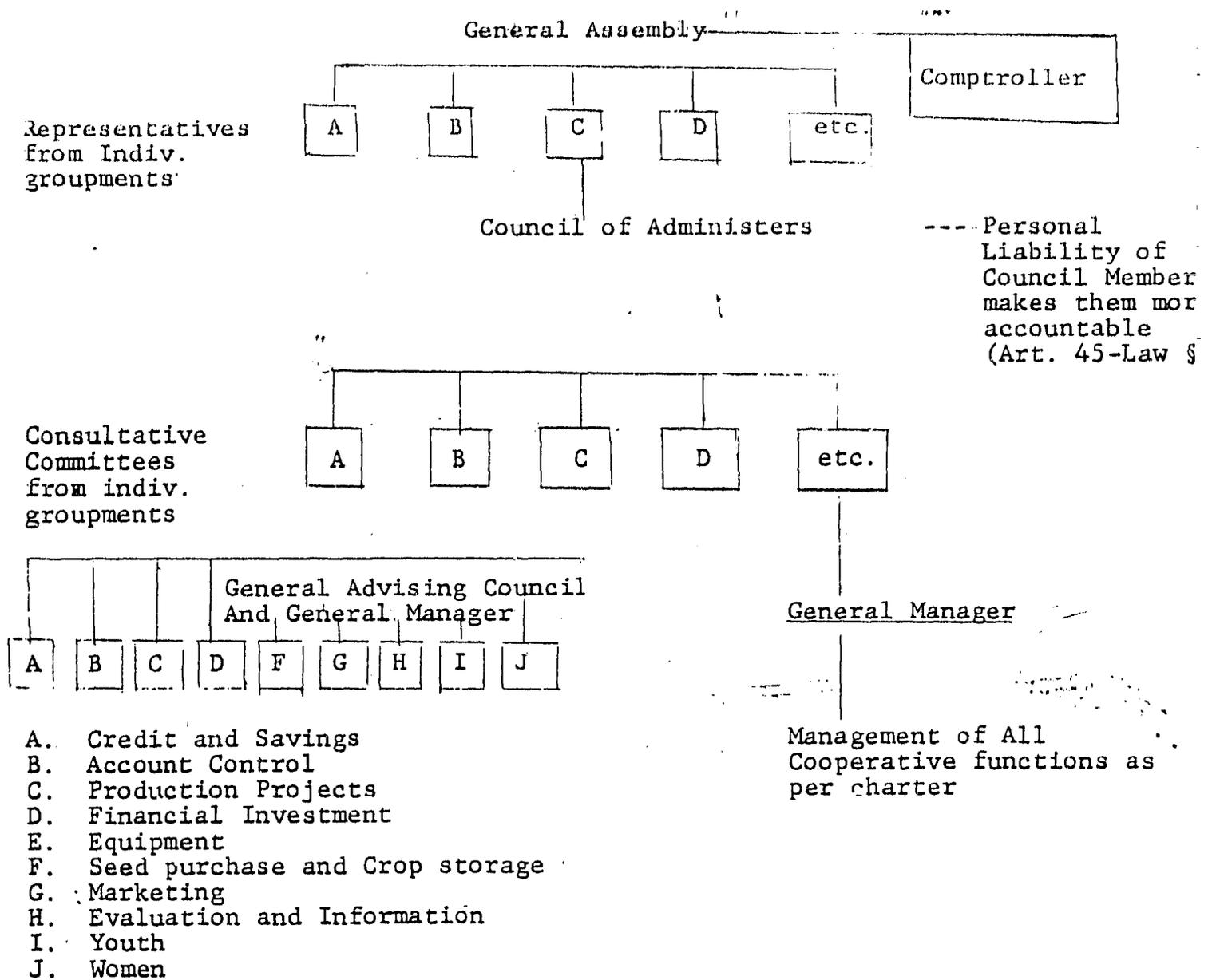
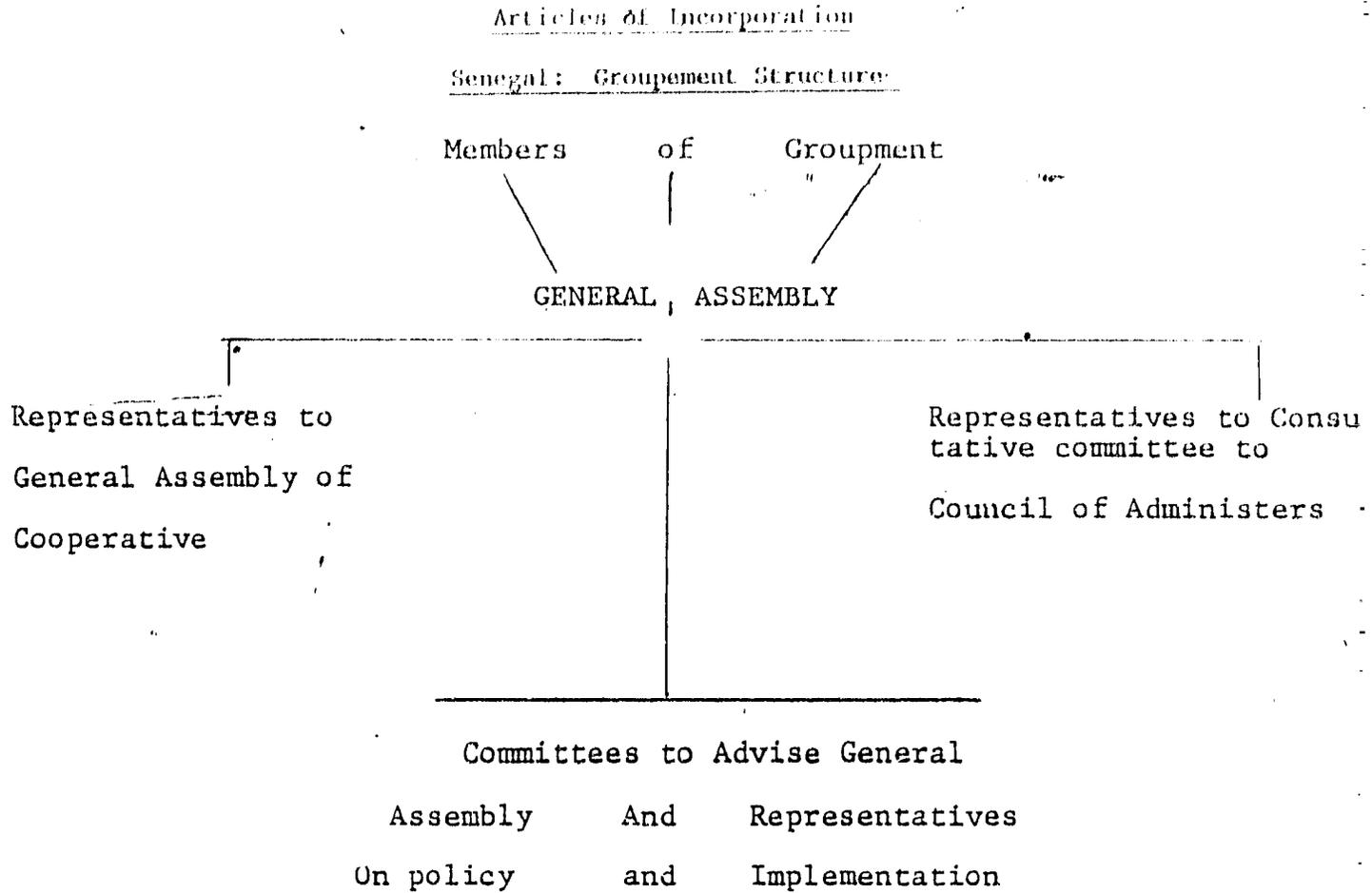


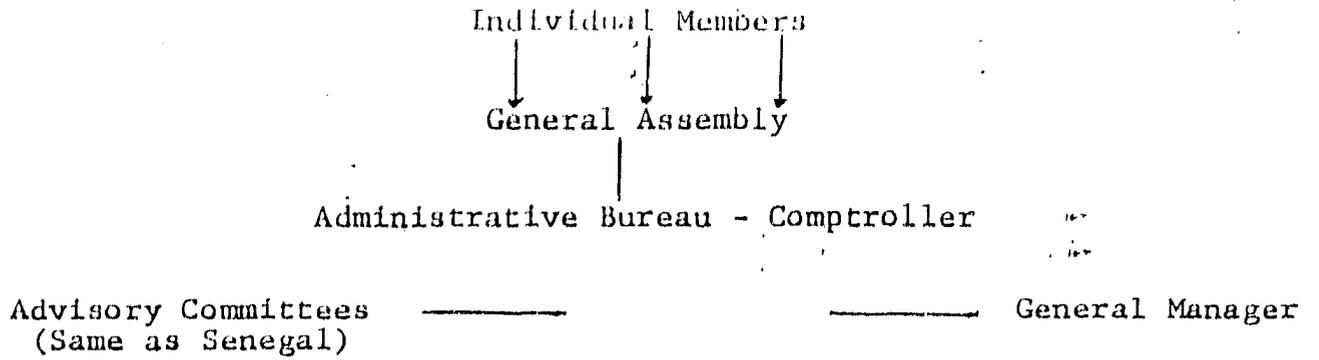
Figure 2



Committees:

- Production Projects
- Financial Investments
- Marketing
- Account Control & Distribution of Profits
- Member Credit
- Water Management
- Training
- Pump Maintenance
- Dispute Resolution

Mauritania: Cooperative Structure



UNION OF COOPERATIVE STRUCTURE

