

CHEMONICS INTERNATIONAL INC.



## THE POTENTIAL OF PUBLIC-PRIVATE PARTNERSHIPS IN SENEGAL:

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## SECTION I

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# Executive Summary, Conclusions, and Recommendations

## A. Executive Summary

This report has assessed the potential for establishing public private partnerships (PPPs) in Senegal. This analysis has revealed several important facts: (1) there are several important projects that are not excessively costly or complicated that could be undertaken as PPPs that could positively affect the country's overall competitiveness and the competitiveness of certain economic clusters; (2) Senegal has already undertaken the implementation of three PPPs (national water company, a binational railroad concession, and a power purchase agreement); (3) the Senegalese government does not have particularly strong capabilities in the creation of PPPs and is currently delayed on two large-scale, complicated efforts (toll road and international airport); (4) there are considerable funds available for financing such partnerships both in Senegal and more broadly in West Africa Monetary Union (UMOA); (5) the Senegalese government has taken steps to expand the commercial legal framework to accommodate PPPs, but all laws should be made to conform to reduce confusion in the investment attraction and implementation phases.

## B. Conclusions

1. The investment climate in Senegal is such that it suffers somewhat from the typical shortcomings of a developing country; therefore it is not an exceptionally attractive site for PPPs – especially when compared to other countries in the world – for foreign direct investment and the formation of new PPPs. Senegal needs to work intelligently and diligently if it wants to set up PPPs to provide better services to the general public and to its private sector.
2. Senegal has some positive and negative PPP experiences to date on which it can build, and there are a number of additional opportunities for application of the PPP concept. Senegal already has three PPPs that are operating and a fourth is about to be initiated. A successful PPP is one that provides a public service to the general population or the private sector that is reliable, efficient and affordable. However, it is clear that Senegal has not realized what a powerful tool PPPs can be to provide better services to the population and create new infrastructure without requiring relatively massive outlays of capital by the government. This can be seen by comparing the experience private sector investment in infrastructure development in Sub-Saharan Africa, where 186 investments have been made representing \$23 billion invested.

There are some excellent lessons that can be learned from the PPPs that have already been implemented in Senegal, including:

- a. The most important lesson is that PPPs have been implemented and continue to operate successfully in this environment.

- b. PPPs offer the opportunity to put government assets under private sector management to achieve greater efficiency in their use while providing better services to consumers at affordable prices. The example of *Sénégalaise des Eaux* (SDE) demonstrates how two companies may be set up for a specific operation: a government-owned company that holds the assets and can receive concessionary multilateral financing, and an operator company. It also demonstrates how the services may be provided in a reliable and trouble-free way and still be affordable to the consumers.
- c. Large improvements in productivity are possible if the government allows and supports employee restructuring that will allow the operating contractor to operate the PPP in a profitable fashion. Unions will be a strong factor in the creation of the PPP and proactive “change management” with the intent to create multiple-year labor agreements should be the goal.
- d. As both the Dakar-Bamako railway and the SDE situations suggest, notable improvements in the operations are possible by simply applying modern, apolitical management. In both of these cases, a defined investment program is fundamental to make the long-term efficiency improvements and dramatic increases in the quality of services. The investment program is agreed to by the operator of the PPP in the contract with the government and can involve the investment of many millions of dollars over the life of the agreement by both the operator. This eliminates the requirement for the government to raise this capital.
- e. A performance contract should include indicators that can create “virtual” competition for the operating company. These indicators can be shaped by Senegalese service company management and employment, as they can recommend what can be achieved by good management.
3. Possible PPP projects identified during this study that should receive further analysis are the following:
- Port of Dakar – container handling facility improvements
  - Port of Dakar – warehousing facility improvements
  - Port of Dakar – upgrading and expanding mineral (phosphates, sulphur, iron ore and gold ore) transshipment facility
  - Port of Dakar – fish processing and freezing facility improvements
  - SENELEC
- Other projects that may merit additional investigation include:
- Municipal solid waste collection and disposal in smaller cities
  - Ferry boat operation linking Dakar and Ziguinchor
- In addition, amended projects that are currently being undertaken by APIX might be assisted:

- Toll road between Thiaroye and Diam Niado

- Upgrading the present international airport
4. The World Bank has been and will continue to be a prime mover in developing PPPs in Senegal because it brings the technical expertise necessary to guide the formation of PPPs, and it has the capability to make concessionary loans to the government and provide partial guarantees for bond issuance, which makes the proposed PPPs more likely to achieve financial success.
  5. The legal and regulatory framework represents a good start. The BOT Law is a step in the right direction, but it is too narrow in coverage; given the importance of a harmonized and consistent legal framework to investors, Senegal still has some work to do. The Senegalese private sector and general population do not know much about PPPs and their attendant modernizing effects (the installation of new management of systems for ensuring improvements in the services, the investment in new equipment and technologies, the focus on competitive subsectors that will enhance additional investment, create more employment and raise outputs) that can improve the lives of everyday Senegalese.
  6. The financial sector in Senegal does not have great depth or many resources to devote to the development of PPPs. However, there is approximately five times that amount available for PPP development in the UMOA market. Further, there is already considerable experience of the *Bourse Régionale des Valeurs Mobilières* (BRVM) in the issuance of bonds in the UMOA market. While these issues have been for relatively modest amounts (approximately \$12 million) and terms (an average of 4.79 years), this does offer another possibility for financing PPPs. Bonds that might be issued on international markets could benefit from guarantees from such sources as The Multilateral Investment Guarantee Agency (MIGA), DCA and others, which can raise such bond ratings to above “speculation grade.”
  7. The participation of donors, particularly those making grants, will face little fiduciary risk in transferring funds to PPP projects. Such funding does not have to pass through the government’s treasury to be available for investment purposes. Funds can be transferred directly to the private sector operator on behalf of the government of Senegal. It will be required, however, to ensure that independent engineering and other professional firms are contracted to supervise the construction of physical works and installation of specialized equipment. If these funds are being used to leverage other funds to be provided by commercial sources, trust funds can be set up in a reputable bank in-country or in the form of an irrevocable letter of credit in a major international bank.
  8. APIX has been the appropriate focal point for work on the *Grands Travaux*. Given the limitations of human resource and institutional capability found in government ministries, the creation of APIX as the focal point and catalyst to develop the president’s *Grands Travaux* was appropriate. Unfortunately, APIX has spent most of its efforts working on “Presidential initiatives” during the last several years developing two PPPs that face strong obstacles (a lack of sufficient demand for the proposed new airport terminal and a political intractable group of squatters on the right-of-way of the proposed toll road) diminishing the momentum and credibility surrounding these efforts. To develop other PPPs that may have a strategic

importance for the development of the country, it may be necessary to put in place a PPP unit whose only focus is the creation of additional PPPs.

9. PPPs to date have not been based on a vision for developing the country but rather as efforts to fix problems. This observation is based on the fact that all efforts in establishing PPPs in Senegal to date have been to fix a serious problem, rather than developing new infrastructure and services based on a strategic approach to creating economic growth. In the case of the water company, the PPP was a response to severe shortages of water. In the case of the Bamako-Dakar railway, it was in response to the inefficiency and decline of freight service. The point here is that none of these efforts have resulted from a vision that involves the development of the country based upon its competitive strengths and the construction of infrastructure to facilitate the dramatic growth of strategic clusters. For example, it appears that modestly priced and relatively straightforward improvements in the present Port of Dakar can result in support to general trade (improvement in container terminal and warehousing expansion); to the fishery cluster (improvement in fish processing and handling facilities); and to the mineral cluster (improved mineral handling facilities).

### C. Recommendations

1. USAID (United States Agency for International Development) should consider supporting the formation of a new PPP Unit or a PPP Project Development Facility within the Senegalese government structure. There is sufficient experience at the country level and within the region that can be capitalized on by such a unit. There is a series of projects that, if implemented, will enhance Senegal's competitiveness. At this juncture, the most appropriate location within the government cannot be ascertained without further analysis; however, because of the fiscal and strategic economic importance for this unit, the Ministry of Finance may be the most appropriate location because the Ministry of Finance is most likely to ensure its financing and to comprehend the fiscal and financial impacts of the projects proposed. The PPP Unit should be governed because of its importance to the economy and the ability to develop high-impact projects, it should be governed by the Economic Cabinet, which would serve as its highest level of authority. The government should "buy in" to the formation of the unit by providing some level of annual funding, perhaps equivalent to 50 percent of outside donor financing. But despite these measures, the PPP Unit should be only a temporary intervention.
  - a. The mandates for this Unit should be as follows:
    - PPP project development and transaction support
    - Creation of a consistent legal and regulatory framework for PPPs
    - Capacity building across the Senegalese government to provide greater understanding and support for PPP transactions
    - Assistance to develop a countrywide competitiveness analysis
    - Serving as a conduit for technical assistance to support these types of transactions.
  - b. Staffing of the PPP unit can be small, with perhaps no more than 8 to 10 technical and administrative personnel. It should technical specialists like lawyers, engineers,

MBA's, chartered accountants, financial analysts investment bankers, social development experts, and so on. Training should be provided to its staff through internships, visits, financial engineering training, programming, etc. USAID should provide expatriate technical assistance for a period of at least three years to ensure that there is a continual focus on moving key activities and projects forward. The advantage of this arrangement is that, while it is expected that the World Bank and the Millennium Challenge Corporation may finance future projects, the technical assistance provided can ensure that the agreed upon PPPs can move forward expeditiously.

- c. The annual operating budget, based on experience elsewhere, may be between \$1 million to \$3 million, depending on the amount of outside technical assistance required.
- d. The Unit should sponsor training in the technical, legal and financial aspects of PPPs to relevant government officials across the entire government. This will enable greater comprehension of the potential for PPPs in Senegal and collaboration among various decision makers.
- e. Develop a strategy based upon the competitive strengths of the country (e.g. agriculture, fishing, minerals, and tourism) which can serve as the basis the development of the country; identify and carefully select PPPs that fit within that plan. Senegal should also be inscribed in the World Economic Forum's annual Global Competitiveness Report at a cost of about \$40,000 per year so that its performance can be compared with other countries. Focus on those elements that have to do with infrastructure and raise performance through PPPs.
- f. Once the competitiveness strategy is developed, provide leadership and team building training so that relevant parts of the government can work to support the Unit.
- g. Some PPP units in other countries achieve cost recovery for their services, either through a fee for service or cost reimbursement included in the offer of the winning bidder.
- h. Learning from the APIX experience, the PPP unit should initiate its activities with those PPPs that are of a scale it can handle and build its experience as it goes along. For example, a good-sized project that would considerably enhance competitiveness would be the container handling facilities in the Port of Dakar. The estimated cost of \$18 million seems manageable and has the full support of the Port officials. The Port has already issued bonds to finance some rehabilitation and has the credibility to contribute to the investments required for smoother container handling operations.
- i. The PPP unit should build upon experience already learned in PPPs in Senegal. For example, if SENELEC (*Société Sénégalaise d'électricité*) is one of the PPPs chosen for implementation, the SONES-SDE (*Société Nationale des Eaux du Sénégal*-

*Sénégalaise des Eaux*) model for asset ownership, operation and performance incentives could be applied in much the same way. Concessionary financing from sources such as the World Bank to upgrade the deteriorated assets as well as guarantees from groups such as DCA (through USAID), MIGA, and Fonds Africain de Garantie et de Coopération Économique (FAGACE) will be important to generate the commercial bond financing needed to make needed upgrades.

- j. The PPP Unit should contract with independent engineering and other professional firms that can verify the appropriate use of donor funding extended for the development of specific PPPs.
  - k. Through the technical advisors working in the PPP Unit should analyze and recommend how to harmonize Senegal’s legal framework to readily accommodate PPPs, as described in detail in this report.
  - l. In the sense of the recommendations above, it would be advisable for training sessions and seminars to be held to increase the awareness of officials and managers of majority publicly-owned companies about the implications of the new BOT Law.
  - m. Consideration should be given to create an Institute for the Public-Private Partnership that includes members of the private sector and academics. The Institute would be responsible for increasing the awareness of the Senegalese private sector concerning PPPs, to create a consensus among them, and to coordinate efforts to promote Senegalese expertise.
  - n. Conduct training sessions for Senegalese regulators to inform them about the implications of the BOT Law and the necessary coordination between Senegalese regulatory bodies and the Infrastructure Council.
2. APIX should be encouraged to amend its current strategy for implementing the two Grands Travaux on which it is working, or these activities should be transferred to the PPP Unit. To create success from all the efforts expended so far, APIX should be supported to implement a first segment of the toll road between Thiaroye and Diam Niado, while the government takes decisive action on removing and fairly compensating the population now living on and near the right-of-way of the proposed road, so that the entire toll road can eventually be completed. It should also be encouraged to develop in the short-term an “intermediate” PPP to upgrade the present international airport, which can serve to increase volumes of passengers and freight to a level that would make the new Blaise Diagne airport feasible as a PPP. APIX should consider and study the possibility of a 10-year PPP at the existing airport. Within the framework of the competitiveness study to be developed, improvements in appearance, public facilities, baggage handling, etc. at the existing airport will assist in building up the passenger flow that will eventually make the new Blaise Diagne airport a feasible operation.

## SECTION II

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### Introduction and Background

#### A. Introduction

This report will assess the potential for using public-private partnership (PPP) mechanisms in Senegal, determine the kinds of implementation structures and actions needed to facilitate successful PPPs, and recommend specific actions needed to support this type of investment.

The Government of Senegal (GOS) has already been involved in the development of several PPPs. These include an American-owned, Canadian-run concession to operate the rail route between Dakar and Bamako, Mali; a power purchase agreement (PPA) with an American firm providing energy to the national grid; and a lease and performance contract with a French firm operating the national water system. While the rail concession is only 6 months old, the water and electricity PPPs have operated for some time; however, two attempts to privatize the national electricity company, SENELEC, have failed.

These activities were analyzed in addition to the other projects reviewed in this study to identify possible pitfalls in future PPP activities, but it was determined that the financial structure of the business arrangements were useful in understanding how PPPs might be structured in the future.

The Government of Senegal has two other large PPPs on the drawing board. These are being planned by APIX (*Agence Nationale Chargée de la Promotion de L'Investissement et Des Grands Travaux*). They are a 48 kilometer-long toll road between Dakar and Thies and an international airport. Other PPPs are still in a conceptual stage, including the Business City of West Africa (which would be developed on the site of the present international airport site after the construction of the new international airport), the standardization of rail widths on the national rail system, improvements to the Port of Dakar,<sup>1</sup> and the mineral transshipment port at Bargny.

#### A1. Methodology

The methodology of this study comprised the following:

- Interviews of principal GOS and donor officials currently involved in planning PPP projects. Most of these interviewees were suggested by USAID based on their relevance to the study.
- Review and assessment of the recently passed Law on Contracts Involving the Building-Operation-Transfer of Infrastructure (“BOT Law”) for the purposes of supporting PPP mechanisms.
- Assessment of the capacity of Senegalese financial and regulatory institutions to support PPP mechanisms such as bond issuance, guarantee funds and dispute resolution.

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<sup>1</sup> Improvements to the Port of Dakar can heighten Senegalese competitiveness, and have been reviewed in this report.

- Development of recommendations for strengthening the capacity of GOS institutions to successfully broker and manage PPP projects in various sectors.
- Identification of obstacles and constraints to PPP investments.
- Identification and assessment of the potential market for PPP instruments such as special bond issues that may be feasible in the Senegal context.
- Identification of fiduciary risk concerns for PPP projects in Senegal.
- Development of approaches to structuring oversight mechanisms to reduce fiduciary risk.
- Identification of those projects deemed most likely to benefit from a PPP approach.

## **B. Background**

### **B1. Definition of Public-Private Partnerships**

Public-private partnerships are a technique for financing activities in which assets, financing and guarantees of the government are combined with the financing, management and technical expertise of the private sector to provide public services to the population. PPPs have been developed around the world to improve public infrastructure, such as the provision of water, electricity and telecommunications services. Recently, PPPs have also been designed to support initiatives in transport, health, education, sanitation and agriculture. PPPs can assist governments that do not have the financial resources to invest in required improvements and which the private sector can often provide more efficiently and with higher levels of service quality.

Under PPPs, the public authority contracts with the private sector to provide services or construct or maintain infrastructure. The advantage of such an arrangement for the private sector is the long-term nature of the PPP contract and ability to balance risks encountered in the business environment. Factors in developing a PPP contract will invariably take into consideration the utilization by users of the service or the infrastructure, remuneration or the rate structure for the contractor, the availability of financing, and the way risks are shared. The potential private sector contractor must answer the following question: Will the contract to be awarded be financially viable and is it likely to be sufficiently profitable to justify the efforts required to win the contract, i.e. preparing tendering documents, examining the feasibility of the project, and seeking and arranging the required financing?

Over the life of the PPP there may be many variables attributable to the change in costs, the behavior of users of the service or infrastructure, force majeure, etc. The private sector contractor will seek to minimize those risks and the negotiator of the contract must ensure that the risks are borne – even to a limited extent – by the party best able to do so, or, at least, to mitigate them.

### **B2. Definition of Public-Private Partnership Mechanisms**

There are several definitions of public-private partnerships. Two such definitions from French-influenced legal systems, one European and the other North American, will introduce the discussion of the potential for PPPs in Senegal:

1. “The public-private business partnership is a contractual agreement between public and private partners that stipulates the results that must be achieved to improve a provision of

public services. That agreement establishes a sharing of risks and benefits in a way that provides material advantages that promote the achievement of results.”<sup>2</sup>

2. “It is generally accepted that the public-private partnership can be defined as all forms of cooperation between public authorities on the one hand and private enterprises on the other hand. ... It is less widely accepted that the public-private partnership can be defined as cooperation centered around common projects by the state or its entities on the one hand and private enterprises on the other hand. This then relates solely to scenarios in which the enterprises allow the State to fulfill its functions and to carry out projects more efficiently.”<sup>3</sup>

PPPs are characterized by four elements: private sector management, contractual or regulatory monitoring of the provision of services, the execution of physical improvements or new construction to improve the services and financial structuring (sometimes with concessionary loans) that will allow private operator to make a profit while the services provided to consumers are affordable and the service standards are enforced. The government generally retains ownership of the assets; thus one could say that this is a “partial privatization.” There is no ideal structure of a PPP; each one is designed to fit the specific situation and requirements. However, there are service standards (e.g. allowed time or frequency of outages, amount of time allowed to make repairs, water pressure and voltage norms) for public services that are well known and are generally applied to ensure that the shift from public sector management to private sector management will result in even better service delivery.

PPPs can also take a wide variety of forms, including: operation and maintenance contracts (O&M); service level contracts (performance contracts); design, build and finance (DBF) and the shadow toll contracts (STC); lease, operate and transfer contracts (LOT); intermediate privatizations; build-operate-transfer (BOT); build-transfer-operate (BTO); build-own-operate (BOO); and turnkey contracts (TC).

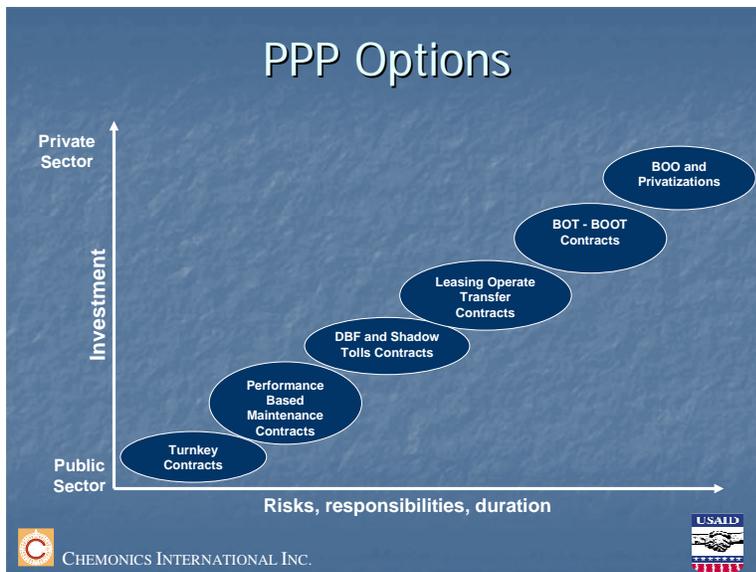
Numerous variations in the contractual options can be applied to PPPs: expansion, postponement of investments, technological change options, exit options (for both the government and the private operator), etc.

The following diagram illustrates the modalities of PPP contracting and the relative position of the project in terms of investment required and level of risk involved.

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<sup>2</sup> “Le dossier d’affaires – Guide d’élaboration,” September 2002, Secrétariat du Conseil du Trésor du Québec, 77 pages, on page 2.

<sup>3</sup> Paul Lignières, “Les Partenariats Publics Privés,” Litec, Paris, 2000, 361 pages, on pages 1 and 2.



### B3. Investment Climate

#### B3a. Investment Climates and PPPs

The investment climate in which projects take place is crucial to infrastructure development operations involving the private sector. Investors' analyses of the investment climate determine the level of capital they are willing to devote to a given country. The quantity and quality of investment flows also depend on the expected returns and the uncertainties of those returns.

A vast amount of literature and empirical evidence stresses the importance of investment climate as a determinant for growth. Stern (2003) – along with several other authors – found that the creation of an investment climate for entrepreneurship and investment is one of the pillars of pro-poor growth. Fischer (1993) found that high inflation is adverse to growth, and Easterly and Rebelo (1993) uncovered a clearly negative relationship between government consumption and growth in developing countries with very high government spending, inefficient bureaucracies and high levels of corruption.

Financial development is also a catalyst for growth according to Levine, Loayza and Beck (2000), who found that countries having more developed stock markets and/or deeper banking systems tend to grow faster. Other investment climate measures such as the strength of property rights, rule of law, and level of corruption are also strongly correlated with growth as maintained by Kaufmann, Kraay, and Zoido-Lobaton (1999), and Knack and Keefer (1995).

Expectations concerning returns in a given country are influenced by the institutional, policy, and regulatory environment in which the contractors would operate. Investment climate factors can be categorized in three diverse but interrelated groups:<sup>4</sup>

<sup>4</sup> Dollar et al. (2003); Dollar, Hallward-Driemeier, and Mengistae (2003); World Bank (2002)

- Macro- or country-level issues such as economic and political stability and national policy related to foreign trade and investment. This category includes macroeconomic, fiscal, monetary, and exchange rate policies, as well as political stability.
- Efficacy and transparent enforcement of a country's economic regulatory framework. From the investors' standpoint, this category refers to issues including labor relations, hurdles to market entry and exit, efficiency and transparency of financing and taxation, and efficiency of regulations concerning the environment, safety, and health. This category covers the ability of regulations to serve the public good – not private contractors' interest through to “regulation capture” – while avoiding adverse selection and moral hazard.
- Quality and quantity of existing physical and financial infrastructure. This includes power, transport, telecommunications, and banking and finance, as well as the national level of skilled workers and technology. Numerous investment climate studies carried out by the World Bank<sup>5</sup> in Africa, Asia and Latin America cite infrastructure issues (e.g. power dependability, transportation times and costs), access to finance, skilled workforces, and access to advanced technologies as key determinants of competitiveness and profitability.

### **B3b. Investment Climate in Senegal**

Senegal has a modestly attractive investment climate<sup>6</sup>, which has allowed it to attract some foreign direct investment. However, when compared to other African countries as to the level of investment in infrastructure, where PPPs might be an important vehicle, Senegal is almost absent from the statistics. The factors that are causing this modest investment climate are described below. Three PPPs have been developed in Senegal, one is in process, and others are possible. All of these cases are discussed in this section.

According to the World Bank's Country Assistance Strategy (2003), Senegal is well-suited for sustained growth and poverty reduction in a democratic and participatory environment. It has a well-educated and modern-minded elite, plus a significant middle class by regional standards. Senegal has also taken important steps towards economic reform, such as trade liberalization (eliminating non-tariff barriers, and minimizing direct discrimination against exports<sup>8</sup>), financial sector reform (cutting direct government involvement, strengthening regulation, and eliminating many of the contingent liabilities formerly borne by the public treasury). Private participation in infrastructure has been encouraged, mainly in telecommunications and water, thus accelerating economic growth and extending service access.

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<sup>5</sup> See *Investment Climate Assessments* in Nigeria, Mozambique, Eritrea, India, China, Peru, and Bolivia, among others.

<sup>6</sup> Morisset (2000)

<sup>8</sup> Exports are concentrated in the primary sector (groundnut, phosphates and fisheries). Manufacturing does not represent more than a quarter of total exports. They are concentrated in a limited number of firms and do not have a large impact on total formal sector employment. World Bank (2003 a)

Despite this potential, however, Senegal still lags in social indicators like income inequality, primary education, infant and maternal mortality, and access to clean water.<sup>9</sup> Moreover, these indicators are sharply differentiated between rural and urban centers.

The World Bank has identified issues related to investment climate, such as public policies in taxation and incentives to investment, that remain major hurdles to the development of the private sector and its participation in infrastructure. Among these are:

- The World Bank reports that only 3 percent of the poorest three quintiles of the Senegalese population have electricity. Likewise, only 5 percent of this sector of the population has piped drinking water at home, and only 0.1 percent has a telephone line. The averages corresponding to the richest two quintiles in these areas are 80 percent, 20 percent and 78 percent, respectively. According to a survey of Senegalese firms, 83 percent of firms considered dependable electricity supply to be a "moderate," to "very serious" factor limiting their operations and growth.
- Despite the fact that the transport sector accounts for approximately 10% of GDP and generates a significant share of the total budgetary revenues of the State, economic crisis and decline during the 1970s and early 1980s, as well as a weak institutional capacity, led to a deteriorating infrastructure network and operations. This crisis also crippled the ability to expand services to a larger segment of the population.<sup>10</sup> Deficiencies in infrastructure are core to the perception of investors regarding a country's investment climate: the latest Standard & Poor's credit rating states that its rating of Senegal was influenced by the state of infrastructure, given that "[i]nfrastructure deficiencies, specially in transportation and power generation, also constrain growth prospects."<sup>11</sup>
- According to the World Bank's "Doing Business" 2003 database,<sup>12</sup> Senegal requires a cumbersome 36-step process to enforce contracts compared to the regional average of 31 and the OECD's average of 18. Similarly, the number of days necessary for a contract to be enforced in Senegal stands at 455, in comparison to the regional average of 372 days and the OECD's average of 213 days.
- The tax system is considered burdensome, economically inefficient, one of the most complex in the sub-region, and a major obstacle to investment and transparency.<sup>13</sup>
- The financial sector is widely regarded as uncompetitive and inaccessible to the poor.
- A number of public and private monopolies persist regardless of attempted reforms.
- A bureaucratic culture pervades the legal and regulatory systems.

<sup>9</sup> For instance, less than 40 percent of those 15 and older can read and write, and net primary school enrollment is 60 to 65 percent. World Bank (2003 a)

<sup>10</sup> World Bank (1999)

<sup>11</sup> Standard and Poor's (2004)

<sup>12</sup> Available at <http://rru.worldbank.org/DoingBusiness/>

<sup>13</sup> World Bank (2002)

- Factor costs remain high relative to those of rapidly growing competitors, partly due to hostile labor-management relations, ultimately penalizing exports. However, low productivity growth, rather than high wage growth, is considered to be the underlying reason for this.<sup>14</sup>
- Corporate governance enforcement lacks transparency.
- The role of the central state administration is too strong in comparison to the private sector – the State consumes around 25 percent of GDP and heavily influences economic activity through policy interventions and its management of the budget and foreign aid.
- Several administrative barriers remain to the opening and operation of firms, including procedures relating to general entry approvals, access to land, site development permissions, connection to utilities, and other operational requirements.

Thus, it can be seen that while there are some positive elements to investing in Senegal, the country has a lot to do to clean up its reputation surrounding investment attraction. In the next section, the experience of private participation in infrastructure projects in the Sub-Saharan region is described. This is followed by the actual experience of Senegal in establishing PPPs, which will be presented, along with some other projects that might be developed as PPPs in the near future.

#### **B4. Experience with Private Sector Participation in Sub-Saharan Africa**

Between 1990 and 2001, more than \$23 billion was invested in Sub-Saharan Africa for infrastructure projects with private participation. In the majority of the countries of the region there was private participation in infrastructure. In fact, during that time more than 186 infrastructure projects were adjudicated in the electricity, transportation, water and sewerage, natural gas and distribution and telecommunications sectors. By far, the most important sector where private participation has taken place is telecommunications, with the electricity sector coming in second.

The following table shows the situation of the evolution of infrastructure with private participation in the region:

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<sup>14</sup> World Bank (2003 b)

Sector Investments (US\$ billion)						
Year	Electricity	Telecommunications	Transport	Water and sewerage	Natural gas	Total
1990	0.1	-	-	-	-	<b>0.1</b>
1991	-	-	-	-	-	<b>0.0</b>
1992	-	0.0	-	0.0	0.1	<b>0.1</b>
1993	-	0.0	-	-	-	<b>0.0</b>
1994	0.1	0.7	0.0	-	-	<b>0.8</b>
1995	0.0	0.8	0.0	-	-	<b>0.9</b>
1996	0.5	1.1	0.0	-	-	<b>1.5</b>
1997	1.2	3.0	0.5	0.0	0.0	<b>4.8</b>
1998	0.8	1.5	0.3	0.0	0.0	<b>2.7</b>
1999	0.6	2.8	1.2	0.2	0.2	<b>4.7</b>
2000	0.7	2.6	0.1	-	-	<b>3.4</b>
2001	0.8	3.2	0.5	-	-	<b>4.6</b>
<b>Total</b>		<b>15.7</b>	<b>2.7</b>	<b>0.2</b>	<b>0.1</b>	<b>23.4</b>

Participation has been dominated by Greenfield-type projects given the regulatory frameworks where the private sector by itself has developed its investments.

Sector	Concessions	Divestitures	Greenfield Project	Management and Lease contracts	Total
Electricity	9	3	16	7	<b>26</b>
Natural gas	0	1	1	0	<b>2</b>
Telecommunications	0	15	85	0	<b>100</b>
Transport	14	3	10	11	<b>38</b>
Water and sewerage	2	0	1	7	<b>10</b>
<b>Total</b>	<b>25</b>	<b>23</b>	<b>113</b>	<b>25</b>	<b>186</b>

According to the World Bank, after a few projects in the 1980s—such as management contracts for toll roads in South Africa and the lease of Libreville International Airport in Gabon—private activity in infrastructure in Sub-Saharan Africa grew significantly in the 1990s. Private participation in transport took place in 17 Sub-Saharan African countries through 38 projects from 1993 to 2001. Over the period as a whole investment in private transport projects amounted to \$2.7 billion, 12 percent of the regional total for all private infrastructure projects.

South Africa attracted the most investment in transportation (\$1.98 billion), followed by Mozambique (\$476 million) and Côte d'Ivoire (\$191 million). These three countries accounted for 98 percent of the investment in transportation projects with private participation in Sub-Saharan Africa.

Among the types of private participation, concessions transferring assets to the private sector accounted for the most investment, followed by greenfield projects. Concessions also represented the largest number of projects, followed by management and lease contracts.

Among transport sub sectors, toll roads led private participation in the region, attracting \$1.9 billion in investment commitments for nine projects in four countries (Côte d'Ivoire, Mozambique, South Africa, and Zimbabwe). Seven countries (Cameroon, Côte d'Ivoire, Kenya, Madagascar, Mauritius, South Africa, and Tanzania) awarded 10 airport projects, involving

investment commitments of \$323 million. Private activity in railways totaled \$259 million for nine projects in 11 countries. And private activity in seaports added up to \$173 million, involving 10 projects in seven countries (Djibouti, Equatorial Guinea, Ghana, Kenya, Mauritius, Mozambique, and Tanzania).

Year (US\$ billions)	Airports	Railways	Seaports	Toll Roads	Total
1997	0.0	0.0	0.0	0.5	<b>0.5</b>
1998	0.2	0.1	0.0	0.0	<b>0.3</b>
1999	0.0	0.2	0.0	1.0	<b>1.2</b>
2000	0.0	0.0	0.1	0.0	<b>0.1</b>
2001	0.0	0.0	0.0	0.5	<b>0.5</b>
<b>Total</b>	<b>0.2</b>	<b>0.3</b>	<b>0.1</b>	<b>2.0</b>	<b>2.6</b>

Source: Adapted from World Bank (2002)

Finally, the following table shows the 10 largest infrastructure projects with private participation between 1990 and 2001, with telecommunications being the most prominent.

Project	Investment (US \$ billions)	Sector	Country
Telkom SA	5.7	Telecommunications	South Africa
Vodacom	2.9	Telecommunications	South Africa
Mobile Telecommunications	1.5	Telecommunications	South Africa
N3 Toll Road	0.8	Transport	South Africa
Côte d'Ivoire Telecom	0.7	Telecommunications	Côte d'Ivoire
Groupement SHECO	0.7	Electricity	Mali
Société d'Énergie et d'eau du Gabon	0.7	Water and sewerage	Gabon
African Power	0.7	Electricity	Zimbabwe
Econet Wireless Nigeria	0.6	Telecommunications	Nigeria
N4 Toll Road	0.5	Transport	South Africa
<b>Total</b>	<b>14.8</b>		

## B5. Senegal's Experience with PPPs to Date

Senegal has had several experiences that demonstrate its ability to undertake public-private partnerships. These include the lease and performance contracts with Saur International for operating the national water system, the power purchase agreement with GE Capital, and the rail concession between Dakar and Bamako operated by CANAC Inc.

### B5a. *Affermage* and Performance Agreements at the Senegalaise des Eaux (SDE)

This arrangement represents a successful PPP approach in Senegal. In 1995, in order to resolve the shortage of potable water in the Dakar region, the government decided to privatize SDE. However, to avoid the sensitivity normally arising from the privatization of such public services, the government followed a strategy of establishing a national water asset company that would, in turn, extend an *affermage* (lease-operate-transfer) contract combined with a performance contract. SONES also became the regulator for the sector.

The asset company *Société Nationale des Eaux du Sénégal* (SONES) conducted a public bidding process, and ultimately selected the private French firm Saur International to operate SDE under a 10-year lease and performance contract. This arrangement was unique in that Senegalese water sector professionals designed the structure of the PPP and recommended the performance indicators based on local realities that would be applied in the performance contract. Also, the World Bank, which had made the original proposal to the Senegalese government and assisted with the procurement of the service firm, agreed to provide financing to SONES on concessionary terms.

Saur operates SDE on the basis of 18 international performance targets that are raised annually. SDE pays SONES an agreed-upon monthly sum, and SONES amortizes the World Bank loan. SDE, which charges for the water on the basis of a “social” pricing structure regularly achieves a 97 percent recovery rate on its billings.

The affermage and performance contract involves considerable new investment to be made by SDE. If this operation were still in the hands of the government, it would have been the responsibility of government to make these investments, and apparently that was not being done to any great degree prior to the signing of the contract. SDE must renew 10,000 water meters, upgrade 10,000 connections, and install about 17 kilometers of new pipe annually. SDE has purchased some of SONES’ equipment, installed more than 480 new computers with specialized software, and made other investments, such as the building upgrades. SDE has also provided its 1,155 employees with 60,000 hours of training and has achieved a three-year “peace pact” with the employees’ union, which had previously resorted to a strike to force negotiations.

Of SONES’ nearly 80 employees, about 18 monitor the achievement of the 18 performance targets, which are raised annually in the investment plan. SONES also contracts out some of its monitoring work.

SONES not only has financing from the World Bank, but, based on its cash flow, has also been able to borrow from Senegalese banks for terms up to seven years and from the West African Development Bank up to 15 years. The guarantee is an escrow account, in which is deposited the value of six months of SONES’ cash flow.

Saur International reported reasonable (12 percent) returns on its investment; SDE has a book value of \$15 million and an estimated worth \$30 million.

Important lessons were learned from this PPP: (1) concessions, where the operator must purchase the assets of the company as in a “pure” privatization, can result in a high level of financial risk for the buyer in addition to creating sensitivity of the public concerning asset ownership of public services; (2) concessions are most appropriate in countries where the consumers have the ability to pay; (3) the performance contract should include incentives for hitting the targets and not just penalties for not reaching them and should create “virtual” competition for the operating company. Also, considerable care must be made to avoid regulatory capture. This PPP is deemed successful because SDE is well run and provides a good, affordable service to the population. These services are provided with performance standards that are increased every year. The major danger in such arrangements is regulatory capture, where the regulators may turn a “blind

eye” when the operator does not meet such standards or do not follow the investment plan laid out in their contract. These problems were not evident in the visit to both SDE and its regulator SONES.

### **B5b. Power Purchase Agreement with GE Capital**

In 1998, General Electric Capital, through GTI, an acquired company, was awarded a 15-year concession contract to provide power to the Senegalese grid with the installation of a 50-megawatt (mW) gas turbine generating plant. Commercial operations began in October 1999 with a 35 mW capacity and 15 additional mW were added in 2001. The contract was the result of an international tender supported by the World Bank and supervised by the *Commission de Régulation de l'Électricité* to address a critical constraint to growth posed by the rapidly increasing demand for power in Senegal.

The plant, operated by special purpose firm, GTI,<sup>15</sup> required two years to become operational. The initial investment was sourced as follows: GE (20 percent); donors providing concessionary funding to the government, including the IFC (40 percent) and *Crédit Commerciale de France* (MIGA-guaranteed, 40 percent). The corporate ownership structure is GE (60 percent); Edison (Italian, 30 percent); and IFC (10 percent). An escrow account was set up to guarantee payment to the concessionaire. For the purposes of this study, GTI is deemed to be a PPP because of the sovereign guarantee of the payments to GTI.

The electricity is sold into SENELEC’s grid based on a formula based on full heat content plus cost of fuel. The PPA is based on a take-or-pay basis of at least 300 gigawatt-hours per year, which is about 60 percent of the plant’s capacity. The only problem with the arrangement had been in SENELEC’s delayed payment during the attempted privatization (described below), but this has now been largely solved. GTI also has an arrangement in which delegated customers’ accounts (DCA) are assigned to pay it directly rather than to SENELEC. These are industrial customers and make up about 35 percent of the monthly invoice. GTI’s plant runs at about 90 percent of capacity and its annual sales are 20 billion CFA francs.

To date this PPA has done its job. However, the cost of electricity to SENELEC is reportedly high, at least compared to thermal or hydroelectric plant generation; SENELEC uses 30 percent of the output of the hydroelectric facility at Manantali, about 700 kilometers from Dakar.

Lessons learned from this agreement are that: (1) such an agreement could be tendered, negotiated and put into operation in relatively little time – only two years; (2) it is a PPP because of the financial arrangement, but the arrangement responds primarily to a lack of power supply in light of rapidly increasing demand and does not resolve basic problems in the operations of the national electricity company; (3) such agreements can result in a higher than average marginal cost of kilowatt-hours utilized. This PPP has operated without any major problems; however, such an arrangement is only recommendable when there is an short-term requirement for more generating capacity and no other means can be developed that would have lower marginal costs for energy. This best way to approach such requirements is to privatize SENELEC so that

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<sup>15</sup> GTI stands for Greenwich Turbine Incorporated, the company involved in the original negotiations. Subsequently, GTI was acquired by GE and the acronym continued to be used as the name of the Senegalese company.

appropriate long-term measures can be put in place based on increased demand for power across the country.

The tender for an additional PPA is underway and has almost been completed. Because the government wanted only a diesel/thermal generation facility, GE was unable to compete as an IPP. Mitsubishi has subsequently been selected to provide a 60 mW facility, which the World Bank will finance.

### **B5c. Rail transport concession between Dakar and Bamako**

A Canadian firm, CANAC, Inc., was awarded a 25-year concession as of September 2004 for the operation of the railroad between Dakar and Bamako, Mali. This concession took seven years to organize and put in place. In the five years prior to this concession, this line, which supplies Bamako with container and freight service and carries important loads of minerals to the Dakar port, operated with heavy losses, with no maintenance of or investment made in either the lines or the rolling stock. The World Bank supported the development of the concession contract and assisted in procuring the concessionaire through a public bidding process. Moreover, this PPP is novel for the inclusion of two governments as signatories to the concession agreement. A representative of each country sits on the board of the operating company.

Contract monitoring is the responsibility of a Monitoring Committee (*organe de suivi*), which sends monthly reports to the World Bank. Also, CANAC has recently been purchased from the Canadian National Railway by Savage Companies of Salt Lake City, Utah, but the acquisition has had no effect to date on the operation of this concession.

The company set up to operate the concession, TRANSRAIL, has dealt swiftly with the excessive number of employees working on this line, reducing the number from 3,000 to 1,500. It also developed a collective agreement with the unions and has programmed 20 percent in salary increases during the first year.<sup>16</sup> TRANSRAIL has also developed a program of “change management,” communicating with employees openly and often.

The total initial investment was \$27.2 million: \$10.2 million by CANAC and other consortium investors; \$14.2 million by the two governments (mainly World Bank concessional financing, with some in-kind investment to be determined); \$800,000 by employees; and \$2 million by other private investors.

TRANSRAIL has been able to increase freight shipments from 20,000 metric tons of freight per month to 40,000 tons simply through improved management and modest investment shortly after taking over the operation. These results have allowed the company to show early profits, and CANAC is now planning a stock offering to be arranged by BICIS (Senegal) and BICIM (Mali), and local affiliates of *Banque Nationale de Paris*. (TRANSRAIL is also operating some passenger trains, but because of the poor condition of the cars the company is not assuming liability for any accidents. Passenger traffic is small in any case, representing only about 8 percent of total revenues.)

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<sup>16</sup> Average worker’s salary is \$400 monthly.

Starting in July 2004, TRANSRAIL will make \$58 million in investments according to a defined investment plan, primarily to upgrade the rolling stock through the purchase new locomotives and cars, and to improve the rail line as well. Compared to the relatively modest upfront cost for CANAC to receive the concession, the investment to upgrade this deteriorated rail line is deemed substantial. KPMG is taking the final inventory of real estate and assets that will transfer to the concession and those which will remain with the government.

Mining prospects offer possibilities for improving the financial picture of this concession even further. For example, the *Industries Chimiques du Sénégal*, a phosphate mining and chemical company, has already indicated an interest in letting TRANSRAIL take over its rail operation. Other mineral exploration is underway for deposits that could be accessed by short (100 to 200 kilometer) rail spurs connecting to the Bamako-Dakar line.

Lessons from this PPP: (1) concessions take considerable time to put into place, in part because of the inherent complexities of concession contracts; (2) restructuring work forces and dealing effectively with unions, often strong ones, are an important element of any PPP involving an existing business in Senegal; (3) considerable operational improvements can be made just by improving the existing assets and applying modern management techniques; (4) rehabilitating existing infrastructure and equipment is often highly expensive and may constrain the financial viability of the PPP; (5) transactions involving in-kind contributions of governments need to be handled early on by an inventory made by an independent third party.

#### **B5d. The Failed Privatization of the Senegal Electricity (SENELEC)**

In 1996, the Diouf government announced its intention to privatize SENELEC and thereafter stopped investing in the operation. Based on an international tender supported by the World Bank, Hydro Québec of Canada in a consortium with *Lyonnaise des Eaux* paid in 1999 40 billion CFA francs for 35 percent of the company's shares and a perpetual concession. *Banque Paribas* served as the investment bank for the transaction.

The company began to operate SENELEC in 2000 with the aim of rehabilitating its generation facilities, but after a time it was obvious that the improvements were not being made. At the end of 2001, the consortium reported serious losses from the operation and, upon its request, was granted a subsidy of 7 billion CFA francs from the government as well as an 8 billion franc recapitalization of the company by the government.

Despite these measures, the company again reported serious financial losses at the end of 2002. the consortium asked the government to raise the electricity tariff, but the government refused. Given this impasse, the consortium asked to be let out of the contract and to be repaid a substantial portion of the purchase price. The government agreed to an amiable separation and paid the consortium 32 billion CFA francs<sup>17</sup>.

Shortly before the exit of the Hydro Québec consortium, the International Monetary Fund (IMF) stipulated in 2002 that the government provide no more subsidies or capital infusions to SENELEC. As a result, the government attempted to privatize the company again, making an

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<sup>17</sup> The actual amount of the settlement reported varies depending on the source.

award to AES, an American firm. However, the well-known financial meltdown of AES prevented the completion of this transaction. Vivendi, the French public service company operator, subsequently proposed a 10-year installment payment arrangement rather than cash. This was turned down by the government.

Today, SENELEC is still run as a government-owned enterprise. It has 2,400 employees and serves 540,000 customers. Under apparently progressive management, sales for 2003 hit 129 billion CFA francs and sales for 2004 are expected to reach 155 billion francs. Management has been able to set forth a 2004-2006 action plan to extend the system, while at the same time allowing for the separation of the system. Under this scheme, 40 percent of the generation capability will be provided by private suppliers.

According to the *Commission de Régulation de l'Électricité*, it is aiming for the separation of the company into generation, transmission and distribution components by 2006. SENELEC's current management is working with the unions as "social partners," has reduced payables in arrears from 22 billion CFA francs to zero, and has moved the cash position from a negative 12 billion francs to a positive 1 billion francs at year-end 2003. SENELEC was able to recover nearly 100 percent of billings in their most recent period by exercising a tougher cutoff policy, including cutting off electricity to National Assemblymen, the minister of Energy and Mines, religious leaders and General Director's own mother to put more discipline in the system.

However, a major problem facing SENELEC is the estimated 300 billion CFA franc cost of upgrading a largely deteriorated system. Management believes that a PPP is the best approach forward, envisioning ownership of the company in the hands of a service provider, financiers, and operations and maintenance contractors and with only about 10 to 15 percent in the hands of the government. A World Bank consultant will be assisting in the development of suitable plan for its ultimate privatization.

Lessons learned from this privatization: (1) when a system is large and deteriorated, it may be difficult for a buyer/concessionaire to undertake adequate due diligence. If the costs of rehabilitating such a system cannot be properly estimated and factored into the purchase price, the transaction is bound to fail; (2) it may be possible to structure a lease-operate-transfer (LOT) operation similar to the SDE one above, setting up a government-owned asset company that can receive financing in this case at the most concessionary rates; (3) PPAs can be structured to provide some of the supply, even while the LOT/purchase agreement is in place, taking into consideration the disadvantages of such arrangements. The high level of deterioration of the assets of an enterprise such as SENELEC is due to poor management and particularly lack of the ability to collect for power delivered and to stop the illegal leakage of electricity to individuals and businesses.

### **B5e. Other Possible PPP Projects: The *Grands Travaux* of APIX**

APIX has been mandated by the president of Senegal to undertake four major PPPs:

- An international airport located approximately 35 kilometers east of Dakar.
- A toll road between Dakar and Thies, which would also serve the new airport.

- A business city or zone to be located on the site of the present airport, that would accommodate businesses seeking a more favorable business location.
- The upgrading of the railroad network to a standard railwidth.

The following progress has been achieved by APIX in the last four years:

- The toll road project is the most advanced and is planned to be developed in two phases:
  - A 12-kilometer non-toll segment from Malick Sy to Pikine estimated to cost \$70 million, which is being financed by government resources and the World Bank
  - A 48-kilometer toll segment from Pikine to Thies, estimated to cost \$180 million, with the financing projected to be sourced through a PPP
- The new international airport project is being planned at an estimated cost of \$290 million. Several steps have been taken to move this project forward. It is estimated that Phase One of the airport will accommodate three million passengers per year.

### **Toll Road**

The envisioned toll road has been discussed since 1978, and is intended to relieve the heavy traffic congestion resulting from the fact that approximately 80 percent of all economic activity in Senegal takes place in the small tip of land in which Dakar is located. To put this congestion in perspective, there are one million inhabitants in Dakar proper and another 1 million in the nearby Pikine-Guediwaye area, and approximately 4 million people – 40 percent of the total population – live in the Dakar-Thies region. Traffic counts between Malik Sy, the proposed start of the improved autoroute/toll road, and Camberene are 70,000 vehicles per day, 40,000 vehicles per day between Pikine and Keur Massar, and 15,000 vehicles per day beyond that to Thies. The average vehicle count on all points of the road between Malik Sy and Thies is 22,000 vehicles a day. The roadway is essentially a two-lane highway. Driving from Dakar to Thies, a distance of 60 kilometers, can require 3 hours in peak traffic times.<sup>18</sup>

The second segment would be built by a private operator setting up a toll road, which APIX plans to have selected in 2005. It is projected that once the financial package is structured, the construction will take 24 to 31 months to complete.

There is, however, a severe constraint: Considerable effort is being made to determine the means to remove persons who presently inhabit the right-of-way of the autoroute, which is obviously complicated and politically sensitive. The most sensitive group involves 50,000 residents of the Pikine-Thiaroye area who live on the proposed right-of-way for the roadway. If this segment of the road cannot be improved, traffic will remain very slow in this area; indeed, it can sometimes take one hour to transit the Dagoudane-Pikine area.

An expropriation law exists, but, because it does not allow for adequate market-based payments to persons whose property is to be acquired for the right-of-way, political repercussions are bound to occur. The population now anticipates additional support beyond a payment for their property to help them resettle elsewhere. The expropriation is further complicated as some

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<sup>18</sup> Some respondents reported this route to require up to 5 hours in rush hours.

residents do not have legal title to their property and thus may not have the right to any resettlement payments. The government is starting to take over unoccupied areas to secure them for the future right-of-way and prevent squatters from taking over more land on the right-of-way.

APIX hopes to have this question resolved in the next 14 months, but its resolution may be complicated by political factors. It is possible that there is no government will to resolve this obstacle prior to the legislative or presidential elections in 2007. Interministerial and presidential meetings are currently planned to develop guidance on this matter. A study for an alternative routing was launched to determine an optimal route that would minimize the social impact. APIX does not have at its disposal the means necessary to resolve this impasse and there seems to be no willingness on the part of any party within government to assist.

Construction of the first 12 kilometer segment, a non-toll segment, is expected to begin in April 2005, with construction expected to last for 18 months. It has been decided that this must be an unlimited access portion whose construction will substantially improve congestion in downtown Dakar.

There is another issue of the constitutional right to access to transportation: a limited-access toll road cannot be set up without alternatives to the route. This, of course, allows avoidance of the tolls, for those who have the time can afford to take the longer route or who cannot afford to pay. Further, along certain segments of the proposed toll road, there is some doubt about the ability of some people to pay the tolls, even very low ones.

To date, the following actions have been taken by APIX:

1. Updating existing studies
2. Conducting traffic studies and toll-acceptance studies
3. Developing a financial model to establish appropriate tolls
4. Obtaining judicial pronouncements over land ownership
5. Identifying sites for transferring populations affected by construction

APIX is currently selecting consultants for developing the autoroute plans, estimating construction costs, and conducting the execution study for the Malick Sy-Pikine segment. However, in addition to these activities, execution of the non-toll portion of the roadway has been slow.

One possibility for moving ahead with the PPP concept for the toll road is to initiate the toll road beyond Pikine-Thiaroye area, temporarily avoiding that political and social obstacle. From the Keur Massar area through Thies, studies have indicated a willingness to pay and there is a good alternative national road for “social travelers.” While this 23 kilometer segment now only requires 40 minutes to travel, that time can be cut to 20 minutes with a toll road – enough time savings perhaps to attract a strong flow of traffic.

The other advantage of this is that a toll road would actually be developed, beginning to change driving patterns for commuters and commercial traffic going between Dakar and Thies. APIX estimates that they can be ready to request bids on the PPP by the first quarter of 2005. Even if it

follows this approach, APIX must continue to work to relocate the estimated 50,000 residents, as their position may become even more intractable as the toll road is developed, connecting to a future right-of-way through their current location. Senegal presently has considerable difficulty managing its current transport system. The advantage of a private sector operated toll road would come from superior management of the resources to be able to keep the road well maintained.

### **International Airport**

Three constraints are associated with the current airport: (1) the large population surrounding to the perimeter of the airport, raising security and safety concerns; (2) a low number of passengers currently arriving at the airport, estimated at 1.5 million per year; and (3) the management of the airport by *Autorité Aéronautique Nationale du Sénégal* (AANS), resulting in no airport tax revenues going to the government or for even minimal improvements to the present facility.

The construction of a new international airport, called Blaise Diagne, is planned to be constructed in two phases. The first phase would include a runway of sufficient length to accommodate Boeing 747s and Airbus 380s. A two-level terminal would be built with 10 gates and air bridges, and a control tower. The service level target for the new facility is IATA B (very good). Additional phases can be added later depending on future traffic demand. One of the justifications for the new facility is that tourism is an important sectoral cluster with tourists estimated to be a significant percentage of current arrivals. The “all-in” cost of phase one of this facility is estimated in a feasibility study carried out by ABB Engineers and the Government of Senegal at 173 billion CFA francs.

The existing airport currently handles 70 flights a day, of which at most ten are commercial or charter flights (see the financial considerations section below for a discussion of the level of traffic and airport tax required to finance this new facility). The air passenger flow to Senegal is projected to grow at 3.49% from 2001 through 2020 to reach 2.16 million. Freight is projected to flow from 23,000 tons in 2001 to 53,400 tons in 2020, growing at an average rate of 4.5 percent.<sup>19</sup>

In 2003 there were 1.12 million passengers passing through the Leopold Sedar Senghor international airport. Approximately 80 percent of them were “international,” paying an airport tax of \$25. Regional passengers paid \$20 and Senegalese and Gambian passengers paid \$5. Total income from airport tax is estimated at \$25.1 million. These revenues are divided between the AANS (56 percent Article 10 income) and the *Agence pour la Sécurité de la Navigation Aérienne* (ASECNA), the Regional Civil Aviation Agency (44 percent Article 2 income). Landing, ground handling, and other fees are collected by AANS. Discussions with APIX revealed an intention to break the current agreement with ASECNA, as has been done in Côte d’Ivoire. The amended agreement with the regional civil aviation agency must be put in place prior to the development of any PPP because it constitutes a major source of income for the private operator of the airport.

The next steps to move this concept forward are the updating of the technical feasibility, economic and financial analyses, with particular focus on refining the traffic projections and

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<sup>19</sup> Estimates made by ABB Engineers.

environmental impact studies. It should be noted that there are also a few residents on the Blaise Diagne site, but this does not pose the obstacle that it does in the case of the toll road.

The following initial activities have been undertaken by APIX:

- Identifying an appropriate 2,500 hectare site located 40 kilometers from Dakar
- Performing some public works on the site
- Fencing in the entire zone
- Amending an already-completed technical, economic and financial study, including traffic studies and environmental impact.
- Creation of a financial model with regulatory accountability
- Feasibility study for adding improvements in water access, electricity and telecommunications.

One must conclude that this new airport facility is not currently feasible because the low volume of passengers. Consideration should be given to a short-term PPP for improvements to the present airport to support overall economic growth and particularly to assist the tourism sector.

### **Port of Dakar**

This deep water port is important as it is the first major port of call for ships rounding western Africa from northern Europe or the Mediterranean. Dakar is the natural gateway for Mali and other countries in the Western Africa region could be served from this location as well. Several improvements are planned:

- Expanding the distribution area on 20 hectares north of the port. This expansion would allow for the construction of additional warehouse and freight forwarding operations, which would improve the efficiency of the port considerably for bulk shipments. The estimated cost is \$18 million.
- Adding a cereal terminal that would allow for the import of cereals and similar products in bulk. Such a facility does not exist today and would aid transport to all the subregion, particularly Mali. The estimated cost is \$83 million.
- Expanding the container terminal to create an additional 8 hectares of container storage and handling areas. This would substantially improve the efficiency of container operations in the port, with connections to the rail road. The project would involve the creation of an additional berth by filling between the current harbor and the current container terminal. Technical, economic and financial feasibility studies have been completed. The estimated cost at \$18 million.

It is interesting to note that this is one of APIX's *grands travaux*. The Port Authority itself has now taken over the responsibility for developing these projects. It has undertaken one bond issue and proposes to have another bond issuance in the near future. The plans of the Port Authority offer an attractive possibility for a series of PPPs. One possibility is a concession to operate the expanded and improved container operations. Others include the operation of an improved fishing port facility or improved mineral handling facilities.

These PPPs are particularly attractive in terms of their potential to improve the competitiveness of the key economic clusters of agriculture, fishing and mineral extraction, and to enhance the flow of trade through the country. Port authorities expressed a need for assistance in structuring PPP deals and developing the contracts that would govern them.

### **Other Projects**

Several potential PPPs have been mentioned, including an industrial park, a mineral port, and a new capital city, but an extensive investigation of them during the short duration of this study was not possible.

## SECTION III

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### Enabling PPP Investments in Senegal

#### A. The Entities Supporting PPP Projects in Senegal

##### ***APIX (Agence Nationale Chargée de la Promotion de l'Investissement et des Grands Travaux)***

Decree number 2000-562 of July 2000 created APIX as the national agency in charge of investment promotion for “*Grands Travaux*.” Decree 2003-683 specifically identified the four projects identified above as those named by the President to be implemented. It also identifies a new capital for the central government as another large project to be undertaken.

APIX coordinates the actions of different ministerial departments concerned with the implementation of the large projects through the formation of Committees of Pilotage. The decree specifically names 14 government ministries and directs the Prime Minister to name the members of a specific Committee of Pilotage. The Director General of APIX serves as the president of each Committee of Pilotage.

The President reviews progress quarterly (*trimestriellement*) through the convening of a Presidential Council. The Prime Minister reviews progress of the large projects monthly through an Interministerial Council. The Director General of APIX presents a report on the advance of the projects at each of the Presidential Council meetings.

It should be recognized that it has required much effort on the part of APIX to be able to play the leading role in developing the two major PPPs described above, which are presently the focus of the president’s program for *grands travaux*. Relations are still poor between APIX and other ministries that believe that APIX has usurped their rightful roles.

In addition to the functions concerning the *grands travaux*, the other specific functions of APIX as given in the decree 2003-683 are as follows:

- Research and identification of investors
- Promotion of Senegal as a destination of investment
- Logistical support of potential investors
- Facilitation of administrative procedures and approaches
- Provision of economic, commercial and technical information both within Senegal and to its embassies
- Assistance to investors

APIX functions as a one-stop shop (*guichet unique*), especially in terms of requests for privileges under the Investment Code and the Export Statute. APIX also works with the Presidential Investment Council to put on workshops to implement priority programs, address investment constraints, and deal with environmental and social impacts. APIX assists the President in the conception and implementation of policy defined for

investment promotion, notably through the activities of the one-stop shop, whose procedures and functions were revised to ensure improved monitoring of investors from conception through development and implementation.

The figures of projects approved in accordance with the Code of Investments and the statute for Enterprises Cleared for Export are shown below:

<b>Year</b>	<b># of Projects</b>	<b>Approved Investments (CFA)</b>	<b>Employment to Be Created</b>	<b>Percent Achieved</b>
2001	459	202,397,621,277	8,471	60%
2002	473	413,696,275,331	10,329	69%
2003	522	576,613,886,521	13,924	63%
<b>TOTAL</b>	<b>1,454</b>	<b>1,192,707,783,129</b>	<b>32,724</b>	

### **Other Government Ministries**

Relevant ministries are consulted regarding the advance of the APIX-supported projects, such as requests to undertake the review of terms of reference. However, there seems to be only a small level of cooperation between the line ministries and APIX. Some ministries completely ignore APIX and some seem to be supporting the development, at least in the case of the autoroute, of alternative plans.

Before the advent of APIX and its ascending role in the development of PPPs, the Ministry of Equipment and Transport was involved in establishing the concession for the operation of the railway between Dakar and Bamako. The Commission de Régulation de l'Électricité oversaw the bidding for the PPA for electricity generation and for the privatization of SENELEC. SONES, the water system asset company, is studying and preparing for the second phase of the water lease and performance contracts.

While APIX has concentrated most of the institutional capability to implement the two large PPPs, the other ministries seem ill-equipped to promote and implement PPPs in the near future. The solution to this is that there is a need to form a PPP Unit that can develop PPPs with a high level of political support and a strong mandate. The PPP Unit would re-start this effort. It is recommended that the PPP Unit be located in the Ministry of Finance, which could serve as the focal point for both the inclusion of the PPP activities into national planning as well as the provision of funding to support the government's share of the investment required.

### **The World Bank**

The World Bank has been involved in every one of the PPPs described above. In fact, one could say that there has been considerable dependence on the part of the Senegalese government upon the World Bank, waiting for the Bank's initiative to lead it through each of these reform processes.

For its part, the World Bank appears to view Senegal as a good target for making sovereign debt loans. In each of the PPPs described above the World Bank has made concessional loans and

provided facilitating technical assistance to the different relevant ministries, *sociétés nationales*, and now to APIX. In several cases, MIGA, the World Bank's guarantee agency, has guaranteed commercial and other lending to Senegal. However, it should be noted that because the World Bank normally does not have resident staff to work on such projects as PPP development, the progress on the projects has been slow and the disbursement have been limited<sup>20</sup> Because of its ability to make concessionary loans and the large pipeline of projects, it is likely that the World Bank will continue to play a large role in the formation of PPPs in Senegal. The development of such projects follows pattern of World Bank activities of the last 15 years in which it has supported first the privatization of public utilities and subsequently the development of public-private partnerships. While its performance in Senegal has been slow, this is more of a reflection of the ability of the Senegalese government to act than a reflection of the capability of World Bank support.

## **B. Legal and Regulatory Framework for PPPs**

A review of the legal and regulatory framework within which PPPs can be developed and operated was also conducted. The review covered the following topics: 1) the required legal framework; 2) the legal framework currently in existence in Senegal; 3) major obstacles in Senegal; and 4) recommendations concerning the necessary reforms and actions for Senegal to problems that might be encountered in its legal and regulatory framework

To complete the assignment, the laws, texts, and reference works described in Annex A were analyzed. The analysis was based on international and sub-Saharan experience with PPPs and the financing of projects, as well as the best practices in these areas. A cohesive legal framework is fundamental to implementing PPPs, particularly when international investors are desirable to participate in the development and operation of a PPP.

### **The General Advantage of a Legal Framework**

An adequate legal framework sends an unequivocal signal to the public and to the private sector of the government's will to support the PPP and to enable it to be implemented. Establishing such a framework has the additional advantage of stimulating public discussion. Finally, it alleviates prejudices against changes through the establishment of markers:

**For the public.** The legal framework<sup>21</sup> clearly designates the parameters for continuity of the public service. It specifies performance criteria in the areas of health, employment, security, and the provision of services, which are subject to sanctions. The legal framework may cover issues related to the question of rates and non-discrimination against users. As stated above, the PPP contract, which includes the principle of contractual flexibility over its duration, is prepared so as to come to grips with changes in economic conditions, possible refinancing, profit-sharing, and

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<sup>20</sup> It should be further noted that in the recent Deloitte study on "Strengthening Planning and Management Systems to Support Accelerated Development in Senegal" that the World Bank is having considerable difficulty disbursing funds and Senegal has an apparent absorptive limitation. In fact the World Bank was only able to disburse 12 percent of its programmed funds in 2003.

<sup>21</sup> These remarks are not limited only to the law authorizing PPPs; they cover the entire legal framework surrounding the regulation of business sectors, tax laws, etc.

obligations to invest. The legal framework also establishes the principle of disclosing information and covers the periodic examination of its operations by independent authorities.

**For the private sector.** The legal framework is intended to clearly establish the principles of stability of the business environment and transparency during the process of awarding contracts and monitoring their performance. It governs the principles of non-interference (outside of certain specific cases) by public authorities and their impartiality. The details of return on investment, remuneration, efficiency premiums, penalties, compensation, lenders' rights, accepting collateral, and risk-sharing are also set forth. The legal framework will also reduce uncertainties in a way that reassures investors concerning the risks of future operations.

In practical terms, it can also be said that an adequate legal framework will reduce the time needed for negotiation of contractual agreements because the laws will reduce concerns that the investor would otherwise wish to include in the PPP contract. The law will delimit the contractual relationship between the public authority and the private sector.

### **B1. Modeling the Legal Framework for PPPs**

The investor will determine whether the legal environment is favorable to the establishment of PPP structures and what constraints, if any, are involved. With regard to constraints, it will evaluate whether the unfavorable consequences can be controlled or mitigated.

Therefore, it is not sufficient merely to adopt a law on PPPs in order to claim that the legal framework will be favorably viewed by the private sector, leading it to invest in this type of operation. A global revision of existing laws is required to ensure that there are no legal provisions that could have an unfavorable effect on PPPs, whether this involves the awarding of contracts, operation, or financing.

Within the framework of a PPP transaction, the investor will use the services of advisors, particularly financial and legal advisors, whose task it will be to conduct a due diligence review of the business and legal environment of the PPP project in order to identify the financial and legal risks involved in the project and ensure that it can be carried out in a harmonious, predictable context. A due diligence review with unfavorable conclusions may turn out to be costly for the public authority, so the investor may refuse to participate in the project or require guarantees before investing in the operation.

Private investors and especially lenders will verify whether the legislative framework of the host country provides a satisfactory response, *inter alia*, to the following questions:

#### **Private law**

- Are the private sector and foreign investors allowed to intervene in the management of public infrastructure?
- What are the restrictions to foreign investments?
- Is the procedure for awarding PPPs clear, transparent, and non-discriminatory?
- What restrictions apply to foreign investors with regard to private property?

## **Operations**

- Is the mode of operation of commercial companies subject to major restrictions?
- Are the customs and tax systems, including stamp duties, exorbitant?
- Are foreign currency transactions problematic?
- Are major restrictions imposed on importing merchandise?
- What type of protection is offered for intellectual and industrial property?
- Are means available to protect oneself against corruption?

## **Environment and real estate law**

- What limits are imposed by property rights, including the ability to accept collateral?
- What environmental obligations exist?
- Are prior authorization procedures required before carrying out an infrastructure project?
- Are environmental impact studies required before carrying out an infrastructure project?
- Are soil decontamination processes used before carrying out an infrastructure project? If so, who pays for them?

## **Regulation of the business sector**

- Is the business sector regulated?
- Has the rate structure been prepared satisfactorily?
- What is the extent of political interference in regulation of the business sector?
- Do conflicts of jurisdiction exist in organization of the institutional supervisory structure?
- Is there a regulatory authority for the sector? Is it independent? Does it have a history of stability and predictability in its decisions and operations?
- Is the administrative procedure for issuing permits and authorizations transparent and have technical support?
- Are any rules of competition applicable to the business sector clear and transparent?

## **Financing**

- Are there restrictions on foreign investment?
- Can foreign investors repatriate dividends and profits outside of the host country?
- What restrictions are imposed on the banking sector?
- Can the operator of infrastructure open bank accounts abroad?
- What flexibility is allowed for financing structures?

## **Social welfare obligations**

- What obligations are imposed regarding the displacement of populations?
- Do labor laws include restrictions on company reorganizations?

## **Dispute settlement**

- Is it possible to use arbitration proceedings as a method for resolving disputes?

- Are there restrictions on the enforcement of judgments?
- Does the state have immunity from enforcement of judgments?

The above list represents the kinds of questions to which the private sector must find an answer in order to determine the attractiveness of the legislation in the host country for investments in PPPs. Luckily, experience with PPPs throughout the world has led to several works on the legislative requirements for harmonious entry into PPP transactions.<sup>22</sup> The objective for writing the two sections above is not to substitute for those serious, thorough studies, but rather to provide a general understanding of what is necessary in terms of legal and regulatory environment for facilitating the development of PPPs.

## **B2. The Situation in Senegal**

Like several countries whose legal system has been inspired by French administrative law, Senegal has developed several PPPs, as described in this report. It is interesting to note that those experiences occurred before adoption of the Law on Contracts Involving the Building-Operation-Transfer of Infrastructure (the “BOT Law,” or *Loi relative aux contrats de construction-exploitation-transfer d’infrastructures*) dated February 13, 2004, which now defines the legal framework for PPPs in Senegal.

### **The Law on Contracts Involving the Building-Operation-Transfer of Infrastructure**

This law is the result of the wish of the President of the Republic of Senegal to develop major public works projects. This law seems a good first, and relatively easy, step to take to promote the concept of PPPs. The major public works projects are described above in the section on APIX.

A first draft of the Law, which was based on the “Sapin Law” in France, was prepared by the Presidency’s legal department. That first draft was then revised by the department, APIX, and the legal department of the World Bank. A large law firm in Paris oversaw the reworking of the text. It should be noted that when this was done, an effort was made to define the process of awarding PPP contracts more strictly.

The final version of the draft BOT Law prepared by these experts is similar to the text of the Law as adopted.

Article 1 of the Law, which is known in French as the “Loi CET” and in English as the “BOT Law,” describes its scope:

[It] applies to all contracts by virtue of which the State, a local organization, a public establishment, or majority publicly-owned company ... entrusts to a third party, which is known as the operator of the project, all or part of the following tasks: financing of infrastructure that is recognized as being in the public interest, designing it, building it, operating it, [or] maintaining it.

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<sup>22</sup> Cf, e.g., 1), *Concessions for infrastructure : A Guide to their Design and Award*, World Bank Technical Paper no. 399, Washington, 1998, 188 pages; 2) *Privately Financed Infrastructure Projects: Draft Chapters of a Legislative Guide on Privately Financed Infrastructure Projects*, United Nations Commission on International Trade Law, Thirty-third session, New York, 12 June-7 July 2000; 3) UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects; 4) *Guidelines for Successful Public-Private Partnerships*, European Commission, January 2003

It must be conceded that the scope of the Law is very general. It covers many different forms of partnerships between the public sector and the private sector going well beyond building, operating, and transfer.

Because the Law refers to “all or part of the following tasks” (financing, designing, building, operating, [or] maintaining infrastructure that is recognized as being in the public interest), it could apply not only to agreements such as leasing (*affermage*), delegated management, or concessions, but can also provide room for creativity in developing different contractual arrangements.

The Law is innovative where Senegalese administrative law is concerned, creating an impetus for major reforms. It provides a legal framework for the establishment of complex, appropriate contractual structures going beyond the traditional form of contracts that have been developed under French administrative law; it will allow new legal tools to be created.

It should also be noted that France has made similar efforts, having realized that it is lagging behind its main European neighbors, “who have been able to provide themselves with new legal tools allowing the implementation of genuine partnerships between public organizations and private enterprises.”<sup>23</sup>

During the discussions held in Senegal, it was observed that not everyone fully understood the impact of the general scope of the Law. In the view of several people, the BOT Law applies only to “major public works projects” and will not affect the way in which they operate in connection with their own business activities. This attitude may be due in part to the name of the Law, which inadvertently reduces its substance. It would be advisable to remedy that impression because in the future it may cause unnecessary confusion about the appropriate text to be implemented by State ministries or entities.

### **B3. Major Obstacles in Senegal**

During our review of pertinent Senegalese laws, the following aspects were identified as issues:

- 1) Lack of consensus
- 2) Some questions about the BOT Law
- 3) Harmonization and consistency
- 4) Jurisdictional conflicts

**Lack of consensus:** The discussions held indicated that the private sector and the general public were barely consulted during preparation of the BOT Law. Bringing the private sector along on such an important piece of legislation is a serious omission and most likely represents an unwillingness to effectively engage the private sector, and perhaps the public, in the development of such laws. If the government wants to create enthusiasm among potential private sector stakeholders, it needs to be more inclusive with the process. There even appears to be a certain amount of suspicion, particularly among representatives of the local private sector, who have the impression that they cannot participate in PPPs in Senegal

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<sup>23</sup> General presentation of the draft Order on Partnership Contracts, Ministry of Economics and Finance of the French Republic.

That impression comes from their analysis of the criteria for prequalification of candidates, which is contained in Article 10 of the BOT Law, particularly the criterion of “references related to analogous [PPP] contracts.”

The lack of public consensus on PPPs is a potential destabilizing factor that could demotivate several investors. It has been seen in certain western jurisdictions that public tendering procedures that were in the process of being finalized were simply cut off under pressure from a public that was ill-informed and did not wish to see the implementation of PPPs. These situations are extremely costly for investors, who must spend a lot of time and energy to prepare their proposals for PPPs. Therefore, it would be beneficial to increase the awareness of the population and the private sector concerning PPP transactions.

Moreover, the concession-granting authorities (*autorités concédantes*) could contemplate including criteria in the tendering documents to and include and stimulate development of the local private sector, but in a spirit that respects the need for competition and transparency.

Public consensus concerning PPPs is a factor that will certainly attenuate political risk in the host country for private investors and particularly for foreign investors.

**Issues with the BOT Law:** As indicated above, the new BOT Law is certainly a positive step forward for the legal environment in Senegal.

However, the Law is incomplete because one structure that is important for its implementation must still be implemented: the Infrastructure Council (*Conseil des Infrastructures*). This structure will have an essential role in articulation of the BOT Law, thus it is vital for it to be set up as soon as possible and for it to include people who are recognized for their reputation, expertise, integrity, and desire to promote PPPs.

Moreover, the implementing decrees for the BOT Law must be adopted as soon as possible in order to complete its scope. Without those decrees, the BOT Law is incomplete legislation that will be difficult to implement.<sup>24</sup>

During the visit to Senegal, an article-by-article analysis of the BOT Law was made. Comments on some of the articles follow:

### Article 1

The general reference to the concession-granting authority could cause problems, as there are infrastructures in Senegal for which several ministries or organizations are responsible. Investors are entitled to be confident that they are signing the PPP contract with the right party. Authorization by decree, which is described in the last paragraph of Article 1, should clearly identify the concession-granting authority in order to avoid any confusion.

The reference in this article to “majority publicly-owned company” as the contracting authority must also be emphasized. The reference is clear but is misunderstood by several people in Senegalese ministries and organizations. Thus, SENELEC would be a “contracting authority”

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<sup>24</sup> All that needs to be done is to emphasize that the content of the PPP contract must be determined by a future decree.

under the terms of the BOT Law and therefore subject to its provisions in connection with its business activities, particularly contracts for the independent production of electricity. As an example, this fact is not understood or perhaps accepted by participants in the electricity sector.

Finally, Article 1 states that the Infrastructure Council must evaluate compliance by the PPP projects submitted for its examination and opinion “in light of State policies.” It was impossible during the interviews to determine the scope of this criterion for assessment and to find out what it relates to. It would be advisable to make this criterion – which is currently vague – official, for example by referring to a general guiding statement to be provided by the departmental staff of the ministers, or even by the Presidency.

### Article 3

This article states that PPP contracts are administrative contracts that are governed by the provisions of the BOT Law and of the administration’s Code of Obligations (*Code des obligations*), which are not incompatible. Unfortunately, a review of the latter law was not possible.

It must be stressed that some foreign investors, particularly those from countries whose legal systems are based on Anglo-Saxon law, are uncomfortable with the administrative character of PPP contracts. Administrative law based on the French system is indeed a complex system whose specialized case law is not sensitive to the business environment guiding the PPPs.

It would have been advisable for some thinking about the qualification of contracts to be done before adoption of the BOT Law.

However, the BOT Law will allow the private sector to avoid certain constraints of administrative law thanks to recourse to the arbitration tribunal instead of the administrative court. The private sector will also have to make a particular effort when negotiating PPP contracts to ensure that the necessary protection clauses are included.

### Prequalification and tendering procedure

#### *Prequalification procedure*

The prequalification procedure pursuant to the BOT Law is described in detail and is based on known standards in this area.

It is not the usual practice to include such details in the body of a law, which usually sets forth the main principles and leaves detailed procedures to implementing decrees. However, the Senegalese authorities chose this approach to display their desire to act in a transparent manner.

Also, the authors could have planned to establish strict time limits. That prevents the process from being hampered by unwarranted delays. The lack of time limits imposed on the Infrastructure Council for making its remarks on the opinion and the prequalification file is a potential source of delay in the prequalification process.

### *Invitation to tender commission*

Pursuant to Article 12, the Invitation to Tender Commission (*Commission d'appel d'offres*) is primarily made up of a representative of the Infrastructure Council. One might wonder about having such a representative on the Commission. In some people's eyes, inclusion of that representative could undermine the function of "independent supervision" of how infrastructure projects are conducted.<sup>25</sup> Indeed, it could possibly erode the necessary distance and impartiality that the Council requires when it exercises its power to arbitrate disputes concerning the selection of a concession-holder (*concessionnaire*<sup>26</sup>) pursuant to Article 23 of the PPP Law.

Finally, it is surprising to see representatives from the political parties on the Infrastructure Council. The failures of infrastructure projects have often been blamed on interference by politicians. Experience shows that investors often hesitate to trust an entity in which politicians are represented. It would be advisable for the Council's responsibilities in the area of dispute resolution to be exercised by a litigation division (*chambre des litiges*) made up solely of magistrates.

### Article 17

This article states that PPP contracts are published in the Official Journal. No one interviewed was able to confirm the scope of this article. If it mandates publishing the entire contract, that requirement would appear to be burdensome.

Complete publication would give rise to difficulties related to protection of investors' industrial information. It is hoped that only the publication of a summary of the PPP contract will be required.

### Article 19

This article covers cases where discussions about a PPP are in progress as of the date of entry into force of the BOT Law. If this occurs, the third party is paid compensation in an amount determined by the Infrastructure Council, and the contract is then subject to the new tendering procedure pursuant to the BOT Law.

Such discussions are apparently being held concerning certain potential projects. However, the Infrastructure Council has not yet been instituted, which raises problems for the implementation of Article 19. Moreover, now that the BOT Law has entered into force, all PPP contracts are subject only to it. It is therefore vital for the Senegalese government authorities to resolve this issue.

Any illegality in the procedure involved in awarding PPP contracts for potential projects could have a negative impact on the perception of risk in the country for investors, thereby undermining their wish to participate in infrastructure projects in Senegal.

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<sup>25</sup> See Article 1 of the Law instituting the Infrastructure Council (*Loi instituant le Conseil des infrastructures*).

<sup>26</sup> The choice of the French word *concessionnaire* is unfortunate because it refers to the concept of a concession, which is not covered by the PPP Law.

**Harmonization and consistency:** The Senegalese legal framework has not undergone an in-depth revision to make PPPs attractive or to smooth out any inconsistencies, ambiguities, or investment risks. It appears that all efforts were devoted to drafting the BOT Law and the Law Instituting the Infrastructure Council.<sup>27</sup>

Some examples of inconsistencies or desirable harmonization are:

#### Law 2004-06 on the Investment Code

The Law on the Investment Code (*Codes des Investissements*) governs the guarantees accorded to investors that wish to do business in Senegal. In particular, it specifies that a company is protected against any nationalization or mandatory purchase measures and that it is free to transfer the income from its operation in Senegal.

The business sectors that are eligible for these guarantees are described in Article 2 of the Investment Code. With regard to the sectors that are subject to the use of PPPs, the Code refers to services provided in the “subsectors of health and education” and “port, airport, and rail infrastructure.”

However, the Code says nothing about other business sectors that could be the subject of PPP contracts. The result is that those sectors would not benefit from the investment guarantees specified in the Code. The parties must therefore ensure that the investment guarantees that are required and desirable are clearly set forth in the PPP contract, as allowed by Article 3 of the BOT Law. But, it is unclear whether the reference to “administrative advantages” that Article 3 allows to be stipulated in the PPP contract is a concept that includes all of the guarantees provided for by the Investment Code.

#### Decree 2002-550 on the Public Procurement Code

The BOT Law contains specific rules on invitations to tender for the award of PPP contracts. The BOT Law covers a broad range of possible types of contracts. For example, concession and lease contracts will henceforth be subject to the provisions of the BOT Law.

However, the Article 3 of the Public Procurement Code (*Code des Marchés Publics*) stipulates that “concession and lease contracts are subject to the rules of publication and opening to competition under conditions specified by decree.”

There is thus an apparent conflict between the two texts with regard to the tendering procedure. Of course, one might argue that the BOT Law is more recent and makes the provisions of the Public Procurement Code that are contradictory with it inoperable. Investors would not be satisfied with such arguments. Lacking clear clauses, they will want guarantees on the validity of the selection process. Considerable time and money are invested in the process of awarding PPP contracts. Therefore, it is advisable to resolve any ambiguities.

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<sup>27</sup> However, it should be noted that the BOT Law raises this issue of harmonization in one case. It occurs in Article 3, where reference is made to implementation of the Code of Obligations (*Code des obligations*) by the administration.

By the same token, reading Article 4<sup>28</sup> of the Public Procurement Code with Article 1 of the BOT Law could lead investors to wonder what distinguishes public procurement from PPP contracts. Confusion should be eliminated between the two laws.

### Law 76-66 on the Code of State-Owned Property

The Code of State-Owned Property (*Code du domaine de l'État*) relates to public and private property ownership in Senegal. In particular, it relates to authorizations to occupy public property,<sup>29</sup> public service concession-holders, and fees for occupation and concessions.

For the reasons expressed above and to avoid any future discussions with investors concerning the interpretation, the Code of State-Owned Property must be amended to harmonize it with the BOT Law and the concepts related to PPP contracts.

The advisability for lenders of accepting state-owned property as collateral under certain circumstances could also be considered.

### Compulsory purchase

Senegal has legislative texts concerning the compulsory purchase of real estate rights for reasons of the common public interest. Briefly, those texts specify payment of compensation to the person affected by the compulsory purchase.

Experience with major infrastructure projects shows that these texts, although commonly used, are unsuitable for the impacts that those projects can have on the population that is directly affected.

To preserve societal stability and meet the requirements of donors (such as the World Bank) with regard to the displacement of populations, it would be desirable to “develop an appropriate, effective, rapid legal framework that respects new data on the displacement of populations, one of whose main aspects would be informing the population.”<sup>30</sup> This is particularly important given the impasse and lack of progress noted for the toll road project described above.

**Jurisdictional conflicts:** Several conflicts exist between implementation of the BOT Law and certain sectoral laws in Senegal. One example is the Law on the Electricity Sector (*Loi relative au secteur de l'électricité*).

As mentioned in this report, the Senegalese electricity sector is operated by SENELEC, whose legal form is the joint-stock company (*société anonyme*). All shares in the capital of SENELEC are held by the Senegalese state. Consequently, it is possible that SENELEC could be described

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<sup>28</sup> Article 4: “Public procurement contracts are administrative contracts that are written and entered into by the State, local organizations, public establishments, national companies, and majority publicly-owned joint-stock companies in order to purchase supplies or to obtain services or the performance of work.”

<sup>29</sup> “Authorization to occupy public natural or artificial property are granted personally and at will and are revocable.” Article 13.

<sup>30</sup> Seminar to provide information on and increase awareness about policies on the displacement and relocation of populations according to the procedures of the World Bank and procedures in force in Senegal.

as a concession-granting authority under the terms of the BOT Law since it applies in particular to majority state-owned companies.<sup>31</sup>

The table on the next page shows the provisions of the Law on the Electricity Sector that could conflict with the BOT Law and the Law Instituting the Infrastructure Council.

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<sup>31</sup> The general wording of the BOT Law should be noted; contrary to the Public Procurement Code (*Code des Marchés Publics*), it does not distinguish between national companies and joint-stock companies with majority public ownership (see Article 4 of the Code).

<b>JURISDICTIONAL CONFLICTS</b>	
<b>BOT Law, Infrastructure Council Law</b>	<b>Law on the Electricity Structure</b>
Scope: All contracts for which the State or its entities entrust all or part of the following tasks: financing, design, building, operation, and maintenance of public infrastructure	System of authorization for activities: <ul style="list-style-type: none"> <li>• License issued for production</li> <li>• Concession granted for distribution</li> </ul>
Granting: <ul style="list-style-type: none"> <li>• Criteria for awarding PPP contract (Article 9)</li> <li>• Previous favorable opinion by the Council (Article 1)</li> <li>• Involvement of the Invitation to Tender Commission and the Infrastructure Council in the process is required.</li> </ul>	Granting: <ul style="list-style-type: none"> <li>• According to a selection process submitted for the approval of the Regulatory Commission (<i>Commission de régulation</i>) (Article 21)</li> <li>• Role of the Commission in awarding</li> </ul>
The PPP contract specifies the conditions for remuneration (Article 2).	The Law sets the parameters for the rate structure and profitability rates (Article 28).
The Infrastructure Council does a study and evaluation of the regulatory framework, competition, technical standards, and performance of infrastructure services (Article 7 of the Council Law).	The Regulatory Commission is consulted by the Minister and gives its opinion on all draft legislative and regulatory texts related to the secteur (Article 10).
The Council provides support for mediation upon request by users in order to facilitate dispute settlement (Article 8 of the Council Law).	The Regulatory Commission has sanctioning powers upon request by one party who has an interest (Article 12).
If a concession-granting authority has begun discussions on the awarding of a PPP contract as of the date the Law enters into force, the Council determines the level of compensation to be paid to third parties. The concession-granting authority then initiates a tendering procedure in accordance with the BOT Law (Article 19).	Tendering procedures are currently in progress for independent production of electricity.

During our mission, we were unable to obtain copies of all the laws that could affect the implementation or permanence of PPP projects. Depending on the nature of each project, issues such as the environment, the administrative authorization process, accounting rules, or taxation can be of fundamental importance for investors and lenders. These laws should be revised to adapt them to PPP transactions and the resulting distribution of risks.

#### **B4. Recommendations regarding the Legal Framework**

- Do a global revision of the Senegalese legal framework in order to identify and correct any provisions that may be inconsistent with the provisions of the BOT Law or the Law Instituting the Infrastructure Council.
- Rename the BOT Law would be useful as, for example, “Law on Public-Private Partnerships.” Several people we talked to, who based their remarks on the current title, do not appear to realize the revolutionary aspects of Senegalese administrative law in this regard.

- Hold training sessions and seminars for officials and managers of majority publicly-owned companies to increase the awareness of the implications of the new BOT Law.
- Create an Institute for the Public-Private Partnership that includes members of the private sector and academics. The Institute would be responsible for increasing the awareness of the Senegalese private sector concerning PPPs, to create a consensus among them, and to coordinate efforts to promote Senegalese expertise.
- Consider the adoption of a special law on the treatment of populations who are displaced as a result of infrastructure projects.
- Proceed immediately with the formation of the Infrastructure Council.
- Adopt the implementing decrees to the BOT Law.
- Conduct training sessions for Senegalese regulators to inform them about the implications of the BOT Law and the necessary coordination between Senegalese regulatory bodies and the Infrastructure Council.
- Revise the Code of State-Owned Property concerning the collateral that can be provided to lenders.
- Do a global revision of legislation to harmonize provisions on the structure and approach of PPPs and stimulate their development.

### C. Financial Aspects of PPP Development

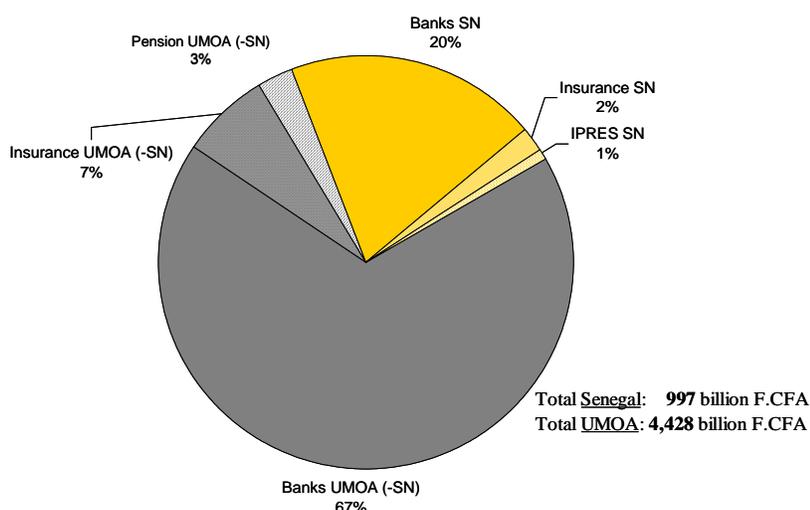
The financial sector in Senegal is recognized by multilateral organizations as having adequate regulatory and supervision arrangements, and enjoying relative freedom from high systemic risk. More than 85 percent of financial sector assets are controlled by commercial banks, followed by insurance firms with around 10 percent, pension funds with less than 5 percent, and microfinance institutions accounting for the rest.

Considering the resources allocated by banks to credit loans and investments in securities, as well as the resources invested by insurance firms in different instruments, and the reserves of the public sector employee pension fund (IPRES), in 2002, financial assets in Senegal reached **997.2 billion CFA francs**. In this regard, the World Bank and IMF identify insufficient financial depth as one of the main constraints to the financial sector.<sup>32</sup>

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<sup>32</sup> World Bank (2002 a and 2003 a), IMF (2001)

### Financial Sector Assets in UMOA and Senegal, 2002



Institution	Financial Assets 2002 (in millions of CFA francs)
Banks UMOA (excludes Senegal) <sup>1</sup>	3,004,886
Banks Senegal <sup>1</sup>	873,263
Insurance Firms UMOA (excludes Senegal) <sup>2</sup>	357,362
Insurance Firms Senegal <sup>2</sup>	89,000
Pension Funds UMOA (excludes Senegal) <sup>3</sup>	140,536
IPRES Senegal <sup>4</sup>	35,000
<b>TOTAL</b>	<b>4,428,831</b>

Notes: <sup>1</sup> BCEAO. Rapport Annuel Commission Bancaire 2002. Comprises operations such as short, medium, and long-term loans, as well as investments in debt and stock securities, and other financial notes.

<sup>2</sup> Estimation based on data from IMF (2001), World Bank (2002 a), and interview with officials from Fédération Sénégalaise des Sociétés d'Assurances (FSSA).

<sup>3</sup> Calculation based on data from IMF (2001) and World Bank (2002 a).

<sup>4</sup> IMF (2001) and World Bank (2002 a). Data for 2000.

However, as the graph and table above illustrate, considering the financial sector assets within the territories of the other member countries of the Union Monétaire Ouest Africaine (UMOA), the combined amount of financial assets available in the UMOA reached 4.43 trillion CFA francs in 2002. It must be added that there is a nascent securities market in the UMOA, the *Bourse Régionale des Valeurs Mobilières* (BRVM), which began trading in 1998 with an initial market capitalization of \$1.5 billion.

In addition to insufficient financial depth, the financial sector in Senegal also lacks diversity of financial instruments because of its narrow economic base, which also results in an overexposure in the banks' portfolios. For instance, in 2002, combined loans to both SONACO and SENELEC represented more than 88 percent of the banking system's total equity. Likewise, the combined

exposure of banks to SENELEC, considering its local oil suppliers, represents 70 percent of total bank equity.<sup>33</sup>

Given the current financial constraints of these companies, and the high dependence of local companies upon their capacity to fulfill their obligations, there are justified concerns regarding the stability of the financial system. This situation is accentuated by the fact that other financial entities hold a significant share of their assets as deposits in banks, which could lead to a wide contagion effect should the banking sector face instability. It must be noted, however, that the government of Senegal has expressed its intention to strengthen the financial state of these two companies.

Another issue, strongly related to the investment climate of the country, has been pointed out by the IMF and World Bank: the hurdles facing financial institutions seeking to enforce contracts before the courts. Despite the solidity and comprehensiveness of the underlying legal framework, poor financial knowledge on the part the courts, combined with scarce human and technical resources, have resulted in a marked deterioration in the judicial environment for financial intermediaries. As stressed earlier in this report, World Bank's "Doing Business" 2003 database reports that Senegal requires an inordinately high number of procedures – 36 – to enforce a contract. In the same manner, the number of days necessary for a contract to be enforced in Senegal stands at 455, which is considered high.<sup>34</sup>

## C1. Banking Sector

Senegal's banking system now consists of 14 institutions: 11 banks and three non-bank financial institutions. Six of these banks belong to foreign banking groups, which hold almost 80 percent of banking system assets. Nine banks offer general services, whereas one bank specializes in agriculture and the other in housing. In 2002, the overall banking sector registered equity amounting to 39 billion CFA francs; Net Own Resources (*fonds propres nets*) was worth 118 billion francs; and 923 billion francs were from depositors (savings accounts, term deposits, etc.).<sup>35</sup>

According to Banque de France, Senegal has a weak banking sector considering its level of development, total deposits representing only 26 percent of GDP in 2002. However, this ratio has grown from 20 percent in 1999 due to an acceleration of overseas workers' remittances.

Senegal's three largest banks, Société Générale de Banques au Sénégal (SGBS), Banque Internationale pour le Commerce et l'Industrie du Sénégal (BICIS), and Compagnie Bancaire de l'Afrique Occidentale (CBAO), represent approximately two-thirds of all deposits. These three banks are respectively ranked as the 4th, 15th and 16th largest banks in the UMOA, according to their total assets.<sup>36</sup> Five other Senegalese banks are ranked within the UMOA's 50 largest banks.

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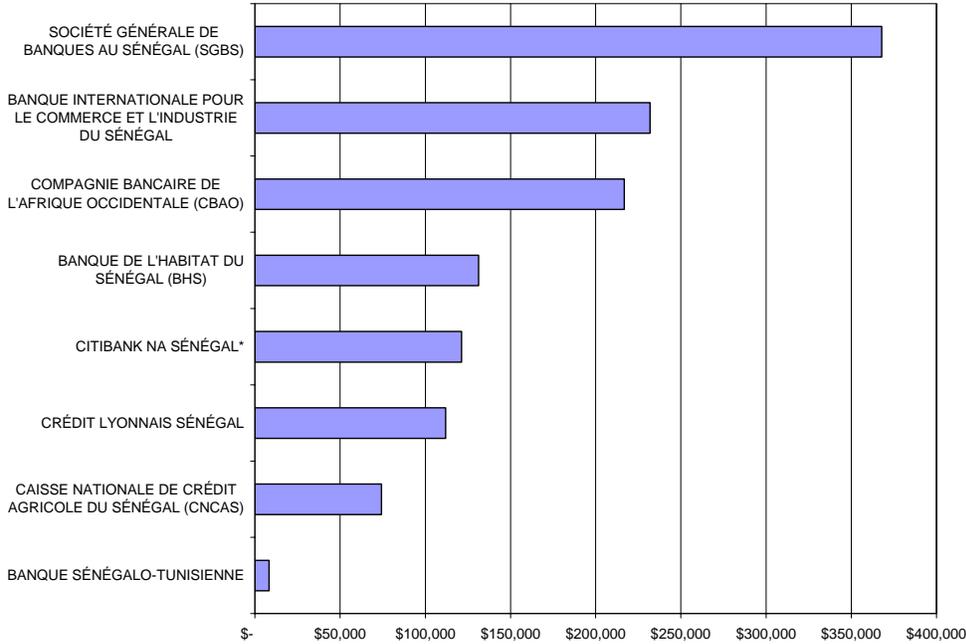
<sup>33</sup> World Bank (2002 a)

<sup>34</sup> Available at <http://rru.worldbank.org/DoingBusiness/>

<sup>35</sup> BCEAO (2002)

<sup>36</sup> Source: "Les 200 Premières Banques Africaines": Zone Franc. Ecofinance N° 34-35 – August/September 2003

**Main Senegalese Banks  
Balance in Thousands of Dollars**



Source: "Les 200 Premières Banques Africaines": Zone Franc. Ecofinance N° 34-35 – August/September 2003

International organizations concede that, thanks to a successful reform program, Senegal has overcome the banking system crisis it faced due to non-performing loans and severe liquidity problems in the 1980s. This program comprised, among other measures, the restructuring and rehabilitation of the sector, the reduction of the government's intrusion, and the reinforcement of banking supervision.

The World Bank's Financial Sector Assessment asserts that the banking sector is now considered to be "liquid, profitable, and relatively well-capitalized." There is limited competition; however, increased competition for top customers has been detected. Government interference in the sector has receded significantly as it divested itself of controlling shares in banks. Around 45 percent of total domestic credit was allocated to the private sector between 2000 and 2001.<sup>37</sup> Long-term credit is restricted to a very limited number of well-established borrowers in the food processing and import-export sectors, whereas short-term collateral loans are much more common, thus restricting small and medium firm access to finance.

Regarding risk exposure, the IMF indicates that foreign exchange rate risk is limited, given that all banks keep a net long exposure to the euro, and can hold only limited open positions in foreign exchange. Likewise, the interest rate risk they face is reduced because most of their assets and liabilities are either short-term or priced on a floating rate basis. However, risks

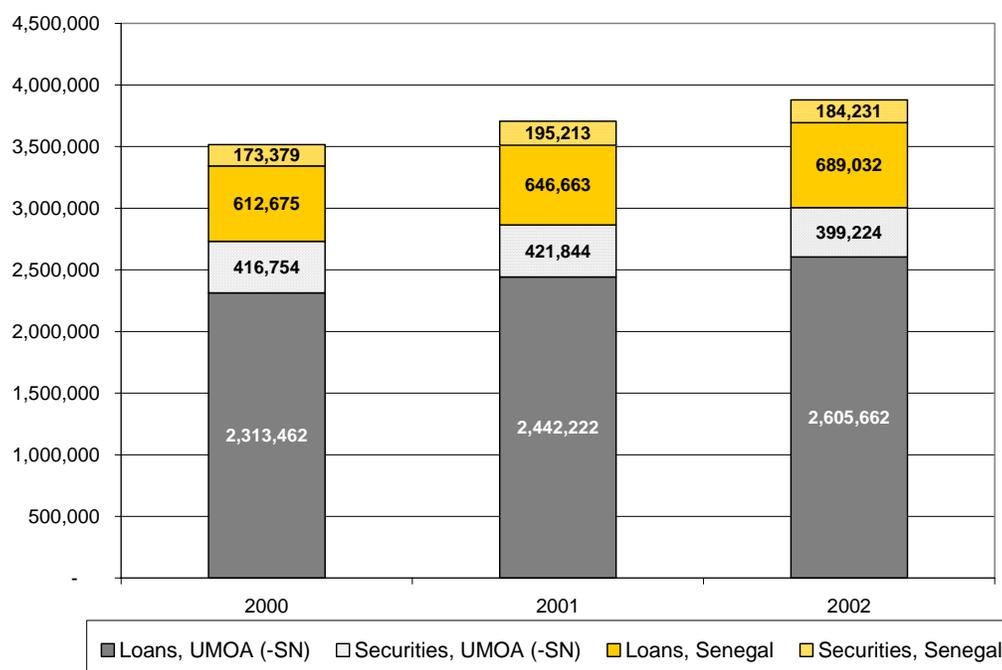
<sup>37</sup> Mitchell (2001)

arising from fluctuations in exchange or interest rates are more related to credit risk, since movements in these rates may impact local borrowers' repayment ability.

The banking sector is subordinated to the *Banque Centrale des États de l'Afrique de l'Ouest* (BCEAO), which formulates and implements monetary policy within the UMOA, and controls credit rates. Under its auspices, the *Commission Bancaire* was created in 1990, with the mandate to strengthen the prudential framework by elaborating and enforcing the rules applicable to the banking sector. Senegal is considered mostly in compliance with a majority of Basel core principles, and the World Bank indicates that the UMOA region has a relatively comprehensive and well-developed supervisory infrastructure, mostly compliant with international codes and practices. Thus, among other measures, regulations limit the percentage of loans that can be granted to shareholders.

The financial assets of the Senegalese banking sector amounted to 873 billion CFA francs in 2002, representing only 23 percent of the UMOA's banking sector financial assets, as the graph and table below illustrate. The BCEAO reports that in 2002 there were 66 banks and 24 non-bank financial institutions in UMOA. Their combined financial assets were worth 3.88 trillion francs in that same year, and their combined equity amounted to 290 billion francs. Similarly, UMOA's banking sector reported Net Own Resources (*fonds propres nets*) of 542 billion francs.<sup>38</sup>

**Banking Sector Financial Assets in UMOA and Senegal  
(Millions of CFA francs)**

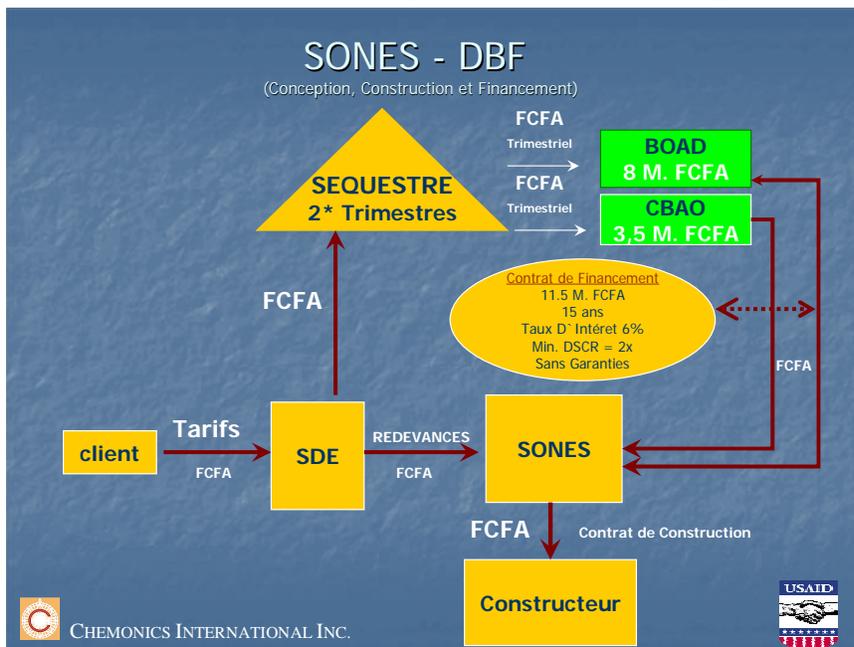


Source: BCEAO. Rapport Annuel Commission Bancaire 2002.

Note: Loans category comprises operations with customers such as short, medium, and long-term loans. Securities category includes investments in debt and stock securities, and other financial instruments.

<sup>38</sup> BCEAO (2002)

Banks are crucial partners in financing infrastructure projects. Among the longest-term transactions carried out in Senegal was the financing for investments in the water sector. The *Société Nationale des Eaux du Sénégal* (SONES), obtained 15-year financing, not secured by the government, of 11.5 billion CFA francs at an annual rate of 6%. Financial engineering employed is governed by a DBF contract (design, build, and finance), where the source of payment used are the rates for water collected by *Sénégalaise des Eaux* from the users, which are placed in an escrow account. The banks that participated in the transaction were *Banque Ouest-Africaine de Développement* (BOAD), with a loan of 8 billion francs, and the *Compagnie Bancaire de l'Afrique Occidentale* (CBAO) with 3 billion francs. The following chart shows the structure of the transaction.



## C2. Insurance Sector

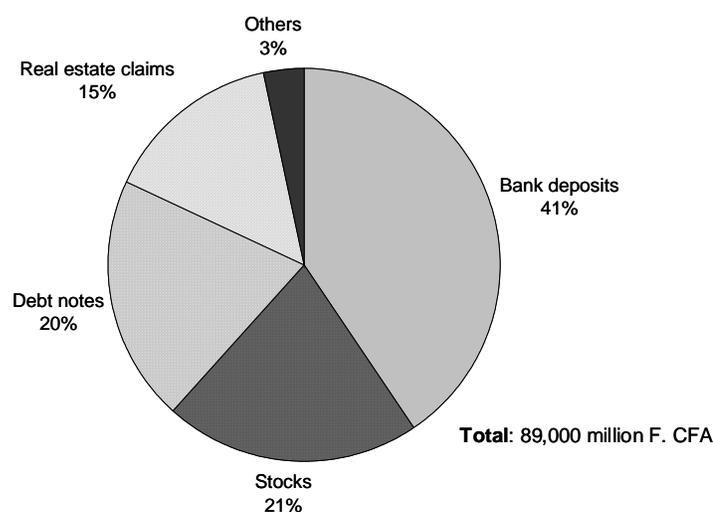
The Senegalese insurance sector comprises ten firms involved in IARD insurance, plus five firms dedicated to life insurance. Among the largest IARD insurers are: AXA Sénégal, with a market share of 22 percent; SONAM, 17.3 percent; AGS, 12.5 percent; Prévoyance d'Assurances, 10.8 percent, and Alliance Sénégalaise d'Assurances, 10.7 percent. Life insurance firms are, in order of importance, ILICO, SONAM Vie, AGS Vie, SNAS Vie, and CSAR.

The insurance sector is regulated by the *Commission Régionale de Contrôle de Assurances* (CRCA), which prepares regulations and conducts on and off-site supervision, and is empowered to penalize or intervene and close insurance firms contravening prudential standards according to the code resulting from the 1992 *Conférence Interafricaine des Marchés d'Assurances* (CIMA) among the 14 African Franc zone countries. To carry out its duties in Senegal, the CRCA relies mainly on support from the *Direction Nationale de Assurances* (DNA) of the Ministry of Finance and Economic Affairs, which has a limited staff. According to the World Bank and IMF, the

UMOA region is largely compliant with the International Association of Insurance Supervisors (IAIS) principles.

With 89 billion CFA francs, Senegalese insurance firms hold about 10 percent of total financial system assets. One of the main problems they encounter is that they bear too much risk and are poorly diversified.<sup>39</sup> This problem results from a lack of suitable long-term domestic instruments and foreign exchange restrictions placed on offshore investing. The IMF has recommended allowing insurance firms to invest their financial assets abroad, inside the UMOA region and out, so as to diversify their risks. In this regard, as the graph and table below illustrate, 41 percent of their financial assets are allocated in bank deposits, which as mentioned before, leave them highly exposed to events in the banking sector.

**Insurance Firms Investments in Senegal, 2003  
(IARD and Life Insurance)**



Type of Investment	Amount (Millions of CFA francs)
Bank deposits	36,000
Stocks	19,000
Debt notes	18,000
Real estate claims	13,000
Others	3,000
<b>TOTAL</b>	<b>89,000</b>

Source: Estimation based on data from IMF (2001), World Bank (2002 a), and interview with officials from Fédération Sénégalaise des Sociétés d'Assurances (FSSA).

<sup>39</sup> IMF (2002).

### **C3. Pension Fund Sector**

The Senegalese pension system comprises two programs, the *Fonds National de Retraite* (FNR) for civil servants, and the *Institution de Prévoyance Retraite du Sénégal* (IPRES), for private sector and other public sector employees. Less than 10 percent of the workforce is covered by a formal pension program. The current programs are considered unsustainable in the medium and long term. This condition is aggravated in the case of the FNR because of the rapid growth experienced by the civil service in the 1960s and 1970s and its subsequent retrenchment. Pension reform has thus become a priority to the Senegalese government, which is considering the introduction of individual accounts on either a voluntary or mandatory basis. These measures may eventually spur the development of the capital market.

Both programs are pay-as-you go systems, thus their level of reserves are limited, as in the case of IPRES, or are at zero, as in the case of FNR. IPRES held only 35 billion CFA francs in reserves in 2000, which represents 3.5 percent of total financial sector assets. These reserves are likely to decline over time according to the current evolution of the population. IPRES reserves are highly exposed to events in the banking sector since a majority of these resources are invested in that sector. Just as in the case of insurance companies, foreign exchange restrictions impede pension reserves to be invested offshore, thus contributing to the exposure of these reserves to concentration risk.

The pension sector is supervised by a regional regulator, the Conférence Interafricaine de la Prévoyance Sociale (CIPRES), which issues and enforces accounting rules for social security institutions within the UMOA.

### **C4. Securities Market**

The *Bourse Régionale des Valeurs Mobilières* (BRVM) trades stock from the eight countries of the UMOA, replacing the old *Bourse des Valeurs d'Abidjan* (BVA). It started operations in 1998 with an initial market capitalization of \$1.5 billion, which by May 2004 had reached \$1.67 billion (894 billion CFA francs). Thirty-nine firms quote their stock in the BRVM, a vast majority of which are from Côte d'Ivoire. Only one Senegalese firm, SONATEL, is listed in the exchange, and accounts for a substantial share of day-to-day trading. In addition, 18 different bonds are currently listed.

Foreign portfolio investment is reduced, despite the fact that investors are allowed to freely expatriate investment earnings and proceeds. Three types of instruments are traded at the BRVM: equity stocks, bonds, and subscription rights, which allow investors to buy in advance stocks at a fixed price. The BRVM lists two types of stocks: the first one is issued by firms with a market capitalization of over 500 million CFA francs and at least 20 percent of its equity held publicly; the second one is for smaller firms with a market capitalization of at least 200 million francs and a commitment to publicly offer at least 20 percent of its equity over a two-year period. The bond listings are allowed for those who have more than 25,000 holders and whose nominal issuance is at least 500 million francs.

World Bank assessment of the regional stock market found that the overall trading volume as well as market capitalization of stocks is small. In 2000, total trading amounted to just \$52

million, only about 0.2 percent of regional GDP. Overall price trends, market capitalization and trading volumes have been negative almost since its foundation.

In contrast, the bond market has grown dynamically, as the total value of listed bonds increased from 40 billion CFA francs in 1998, to 242 billion by May 2004. Among the issuers are national governments, regional development banks, and private commercial banks and industrial firms. No defaults on traded bonds have been reported since the launch BRVM.

Among the problems the BVRM faces are the relative lack of liquidity of most stocks, and the bureaucracy of the stock market. The current volume of activity fails to cover for operating costs, and results in high transaction costs, further hindering market liquidity. Its performance is expected to improve with new listings arising from the privatization of public enterprises, pension reform, and the inclusion of new companies with high growth potential in the stock exchange.

The *Conseil Régional de l'Épargne Publique et des Marchés Financiers* (CREPMF) is the regional body in charge of regulating the BRVM. The CREPMF partially complies with International Organization of Securities Commissions (IOSCO) standards for financial regulation. However, the CREPMF lacks both sufficient resources and technical expertise to enforce such regulations, as well as transparency in formulating its policies. There are also no arrangements to coordinate its activities with other regional entities, such as the Banking Commission and the BCEAO.

The analysis of the obligations that have been issued in the BRVM, shown in the following picture, finds that the value of Senegalese instruments is 29.5 billion CFA francs, approximately \$60 million. Among these issuances two issues stand out: one from the phone company SONATEL for 12 billion francs, with a duration of six years, and another by the electric company SENELEC for 14 billion francs, with a duration of five years. Longer-term bonds for up to seven years have been issued in Benin.

EMISION OBLIGATAIRES	PAYS	TAUX D'INTERET	MONTANT EMISION	DUREE	ANNEE EMISION
BRAKINA	BURKINA	7.45%	2,500,000,000	5	1998
BRAMALI	MALI	7.50%	3,000,000,000	5	1998
SOBRERA	BENIN	7.45%	4,000,000,000	5	1998
SOBOA	SENEGAL	7.50%	2,500,000,000	5	1998
SOLIBRA	COTE D'IVOIRE	7.45%	5,000,000,000	5	1999
SGBCI	COTE D'IVOIRE	7.50%	5,000,000,000	5	1999
LOTENY TELECOM	COTE D'IVOIRE	9%	5,000,000,000	3	1999
SONATEL	SENEGAL	7.00%	12,000,000,000	6	1999
CIMTOGO	TOGO	7.50%	2,000,000,000	5	1999
BEFI SAFBAIL	COTE D'IVOIRE	8.25%	2,500,000,000	1	1999
CAA	COTE D'IVOIRE	8%	5,000,000,000	5	2000
BEFISAFCA	COTE D'IVOIRE	8.75%	7,000,000,000	2	2000
TOGOCEL	TOGO	7.75%	10,000,000,000	5	2000
BOAN BENIN	BENIN	6.60%	2,000,000,000	7	2000
AFRIPATEL	COTE D'IVOIRE	8.50%	4,000,000,000	3	2'002
SAGA CI	COTE D'IVOIRE	7.50%	3,000,000,000	5	2'002
ICS	COTE D'IVOIRE	7.00%	15,000,000,000	3	2'002
COTE D'IVOIRE TELECOM	COTE D'IVOIRE	7.50%	6,500,000,000	5	2'002
BHM	MALI	7.50%	8,000,000,000	5	2'002
SHELTER AFRIQUE	NAIROBI	6.25%	3,500,000,000	7	2'002
SENELEC	SENEGAL	7.50%	15,000,000,000	5	2003
CEB	BENIN	6.50%	16,000,000,000	7	2003
CELTEL	BURKINA	7.50%	3,000,000,000	6	2003

The average term of all emissions amounts to 4.79 years and the average interest rate elevates to 7.53%. The average emission totals 6 billion CFA francs, or about \$12 million.

### **C5. Availability of Resources for Infrastructure Projects**

The Net Own Resources (*fonds propres nets*) in the banking sector available for infrastructure and other PPP projects are estimated at 118 billion CFA francs, or approximately \$230 million. According to the internal regulation of the banking sector in Senegal, banks can lend an amount equal to eight times the sum of these funds.<sup>40</sup> Nevertheless, international financial standards show that, given risk exposure concerns and diversification requirements, no more than 15 percent of this amount should be channeled to financing investments in the infrastructure sector. This means that around \$276 million can be used to finance infrastructure projects, but in terms no longer than a maximum of seven years. Within the UMOA region \$1.38 billion is available for such financing.

In the case of the insurance firms in Senegal, they can invest a sum of up to 89 billion CFA francs in different types of instruments. According to life insurance firms, no more than 40 percent can be invested in medium and long-term instruments, such as obligations and bonds emitted by private firms in the infrastructure sector. This maximum amount rises to 36 billion francs, around \$70 million. If the insurance sector funds available in the rest of the UMOA are added, the amount becomes 357 billion francs. Applying the same 40 percent restriction leaves a total of funds available for infrastructure of approximately \$284 million.

With respect to the pension funds, if individual account capitalization does not take place (in private pension funds), the possibility of directing their resources to purchase infrastructure projects bonds is severely constrained.

The following table presents the total amounts available for infrastructure in Senegal.

<b>Ressources</b>	<b>Senegal market Millions of dollars</b>	<b>UMOA market Millions of dollars</b>
Banks	276	1,380
Insurance Firms	70	284
<b>Total</b>	<b>356</b>	<b>1,664</b>

<sup>40</sup> Information provided by BICIS and Amadou Seck from Assurances Generales Senegalaises - VIE

## **C6. Conclusions concerning the Availability of Funds to Finance PPPs in Senegal**

The Senegalese financial sector is acknowledged as having adequate regulatory and supervision arrangements, and as enjoying a relative freedom from high systemic risk. Despite this, the financial sector presents a number of weaknesses that hinder its potential as an eventual source of financing for infrastructure investments. Among the major problems it presents are its limited financial depth and the lack of a diversity of financial investment instruments available in the market, which results from the embryonic state of the regional exchange BRVM. This in turn encourages the heavy concentration in the banking sector of financial assets available in the economy. This problem is accentuated by regulatory restrictions on investments from insurance firms and pension funds, which are thus forced to deposit large portions of their assets as deposits in the banking sector, leaving them poorly diversified and heavily exposed to events affecting the banking sector.

For potential PPP operators who would find their financing options constrained by the limited depth of the Senegalese financial system infrastructure, a plausible alternative would be to turn to the financial markets of the UMOA as a whole. As described earlier, the size of the financial sector assets in the UMOA as a whole are almost five times larger than the size of those assets in Senegal.

However, before turning to the UMOA financial system, or any other international capital market, a series of steps must be taken in order to increase the attractiveness and liquidity of any bond structured to finance infrastructure projects.

Even though Senegal does not issue sovereign debt in the international markets, it bears a desirable B+ rating on long term obligations according to Standard and Poor's. This rating was assigned within the framework of UNDP's efforts to benchmark African countries according to international financial standards, and thus facilitate the medium- and long-term development of capital markets. It also helps improve their access to international sources of financing, given that international institutional funds are allowed to invest only in instruments issued by the holder of a favorable rating. However, from the point of view of many of foreign portfolio investors, a low rating is better than no rating at all. In the case of financing infrastructure projects, the major importance of sovereign ratings is that they can help private capital mobilization by serving as a benchmark for other potential domestic borrowers, such a banks or corporations.

Thus, Senegal's B+ rating could be conveyed to a financial obligation issued by a firm within that country to finance an infrastructure project. The mechanism to pass on this B+ rating on to the financial obligation could take the form of a guarantee from the government of Senegal, for instance, as a minimum revenue guarantee. In this case, the revenues of the infrastructure project (which will serve to pay both principal and interest on such bonds) would be guaranteed by a government bearing a B + rating. Thus, from the standpoint of investors, the risk of such a bond should be the same as the risk represented by the guarantor, which in this case would be the government of Senegal.

Nevertheless, such a bond would still be viewed as a “junk” bond in international markets, given that bonds with ratings below BB are considered “speculative grade” or “below investment grade.” In other words, junk bonds are those that the experts feel that the issuers have a higher than average chance of defaulting on, and are assigned higher risk premiums. From the point of view of the private investor, in addition to the risk that the revenue may be less than expected, there is the probability that the guarantor government will not honor its guarantee in a timely manner and form, thus allowing the guaranteed bond to go into default.

How could the credit standing of such a bond be enhanced so as to facilitate the access to international financing and reduce the cost of debt? This point is particularly crucial in the case of large infrastructure projects whose domestic financial markets are not deep enough to provide adequate financing. A number of multilateral organizations and donor agencies provide an array of financial tools aimed at improving the credit standing of development projects, such as infrastructure. One of such tools is the counter guarantee, especially useful in the case of bond issued in international markets. It provides credible backing to the commitments assumed by a government, which is, in turn, guaranteeing a bond issue. Given the sound financial standing of the international agencies in question, their credit ratings are generally outstanding. Thus, private investors would demand a much lower premium from bonds whose governmental guarantor is in turn counter guaranteed by a reputable multilateral organization or donor agency.

Counter guarantees can take many forms, and they do not necessarily fully cover the repayment of the interest and principal of a bond. Thus, a partial risk guarantee would not completely convey to the bond the full credit rating of the international organization (which usually is AAA). However, it would generally be adequate raise the bond’s rating to above “speculative grade,” or BBB-. This would not only decrease the risk premium demanded on the bond, but it would also raise the likelihood that international institutional investors would buy it, hence contributing to its liquidity. These counter guarantees would certainly be required for a bond issue in international markets anticipating intensive participation of institutional investors, such as those from Europe and the U.S.

Infrastructure projects with private participation in Senegal would greatly benefit from the structuring of both a government guarantee, such as a minimum revenue guarantee, and a counter guarantee from a multilateral organization or international donor. It would not only allow the infrastructure project to reduce its cost of debt, but it would also greatly facilitate its access to international sources of financing. It must be noted that guarantees from international organizations can be directly granted to the concessionaire firm or the resulting SPV (special project vehicle). However, a significant added value of setting a financial structure that includes a government guarantee is that it encourages the corresponding authorities to study the project more closely, thus increasing their awareness on the development and feasibility of the project over time, and allowing them to avoid hindrances that may eventually affect the project.

#### **D. The Fiduciary Risk of Donors**

PPP development as described in this report offers several advantages for international donors who want to support and participate in them. The primary advantage is that the principal funding for the PPP itself does not have to pass through the treasury of the government receiving the

assistance. Funding does, however, have to enter the treasury of the government if the donor wants to support the establishment or operation of the PPP unit, which is charged in many countries with the development and supervision of the PPP process. These funds are relatively limited as shall be shown in Section III of this report.

But relatively large sums of money can be transferred to PPPs without the risk that they will pass through the general fund of the government and be diverted. This is because the donor does not have to transfer funds until the PPP project requires them. It is required, however, that the PPP unit or other entity be charged with contracting for independent inspection of the physical works that are built. Unless these are constructed according to the specifications and plans, the donor would not be obligated to release the funds, so safety of the funds can be assured.

If other financial structures are required, other mechanisms such as irrevocable letters of credit at U.S. or EU banks can be established. If a similar mechanism is required to be established within the country, trust funds can be established at a large, reputable bank.

### **E. Other Factors Affecting PPP Development**

One of the facilitating factors in the formation of PPPs in Senegal is the fact that 90% of the land is state-owned. This can reduce the cost of developing PPPs because the government can provide the land as a part of its input to the formation of the PPP agreement and financing. The government's land ownership may also lead to opportunities for concessions of land

## ANNEX A

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15. Loi abrogeant et remplaçant l’Article 19, Alinéas 4 et 5 et le Chapitre IV de la loi no. 98-29 du 14 avril 1998 relative au secteur de l’électricité.

16. Loi no. 65-59 du 19 juillet 1965 relative à la production, au captage, au transport et à la distribution de l'eau et de l'énergie électrique.
17. Loi no. 81-13 du 4 mars 1981 portant Code de l'eau.
18. Loi no. 83-73 du 5 juillet 1983 autorisant la création de la Société nationale d'exploitation des eaux du Sénégal (SONEES).
19. Projet de loi portant cadre législatif de régulation pour les entreprises et les concessionnaires de services publics.
20. Loi no. 76-66 du 2 juillet 1976 portant Code du domaine de l'État.
21. Loi no. 13-2004 du 13 février 2004 relative aux contrats de construction – exploitation – transfert d'infrastructures.
22. Loi no. 14-2004 du 13 février 2004 instituant le Conseil des infrastructures.
23. Acte du colloque sur le programme national de bonne gouvernance organisé avec l'appui du programme des Nations Unies pour le développement.
24. Acte du séminaire d'information et de sensibilisation sur les politiques des déplacements et de recasement de population selon les procédures de la Banque Mondiale et celles en vigueur au Sénégal.
25. Le droit des sociétés commerciales et du groupement d'intérêt économique OHADA, Collection droit uniforme, Presses universitaires d'Afrique.