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BIZCLIR Business Climate Legal & Institutional Reform

AgCLIR: SENEGAL

Commercial Legal and Institutional Reform Diagnostic of Senegal's Agriculture Sector






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AgCLIR: SENEGAL

Commercial Legal and Institutional Reform
Diagnostic of Senegal's Agriculture Sector

AGENDA FOR ACTION

September 2009

Cover photos (from left to right) by: Russell Brott, Hendrik De Bruyne, Jean Mazerand, Edgar Sanchez-Sinencio, John Gyovai and Richard Waghorn

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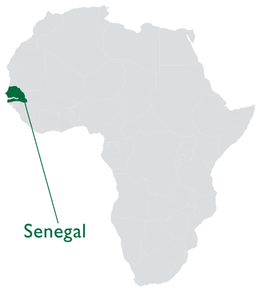


INTRODUCTION

This report addresses the conditions and opportunities for doing business in Senegal's agricultural sector. Through close examination of the relevant policies, laws, institutions, and social dynamics, it aims to inform assistance decisions by the U.S. Agency for International Development (USAID) and other donors in the area of agricultural development in Senegal. It can also provide insights and guidance about the sector to government officials, private sector representatives, and others.

AGRICULTURE IN SENEGAL: A PROFILE IN VULNERABILITY

Of Senegal's nearly 13 million citizens, over three-quarters work in the agricultural sector, which, of course, includes the growing, processing, transport, and marketing of food and other goods produced through farming and forestry. Yet the country relies on imports for 70 percent of its food supply—a rate higher than any other country in Sub-Saharan Africa.[1] Most crops produced in Senegal have difficulty making it to market, if they ever do. The country's agricultural products also remain uncompetitive vis-à-vis foreign alternatives, both for local consumption and international trade.

Fifteen years after its historic (but incomplete) economic liberalization, Senegal remains unusually vulnerable to food shortages and price shocks. During the 2008 international food crisis, Senegal's particular dilemma was revealed: cheap imports of staple foods, when swept from the marketplace as exporting trade partners cut back on supply, could not be replaced by affordable, locally produced alternatives. The riots that ensued underscored Senegal's inadequate domestic food systems. They also revealed much more: the government was ill-prepared for a crisis of this magnitude. The underlying legal, regulatory, and institutional architecture to support the agricultural sector could neither respond sufficiently to the crisis nor catalyze a sustained private sector response to the underlying issues of supply shortages and anemic purchasing power, inefficient marketing systems, bottlenecked transport corridors, and commerce based almost exclusively on arms-length transactions.

Senegal's national leadership is well aware of the country's vulnerability to poverty, food insecurity, and lack of general economic competitiveness. In the wake of the 2008 crises, it redoubled its efforts to address the issues of farm productivity, agricultural enterprise development, and access to domestic, regional, and international markets.[2] Yet results are not yet visible to the naked eye. Almost 50 percent of the population remains officially unemployed, more than half the country lives in poverty, and GNP growth for 2009 is projected to be just 1.5 percent.[3] Although these facts are attributable in part to worldwide recession, they also evidence sluggishness in implementing domestic reforms. In September 2009, Senegal fell five places, from 152 to 157, in the World Bank's annual *Doing Business* report, which ranks 183 countries for the ease in which companies can do business and grow.[4]

To achieve Senegal's overriding goal of food security and poverty eradication, reforms must promote high levels of technical skill and enhanced knowledge across every important agricultural value chain. These include the proper use of quality seed, pesticide, and fertilizer; expanded use of irrigation and water management practices; the ability of farmers to enter the formal sector as cooperative or processing enterprises; the ability of agricultural enterprises

1 Unless identified otherwise, statistics cited in this report are drawn from a number of sources, including the Economist Intelligence Unit (EIU) Country Profile (2008), the CIA's online World Factbook (2009), the OECD's Africa Economic Outlook (2009), various studies of the United Nations, and other external publications, which themselves draw most of their data from international sources or the Senegalese government's own surveys. Given limitations in domestic information gathering, most figures cannot be said to be exact, but they do represent best estimates as accepted by the international community.

2 A useful summary of the overall state of Senegal's economy, including its agricultural, industrial, and service sectors, can be found at the Africa Development Bank/Organization for Economic Cooperation and Development's discussion of Senegal in its annual publication, *African Economic Outlook* (2009).

3 Reuters, "Senegal Growth seen down at 1.5% in 2009" (July 20, 2009).

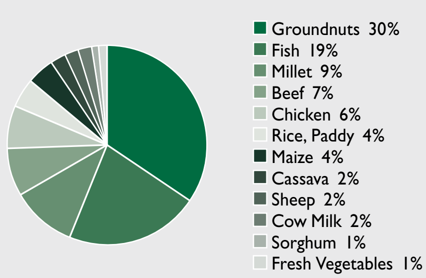
4 *See* World Bank, *Doing Business 2010* (September 2009), and accompanying literature at www.DoingBusiness.org.

to obtain credit and outside investment, as well as to use written supply contracts; the management of post-harvest loss; and compliance with quality standards that represent key conditions for export. The goal also requires widespread understanding of how regional and international institutions, such as the West African Economic and Monetary Union (WAEMU) or the World Trade Organization (WTO), create both opportunities and obligations for Senegal with respect to building its commerce in agriculture.

Some of these issues are as old as farming itself; others represent modern trends in agricultural science and food safety, legal and economic policy, and cross-border trade. All contribute to the conclusion that agricultural knowledge and professional expertise are more critical than ever.

At the same time, Senegal's particular vulnerabilities are significantly attributable to certain very basic issues. Fundamentally, its rates of illiteracy—around 70 percent of women and nearly 50 percent of men—are among the highest in the world. Its infrastructure, particularly as it concerns the agricultural sector, is entirely inadequate. The fact that trucks cannot transport goods without undue police interference and on-the-road "shakedowns" almost dooms any hope of competitive trade. Moreover, the country's effective relegation of women to unskilled, unhealthy work means that it is ignoring the productive capacity of half its population. Its perpetuation of the "worst kinds of child labor," estimated by the U.S. Department of Labor to include 30 percent of children ages 5–14, must be confronted.

AGRICULTURE PRODUCTION IN SENEGAL
(SELECTED PRODUCTS, 2005, AS VALUED IN US DOLLARS)



Source: Food & Agriculture Organization (FAO)

Senegal produces a wide variety of agricultural goods,[5] with groundnuts (peanuts) serving as a major engine of the rural economy. The majority of the country's farmers, however, produce on a subsistence level. Growth in the productivity of Senegal's farms can increase incomes, enhance health, and improve livelihoods, permitting more of the country's citizens to turn to skilled labor, entrepreneurship, and other sectors as the source of their livelihoods. But even as a lower representation of Senegalese work directly in agriculture, the sector can serve as a much stronger and more efficient source of food security and driver of economic growth. To the extent that there are ongoing reforms in conditions for "doing business" in the agricultural sector—that is, for the pursuit of economic activity arising chiefly from domestic production of food and other agricultural resources—the country will experience greater productivity, entrepreneurial opportunity, and wealth creation—all of which drive long-term food security.

AgCLIR: A TOOL FOR UNDERSTANDING OBSTACLES TO START-UP AND GROWTH OF AGRIBUSINESS

In 2007, incorporating lessons learned from its first-generation legal, institutional, and trade diagnostic tool called CLIR, USAID sponsored the redesign of CLIR through its Business Climate Legal and Institutional Reform (BizCLIR) project.[6] The BizCLIR focus areas were designed to align with the World Bank's enormously influential *Doing Business* country reports.[7] Based on the *Doing Business* analytical structure, BizCLIR employs a multi-indicator, diagnostic process that closely examines the following topics: Starting a Business, Dealing with Licenses, Employing Workers, Registering Property, Getting Credit, Protecting Investors, Paying Taxes, Trading Across Borders, and Enforcing Contracts, and Closing a Business.[8] BizCLIR also addresses the issue of competition law and policy, which, though not specifically

5 As illustrated by the table on this page, fish is a major product of Senegal and a major source of foreign exchange, as compared to other food and agricultural products. This report does not study the production of fish specifically, however.
6 Detailed information about BizCLIR can be found at www.bizclir.com.
7 World Bank, *Doing Business 2010* (2009), and accompanying literature at www.DoingBusiness.org.
8 In 2008, the World Bank changed the designation of the category "Dealing with Licenses" to "Dealing with Construction Permits," a change that more accurately reflects the scope of its survey. The AgCLIR methodology maintains its emphasis, however, on the licenses and permits that are required across agricultural value chains. Accordingly, the terminology has not been changed for this report.

addressed in *Doing Business,* is a key consideration in the legal and institutional environment that supports economic development. (Closing a Business is the one *Doing Business* category that is not covered in this report.)

For each of the topics it covers, *Doing Business* considers a few key indicia of whether and how the environment for enterprise is "working," measured by such means as the number of procedures involved in achieving a goal (for example, to legally transport goods across borders or to enforce a contract), the number of days it takes, and the costs of the procedures in relation to per-capita income. *Doing Business* now gathers data from 183 countries and ranks each, thereby demonstrating how their respective regulatory environments compare to others throughout the world.

SENEGAL'S RANKINGS IN THE WORLD BANK *DOING BUSINESS* CATEGORIES

	2010	2009	Change
Doing Business Overall (*181 countries surveyed*)	157	152	-5
Starting a Business	102	94	-8
Dealing with Licenses	124	121	-3
Employing Workers	172	173	+1
Registering Property	166	164	-2
Getting Credit	150	147	-3
Protecting Investors	165	164	-1
Paying Taxes	172	173	+1
Trading Across Borders	57	64	+7
Enforcing Contracts	151	150	+1
Closing a Business*	80	80	0

*Closing a Business was not covered in this analysis.

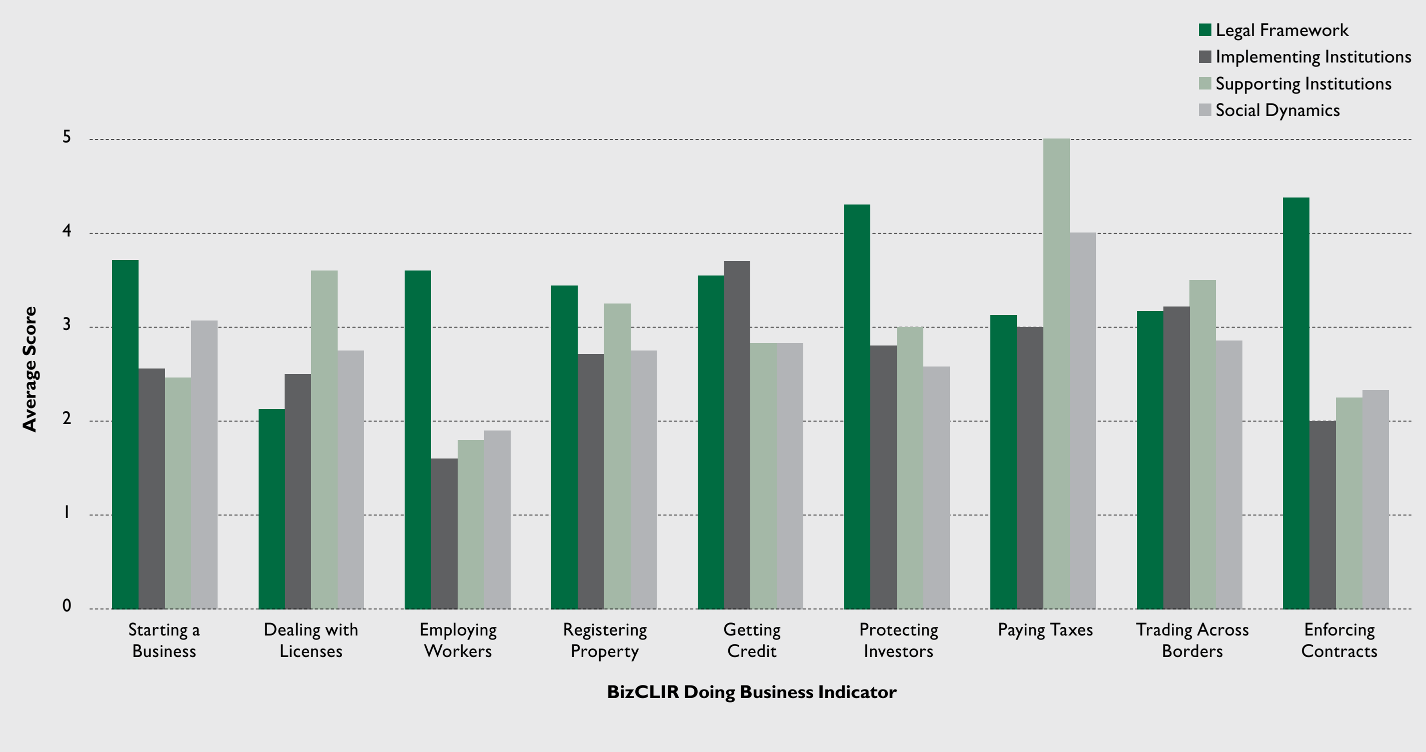
USAID's BizCLIR initiative takes most of the *Doing Business* topics and delves deeper into their respective **legal frameworks, implementing institutions, supporting institutions,** and **social dynamics.** That is, after *Doing Business* delivers a key "snapshot" of the conditions for enterprises in 183 countries, BizCLIR subjects the same issues to an expanded analysis of factors feeding in to these essential findings and then reports on the entire, more complex scenario. BizCLIR seeks to understand the important contextual differences among countries, and identifies strengths and weaknesses within economies that provide key opportunities for long-term development. A summary of the BizCLIR methodology, including its use of a comprehensive set of indicators, is set forth as an appendix to this report.

Recognizing that economic growth in many developing countries turns significantly on the agricultural sector, this diagnostic shifts the BizCLIR focus on economies generally to the specific and critical issues pertaining to agriculture—hence, the name "AgCLIR." The focus on agriculture stems from a consensus in recent years that GDP growth in agriculture has more than twice the impact in reducing poverty as growth in other sectors.[9] Yet, while 75 percent of the world's population lives in rural areas, most working in agricultural-related pursuits, only 4 percent of official development assistance goes to agriculture in developing countries.[10] In Sub-Saharan Africa, only 4 percent of total government spending as of 2007 was directed at farming communities.[11] Thus, the goal of this diagnostic is to better understand *why* Senegal's agricultural sector functions as it does; *what* policy, legal, and institutional changes could lead the sector to greater productivity and economic growth; and *who* among Senegal's economic actors can lead or implement change?

In the most recent *Doing Business* report, issued in September 2009, Senegal ranked 157 out of 183 countries surveyed.[12] A year earlier, in two areas in particular—Starting a Business and Trading Across Borders—the country registered dramatic improvements. That energy has quelled, however, with the past year showing only a few mild improvements under the World Bank's methodology. Four areas remain among the most poorly ranked (bottom 10 percent) by *Doing Business:* Employing Workers, Registering Property, Protecting Investors, and Paying Taxes. (Notably, when looking closely at these issues in the agricultural context, the AgCLIR

9 World Bank, "World Bank Calls for New Emphasis on Agriculture for Development" (press release) (October 19, 2007) (citing *2008 World Bank Development Report: Agriculture*).
10 Id.
11 Id.
12 World Bank, *Doing Business 2009* (2008).

INDICATOR SCORE COMPARISONS



diagnostic identified different strengths and weaknesses, as detailed later in this report.)

This diagnostic took place June 8–22, 2009. A seven-member team of consultants traveled to Senegal and conducted interviews across the agriculture sector, including with national and local officials, farmers and their associations, owners of agricultural enterprises, business associations, non-government organizations (NGOs), the banking and lending community, and many others. Interviews and observations took place in and near Dakar, Sain Louis, Richard Toll, and Kaolack. Over 240 people were consulted. The AgCLIR diagnostic culminated in a roundtable presentation and discussion on June 22, 2009, which was attended by more than 100 stakeholders in Senegal's agricultural sector, as well as by several donors. At the roundtable, team members introduced their preliminary observations, which were then subjected to feedback and elaboration from the participants. This input helped shape the final conclusions of the team, which are found in this report.

SUMMARY OF FINDINGS

Summaries of subject-matter areas examined in this diagnostic are set forth below.

STARTING A BUSINESS

Between 75 percent and 90 percent of Senegal's economy operates in the informal sector—that is, the majority of enterprises do business without registering formally with the state and without adhering more than just selectively to the country's laws and regulations governing commerce. The rates of informality are even higher in the agricultural economy, although certain "semi-formal" structures, such as permits for selling produce in markets, exist at a community level.

Pervasive informality means that most agricultural enterprises are constrained from growing and prospering through access to credit, investment, and formal systems of assistance. It further means that they are not contributing, through taxes, to the state's ability to improve conditions of education, infrastructure, productivity, food safety, and access to markets. Informality in Senegal is unlikely to be reduced through legal or regulatory changes alone—informal businesses will only move into the formal sector once they see tangible value in "joining" as exceeding the very tangible costs.

Indeed, although farmers often fail to see their operations as "businesses" in Senegal, the more entrepreneurial often do. After an individual has the necessary ingredients to start a formal business, and after developing a business plan on paper or merely in concept, the first obstacles to growing a business tend to lie in the procedures necessary to incorporate and register the new "firm" before it can operate legally. The Senegalese government has shown a dedicated, if incomplete, effort to achieve such inclusion. Issues of land, labor, access to capital, and technology must be addressed in order to strengthen the conditions for building sound agricultural enterprises in the future. The role of government influence over market forces also warrants greater understanding vis-a-vis its impact on starting a business.

DEALING WITH LICENSES

Senegal's licensing environment, although not applied consistently throughout the agricultural sector, aims to foster greater efficiencies with respect to regulation of farm inputs, such as pesticides, seed, and fertilizer. Recent efforts to expand the country's trade in agricultural goods have encouraged more efficient and cost-effective exports. Serious constraints remain, however, with respect to continued government price controls on key commodities as well as to the capacity of state institutions to implement their regulations in a fashion that actually benefits Senegalese farmers and consumers. State institutions must also strengthen their ability to adequately, fairly, and consistently apply the regulations they are charged to implement.

COMPETING FAIRLY

Senegal's regime for competition law and policy does little to address competition concerns in the agricultural sector. Though the country has had a competition law in place since 1994, it is not effectively enforced. The National Competition Commission lacks the resources to investigate and prosecute violations of the competition law. The Ministry of Commerce, which shares jurisdiction for enforcing competition law, is similarly resource-constrained, largely because its limited competition resources are devoted to a number of activities other than traditional competition enforcement. As a result, there is no effective check on collusive behavior or abuses of dominant positions in the agricultural sector. Moreover, the ongoing efforts by the government to regulate commodity prices are at odds with the competition law's reference to price controls as only a "temporary" measure.

EMPLOYING WORKERS

A full regime of labor laws exists in Senegal, designed with the overall goal to protect the country's workers. The institutions responsible for enforcing the law, however, lack financial and logistical means to oversee compliance with core labor requirements, thereby enfeebling the overall impact of the system. In the rural areas, traditional, informal labor practices are typically the norm, which tends not to adhere to the laws. To these workers, traditional labor unions bear little relevance. Their strong interest in constructing strong farmer organizations and producer associations is generally underserved.

Illiteracy rates in Senegal are high (at least 58 percent of the adult population, including over 70 percent of women), which exacerbates farmers' ability to both access technical information, use important farm inputs (pesticides, fertilizers, and seeds), and form legally recognized and registered groups. The country also engages its children in the "worst forms of child labor," as referred to by the United Nations—labor far more severe than before- and after-school farm work—and rates of inappropriate employment of the country's children ages 5–14 are around

30 percent. Senegal should look to the efforts of other countries in the region and in Africa, which have succeeded in driving up rates of literacy and forcing down rates of inappropriate child labor.

REGISTERING PROPERTY

Senegal's land issues include grave issues associated with land tenure insecurity, the growing demand for urban land, and administrative problems associated with the immense power of rural councils to award land use rights. The vast majority of rural Senegalese do not have title to the land where they live and work. In some cases, they have long-term legal rights to occupy or work the land; in many others, however, they do not. And very few rural Senegalese are able to use their land or land rights as collateral to access credit. Meanwhile, investors and business people find that acquiring land is an arduous process, often requiring bribes and favors to local politicians.

Notwithstanding the immense impact of land ownership on Senegal's agricultural economy, there has not been, to date, a clear political mandate to resolve the key issues. If anything, the opposite is true; the government gives lip service to reform, but does not seem interested in either major changes to the law or sweeping reforms of enforcement.

GETTING CREDIT

Although Senegal's banking and microfinance institution (MFI) sectors are robust, their vigor does not extend to the agricultural sector. There are 18 commercial banks and several hundred MFIs. The financial sector has been liberalized and privatized for over a decade. Eight banks are either foreign-owned or have significant foreign investment. No bank has gone bankrupt in the last 20 years, and the commercial banks all appear to be stable and liquid.

Yet agricultural lending in Senegal accounts for less than 5 percent of the total portfolio of the financial sector. Much of this comes from MFIs, rather than banks. Lending is concentrated geographically in Dakar; much of Senegal's rural population has no contact with banks or MFIs, either as borrowers or as depositors. Loans to farmers, fishermen, and herdsmen are very rare; they total less than 1 percent of all loans. The primary constraints are high risk, which makes both banks and MFIs reluctant to loan, and also the inability to provide collateral. Few farmers have clear title to land, and very few banks will lend against future harvests. Even when loans to processors and exporters are included, total loans to the entire agricultural sector are just over 4 percent of Senegal's total financial sector portfolio. Bringing agricultural enterprise into Senegal's credit regime will take significant changes in mind-set, priorities, policy, and institutional effectiveness.

PROTECTING INVESTORS

Senegal officially welcomes foreign investment. There is no discrimination against businesses conducted or owned by foreign investors. In fact, there are no barriers regarding 100 percent ownership of businesses by foreign investors in most sectors. There is no recent history of expropriation or nationalization. There are no restrictions on the transfer or repatriation of capital and income earned. Senegal enjoys high levels of both political and economic stability: the country has never had a coup or a civil war, it has enjoyed consistent modest economic growth since 2002, and the currency is pegged to the Euro. And while the company law is rather weak, the general commercial legal framework is quite strong, grounded in a regional system of laws that is largely consistent with international best practices. In the agricultural sector particularly, the government has made a strong, public commitment to protect and encourage investment and to expand the sector beyond the current status quo.

Arguably the corporate governance factors assessed by *Doing Business* represent an advanced level of investor protections that are most effective in economies with substantial numbers of established, well-managed corporations. As a threshold matter, most Senegalese businesses, especially in the agricultural sector, need to address basic good business practices—bookkeeping and management—before turning to such issues as disclosure duties and shareholder protections. Certainly corporate governance is a necessary part of a modern commercial legal framework and will increase in importance as Senegal's economy continues to grow. Ensuring that an adequate structure is in place and utilized as the need for stronger corporate governance develops will be important. In the meantime, Senegal should support and encourage a culture of good business management, which will benefit the broader business community and lay the foundation for more advanced corporate governance practices to come.

PAYING TAXES

Taxes are a major part of the Senegalese economy. In 2008, taxes accounted for 87 percent of government revenue and 20 percent of GDP. Tax revenue rose in 2007 by approximately 20 percent (4 percent of GDP) over the previous year, due to a moderate broadening of the tax base, productivity bonuses for tax inspectors, modernization of the tax department, and higher priced oil and gas exports that generated additional tax revenue. With its current program of tax reforms, Senegal is moving in the right direction. Nonetheless, dissatisfaction with the country's overall tax system, including the cumulative burden of the many different taxes that businesses must pay, runs deep. The procedures required for an enterprise to comply with Senegal's tax laws are quite onerous when compared to the West Africa region and especially when compared to the group of developed countries that make up the Organization for Economic Cooperation and Development (OECD). On the other hand, the percentage tax rate, while high, is considerably less than the weighted average value of countries within the region, and is generally in line with the OECD.

Many businesses are concerned that the government has a near-predatory attitude toward existing small and medium-sized enterprises (SMEs) as a source of additional tax revenue.[13] It appears that existing business enterprises are indeed reaching a saturation point in terms of the amount of taxes that are extracted. It also appears that the business community pays a disproportionate share of taxes to offset agricultural subsidies and shortfalls from other sources of tax revenue. Clearly, there is a need for a broader tax base to reduce the tax burden on Senegal's SMEs.

TRADING ACROSS BORDERS

Trade policy. In recent years, Senegal has improved its climate for agricultural exporters. The government has reduced the administrative steps needed to export and has reduced costs for companies that export 80 percent of their production. Exporters may now import duty-free inputs used in the manufacturing of export goods and pay reduced fees to obtain documentation required by foreign markets' importers. Food-processing companies in the fruits and

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13 There is no universally accepted definition of "SME" in Africa. In general, small enterprises are regarded as employing 5 to 25 people and are often owner-managed or family-controlled businesses. Medium-sized enterprises, depending on their annual revenues, can employ up to around 200 people. "Micro-enterprises" are generally household businesses or small shops, usually informal, employing fewer than five people. It is safe to say that, in Senegal's agricultural sector, small businesses tend to be quite small—fewer than 10 employees, to the extent that non-family members work there—with annual revenues that may be beyond subsistence levels, but not by much.

vegetables, cereals, and fish sectors are confident that in the future, tariffs on imported packaging materials, such as glass packaging and cardboard boxes, will also be reduced for finished products destined for export.

Imported goods bear duties that fluctuate with undocumented and unpredictable frequency based loosely on domestic supply and demand for similar products, notably food staples. Imports are also subject to temporary bans based on the government's determination to protect local producers. Overall, Senegal does not have a coordinated, cross-sector national agricultural strategy for trade. Its ministries, private sector, and support organizations coordinate to some extent by sector on developing norms, fixing the recommended price minimums, and making trade policy. But the country's various protectionist measures are at odds with the goals of free trade and growth of robust international markets.

Trade facilitation. Senegal's trade in agricultural products is generally transparent and efficient, although handling of bulk commodities such as rice needs improvement. Several exemptions are granted to agricultural products, and there are special procedures in place for expeditious handling of perishables. In recent years, clearance times have decreased significantly to no more than 48 hours through innovative IT applications, reform efforts by the Dakar Port Authority and the State Customs Administration (Customs), and a comprehensive approach that partners both national authorities and private stakeholders. Moreover, the port process for Mali transit cargo is a best practice for the region.

To control rising transaction costs, Customs must expand its use of international best practices related to risk management and World Trade Organization (WTO) valuation. Priority should also be given to the following: (1) expanding Dakar's bulk terminals that handle vital food staples such as rice and wheat; (2) accelerating regional integration to promote interregional trade; and (3) addressing transport issues, such as outmoded rail links on the major trade corridors and the numerous informal payments associated with road transport. If unattended, these issues will endanger the country's competitive position and slow the growth of international and regional trade.

ENFORCING CONTRACTS

Contracting for goods and services is an important aspect of agribusiness in Senegal, as in most agricultural countries. Contracts, formal and informal, are used throughout the supply chain—to purchase fertilizers and other inputs, to sell to markets and wholesalers, and to supply processors and exporters. Senegal has a good set of contract laws, part of a generally complete and robust legal framework. Unfortunately, formal contract enforcement is a difficult and time-consuming process. Few judges or lawyers are conversant in commercial laws. Court cases are expensive and rarely resolved expeditiously. Decisions can be inconsistent, arbitrary, and non-transparent. Because of the difficulties involved in enforcement, many SMEs simply do not use written contracts. Instead, they often restrict their clients to people they know or otherwise structure their transactions to avoid disputes. As a result, it may be difficult for such businesses to expand their client bases and grow. In the absence of efficient courts or other resolution mechanisms, investment is deterred and business opportunities become more limited.

CROSSCUTTING THEMES

This diagnostic is organized so that 10 components of a healthy and prosperous environment for agricultural enterprise are considered discretely and, where appropriate, in relation to each other. Certain issues and dynamics are prevalent across this analytical framework and are worth considering independently. These crosscutting themes are discussed in this section.

SIGNIFICANT OPPORTUNITIES IN AGRICULTURE, BEGINNING WITH OPEN MARKETS

Senegal's agricultural economy faces a plethora of challenges. It is important to recognize from the outset, though, that certain key strengths may serve as a foundation for progress. These include the state's commitment to regional structures—legal, monetary, and trade-related—that have created a remarkably free marketplace in the region. In other words, Senegal has embraced law and policy in a way that facilitates access to markets and cross-border trade to an extent that is not yet so effectively found in such regions as East Africa or even Southeast Asia.[14] (Certain limitations to regional integration are addressed later in this report.) Where laws and policies are in sync, the ability for food and other agricultural products to flow into and out of markets, including across borders, is enhanced.

First, Senegal's participation in OHADA, the *Organisation pour l'Harmonisation en Afrique du Droit des Affaires,* or the "Organization for the Harmonization of Business Law in Africa," provides a sound legal foundation for trade. Sixteen West and Central African countries are members[15] and have agreed to standardize their business and commercial laws. These laws are supported by a multinational legislature (which passes the laws and periodically reviews them), a supranational court (which preserves uniformity of practice by issuing decisions and interpretations applicable throughout the OHADA territory), and a permanent secretariat, which includes most general commercial laws. OHADA members agree to accept these laws—which are typically inspired by French models, though with reference to international best practices—as their own.

The OHADA has nine uniform acts. These include the laws on contracts, corporations, bankruptcy, transportation of goods, surety, and collection of debts. If a Senegalese law conflicts with OHADA law, OHADA prevails. The OHADA is generally considered a success; the laws are widely perceived as modern, reasonable, and well drafted, and their consistency across a wide region is believed to have encouraged both outside investment and interregional business.

In addition to legal integration, Senegal has committed itself to regional financial integration. Eight West African countries comprise the West African Economic and Monetary Union (WAEMU). These countries all use the West African Franc, which is pegged to the euro. They also share a single central bank. Less well known is that the eight WAEMU countries have produced a body of specialized financial law, based on a combination of French models and international best practices that is consistent throughout the WAEMU region. The WAEMU laws cover an area that is narrower but deeper than the OHADA laws: while the OHADA deals with general business and commercial laws, the WAEMU is focused purely on the economic sector. Again, the fact that Senegal shares with several of its neighbors a system that provides for faster, freer flows of money shows a commitment to developing markets for its products, as well as systems for investment in its own economy.

There are several other conditions that support Senegal's goals to achieve food security and sustainable growth in its agricultural economy. For example, Senegal enjoys, by regional standards, a stable environment for investment. The country's macro economy is stable; the international financial crisis has slowed growth but has not resulted in any major collapses within Senegal. Although the end of President Wade's term will give rise to some uncertainty, no one expects serious turbulence or violence. The government's policymaking process is, by regional standards, transparent. Agencies often hold public hearings (though they are not obligated to), and there is considerable discussion of business issues in the media.

Moreover, Senegal's government is consistently tolerant toward foreign investors. There is no

14 For the USAID/BizCLIR analysis of similar legal institutional issues in five Southeast Asian countries (Cambodia, Indonesia, Laos, Philippines, and Vietnam), see *SEA-CLIR-Trade, Advancing a Regional Agenda for Shared Growth* (March 2008).

15 The West and Central African Francophone countries, plus Guinea Bissau. The Democratic Republic of the Congo is not currently a member, but is expected to join soon.

recent history of nationalization or expropriation, and most foreign investors are allowed to do business in peace without major political harassment. With a few exceptions (such as a controversial threat of revocation of a mobile phone license in 2007), the government is perceived as a fairly neutral. However, political connections were consistently reported as necessary to start a business of any real size.

Among its other advantages, Senegal inherited a substantial French research infrastructure focused on agriculture. Over the years, this has resulted in a regionally competitive research and development regime that is able to provide some level of support to the private sector. Senegal's agricultural research staff is reported to be some of the most highly qualified in Africa.

Finally, it is notable that Senegal consumes much of what it produces. A growing understanding of rural-versus-urban tastes is increasing the ability of local agribusinesses to meet local and regional demand. Of course, Senegal is the closest country to Europe from Sub-Saharan Africa and has many different possibilities for air and sea transport to Europe and points beyond. Thus, as a source of and destination for local, regional, and international trade, Senegal has many advantages, many directly relating to the long-term viability of its agricultural economy.

HIGH-RISK BUSINESS ENVIRONMENT INHIBITING START-UP AND GROWTH OF AGRICULTURE

During this diagnostic, it was widely opined that agricultural investment opportunities far exceed the number of interested investors. In other words, notwithstanding Senegal's many hard-won advantages, there is very little lending or outside investment into Senegal's agricultural sector, thereby keeping local systems antiquated and farm productivity low. Throughout this report, numerous sources of risk are detailed:

- Senegal's land regime is at odds with strengthened productivity, because most farmers do not own the land they cultivate. They are typically unable to use their land as collateral for a loan, so investing in equipment or storage facilities is rarely an option. There are also land-use constraints that act against periodic "rests" being given to plots of land. Accordingly, the quality of the soil is being constantly diminished.
- Banks generally avoid lending money to farms for a variety of reasons: a perceived sense of risk (little of which is being actively minimized); the absence of a credit bureau; and the absence of a secured transactions regime against which they can hold moveable property—such as equipment or even a crop in the field—as collateral for a loan.
- The quality of the Senegal's rural workforce is considered poor, due to the country's exceptionally low rates of literacy and poor vocational training opportunities and other basic requirements for a skilled workforce.
- Senegal's attempts to meet modern sanitary and phyto-sanitary (SPS) requirements for trade are undermined by food safety agencies that are under-funded and spread too thin.
- The fact that Senegal's courts are generally ineffective—judges do not have a strong command of commercial contract law—means that outsiders perceive the risk of loaning to farmers or otherwise investing in agriculture as unduly high.

It is a recent truism of the developing world that increased use of the formal tools of doing business—including contracts, credit registries, standardized accounting practices, and others—supports more trust in an economy, and therefore more growth. This can prove true for Senegal, its agricultural sector in particular. Although innovation in the sector may be limited by hard-to-shake norms and conditions, these deterrents must not be deemed "unchangeable." Rather, they warrant continuous and detailed consideration as Senegal progresses in moving its agricultural sector toward reduced poverty and enhanced growth.

EFFICIENT PORT/CUSTOMS PROCESSES CONTRAST WITH HIGH TRANSACTION COSTS AND INEFFICIENT SPS PROCESSES

Senegal's government is committed to improved trade facilitation. This is demonstrated through the multiple reorganizations the country has undertaken, for example, to apply IT solutions to its international trade process. As a result of strong government commitment, import and export clearance procedures for agricultural products at Dakar's Leopold Sedar Senghor International Airport are efficient, fast, and simple. Export of air shipments is almost instantaneous. A facilitation center incorporating representatives of all regulatory agencies expedites processing. Imports of perishable products are granted provisional release upon filing of limited documentation and traders given 15 days after release to file formal documentation and pay duties.

In addition, international trade processes at the Dakar port are fairly expeditious, with normal customs processing completed within 24 hours. A limited number of shipments are released with only document review or scanning, a first foray into meaningful risk management (detailed at this report's chapter on Trading Across Borders—Trade Facilitation). Land-border clearance by Customs and the other regulatory agencies incurs minimum processing delays of 3–8 hours. Lack of integrated border management practices and harmonized procedures, however, even when both countries are members of WAEMU, prevent further efficiencies.

The fact that many reforms have been effectively integrated in recent years is promising for the future. That said, successes at Customs have not been matched by those agencies charged with ensuring that Senegal meets its animal and plant-safety (SPS) requirements, which are critical for bolstering the country's ability to trade in the international marketplace.

For example, in the fields, the Directorate of Plant Protection (DPV) is responsible for ensuring SPS norms are respected, especially for crops destined for export. The DPV aims to prevent new incidences of pests and illnesses in the fields, as well as further destruction from those existing already. The DPV also inspects imported and exported crop and issues SPS certificates for exports. Unfortunately, the DPV faces significant obstacles against effectively conducting its work. It has serious budgetary constraints to the point where some of its border inspection posts do not own offices within the port limits, nor have electricity or possess any equipment to conduct inspections. In addition, the DPV's most technically adept staff members who respond to infestations are aging and retiring with few technically competent younger staff to replace them. There are few if any advanced scientists on staff. All together, these problems mean that turnaround time for response to identifying pests, identification of treatment, and application of treatment is slow.

The government does not own planes to spray on a large scale for infestations. In the past, Senegal worked with the government of Mauritania to spray in the Senegal River Valley against locusts during a state of emergency. However, spraying is not often timely enough and producers of rice, tomatoes, and other important staples experience significant crop losses while waiting for even the most capable of DPV staff to organize the spraying assistance, or even to find petrol for their vehicles or to identify the pest attacking production.

The contrast between these institutions that are critical to international trade—Customs and food safety agencies—illustrates the fact that strengthening Senegal's environment for trade in agricultural goods is multifaceted. Commitment and capacity-building are necessary along *all* links in the chain.

HEAVY STATE INVOLVEMENT FROM PRODUCERS TO END MARKETS

At several junctures of this report, state involvement in the agricultural economy is noted. Of course, it is critical that the state be mindful of the many ways it can support the agricultural economy, through efforts to improve farm productivity, effective extension services, strong research agencies or partnerships with private agencies, sound financial institutions including support for agricultural lending, and competent trade facilitation. In Senegal, though, the state appears to overcommit its resources in certain areas, while neglecting other duties—fundamentally, education—where it can contribute significant value to the sector.

The most pernicious example of undue state involvement in agricultural markets is found with respect to price controls. The state is heavily involved in setting prices and/or margins for staple foods under "temporary" measures taken under the country's Competition Law. For example, during the in-country portion of this diagnostic (June 2009), prices and/or margins for at least rice, sugar, milk, bread, and vegetable oil were fixed by the state.

Although the goal of the state's intervention may be noble—to protect consumers from high international food prices—the costs of such a program ultimately include the perpetuation of Senegal's food dependency and low farm productivity. The program appears to consume a significant amount of state resources, including in the Ministry of Commerce, both with respect to setting prices and enforcing those mandated prices in local markets. In addition, there is a notable "disconnect" between the Competition Law—which provides for only "temporary" price-fixing by the state—and the ongoing program to set prices for staple products.

HOW THIS REPORT IS STRUCTURED

Each chapter of this report is structured the same way. Following an introduction, each has four substantive sections, which are themselves followed by recommendations:

LEGAL FRAMEWORK

The chapters first examine Senegal's laws and regulations that serve as the structural basis for the country's ability to achieve and sustain market-based development in the agricultural sector. They discuss the following questions: How accessible is the law, not only to elite, well-informed groups, but also to less-sophisticated actors, rural constituencies, or foreign investors? How clear are the laws, and how closely do they reflect emerging global standards? How well does law respond to commercial realities faced by stakeholders in the agricultural sector? What inconsistencies or gaps are present in the legal framework? This section examines key laws and regulations that apply throughout the economy and additional laws and regulations underpinning the agricultural sector specifically.

IMPLEMENTING INSTITUTIONS

Next, the chapters examine those institutions that hold primary responsibility for implementation and enforcement of the legal framework. These institutions include government ministries, authorities, registries, and, in certain cases, private institutions such as banks and credit bureaus. In addition, courts are examined with respect to their effectiveness in addressing disputes that arise in the agricultural sector. Again, the indicators seek to uncover how these implementing institutions function not merely with respect to mainstream business interests in the capital, but also in rural areas and agriculture-based communities.

SUPPORTING INSTITUTIONS

The chapters then look closely at those organizations, individuals, or activities without which the agricultural sector in Senegal cannot be fully developed. Examples include farmer associations, rural banks, professional associations, agricultural and law faculties, the media, and donors. The relative awareness of law and practice on the part of each institution is examined, along with the specific ways in which institutions increase public and professional awareness, work to improve the economic performance, and otherwise serve their constituencies.

SOCIAL DYNAMICS

As the final point of analysis, the chapters discuss key issues that impact the environment for growth in the agricultural sector. Roadblocks to reform, in particular, are considered, including those entities that may be undermining change. This discussion also identifies significant opportunities for bolstering the environment for agricultural enterprise—such as champions of reform or regional initiatives—as well as matters of access to opportunity and formal institutions. Social dynamics also concern such important matters as gender, human capacity, and public health, each of which may have a significant bearing on how the business environment truly functions. Indeed, often a full understanding of legal and institutional issues cannot be achieved without a nuanced consideration of a country's social dynamics.

RECOMMENDATIONS

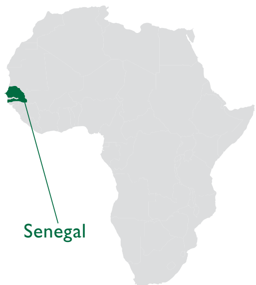
Following this four-part analysis, each chapter sets forth a set of recommendations. These are drawn from the key findings in each chapter and reflect current reform capacities, opportunities, and evidence of will to reform. Some of the recommendations within the chapters may overlap—that is, some may be consolidated into a single reform initiative covering two or more topics—and all turn on the priorities and preferences as enunciated by the Senegalese government itself. The recommendations in this report are intended to serve, among other functions, as a threshold list for donor coordination of immediate initiatives and preparation of scopes of work.

THE SCORE AWARDED *KEY INDICATORS* ALIGNS WITH THE FOLLOWING CONCLUSIONS:
1 = strong negative
2 = moderate negative
3 = neutral (or having some negative and some positive qualities)
4 = moderate positive
5 = strong positive

AgCLIR SCORES

With respect to each area of inquiry, this diagnostic uses a process of reviewing and scoring **key indicators** to develop a thorough analysis. Once as much relevant information as possible is gathered—from written sources, meetings and interviews, and consultation among colleagues—each of the key indicators is scored, based on the assessor's best estimate of the issue at hand. To help an assessor determine a score, between 3 and 15 **supporting questions** accompany each key indicator. These questions themselves are not scored, but are intended to guide the assessor toward a consistent, fact-based judgment from which the key indicator score is then derived.

The scores are not intended to serve as a stand-alone, number-based pronouncement on the state of the agricultural sector in Senegal. Rather, they should be read in conjunction with this report's narrative as a means of understanding the status of certain key indicators of a healthy legal and institutional environment for agricultural enterprise and identifying priorities for reform.

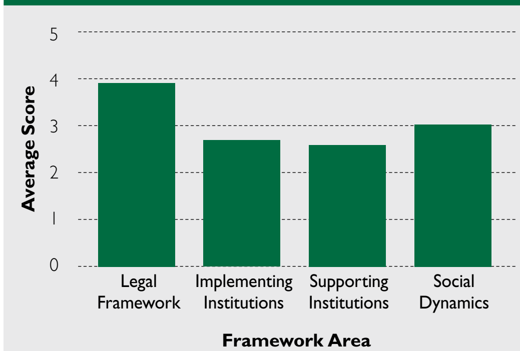


STARTING A BUSINESS

Starting an agricultural enterprise—an agribusiness—can be as simple as clearing an unclaimed plot of land, growing a crop of maize, and selling the surplus crop in a nearby retail market. It can also be as complex as investing in a manufacturing plant capable of using chemical extraction to turn tons of cassava into a product for industrial use. Distinct and special among industries in Senegal for historical, social, and economic reasons, agriculture is the dominant source of employment (though not GDP) in the Senegalese economy. As is the case in most economies where agriculture plays such an important economic and social role, policy toward agriculture is treated differently than policy of just about any other sector in the economy. Like governments in many regions of the world, the Senegalese government plays a large role in its agricultural sector in order to simultaneously "protect" both the "peasant" farmer and "poor" consumer.

STARTING A BUSINESS	
Doing Business Ranking 2010	102
Doing Business Ranking 2009	94
Procedures (number)	4
Duration (days)	8
Cost (% gross national income per capita)	63.7
Paid-in minimum capital (% gross national income per capita)	206.9

STARTING A BUSINESS



No country in Sub-Saharan Africa is so food-import dependent as Senegal. Senegalese agriculture is specialized in just a few products: groundnuts (peanuts), fish, millet, beef, chicken, and rice. Productivity in each of these areas stagnated over the last 30 years—a period during which population more than doubled—leading to a decline in output per capita of more than 50 percent. Food imports have steadily increased since the 1970s to fill the growing food deficit.

Nearly 80 percent of Senegal's population depends on agriculture and agriculture-related activities for the majority of its income. Yet persistent poverty has not allowed for sustained improvements in dietary quality over this period.[16] This is particularly true for rice, the largest source of calories from food (excluding vegetable oil) intake in the Senegalese diet. Senegal is in the counterintuitive position of having an economy primarily composed of farmers, yet importing the vast majority of the food required to feed them. Political leaders have brought the issue to the forefront of the political debate in Senegal—food self-sufficiency is no longer an abstract debate among academics.

Despite its negative trends in food self-sufficiency, Senegal enjoys several advantages as a location for investment in agribusiness related to food production, horticulture, or other types of agricultural enterprise. First and foremost, Senegalese business people have a reputation for entrepreneurialism and hard work.

16 Anderson, Kym & William Masters, *Distortions to Agricultural Incentives in Africa* (World Bank, 2009).

Second, Senegal has a relatively stable political and macro-economic foundation for agricultural growth. Third, Senegal consumes much of what it produces. A growing understanding of rural versus urban tastes is increasing the ability of local agribusinesses to meet local and regional needs. Last, and more pertinent to export-related production than food sufficiency, Senegal is the closest country to Europe from Sub-Saharan Africa and has many different possibilities for air and sea transport to Europe and points beyond.

In Senegal's agricultural sector, as in the rest of the economy, most business activity begins informally. While no official estimate exists at the time of this report, numerous informed observers estimated that between 75 percent and 90 percent of the economy operates in the informal sector. It is presumed that an even higher percentage of the agricultural economy operates in the "grey" economy. Although farmers often fail to see their operations as "businesses" in Senegal, the more entrepreneurial often do. After deciding that they have the necessary ingredients to start a business, and after developing a business plan on paper or merely in concept, the first obstacles to growing a business tend to lie in the procedures necessary to incorporate and register the new "firm" before it can operate legally or in the formal sector.

Economies differ greatly in how they regulate the entry of new businesses and the legal basis for the formation of that company. In some countries the process is simple, involving little cost. In others the procedures can be so burdensome that entrepreneurs might decide to avoid the process altogether. This chapter focuses on both the challenges associated with such informality as well as the ideal level of regulation.

Informality poses tremendous challenges to the typical agribusiness in Senegal. Those countries that encourage agribusinesses to move beyond informal status—to register within a state-operated registry, acquire licenses, and pay taxes—set the stage for a variety of positive outcomes. When such measures are made available and promoted, agribusinesses are better able to access external financing for start-up investment and growth, manage their business risks, and expand their access to market opportunities. Informality is unlikely to be reduced through legal or regulatory changes alone—informal businesses will only move into the formal sector once they see tangible value in "joining" as exceeding the very tangible costs. This takes considerable effort on behalf of the state. The Senegalese government has shown a dedicated, if incomplete, effort to achieve such inclusion. This chapter will discuss some of the successes, opportunities, and challenges that remain for the government and the private sector in setting the stage for agribusiness expansion in Senegal.

LEGAL FRAMEWORK

THE ROLE OF THE STATE

Agriculture and rural development priorities are well articulated in Senegal's legal framework. Key portions of the legal framework, including the company law and investment code, are reasonably modern, clearly drafted, and functional legal instruments conducive to broad-based economic growth in the agricultural sector. The OHADA body of laws was adopted by 16 African countries including Senegal to encourage regional policy harmonization and increase attractiveness to foreign investment. In 1993 Senegal and 15 other West and Central African countries took the bold step of giving up some piece of their national sovereignty to achieve these ends. The laws they adopted are based on French legal instruments ranging from the 1960s to 1990s and include the OHADA Company Law.

Despite the sufficiency of these basic building blocks, one of the most notable features of the Senegalese policy framework is the tendency toward politically motivated policy initiatives, followed by policy reversals and later the birth of new initiatives. For example, the New Industrial Policies laid out between 1986 and1993 were almost all later reversed. Plan Manioc, Plan Maize, and now the Return to Agriculture (REVA) have each followed in this tradition: great hope is raised, institutions revamped, and analysis completed, only to be overruled with the change in political winds. During this diagnostic, the newly released Great Agriculture Offensive for Food and Abundance (GOANA) initiative was rumored to be already on the chopping block in anticipation of GOANA 2, scarcely one year after the announcement of this key agriculture-related policy.

Senegal's government plays an activist role in the economy. The legal framework provides a basis upon which the government is a principal actor in all parts of the agricultural economy in particular. For instance, Law 66-48 sets out that any company that wants to transport a good from one state to another must get approval from the Ministry of Commerce. Law 96-43 fixes prices at levels determined by the state. In both cases, the government officials responsible for these activities characterize the approach as "consumer protection," including, in the first example, "accuracy in labeling." Moreover, the state sets profit margins based on "consultation" with actors knowledgeable about the sector.

Officials involved in the price- and margin-setting activities emphasize the huge quantities of work this process requires and the "staff deficit" to properly implement the law. For instance, the competition and distribution office within the Ministry of Commerce in Dakar estimates that it would take 250 staff to properly manage their portfolio of activities. Currently the office manages on 25–30 staff due to budget constraints.

COMPANY FORMATION

Doing Business highlights the impact of positive legal reform in Senegal's company registration process. In 2007, there were 10 separate procedures required to register a business (specifically, an urban or peri-urban manufacturing business) in Senegal. In 2008, the number of procedures was reduced to four, resulting in an impressive decrease from 58 days to start a business to 8 days to start such a business. These reforms also reduced the cost of starting a business from 107 percent of GNI/per capita to 72 percent. These figures pertain to companies quite different from the typical agribusiness—often smaller and more rural than the case study focus completed by the World Bank. For good reason, much attention has been paid to the *Doing Business* report in Senegal, but much more analysis is needed to truly understand the time, cost, and regulatory burden of starting an agribusiness (including cooperatives), as opposed to a more typical manufacturing business as laid out in the *Doing Business* case.

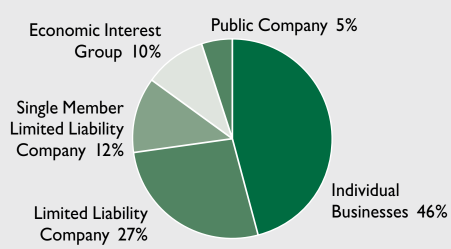
KEY POLICIES AND LAWS

- Accelerated Growth Strategy (2005)
- Great Agriculture Offensive for Food and Abundance (GOANA) (2008)
- OHADA Uniform Act relating to Commercial Companies and Economic Group Partnerships (1998)
- Cooperative Law No. 83-07 (1983)
- Land use and zoning laws
- General business laws and regulations pertaining to tax, social security, health insurance, environmental impact of business, export/import, and labor.

Companies and economic interest groups *(Groupement d'Interet Economique)* have been governed in Senegal since January 1, 1998, by the Uniform Act of the OHADA. The law provides for the establishment of a single member limited liability company, economic interest group, individual business, public company, and limited liability company. The pie graph below shows the number of each that were set up in 2008: individual business and limited liability companies constitute the greatest proportions of the companies registered, covering 46 percent and 27 percent of the companies registered in 2008, respectively.

Although certain aspects of the OHADA law, including its visibility, predictability, and harmonization aspects, are positive, multiple interviewees cited an excessive tendency to say that the OHADA is "great" and without need for revision. As one legal expert put it, "while OHADA rules are easy to implement, they are not modern." The company law, for instance, is based on the 1967 French Company Law. Two main criticisms of this instrument include the facts that there is no real need for a minimum capital requirement for the majority of businesses, and second, notary services simply are not needed for small companies and add to the burden of company start-up. Many countries have eliminated minimum capital requirements, given their inability to protect either creditors or shareholders (aside from not being enforceable). There will be significant difficulty modifying any of the OHADA laws given the need for unanimity across all 16 members before a change in the law can take place.

LEGAL STATUS OF BUSINESSES CREATED IN 2008



Source: APIX Senegal

COOPERATIVE FORMATION

Unlike the company law and other important legal instruments governing Senegal's economy, the Cooperative Law is not enshrined under the OHADA system, though the OHADA is apparently moving in this direction. The Cooperative Law (No. 83-07, 1983) creates a uniform legal framework for all cooperatives in Senegal, allowing for such privileges as tax-free status.

The law is under review given its numerous shortcomings, including unnecessary differentiation from the corporate formation process, separate and somewhat complicated division between "rural" and "urban" cooperatives, and a *lack* of mandatory approval "deadlines" (i.e., all applications must be approved or rejected within 30 days, otherwise the approval is automatically granted). A general absence of strong internal governance guidelines has also been raised as a concern to people familiar with the legislation. In the past in Senegal (as in many African countries), cooperatives have tended toward highly political institutions headed by powerful religious or political chiefs and patronized by leading political figures. The legacy of post-colonial economic policies and the *Societes de Prevoyance* laid a poor foundation for the formation of business-oriented agricultural cooperatives in Senegal.

Given the renewed interest in the new Cooperative Law and registry, there is evidence of positive momentum toward improving the environment for cooperatives. Legal reform alone, however, will be insufficient without adequate institutional support.

FOUNDATIONAL LAWS FOR STARTING A BUSINESS

Of course, in addition to legal, regulatory, and institutional requirements for starting an agribusiness, agriculture is uniquely dependent on access to sufficient quantities and quality of land (including access to water), labor, capital, and technology to thrive. Moreover, for agricultural enterprises to be successful, supporting infrastructure, organized and accessible markets, dynamic entrepreneurs, skilled management, and investment all need to align in favor of the nascent enterprise. Senegal managed to drastically reduce the number of days required to start a business based on the simplification of its regulatory environment—a tremendous achievement that can offer great lessons to other areas of need in the Senegalese business environment. These lessons include *simplification, transparency,* and *timeliness*—three principles crucial to achieving the above-mentioned results. These principles need to be applied well beyond business start-up to the following areas discussed throughout the report, at a minimum:

Potential agribusinesses are offered incentives to start their businesses in Senegal. Noteworthy examples from the Investment Code include:

- Customs exemptions (3 years)
- VAT suspension (3 years)
- Tax credits
    - 40 percent eligible investment
    - Five years
    - 50 percent taxable profit

Exemptions extend to five or eight years if certain conditions of employment generation and distance from Dakar are met.

Land. During this diagnostic, numerous interviewees knowledgeable about land reform commented that the government has no clear priorities or policy at this time. Despite years of attention to land reform in Senegal, and a generally conducive legal framework, securing access to land is the most frequently cited obstacle for doing business in the agricultural sector. While large agribusiness ventures reported no or few problems with securing access to land, individuals and organizations representing smaller enterprises consistently reported that the local authorities charged with land management *(communautés rurales)* impede access to land in their communities. The process was typically cited as "opaque," "personality-driven," and "politically motivated." More than one person knowledgeable about the law described the legal framework for land as "ambiguous." All individuals interviewed confirmed, however, that land being used for "productive" purposes cannot be taken away, with the exception of very narrow circumstances that must be found to exist by a court.

There are no restrictions on the ownership of land by foreigners and in general property rights are well respected, if unevenly applied, especially in rural areas. A legal framework supportive of economic growth will necessarily clarify the role and procedures at both the national as well as the community level. This issue is explored in-depth in this report's chapter on Registering Property.

Labor. The inflexibility of the labor code in Senegal is notorious among agribusiness owners. Because of the relative difficulty in terminating employees, it often makes more sense for business owners to hire short-term, non-contract employees than to hire contract employees. Interviewees generally reported an ability to access a flexible, hard-working cadre of workers, though highly technical functions are often given to expatriates due to the lack of highly trained professionals in the country. Consistent complaints regarding labor included a lack of well-trained managers and individuals knowledgeable about international "best practice" in agriculture. Senegal's border agencies were praised for "substantial" improvements in recent years, especially with respect to easing restrictions on foreign exports. Despite this, human resource constraints are a severe impediment to the start-up of local agribusinesses. For instance, one farm that produces its own seeds for sale on the local market only produces the foundation seed which it then ships to France for multiplication. Its representatives explained that Senegal lacks sufficient expertise to multiply the seeds in sufficient quantity for local markets. Moreover, they said, individuals who are trained in the multiplication techniques tend to move on to other ventures in Senegal or in other countries where the expertise is in demand with higher remuneration. Other major issues pertaining to labor in the agricultural sector are discussed in this report's chapter on Employing Workers.

ACTION PLAN FOR IMPROVING THE *DOING BUSINESS* SCORE IN 2009/2010

- Create a Web site to announce legal changes and for document backup
- Extend the delivery of the company identification number to 48 hours in the 11 regions
- Reduce the cost of creating a company
- Remove the requirements for criminal record check (OHADA rule)
- Reduce the minimum capital requirement

Capital. In Senegal, as elsewhere in the region, access to finance is consistently reported as one of the top impediments to starting and profitably growing an agribusiness. The lack of rural credit is a major constraint to agribusiness development in Senegal.

Since titles are not available for most land, land cannot be used as collateral for agribusiness loans. There exists a "missing middle" in terms of the finance available to enterprises—interviewees suggested that large companies are covered by the commercial banks and micro and small businesses covered by microfinance institutions. Mid-sized companies reportedly have a difficult time accessing start-up finance. Despite this, supply chain financing appears to be growing in strength and is being used by farmers to get the inputs necessary for production. Under the Investment Code, and more recently GOANA, potential agribusinesses are granted generous investment incentives and subsidies on planting material, and exemptions from VAT and customs duties. Start-up capital is explored in greater depth in this report's chapter on Getting Credit.

Technology. Access to planting material that meets international productivity standards is a major impediment to the growth of Senegal's agricultural sector. Individual farmers lack the means to buy hybrid seeds and, until recently, trade barriers prevented groundnut farmers from accessing the most productive planting material from the United States. Most groundnut farmers still do not have access to improved planting material. Larger companies reported that supply of inputs is rarely if ever a problem, with the exception of packaging materials, which can be a frequent and annoying problem.

In sum, with respect to Starting a Business, interviewees consistently noted that the legal and regulatory framework pertaining to agriculture (land, water, food safety, import/export, food processing) tends to be clearly drafted and easy to use. Print copies of law pertaining to agriculture are readily available to members of the legal profession, but were just as frequently unknown to members of the business community. Other than the OHADA laws, laws pertaining to agriculture-related activities are generally not available on Internet sites. Importantly, Senegalese laws reviewed in this diagnostic neither limit foreign involvement in the agriculture sector nor discriminate against the country's citizens, such as women or social castes.

IMPLEMENTING INSTITUTIONS

THE GOVERNMENT OF SENEGAL

Government strategy toward the agricultural sector in Senegal is led by the previously mentioned **Great Agriculture Offensive for Food and Abundance (GOANA)** as well as by the country's **Accelerated Growth Strategy (SCA),** which is substantially drawn from the country's *Strategie de developpement du Secteur Prive* and its *Document de strategie de Reduction de la Pauvrete.* Faced with a global crisis characterized by sharp increases in the price of many of the food staples consumed by Senegalese, the government made food sufficiency a primary goal of its current administration. President Wade personally launched the new initiative in Spring 2008 in response to the food crisis and the ensuing popular unrest that occurred across the country. The GOANA's focus is on priority supply chains, including cereal crops (millet, sorghum, fonio, maize, and rice) and other food crops (cassava and cowpea). An impressive array of literature is available from APIX and other government organs laying out the incentives to invest in these sectors as part of the initiative, the potential for growth, and the obstacles that need to be overcome in order to succeed. Interviewees consistently reported the "political" nature of this strategy, describing it as a "knee jerk" reaction to the crisis of 2008. Private sector business people, small traders, and others commented on the lack of stakeholder engagement in the overall strategy and made clear their unhappiness with the incentives for attracting non-farmers into agriculture.

MINISTRY OF AGRICULTURE

Senegal's Ministry of Agriculture tends to determine its direction based heavily on the policies, programs and politics surrounding REVA and GOANA. As a result, agricultural statistics are artificially inflated and unsubstantiated. The Ministry's trade policy support is not effectively aligned with production policy as the GOS tries to support farmers (via input subsidies) while keeping consumer prices low. Taking fickle political pressures into consideration, the Ministry fluctuates its actions frequently between subsidizing production and blocking imports to protect farmers while at the next moment they are subsidizing imports. In addition, most technical agencies within the Ministry of Agriculture remain unfunded to do their jobs effectively.

KEY IMPLEMENTING INSTITUTIONS

- National Agency of Promotion of Investment and Public Works (Agence de Promotion des Investissements et des Grands Travaux (APIX)
- APIX New Enterprise Support office
- Directorate of Analyses Forecasts and Statistics (DAPS)
- Presidential Investors Council (CPI)
- Cooperatives registry
- Chambers of Commerce, Industry, and Agriculture
- Institutions pertaining to Special Economic Zones, including Dakar Integrated Special Economic Zone and Entreprise Franche d'Exportation

APIX

The central institution for starting a business in Senegal is the **Agency for the Promotion of Investment and Major Projects (APIX).** APIX houses the one-stop shops for investment promotion and business start-up. This is the first stop for residents and foreigners interested in establishing a business in Senegal, with one office in Dakar and two outside of Dakar. APIX is also the place to deal with investment incentives and many other administrative procedures. The agency has shown a deep level of commitment to a simpler registration process, transparency, timeliness, and an improved business-friendly image of Senegal. APIX provides some but not all materials in English.

APIX, created nearly a decade ago by incoming President Wade, reports to the General Secretariat of Senegal's Office of the President. The agency's main tasks are the following:

- Improve Senegalese business environment
- Promote Senegal as an investment location
- Research and identify national and foreign investors
- Follow-up on investment contacts and project evaluations.

In order to streamline the business registration process, APIX created a **New Enterprise Support Office.** This office acts as a central office for four agencies responsible for various administrative procedures, including the following:

1. The *one-stop office,* where all administrative procedures needed to certify an investment project as compliant with Senegal's Investment Code must be completed within 10 days. Decisions on an investor's application for free export company status must be made within 21 days.
2. The *problem-solving office,* which provides assistance to investors in completing administrative requirements and for solving diverse problems that may arise, particularly with respect to access to land.
3. The *investment promotion office,* staffed by investment marketing managers who provide business information and support to initiate a new investment project.
4. The *follow-up and documentation center,* a general source of information and a provider of "aftercare" to investors, provides follow-up services to speed the investment approvals process until the project has been finalized.

Although new business registrants still have the option of dealing directly with each agency, interviewees report that they rarely do. Another notable improvement is the change that allows new businesses to post announcements of their registration on a Ministry of Economy and Finance Web site instead of advertising in the local press. The APIX Web site still needs updating and could benefit from the wide array of forms and publications available in hard copy at the APIX office, which are not available online.

Despite these reforms, it is notable that the one-stop shops at APIX essentially sit on top of the old system of administration. That is, they have not actually reformed the old ways of doing things; rather, they have created newer and better ways of doing things in a parallel system. Unfortunately, these fixes do not address the institutional weaknesses of line ministries involved in the process of business start-up, including institutions responsible for administering permits, licenses, and other types of "use rights." There remain large cracks in the process. For instance, a large company consulted during this diagnostic had been trying to go through APIX for one year but could not get the required permits to start its business as allegedly due to "political reasons." The company was forced to go back through the start-up processes of the year before, but chose to go through the formal government channels in order to get "hard to obtain" licenses more directly.

Reduction of administrative barriers to start a business is not the most pressing business start-up problem in Senegal. Instead, interviewees and past analytical work in Senegal point to electricity, access to finance, and lack of irrigation as the key impediments to start-up in the agricultural sector. Key features noted across each of the responsible agencies for the provision and regulation of these services include:

- National institutions charged with implementing agricultural and rural development policy were reported to have insufficient professional and administrative capacity to carry out their mandate.
- Institutions responsible for implementing agricultural and rural development policy (including the Ministry of Agriculture, the Ministry of Land, the cadastre, irrigation authorities, and other relevant bodies) were reported to have insufficient resources, authority, or support to carry out their mandates.
- Politicization of the agricultural agenda, including frequent policy reversals and "uninformed decisions," is frequently cited as weakening the ability of non-executive actors to do their jobs.

STATISTICAL AGENCIES

Across Senegal, public and not-for-profit actors consistently note the political pressure for GOANA to succeed. Some analysts have noted the threat this poses to the objectivity of state crop production figures and famine early warning systems housed at the **Directorate of Analyses Forecasts and Statistics (DAPS)** and the **Interstate Committee to Fight Desertification in the Sahel (CILSS).** Not only are production numbers reportedly overstated, third-party crop or nutritional surveys have been discouraging and their results reportedly suppressed. For example, in 2008, the government reported that cereal production increased nearly 125 percent.[17] Numerous well-informed interviewees expressed skepticism that the country managed to produce such a large food crop. Moreover, these sources noted, attributing these increases to the GOANA program, as the government has done, is not accurate.

The SCA, on the other hand, takes a more micro approach to improving the enabling environment for agriculture. Initially informed by the Diagnostic Trade Integration Study (DTIS) as part of the larger multidonor integrated framework (IF) process,[18] the SCA targets reforms in five areas with key potential, including agribusiness and fishing. The SCA provides detailed action plans to improve agricultural value chains for domestic and international markets and lays out specific activities for each year to improve the investment climate. More recently the

17 U.S. Department of Agriculture, Foreign Agriculture Service, GAIN Report #SG9001 (January 2009).

18 The Integrated Framework (IF) for Trade-Related Technical Assistance to least-developed countries (LDCs) is a process that was first established in 1997 to support LDC governments in trade capacity building and integrating trade issues into overall national development strategies. *See* www.intergrated-framework.org.

president has noted his desire that his country be ranked among the top 10 African countries of the *Doing Business* rankings by 2010; in the most recent report, issued in September 2009, Senegal ranked 26 out of 46 Sub-Saharan economies. The Presidential Investors Council (CPI) brings together the president and selected investors to find solutions relating to the business environment. The council meets on a regular basis once or twice a year, and is attributed with pushing through more than 100 reforms to date.

In general, data for the agricultural sector are available, but not without substantial obstacles. Data tend to be shared on a person-to-person basis, require hard-copy letters proving what the use is, and lack uniformity of presentation. Each of these points greatly affects the ultimate level of distribution and use. Production, trade, irrigation, and other key statistics tend to differ greatly between sources. Some donors, including USAID, were praised during this diagnostic for their contribution to the availability of statistics. Each of these issues makes sound policy analysis, and policymaking, difficult and less precise.

One noteworthy exception to these issues is the recent analysis produced by APIX for the GOANA initiative. Unlike much of the data and data analysis produced by the state, it was coherent, convincing, and demonstrative of a strong foundation in business and economics. This work should be replicated on a larger scale for infrastructure and other needs.

COMPARATIVE IRRIGATION STATISTICS, SELECTED COUNTRIES OF WEST AFRICA

Country	Total irrigation (ha)	Irrigation potential (ha)	Total irrigated as % of potential
Senegal	**119,680**	**409,000**	**29.3**
Ghana	30,900	1,900,000	1.6
Burkina Faso	25,000	165,000	15.2
Morocco	1,484,000	1,664,000*	89.2
Cote d'Ivoire	72,750	475,000	15.3
Guinea	94,914	520,000	18.2
Nigeria	293,000	2,331,000	12.5

Source: FAO, AQUASTAT Survey, 2005, *=2007 data

COOPERATIVES REGISTRY

This state institution is charged with registering cooperatives. Unlike APIX and other entities involved in registering businesses, the cooperatives registry has suffered from years of neglect, insufficient staff, and facilities (including IT) unsuited for the modern job of promoting and developing a broad base of agricultural cooperatives. Historically, and by some accounts currently, cooperatives have been so highly politicized that their full potential could not be exploited. Some commentators noted the need to move from the term "cooperative" to "farmer-based organization" or some other less political term to connote the grouping without the political bend. Registry staff is familiar with the relevant authority on cooperatives (Law on Cooperatives, 83-07, 1983) but is generally unable to provide even basic statistics on the number, sizes, or types of cooperatives that exist in Senegal.

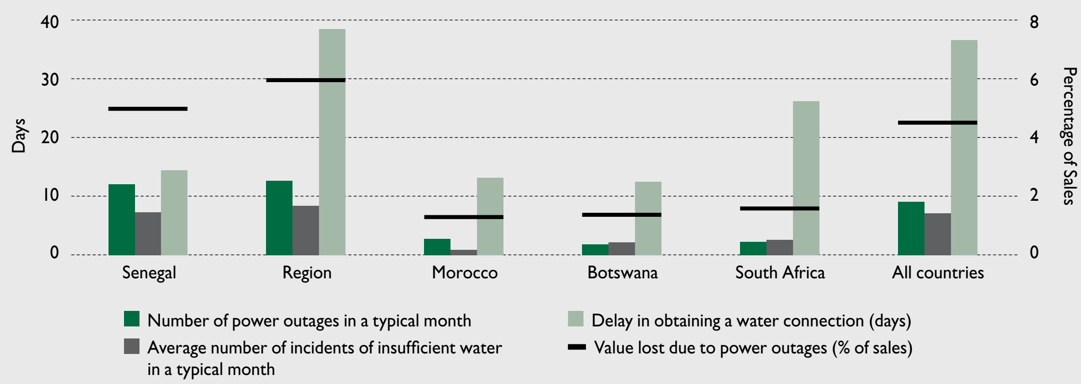
SUPPORTING INSTITUTIONS

Access to fertilizer, seed, and crop protection materials in sufficient quantity and quality is a problem noted by many representatives in the agricultural sector. For example, fertilizer for rice is said to cost upwards of 50 percent of production costs. Inefficiencies in the state's distribution and marketing system are partly to blame: the tender programs are said to be opaque and with substantial graft. Fertilizer, like other inputs in Senegal, is regarded more like a political treat or lever for influence than it is a private commodity that needs to find equilibrium in the markets.

INNOVATION

With a literacy rate of around 39 percent, it is hard to expect a take-off in agricultural production founded on increased productivity from innovation or scaling up of modern technology. The education, research, and development systems in Senegal are not yet conducive to a first-rate agricultural sector. With a university and

COMPARING WATER AND ELECTRICITY CONSTRAINTS



Source: World Bank Group Database, *Enterprise Surveys*

vocational curriculum that is said to be focused more on traditional agricultural development models than on agriculture as a modern business, the foundations for agricultural expansion is weaker than it ought to be. As a professor in Ghana noted during an AgCLIR diagnostic in that country, "Agriculture is no longer a brute force industry. It is a knowledge-based industry."[19] Agriculture extension services that could potentially fill these voids in knowledge or access to technology are said to be in a total state of disrepair. As one farmer noted, "our agriculture extension agents couldn't grow a peanut if they wanted, so how could they help me?" Farmers and others in the agricultural sector noted that agriculture extension services are not providing even the most basic support and need to be revitalized.

KEY SUPPORTING INSTITUTIONS

- Senegalese Institute for Agricultural Research (ISRA)
- Office for Leveling Up of Enterprises (BMN)
- Institute for Food Technology (ITA)
- National Union of Traders and Industrialists of Senegal (UNACOIS)
- Senegal Accelerated Growth and Increased Competitiveness *(SAGIC)*
- West Africa Trade Hub (WATH)
- Agriculture Markets and Agribusiness Development Project (PDMAS)

Senegal is considered lucky among West African nations, having inherited a substantial French research infrastructure focused on agriculture, including the **Senegalese Institute for Agricultural Research (ISRA)** and the **Institute for Food Technology (FTA).** Over the years this has resulted in a regionally competitive R&D system able to provide some level of support to the private sector. While Senegal's agriculture research staff is reported to be some of the most highly qualified in Africa, and rate highly in terms of average expenditure per researcher,[20] private enterprises noted the long list of research, reproduction, testing, and other scientific activities that need to take place outside of the country. The challenge of working increased innovation into Senegal's agriculture sector is at least threefold:

- **Minimal financing exists for research and development.** The country is still well below 1980 public agricultural research expenditures and, according to most interviewees, well below the level at which R&D would be useful to a wider agricultural community. Moreover, government staff reported the inability for long-term planning given the short and sometimes erratic funding by donors in this sector.
- **The ISRA and the Institute for Food Technology (ITA) need more qualified staff.** Both institutions report significant outflows of staff to the private sector based

19 USAID/Booz Allen Hamilton, AgCLIR Ghana at 1 (November 2008).

20 Agriculture Science and Technology Indicators, Senegal Country Brief, No. 26 (2004).

on the higher salaries and what one former ISRA researcher reported to be "the lack of clear goals." The ISRA is reportedly on the verge of a large outflow of retirees, with no plan to replace these staff.

- **Scaling up.** The ability to bring newly developed varieties to scale is endemic. Neither the private nor public sector reported an ability to scale their research investments to the extent necessary for national impact. One key impediment to this is the weakness at the **National Agency for Rural Extension,** which is reported not to have either the means or background to sufficiently scale the distribution of new varietals or technologies.

INFRASTRUCTURE

Lack of electricity and lack of water were consistently described as two of the top three most severe impediments (in addition to dealing with land) to the start-up and growth of agribusinesses all along agriculture value chains. Even where the national grid had reached pack houses and farm gates, companies said that electricity costs made up 50 to 70 percent of operating costs. Where the grid did exist, it was reportedly not as reliable as users needed. One user in particular noted the extreme risk of losing his entire crop should his irrigation pumps go down for the day. As shown in the table below, Senegal compares well by regional standards, but poorly by African benchmark countries in terms of the number of power outages per month and the average number of incidents of insufficient water in a typical month. One survey noted that Senegalese business loses upwards of 6 percent of sales due to power outages. An even greater number of businesses never start because they are not viable given the *private* infrastructure costs associated with running a business.

CORRUPTION IN THE NEIGHBORHOOD: HOW SENEGAL FARES RELATIVE TO ITS NEIGHBORS IN THE CORRUPTION PERCEPTION INDEX (180 COUNTRIES SURVEYED)

Country	World Ranking	Score
Benin	96	3.1
Burkina Faso	80	3.5
Cote d'Ivoire	151	2.0
Ghana	67	3.9
Nigeria	121	2.7
Senegal	**85**	**3.4**
Togo	121	2.7

Source: Transparency International, *Corruption Perception Index* (2008). Scored on a scale of 1 to 10, with 10 being best (perceived as the least corrupt).

SOCIAL DYNAMICS

Most descriptions of Senegal hold the country up as a model democracy for the rest of Africa. There is a tradition of competition among parties and a long string of civilian rule. Moreover, Senegal has long enjoyed a vibrant news media, which is considered well informed and relatively unbiased. Reports exist about self-censorship, based on a law that does not allow reporters to "discredit" the state or disseminate "false news." Despite this legal background, private media are reported to criticize the various bodies of the government at will.

CORRUPTION

Notwithstanding the country's relatively strong showing for the region, Senegalese business people, civil society, and government all reported high levels of corruption. Many private sector actors reported corruption as one of the leading obstacles to an improved business environment. Senegal ranks 85 out of 180 countries surveyed in 2008 for Transparency International's Corruption Perceptions Index. And in 2006 the Organisation for Economic Co-operation and Development (OECD) reportedly raised the issue of "the ability of the State to manage major projects with transparency."[21] The state has taken action to stem corruption through, for example, the adoption of a new public procurement code (Decree 2007-545). Persistent reports of corruption in the land acquisition process and judiciary deserve enhanced attention.

As in many former socialist states, citizens in Senegal look to the state as "well endowed"

21 African Development Bank/Organization for Economic Cooperation and Development, *Africa Economic Outlook* (Senegal) (2005–2006).

PREFERENCE FOR RICE TYPES IN RURAL AND URBAN AREAS				
	RURAL		URBAN	
Rice types	Observations	Percent	Observations	Percent
Local whole	79	52.7	35	10.0
Local intermediate	33	22.0	27	7.7
Local broken	21	14.0	79	22.6
Imported whole	3	2.0	46	13.1
Imported intermediate	6	4.0	48	13.7
Imported broken	8	5.3	115	32.9
Number of observations	150		350	

Source: Fall and Diagne (2008)

with resources and as responsible for assuring their well-being. Across Senegal, private, public, and non-profits alike frequently noted their desire for the state to play an even *larger* role in everyday economic affairs. Demands ranged from increased subsidies for fuel and food to higher tariffs on imported products. None of these arguments is without merit. This pressure seems to have resulted in the activist state seen today. Unfortunately, as one observer noted, the "government tries to protect consumers and producers at the same time," usually without regard to the benefits of competition through the extensive use of input subsidies, specific duties, and price controls. But, as this commentator further noted, "Governments can only do that if they have a lot of money, which the government of Senegal does not." So while Ministry of Agriculture received 5 percent of the government budget in 2008, the country is still far from meeting the Comprehensive Africa Agriculture Development Programme (CAADP) goal of 10 percent of budgetary expenditures going toward agriculture. This is a strong argument for smarter aid and increased prioritization of agriculture.

Such large amounts of government intervention in agricultural markets are bound to be highly politicized—and indeed they are. Two of the most damning critiques were (1) the necessity to have "political sources of support" in order to start up an agribusiness of any size; and (2) the very political production campaign combined with the government's frequent inability to admit failure.

MARKETS

As detailed in this report's chapters on Dealing with Licenses and Competing Fairly, entrepreneurs face the challenge of heavy state involvement and price ceilings on basic foodstuffs at every level of the value chain, including processing, transporting, and marketing. Import restrictions and interference in energy markets further add to unpredictability in the environment for agricultural enterprise. Often state support is extended for industries considered in decline, if not moribund, such as cotton, which continues for reasons of political necessity more than economic need. Unfortunately, the opportunity cost of this support in terms of other more productive needs, including extension services, is quite high.

There are domestic, regional, and international markets that regularly deal in the agricultural commodities that Senegal produces. In some products, including maize, rice, green beans, cherry tomato, mango, and melon, consumer markets are demanding Senegalese products. Despite this demand, interviews with producers, cooperatives, and other market actors suggested that poor market infrastructure linkages essentially split the country into a series of three "nations": the north, the south, and the east. As described by one observer: "Dakar is not a viable market for the maize from the East. It's easier to unload a boat full of maize than it is

to collect and move it from a thousand different farmers in the East." As more than one trader noted during this diagnostic, it tends to be easier to trade with European countries than it is to trade in volume regionally and often within Senegal. There is no boat or air connection with the southern region and only a poor road connection to the east. This leaves the only option of driving through Tambacounda on "roads that break cars," as one interviewee put it. The alternative is to go through the Gambia and wait for a small ferry that has a record of delays and is a magnet for "informal payments." Transport infrastructure to the north of the country is considered reasonable.

Poor physical connectivity in Senegal and beyond is complicated by relatively weak market information. Market prices and opportunities are discovered via informal means and more recently through the private Manobi system. The Agency for Market Regulation (ARM) is building its own system using field surveyors and public phone lines to collect and disseminate data. The ARM is charged with monitoring the supply of food products between regions, but it lacks a mandate to play a role in regional stock management. The Ministry of Commerce takes the lead in tracking prices in surrounding countries.

During this diagnostic, a lack of an effective operational link between ARM and the Ministry of Commerce was described as a critical impediment to better management of national food supply in times of food scarcity. The Inter-State Council for the Mitigation of Drought and Desertification in the Sahel *(Comité Inter États de Lutte contre la Sécheresse au Sahel* (CILLS)) circulates production balance sheets that would be helpful for policymakers during emergency situations. Domestic production figures reportedly need to be depoliticized first to allow the government to properly analyze these figures and be more forward-looking in its requests for food aid. Food aid is said to suffer from poor timing and reportedly arrives in amounts that do not necessarily reflect the needs at hand (too much or too little), exaggerating already serious price fluctuations in local markets.

Senegalese farmers and Farmer Based Organizations (FBOs) stand to benefit from increased availability of market information proposed by ARM. They would gain a lot from collaboration with USDA's Agriculture Marketing Service Federal-State Market News Service (FSMNS), which gathers and disseminates price data for 300 different fresh fruit and vegetable commodities in 31 markets in North America and Europe, from 181 different shipping points. Access to information is free of charge and available online.[22]

DONOR AGENCIES

Donors in the agriculture development space across Senegal characterize their own coordination of agriculture-related development assistance as "poor" and "ad hoc." None of the donors consulted during this diagnostic, representing a variety of bilateral and multilateral agencies, gave compelling reasons for this absence of coordination or sharing of best practices. A number of donors expressed skepticism at the potential for improving this coordination but understood its importance. Clearly this gap needs to be overcome for the sake of leveraging scarce resources through coordination and collaboration.

22 *See* http://www.ams.usda.gov/AMSv1.0/.

According to the Ministry of Agriculture and donors interviewed for this report, donors actively support Senegal's Accelerated Growth Strategy. Donors fund value chain–related interventions (bilateral cooperation), hard infrastructure (e.g., multilateral cooperation institutions), extension services, and to a lesser extent policy-related interventions.

AGRICULTURE MARKET BEHAVIOR

As described at the outset of this chapter, no other country in Sub-Saharan Africa is so dependent on food imports as Senegal. Rice supplies, the basis of the national diet,[23] fall short of demand on an annual basis. At the same time, Senegal's urban consumers are said to be unfamiliar with the characteristics of domestically produced rice. In contrast, foreign rice is said to be well known through efficient use of marketing and branding efforts.[24]

With this in mind, it is worth pointing out that government programs such as GOANA tend to focus on the production side of the equation, while marketing and logistics may well be more important issues to address. Agricultural investment opportunities are reported to far exceed the number of interested investors. With only 2 percent of lending going to the agricultural sector, and a general perception of risk pervading the agricultural sector, there is a strong argument for pursuing the policies set out under GOANA and managed by APIX to attract investors.

In general, numerous holes appear to exist in the government's plan to ramp up Senegalese agriculture to the point of self-sufficiency, namely:

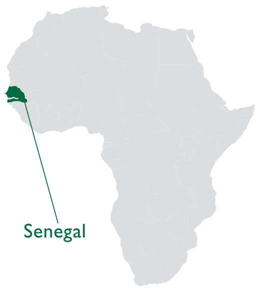
- **Unrealistic goals.** No analyst interviewed for this diagnostic agreed with the government's claim that self-sufficiency will be reached in the short term.
- **A focus on external actors.** Time and again Senegalese business people noted their incredulity with the government's decision to focus its attention on individuals and companies that are not currently in the agricultural sector. While it may seem easier to facilitate the entrance of new, well-capitalized investors, only when the constraints to SMEs already operating in the agricultural sector are lifted will economic growth truly take off.
- **Overemphasis on production.** Large quantities of product continue to rot at the farm gate. Local rice continues to be bypassed due to lack of familiarity among consumers. The government needs to focus on constraints facing the agribusiness sector that affect not only producers, but also transporters, millers, marketing agents, and other key players in local value chains. In sum, agriculture needs to be considered well beyond the producer.

RECOMMENDATIONS

- Build awareness of public, private and donor programs available to assist agribusinesses through radio, television, and billboard programs.
- Strengthen the Ministry of Agriculture's extension program.
- Broaden the scope of GOANA and future agricultural initiatives to include key infrastructure and support service constraints including power, water, and transportation.
- Create incentives for students to study agriculture-related fields in secondary and post-secondary settings and work with the private sector to ensure that current curriculum meets their current and future needs.
- Deepen the expertise and incentives offered by APIX to send an unambiguous signal to the market that Senegal is a destination for agribusiness.
- Continue to focus on cooperatives as a locus of agribusiness growth, specifically focusing on (1) legal reform, (2) institutional strengthening, and (3) internal organization/management.

23 In urban areas, rice accounts for 54% of cereal consumption and 18% of total household spending. In rural areas, rice is 24% of cereal consumption and as much as 25% of total household spending.

24 Amadou Fall & Aliou Diagne, "Etude de Relation Qualité-Prix du Riz Produit dans la Vallée du Fleuve Sénégal" (ISRA-IRA-ADRAO-SAED-CIRIZ: Février 2008).



COMPETING FAIRLY[25]

Like other sectors of the economy, agriculture in Senegal is generally subject to free-market competition. Stakeholders in Senegal, however, are concerned about anticompetitive conduct suspected in certain segments of the sector, including wheat imports, tomatoes, sugar, and rice. For example, stakeholders noted that recent wheat prices in Senegal have been significantly higher than in the Ivory Coast, where private sector competition is more vigorous.

The concerns expressed by stakeholders in Senegal are consistent with a 2007 World Bank report on its country assistance strategy for Senegal, which cited "collusive behaviors by a few dominant firms [that] have produced significant costs for local consumers," noting sugar and groundnuts as examples.[26] The report then details the impact of competition, stating:

> *A recent Bank study indicates that the sugar sector in Senegal is under the monopoly of one company…which benefits from relatively high protection levels. As a result, the consumer price of sugar is about US$1 per kilogram in Senegal, while it is US$0.4 in Sri Lanka and US$0.5 in The Gambia. Such a price differential has significant implications for poverty levels in Senegal since it is estimated that the number of people living in poverty would decline by 200,000 or by almost 2 percentage points if the sugar price were cut by half or equal to the one prevailing in The Gambia.*

In other words, according to the World Bank, significant poverty-reducing effects could be achieved by the application of competition principles in just one agricultural market.

Senegal's competition regime faces challenges in addressing competition concerns in the agricultural sector. Though the country has had a competition law in place since 1994, it is not effectively enforced at the moment. The National Competition Commission lacks the resources to investigate and prosecute violations of the competition law. The Ministry of Commerce, which shares jurisdiction for enforcing competition law, is similarly resource-constrained, largely because its limited competition resources are devoted to a number of activities other than traditional competition enforcement. As a result, there is no effective check on collusive behavior or abuses of dominant positions.

In sum, significant competition problems in the agricultural sector persist. Addressing these problems should produce lower prices and thus help reduce poverty. Senegal's competition law is largely adequate to the task, but several steps need to be taken to improve the ability of implementing institutions to address competition issues and enhance consumer welfare, as detailed below.

LEGAL FRAMEWORK

International competition laws, including antitrust laws in the United States, generally proscribe three core anticompetitive practices:

1. Collusive agreements among businesses to fix prices or limit output;
2. Abuse of a monopoly or dominant position; and
3. Mergers or acquisitions that unduly reduce competition or create a dominant position.

Though laws vary among jurisdictions, international experience suggests that competition laws prohibiting these practices are critical to ensuring a smooth-functioning market economy.

Businesses in Senegal, including agribusinesses, are subject to two sets of competition laws: (1)

25 Unlike the other 9 chapters of this report, "Competing Fairly" is not a standard area of inquiry under the AgCLIR diagnostic methodology. This section was included based on interest from local stakeholders and the US Federal Trade Commission. There is no indicator scoring for this chapter.

26 *See* International Development Association and International Finance Corporation, *Country Assistance Strategy for the Republic of Senegal for the Period FY07-10* (May 2, 2007), at 15.

Senegal's national competition law; and (2) competition law of the West African Economic and Monetary Union (WAEMU). These laws provide a workable framework for addressing core competition concerns.

SENEGAL'S NATIONAL COMPETITION LAW

Senegal has been a pioneer among West African nations in instituting a competition regime. Senegal enacted a national competition law in 1994 as part of a general liberalization of its economy.[27] That law, Law 94-63, was modeled on French competition law and addresses two out of the three core competition concerns listed above: (1) agreements that restrict free competition (Article 24); and (2) abuse of a dominant position (Article 27). Law 94-63 does not contain provisions directed specifically at anticompetitive mergers, though Article 24 could in theory be applied.

KEY LAWS

- Senegal National Law
  - Law No. 94-63
  - Decree No. 95-77
  - Decree No. 96-343
- WAEMU Treaty (Treaty of Dakar), Articles 88-90 and accompanying regulations and directives

While Senegal's competition law is generally designed to promote competitive market-based prices, it notably provides an exception that allows the state to take "temporary measures" to fix prices in response to extraordinary conditions. This provision, Article 43 of Law 94-63, has been invoked frequently by the government in recent years to set prices for staple foods and other widely used products.

Though a number of international competition laws exempt certain activities within the agricultural sector from competition law, Senegal's does not. However, no investigation of anticompetitive activities within the agricultural sector has been made, nor has any enforcement action been taken within the sector, despite widespread suspicions of anticompetitive conduct. This is largely due to resource constraints and uncertainty about the role of national competition authorities, discussed later in this chapter.

WAEMU LAW

The WAEMU law also contains provisions prohibiting anticompetitive activity. Article 88 of the Treaty of Dakar, which created the WAEMU in 1994, prohibits agreements that distort free competition and abuse of a dominant position. Implementing legislation passed by the WAEMU in 2002 provides further detail as to prohibited practices. Among other things, WAEMU Regulation No. 02/2002 prohibits mergers that create or strengthen a dominant position.

A somewhat open question is the extent to which WAEMU competition law has preempted or should preempt application of Senegal's national competition law.

ADEQUACY AND APPLICATION OF SENEGAL AND WAEMU LAW

Senegal and WAEMU competition laws generally provide a workable framework for combating anticompetitive activity. While Senegal's competition law could benefit from updating,[28] its provisions generally address the types of collusive behaviors in the agricultural industry raised as a concern by a number of stakeholders. In 2000, the WAEMU Court of Justice issued an advisory opinion holding that, under the Treaty of Dakar, competition law may be applied exclusively at the community level.[29] This was followed in 2002 by a directive issued by the WAEMU Council of Ministers reiterating the primacy of the WAEMU Commission over national competition authorities.[30] Under the directive, Senegal's national competition authorities are limited largely to conducting studies and referring complaints to the WAEMU Commission for decision. In practice, however, neither Senegal's national authorities nor the WAEMU Commission is actively investigating

27 For a more detailed history of Senegal's competition law, see United Nations Conference on Trade and Development, *Voluntary Peer Review of Competition Policies of WAEMU, Benin and Senegal* (2007).

28 It is worth noting, for example, that France's competition law, on which Senegal's law was based, has been updated since 1994, including through significant revisions passed in 2008.

29 *See* WAEMU Court of Justice Opinion No. 003/2000 (June 27, 2000).

30 *See* Directive No. 02/2002/CM/WAEMU.

allegations of anticompetitive behavior within the agricultural sector.

A key concern of a number of stakeholders in Senegal, however, is the relationship between Senegalese and WAEMU competition law. The long-held position of the competition community in Senegal has been that Senegalese competition law should apply to anticompetitive practices within Senegal, while WAEMU competition law should apply to anticompetitive practices having effects throughout the WAEMU. This framework would generally match the application of national and community laws in the European Union. Senegal's competition authorities have felt slightly hampered, however, by the 2002 directive of the WAEMU Council of Ministers declaring that competition law should be enforced exclusively at the community level. Clarifying the role of the national competition authorities under the WAEMU framework would bolster the ability of Senegal's authorities to address anticompetitive conduct.

An effort to update WAEMU competition law is reportedly underway through the auspices of the OHADA, and this effort should clarify the role of national competition authorities. The legal framework should give a role for national authorities, given the difficulties the WEAMU Commission faces in investigating anticompetitive conduct in Senegal.

CONSUMER PROTECTION

In many countries, including the United States, consumer protection laws are often enforced in close conjunction with competition laws. Consumer protection laws complement competition laws because they protect consumer buying power and prevent artificial increases in demand for products, for example, by prohibiting the dissemination of misleading information (e.g., false advertising or deceptive labeling).

Senegal does not have an overarching consumer protection or consumption law. A number of laws, however, protect consumers from unsafe food products and deceptive labeling. Under

KEY IMPLEMENTING INSTITUTIONS

- Senegal National Competition Commission
- Senegal Ministry of Commerce, Directorate of Internal Trade, Competition Division
- WAEMU Commission, Department of Regional Market, Commerce, Competition and Cooperation, Directorate of Competition

Law 66-48 and implementing decrees, for example, the Ministry of Commerce conducts pre-approval testing on processed foods and checks the accuracy of weights and measures used in local markets.

One challenge, as in other areas of the assessment, is the gap between the law and actual practice. Stakeholders reported a number of concerns on consumer protection issues as to food products. As one example, a study of domestically packaged sugar showed that packages were consistently underweight. Stakeholders expressed concerns about the quality of other food products, as well. While the Ministry of Commerce appears to carefully test processed food products before approval, ongoing spot-testing and law enforcement could be improved.

IMPLEMENTING INSTITUTIONS

The key institutions responsible for enforcing Senegal's national competition law are (1) the National Competition Commission; and (2) the Ministry of Commerce. The key institution responsible for implementing the WAEMU competition law is the WAEMU Commission.

NATIONAL COMPETITION COMMISSION

Senegal's National Competition Commission, established by Law 94-63, is comprised of six principal members and three alternates. The commission also has a General Secretary, a role currently filled by an official in the Ministry of Commerce. The independent commission is empowered to hear cases related to anticompetitive practices, issue decisions, and impose

FERTILIZER MARKET

As a case study in competitive dynamics, the assessment focused on fertilizer markets, in part because it is universally agreed that agricultural productivity depends heavily on widespread, efficient fertilizer use. The assessment highlighted significant competitive distortions in fertilizer markets, in large part arising from a state subsidy program.

The vast majority of fertilizers distributed in Senegal are subsidized. Senegal's fertilizer subsidy program operates through a tender process. Private companies are invited to submit bids to the state, which selects suppliers. The selected suppliers distribute fertilizers to farmers and are entitled to receive a portion of the price of the fertilizer from the state. The amount of the subsidy has varied by year and by fertilizer, though in the most recent campaign all covered fertilizers were subsidized at a 50% level. Suppliers collect half of the price of the fertilizer from the farmer, and are entitled at the end of the campaign to collect the other half of the price from the state.

There was widespread agreement among stakeholders as to a number of problems in the operation of the subsidy program, including:

- The tender program has not operated in a transparent manner. Stakeholders stated that bids were not always evaluated solely on the merits, but rather affected by pecuniary corruption or political influence. Because of the unpredictability of the tender process, Senegalese suppliers are reluctant to purchase inventory when international prices are low, lest they wind up not winning the tender. Given the extreme recent volatility in international fertilizer prices (see box), this is a significant issue.
- Fertilizer distribution has been beset by corruption. The subsidy program is designed to target small farmers, and farmers must establish their eligibility by getting approval from various local officials. The distribution process presents opportunities, however, for officials to obtain excess fertilizer, for example by overstating the amount of fertilizer needed at a particular farm. There is an incentive to do so because subsidized fertilizer can be resold in the black market for a profit. Numerous stakeholders reported the existence of a thriving black market in fertilizer sales to Mauritania, Gambia, and Guinea-Bissau.
- The state has not always paid its bills to fertilizer suppliers in a timely manner. Though the state is supposed to pay the subsidized portion of fertilizer prices to suppliers, it does not always do so in a timely manner. This makes it difficult for suppliers to continue in the business and fund fertilizer purchases for the next campaign. At least one major supplier has largely withdrawn from the market because of difficulties in obtaining funds owed by the state. Though the government has committed to reducing payment delays to the private sector, our assessment suggested that as to fertilizers, the problem has not yet been resolved.

To many stakeholders, the bottom line is that the intended benefits of the subsidy program are not reaching the intended beneficiary, the small farmer. Some stakeholders even questioned whether amounts lost to corrupt practices defeat the entire purpose of the subsidy, such that farmers would be better off without the program—though others believe that some sort of subsidy program is necessary.

SENEGAL ANNUAL FERTILIZER CONSUMPTION (TONS)

1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
22,900	25,600	37,800	38,200	29,900	35,970	32,070	37,970	30,840	21,900

Source: FAO Statistics, available at <http://faostat.fao.org/site/575/default.aspx>.

sanctions and/or injunctions. Commission decisions may be appealed to the Supreme Court. In addition, the commission may produce reports and otherwise advocate on competition issues.

The members of the commission operate essentially on a volunteer basis. For example, the current president of the commission is a Supreme Court Justice. The current first vice president is a professor of law at Cheikh Anta Diop University. Other members represent the private sector, civil society, and the judicial branch of the government. The National Competition Commission has no staff, no office, no Web site, and no telephone number. Nor does it have an independent funding source. Rather, it is funded through the Ministry of Commerce. The commission relies on the investigative staff of the Ministry of Commerce to conduct any investigations of anticompetitive activity.

While public resources are limited in Senegal, experience in similarly situated countries suggests that it is feasible to staff a competition agency. In Zambia, for example, the competition commission has a staff of about 20–25. In Tanzania, the competition commission has a staff of about 40. Placing human resources in the independent competition commission would be consistent with international best practices and recent competition reforms in France, which served as a model for Senegal's competition law when it was enacted in 1994.[31] Providing resources to the competition commission could reduce the gap between the law, which prohibits anticompetitive conduct, and current anticompetitive practices in the agricultural sector. This could in turn lower consumer prices and have positive poverty-reducing effects.

MINISTRY OF COMMERCE

Within the Ministry of Commerce, the Competition Division in the Directorate of Internal Trade has responsibilities for enforcing the provisions of Law 94-63. The Competition Division is headed by a director with seven staff members working under him. This staff is the primary resource for investigations of anticompetitive conduct. The staff reports through the Directorate of Internal Trade to the Minister of Commerce.

HUMAN RESOURCE CONSTRAINTS

- Staff of National Competition Commission: 0
- Staff of Competition Division, Ministry of Commerce: 8
- Staff of Competition Directorate, WAEMU Commission: 3

The Competition Division has a number of responsibilities in addition to its mandate to enforce competition rules. Most significantly, the Competition Division is heavily involved in setting prices and/or margins for staple foods under "temporary" measures taken under Law 94-63. For example, prices and/or margins for at least rice, sugar, milk, bread, and vegetable oil were fixed by the state during the time of the assessment. As to rice, for example, the state fixes margins for importers, wholesalers, and retailers (e.g., 15 CFA per kg for retailers, or 5,000 CFA per ton for wholesalers).

While the goal of the state's intervention is noble—to protect consumers from high international food prices—the assessment highlighted the costs of the program as well. First, some stakeholders in the private sector suggested that state-mandated margins might serve as a disincentive to expand business operations. In the long run, setting conditions that encourage entry by numerous private sector competitors may more effectively boost output and lower prices. Second, the program appears to consume a significant amount of state resources, including the human resources of the Competition Division. Other staff within the Ministry of Commerce, particularly in the regional offices, expend significant resources enforcing mandated prices in local markets. Finally, there appears to be something of a disconnect between Law 94-63—which provides for only "temporary" price fixing by the

31 In Senegal, this could perhaps be accomplished by shifting resources within the government. In particular, the government's recent commitment to phase out certain subsidy programs may free human resources that had overseen these programs. *See* Government of Senegal, *Memorandum of Economic and Financial Policies* (transmitted to IMF Dec. 5, 2008), at 42.

state—and the ongoing program to set prices for staple products.

WAEMU COMMISSION

The WAEMU Commission is composed of seven departments, one of which is the Department of Regional Market, Commerce, Competition and Cooperation (DMRC), based in Ouagadougou, Burkina Faso. Within the DMRC, the Directorate of Competition is responsible for enforcing competition law throughout the WAEMU. The Directorate of Competition has three staff members. This level of staffing is insufficient to provide effective enforcement of competition law, especially given (1) the distance between Ouagadougou and "facts on the ground" in Senegal; and (2) the theoretical exclusive jurisdiction of the WAEMU Commission over competition law in all eight member states.

ADEQUACY OF IMPLEMENTING INSTITUTIONS

Largely because of the above-noted resource constraints, neither the national nor the WAEMU authorities effectively enforce competition law and policy in Senegal. While the Ministry of Commerce has somewhat more resources than the National Competition Commission, which has virtually none, the ministry's activities are not principally directed toward investigating anticompetitive behaviors (i.e., cartel agreements and abuses of dominant positions). In addition, there is some question whether the Ministry of Commerce is effectively positioned to avoid political influence in its work. Dominant firms often have significant political connections in Senegal, and enforcing the competition laws against these companies could be challenging from a political perspective.

Both the Competition Commission and the Ministry of Commerce could benefit from technical assistance from foreign governments or other international bodies, particularly in the areas of investigative techniques, competition economics, and competition advocacy.

KEY SUPPORTING INSTITUTIONS

- Legal profession
- Courts
- Office of the President

SUPPORTING INSTITUTIONS

LEGAL PROFESSION

Competition law expertise appears not to be particularly widespread among Senegal's legal community. This is not, however, because of a lack of capacity or learning in the bar. Rather, it largely reflects the lack of competition law activity since passage of the competition law in 1994. Indeed, Senegal's legal community appears to be well positioned to support a competition law regime and promote a culture of competition should public authorities more actively enforce the law.

COURTS

Because a legal framework providing clear rules in areas such as contracts, property rights, business association, securities, and bankruptcy is a necessary element of any competition regime, the court system is an important supporting institution. Interviews with a number of stakeholders suggested significant shortcomings within the court system. Most significantly, legal outcomes are often difficult to predict because of potential corruption, whether through pecuniary bribes or political influence. In addition, resolution of commercial disputes is often time-consuming and inefficient—a problem the government has recently vowed to address.[32]

OFFICE OF THE PRESIDENT

A number of interviewees suggested the strong influence of the Office of the President in almost all facets of Senegal's economy and government, and the competition regime is no exception. Without presidential support, Senegal's competition regime is unlikely to succeed.

32 *See* Government of Senegal, *Memorandum of Economic and Financial Policies* (transmitted to IMF June 5, 2009), at 11.

SOCIAL DYNAMICS

DISCONNECT BETWEEN SENEGAL'S COMPETITION LAW AND ACTUAL PRACTICE

Competition law and policy is effectively not enforced, and collusive practices appear to be ongoing in the agricultural sector. In addition, the law provides for "temporary" interventions by the state to set certain prices, yet the state's intervention appears to be active and ongoing.

This disconnect may be due to the fact that a culture of competition has not firmly taken hold in Senegal. Though the economy has liberalized in recent decades, interviews with numerous stakeholders highlighted a widespread expectation that the state should be heavily involved in directing the economy—and a corresponding lack of appreciation of the benefits of competition. Though many business operators compete aggressively, not all politicians and government officials fully appreciate core competition principles.

ABSENCE OF BASIC KNOWLEDGE

Collusive practices are unlikely to abate until basic knowledge of competition principles becomes more widespread. This, in turn, is unlikely to happen without education efforts and enforcement of the competition law, including some well-publicized cases. Law enforcement is a powerful deterrent in any area of the law, and competition law is no exception.

RECOMMENDATIONS

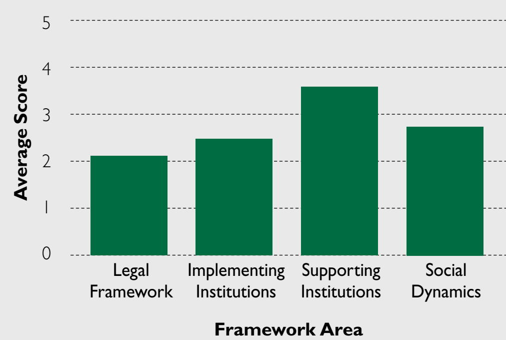
- Provide the Competition Commission with staff resources to investigate anti-competitive conduct.
- Conduct capacity-building programs with competition authorities. Technical assistance could include short-term training programs, longer-term resident advisers, and/or staff exchanges with established competition authorities in other countries.
- Provide the Competition Commission with independent funding, rather than funding the commission through the Ministry of Commerce.
- At the WAEMU level, clarify the respective roles of national and community competition law.
- Partner with the media to publicize competition issues.
- Conduct an independent cost-benefit analysis of the state's input subsidy regime.
- Remove political influence from the tender process for inputs, eliminate corruption, and better target farmers.
- Consider the need for a broad consumer protection law.
- Address corruption in the court system.
- Support capacity-building programs for the Ministry of Commerce and other implementing institutions, including consumer associations.

DEALING WITH LICENSES

Senegal's environment for licensing activities associated with agricultural enterprise, although not applied consistently throughout the sector, has taken strides in recent years toward greater efficiency with respect to business licensing and management of farm inputs, such as pesticides, seed, and fertilizer. Efforts to expand the country's trade in agricultural goods have encouraged more efficient and cost-effective international exports. Serious regulatory constraints remain, however, with respect to continued government price controls on key commodities, as well as to the capacity of state institutions to implement the regulations it sets. These constraints must be addressed if Senegal is to meet its goals in the sector.

DEALING WITH LICENSES	
Doing Business Ranking 2010	124
Doing Business Ranking 2009	121
Procedures (number)	16
Duration (days)	220
Cost (% gross national income per capita)	463.1

DEALING WITH LICENSES



Senegal's six primary regions—Dakar, Saint Louis, Kaolack, Tambacounda, Kolda (Diaobe market place), and Ziguimchor—are representative of the country's agribusiness economy. The constraints and challenges of the state's licensing regime are common across all regional sectors. In contrast, the Dakar Integrated Special Economic Zone (DISEZ) demonstrates the potential for streamlined agricultural processes across Senegal by creating a viable model for investments in the sector.

Senegal's laws relating to licensing of agricultural enterprises are generally accessible, easy to understand, and structured to encourage importation of agribusiness goods that contribute to development across the entire region.[33] The legal framework allows for competitive sourcing, certification of quality, and minimal import tariffs. It also includes provisions for agricultural inputs and chemicals, property development, and the export of goods. Notwithstanding this generally sound legal environment, national and regional institutions charged with implementing agricultural and rural development policy typically have insufficient professional and administrative capacity to carry out their mandates. Moreover, as discussed in this chapter's section on Social Dynamics, profound limitations in the real property regime overshadow the overall effectiveness of Senegal's licensing environment for the agricultural sector.

LEGAL FRAMEWORK

Provided they do not unduly restrict access to a particular sector, and do not stifle innovation and investment by overregulation, licenses have a legitimate place in a country's regulatory system. These include licensing provisions for business formation and growth, the

33 All of Senegal's major civil and criminal laws can be found online at http://www.senlex.com/ (French only).

sale and distribution of agricultural inputs and chemicals, property development, and agricultural exports.

Although legal and institutional reforms continue to be needed in Senegal, these should be designed with care, because overregulation tends to stifle growth and progress. Where the regulatory burden is large, entrepreneurs tend not to comply with the licensing requirements and resist moving their activities from the informal into the formal economy. There they typically continue to operate with less concern for safety and compliance with responsible business practices, to the detriment of all.

BUSINESS LICENSES

In Senegal, individuals, local companies, and branches of foreign companies may run a business with a license. A Senegalese company may be a joint stock company, a limited liability company, or a single proprietorship in accordance with the Civil and Commercial Code. Minimum equity capital is CFA 500,000 for joint stock companies and CFA 2 million for limited liability companies with a minimum of seven shareholders. The shareholders may be individuals, public bodies, or other companies. Specific regulations apply to public companies. Limited liability companies or branches of a foreign company are the most common entities operating a business in Senegal.

Small business. For small businesses, licenses are relatively easy to come by with the help of institutions such as the Chambers of Commerce, discussed later in this chapter. Easy access to licensing legitimizes the business in the eyes of customers, and protects the business from financial penalties when operating outside of required regulations. The small business license is vital for promotion of the business across regions and territories, and it has been observed that licensed business have generally proven more successful than businesses operating without administrative sanctions.

KEY POLICY AND LAWS

- OHADA Uniform Act relating to Commercial Companies and Economic Group Partnerships (1998)
- Investment Code (2004)
- Law and policy pertaining to special economic zones
- Laws regulating the sale and distribution of seed, fertilizer, pesticides and herbicides, including pesticide control regulations of the Committee for Drought Control in the Sahel (CILSS)
- Price control policies and regulations
- Laws that promote the domestic development of bio-fuels and reasonably priced energy for agricultural and rural-sector production
- Land use and zoning laws
- Export laws and regulations
- General business laws and regulations pertaining to tax, social security, health insurance, environmental impact of business, export/import, labor, and specific business permits and licenses (construction, food safety, health, tourism, etc.).

Licensing of joint ventures. The Senegalese investment code provides incentives for individuals as well as joint venture business operations. However, limited equity financing by many Senegalese investors means the foreign investor may need to be prepared to provide most investment capital for a joint venture.

Special economic zones. Senegal's free trade zone initiatives have largely been replaced with the *Entreprise Franche d'Exportation* (EFE), which reduce taxes and provides for duty-free imports to companies located within these zones. The old Dakar free industrial zone (ZFID) is virtually inactive and stopped issuing new licenses in 1999. Firms already located there may continue receiving benefits until 2016. In 2007, Senegal's government signed an agreement with Jafza International of Dubai to establish a "special economic zone" (the Dakar Integrated Special Economic Zone, or DISEZ) for sanctioned investments outside of Dakar. The DISEZ

BUSINESS LICENSING PROCEDURES—SENEGAL			
Procedure	Time to Complete	Cost to Complete	Comments
1. Deposit the founding capital with a bank	1 day	No charge	Company can also deposit the capital with a notary
2. Notarize company bylaws and bank deposit of subscribed capital	1 day	CFA 250,000	The procedure takes 3 days if notary prepares; 1 day if notary only signs
3. Obtain criminal records	2–7 days	CFA 200 (stamps)	
4. Register the Company Bylaws at the income tax center (Centre des Impôts)	Average 3–5 days	CFA 65,000	This procedure normally takes from 5–10 business days
5. Register at the Registry of Commerce, Tribunal of Commerce	Average 20 days	CFA 2,000 + 30,000 fixed fee + CFA 90 per 1 million of capital	This procedure may take up to one month
6. Publish a notice of the new company in an official journal	4 days	CFA 70,000	Must be completed within 15 days of registration
7. Register at the Ministry of Economy and Finance for company identification number	10 days	CFA 1,000 (stamps)	Provisional number is ready in 1 week, final number in 2 weeks
8. File a declaration of commencement of operations at Labor Authority	Average 3 days	No charge	This procedure takes from 1–4 days
9. Become affiliated with the Caisse de Securite Sociale (CSS)	Normally 2–3 days	No charge	
10. Become affiliated with the pension fund (Institut de Prevoyance Retraite—IPRES)	Average 3–5 days	No charge	Must also become affiliated with the Institution de Prevoyance Maladie (IPM) if there are over 100 employees

Source: Senegal Business Guide http://www.alloexpat.com/senegal_expat_forum/doing-business-in-senegal-business-guide-t555.html.

agreement creates an ambitious model for agribusiness development and investments.

The Senegalese government has created a High Authority for the administration of all special economic zones within Senegal to deal with business licenses and registration. The authority operates as a one-stop shop for the formation, registration, and licensing of companies. The authority also offers a wide range of services, including the provision of buildings to companies operating within the zone and the delivery of working and residence permits to foreign nationals. The authority enjoys the powers of municipalities and it is the delegate of the prime minister and all ministers within the special economic zones.

FARM INPUT SUPPLIES

Senegal's legal framework should allow for an efficient market for agricultural inputs. Import licenses for agricultural products and inputs encourage and facilitate importation of goods and services necessary for the development of the agribusiness sector. Senegal's laws clearly stipulate the content of the information that agricultural enterprises must furnish to their users in order to secure licenses. Furthermore, the law stipulates the inspection procedures necessary to maintain licensing status.[34]

Laws regulating the sale and distribution of seed, fertilizer, pesticides, and herbicides allow for competitive sourcing, certification of

34 For ideas on how Senegal's environment for inputs compares to other countries in the region, see USAID/AgCLIR report on Ghana (November 2008).

ADDITIONAL TAXES ON BUSINESSES IN SENEGAL		
Tax	Tax Base	Tax Rate
Tax on interest	Interest income	15%
Advertising tax	Value of advertising	Variable
Stamp duty on contracts	Number of contracts	CFA 2,000 (fixed)
Tax on insurance contracts	Insurance premium	Variable
Tax on unimproved property	Rental value of land	5%
Tax on improved property	Rental value of property	5%
Business tax	Rental value of business premises	Different rates
Vehicle tax	Engine capacity	CFA 50,000 (avg)
Fuel tax	Fuel costs	Included in fuel price

Source: Economy Watch, Economics & Investing Reports http://www.economywatch.com/doing-business/paying-taxes.html

quality, and minimal import tariffs. Other laws promote the domestic development of biofuels and reasonably priced energy for agricultural and rural-sector production.

In 1982, Senegal abolished its import licensing system, opening the market to all countries on an equal basis. Previously, only products from the franc zone and the European Union could be imported without a license. Certain import restrictions still exist on some agricultural and industrial products that support the Senegalese economy, but licenses are not required.

Legislation regarding the issuance of licenses to use agricultural chemicals and other inputs clearly states the skills and training required for obtaining such licenses. Agribusiness service providers including spray companies, chemical providers, harvesters, packers and other transformation companies (e.g., threshers, huskers) require licenses to operate.

REGULATION OF COMMODITY PRICES

Although government price controls have been significantly dismantled since the liberalization of the economy in 1993, Senegal continues to regulate the prices of a wide range of food commodities. As discussed in this report's chapter on Competition, Senegal's competition law is generally designed to promote competitive market-based prices. Notably, however, it provides an exception that allows the state to take "temporary measures" to fix prices in response to extraordinary conditions. This provision, Article 43 of Law 94-63 (the Competition Law), has been invoked frequently by the government in recent years to set prices for staple food products and other widely used products.

Accordingly, the state now sets minimum prices for sale from producer to domestic or international buyers. In addition, using the exception in Law 94-63 and other sources of authority, it also determines the availability in markets of key commodities, provides for subsidies for inputs, and blocks the importation of products that compete directly with similar, domestically produced goods. Such market interference can have a positive impact on sales for domestic producers of certain commodities but ultimately harms producers' ability to sell products in a timely and profitable fashion. The price controls in particular mask inefficiencies in productivity that, if corrected, would stabilize prices long term for the ultimate benefit of consumers in Senegal.

The Agency for Market Regulation (ARM), created in 2002, often takes the lead on stakeholder coordination and works closely with various ministries to determine price minimums for commodities prior to the upcoming season's harvest or in response to a trade issue. ARM's approach is sectoral—it regulates tomatoes, rice, bananas, onions, fonio, and other commodities. Through stakeholder consensus, ARM develops recommended trade policies, such as the recent ban of onion imports during Senegal's production season. Although it enforced these restrictions at the borders, the Ministry of Commerce (MOC) failed to file a notification at the World Trade Organization (WTO) level.

ARM fixes recommended price minimums, or "fair prices," for regulated commodities. The fair price is calculated based on producers' costs, a maximum 40 percent margin added to the cost of production, the local market gate price, and the cost of logistics to send the product from the field to Dakar. World market prices are not considered.

To gather this data, ARM is developing a Market Information System (MIS) based on current reporting by about 300 "surveyors" throughout the region that report on weekly stocks and prices. ARM plans to hire statisticians to develop the MIS database, to compile annual summaries of stocks, and to launch a public phone line that farmers can call to find out the recommended minimum selling prices. This method would similar to the existing private Manobi system.

Continued regulation of commodity prices to protect and encourage domestic production is grounded in legitimate concern for the livelihood of Senegalese farmers and the future of the agricultural sector. Yet extending this practice also perpetuates inefficient practices—on the farms, on the roads, and in the markets—that cry out for more sustainable solutions. The prices of Senegal-produced commodities often cannot compete with foreign imports because of failures in agricultural cooperatives (see Starting a Business), severe weaknesses in the workforce (see Employing Workers), and issues of transport and trade facilitation (see Trading across Borders).

PROPERTY DEVELOPMENT

Laws and other regulations concerning agricultural land use and zoning allow adequate commercial development on transparent terms. The law permits a wide range of real property development, including commercial, residential, and agricultural. The use and geographical categories for each type of land use are clearly defined and reasonable. On the other hand, as detailed in this chapter's discussion of Social Dynamics, laws regarding land ownership, titling, cadastre, and land use create severe constraints to agribusiness development in Senegal.

AGRICULTURAL EXPORTS

Senegal's licenses governing agricultural exports are designed to facilitate the flow of goods, particularly those related to sanitary and phytosanitary (SPS) regulations for food products. Dakar's unchallenged presence as the country's primary market and distribution center is a testament to Senegal's local agribusiness distribution capabilities. However, the country does not effectively export internationally in large quantities. Senegal's export markets have not "taken off," even with the assistance of donors, due to a lack of training, technology, capacity, and, in some cases, appropriate planting materials. As a member of the West Africa Economic and Monetary Union (WAEMU), Senegal has a common external tariff with the other member countries. Although no tariff or quota is applied to intraregional trade in domestic products, imports from countries outside the WAEMU are taxed.

COMPARATIVE TAX BURDEN
SENEGAL, REGIONAL COUNTRIES, OECD—2009

Item	Senegal	Region	OECD
Payments (number)	59.0	37.8	13.4
Time (hours)	666.0	311.7	210.5
Profit tax (percent)	14.8	21.5	17.5
Labor tax and contributions (percent)	24.1	13.2	24.4
Other taxes (percent)	7.0	32.0	3.4
Total tax rate (percent profit)	46.0	66.7	45.3

Source: World Bank Doing Business website
http://www.doingbusiness.org/ExploreEconomies/?economyid=164

There are considerable non-tariff barriers to the movement of goods among the eight countries that make up the WAEMU. These countries all use the West African Franc, which is pegged to the Euro. They also share a single central bank and a common framework of financial laws. Notwithstanding these attempts at unity, each country tries to protect its economy from imports from other countries. Despite the WAEMU framework, considerable work must still be done to harmonize intra-regional trade. By strengthening its regional distribution, Senegal can more easily navigate into the international market outside of Africa.

Currently, legislation supports the export processes on a regional scale. Laws that prescribe licenses for participation in the export of agricultural goods stipulate the objective compliance criteria that must be met in order to be granted such licenses, leading to more efficient business practices by private sector businesses. Also, laws regulating the issuance of agricultural export licenses are careful to avoid distortions to the private sector's decisions as to when, and in what sequence, crops are grown for export. Legislation also provides for the ready importation of seed and other planting materials, subject to normal SPS safeguards, as well as packaging materials used for the preparation and shipment of agricultural products for export shipment, and farm machinery.

By facilitating trade among countries in the WAEMU framework, Senegal can capitalize on existing relationships to promote trade that is both streamlined in import/export procedure as well as a reduction or elimination of non-tariff barriers. By increasing trade across borders in the region, Senegal will be well positioned to stimulate economic progress and development, using the EU as a viable model. Once trade relationships within the WAEMU community are better established and begin to grow, Senegal will be much better positioned to expand its imports on a global scale.

Senegal is also uniquely positioned to perform internationally in the highly lucrative and niche export market of organic food products. Much of Senegal's agricultural land has not been developed with pesticides, even though Senegal as a CILSS member participates in regulated pesticide importation. Accordingly, Senegal can take advantage of these conditions that facilitate organic certification by environmental agencies. Organic produce and its niche marketing relationships have a stronghold in international circles. Thus, Senegal is positioned to export under organic and other international standards such fair trade and GlobalGAP certification.

KEY IMPLEMENTING INSTITUTIONS

- National Agency of Promotion of Investment and Public Works (Agence de Promotion des Investissements et des Grands Travaux (APIX))
- Chambers of Commerce, Industry, and Agriculture
- Institutions pertaining to special cconomic zones, including Dakar Integrated Special Economic Zone (DISEZ) and Entreprise Franche d'Exportation
- Sahelian Pesticide Committee (SPC)
- Committee for Drought Control in the Sahel (CILSS) (The Gambia, Senegal, Cape Verde, Burkina Faso, Guinea Bissau, Mali, Mauritania, Niger, Chad)
- Agency for Market Regulation (ARM)
- Common External Tariff of the West Africa Economic and Monetary Union (WAEMU)

IMPLEMENTING INSTITUTIONS

APIX

The **Agency for the Promotion of Investment and Major Projects (APIX)** is the agency charged with registering new enterprises in Senegal. Its work includes assisting entrepreneurs in understanding the licenses they must obtain, and helping them meet those requirements. The form and functions of APIX are detailed in this report's chapter on Starting a Business.

CHAMBERS OF COMMERCE, INDUSTRY AND AGRICULTURE

Senegal's Chambers of Commerce, Industry, and Agriculture provide a strong and dynamic support network for the country's business communities. The chambers are responsible for defending the broad interests of the different economic sectors to which their members belong, while maintaining close contact with Senegal's regional and national governments. The Dakar Chamber of Commerce, Industry, and Agriculture, which dates back to 1870, serves as an advisory body to state officials and acts as a bridge between the business community and central government. It also provides business development services such as training, information, and advice on creating a business, as well as conflict resolution services, including arbitration.

In the regional cities, the local chambers are not only leading members of the business community, but they also provide key business services. For example, in Kaolack, the Chamber of Commerce and Industry manages the shipping port on behalf of the regional government and administers a mutual fund that provides micro- and small-scale loans to its largely female members for investments in activities such as food processing and distribution. In Saint Louis the local chamber represents the interests of numerous farmer associations and provides business services to them.

The chambers also help entrepreneurs start their businesses: for a fee of CFA 129,000 (approximately US$260), a local chamber will handle all the documentation and obtain the approvals needed to start a simple business organization, such as an Economic Interest Group (Groupement d'Intérêt Economique—GIE) with three partners. A copy of the chamber's document used for creating a GIE is shown in the Annex to this section.

In addition to the Dakar Chamber of Commerce, Industry, and Agriculture, regional chambers are located in Diourbel, Fatick, Kaloack, Kolda, Louga, Matam, Saint-Louis, Tambacounda, Thies, and Zinguinchor.

INSTITUTIONS MANAGING USE OF PESTICIDES

In West Africa, a variety of sub-regional and bilateral initiatives are building capacity of countries and institutions to effectively manage pesticides, particularly the illegal transport of banned pesticides. There are regional and, in many cases, country-specific regulations governing pesticide use, storage, and disposal in West Africa, including Senegal.

In 1992, the ministers of the countries belonging to the Permanent Interstate Committee for Drought Control in the Sahel (CILSS), which included The Gambia, Senegal, Cape Verde, Burkina Faso, Guinea Bissau, Mali, Mauritania, Niger, and Chad, met in Ouagadougou, Burkina Faso, to adopt common regulations for the registration of pesticides for the CILSS member states. A common registration system was feasible because of the similarity in the ecosystems and populations of the member states.

The Sahelian Pesticide Committee (SPC) was established in 1994. This committee is mandated to control the entry of pesticides into the sub-region and serves as a common pesticide registration and licensing body for registration applications submitted by agro-chemical companies and for grants of sales permits within member states. The *Institut du Sahel* (INSAH) is a member institution of CILSS and works with regional and national organizations to strengthen pesticide management through the SPC, strengthen the import and use of pesticides, increase awareness of the risks associated with pesticide use, and improve quality control and residue analysis.

The common CILSS regulations provide for registration conditions and procedure for pesticide use, labeling and packaging, field trials, emergency situations, and post-registration control by member states.

SUPPORTING INSTITUTIONS

Senegal's maintains a wide network of supporting institutions that together create a framework for agribusiness development. This network runs the spectrum from agribusiness service organizations such as consultants, pesticide applicators, transporters, post-harvest handling service providers, and input supply dealers, to the central bank and the legal profession.

AGRIBUSINESS SERVICE ORGANIZATIONS AND AGENCIES

Among the many institutions in Senegal that support permits and licensing related to agriculture and agribusiness activity are poultry producer organizations such as the *Union National des Acteurs de la Filiere Avicole* (UNAFA) or the Garden Vegetable Producers *(l'Association Nationale des Producteurs Senegalais des Maraîchers*—UNPM). Furthermore, different ethnic-based groups have sprung up, for example, those assisting emigrants from the People's Republic of China who began arriving into Senegal in the 1980s. These organizations provide orientation, information, and assistance to help new entries become established in their chosen profession or location. The private sector, including different cooperatives and grower associations, as well as traders, processors, and marketers, is quite active and has a real voice in determining the regulatory environment that governs them.

For exporters, there are several organizations such as the Fishmongers and Fish Exporters Association of Senegal (UPAMES) and the Senegalese Agency for Export Promotion (ASEPEX) that help their members gain access to and open export markets for their products. Similarly, the National Market Vendors Union *(Syndicat National des Employes et Cadres du Commerce du Senegal*—SNECCS) is an association of market vendors that helps its members obtain licenses permitting them to sell on local markets.

MINISTRY OF THE ENVIRONMENT AND THE PROTECTION OF NATURE

This ministry is charged with implementing the requirements for environmental compliance. It is responsible for a variety of environmental licensing issues, including plant protection and quarantine, consumer protection (in relation to chemical residue, weights, measures, and micro-biological contamination), and animal health (including disease surveillance, animal movement, vaccination programs, etc.). Environmental programs are still fledgling in Senegal, and, though well intentioned, are not as effective as they could be. Stakeholders complain that legal requirements pertaining to environmental protection are not consistently applied. They contend that the ministry needs assistance in developing its ability to fairly, thoroughly, and equitably implement its mandate.

KEY SUPPORTING INSTITUTIONS

- Agribusiness service organizations and agencies
- Ministry of the Environment and the Protection of Nature
- The legal profession
- Trade associations and cooperatives

LEGAL PROFESSION

Individual lawyers, associations of lawyers, and law firms contribute to the regulatory environment for agriculture-related licensing. There is an established bar association that includes lawyers who represent the agribusiness community in commercial matters, including matters relating to commercial law and/or dispute resolution.

TRADE ASSOCIATIONS AND COOPERATIVES

The private sector, inclusive of cooperatives and grower associations, traders, processors, and marketers, is active in the promotion of environmental regulations, and has a real voice in determining the regulatory environment that governs them. The chambers of commerce provide their memberships and the public with information and training on the regulatory environment impacting agricultures. Also, the agribusiness community regularly reports on developments with the regulatory environment impacting agriculture.

Most importantly, trade and industry associations have affiliations with international trade organizations and are involved in the harmonization of regulatory compliance with international

TAXES IN SENEGAL THAT IMPOSE THE GREATEST ADMINISTRATIVE BURDEN			
Tax	Tax Base	Number of Declarations per Year	Estimated Time Required (hours)
Corporate income tax	Taxable profit	3	120
Value Added Tax (VAT)	Sales value	12	450
Payroll tax	Payrolls	12	96
Retirement contributions	Payrolls	12	96
Social Security contributions	Payrolls	12	96
Total			666

Source: Economy Watch, Economics & Investing Reports http://www.economywatch.com/doing-business/paying-taxes.html

standards. All factions of the agribusiness arena recognize the importance of licenses that are lawful and effective in providing neighbors, workers, and consumers with the products they need without undermining environmental safety or a competitive business climate.

SOCIAL DYNAMICS

LAND POLICY AS AN INHIBITOR OF GROWTH

In Senegal, tribal norms and customs have functioned for centuries to govern issues such as land ownership and inheritance. A strong communal system works adequately to redistribute land parcels among new claimants, particularly when the land is used for traditional purposes. Where traditional methods fail, however, is in the face of large, external shocks to the land distribution system, such as where an external investor may require several thousand hectares of land for a productive enterprise. Even with the greatest will, it is extremely difficult for traditional means of land distribution to address these issues.

During the colonial period, French authorities sought to impose their own land system on agricultural production in Senegal and their other West African colonies. Rural populations resisted the colonial authorities' efforts to impose a new land regime on them, clinging to traditional systems that included neither private nor individual appropriation of land or other natural resources. Following its independence from France in 1964, Senegal devised a new land system composed of three separate regimes: (1) private property, a legacy of the colonial system that mainly exists in urban areas and has grown rapidly due to urban sprawl and modern economic activities; (2) public ownership, which gives the state the option to allow local governments to own or use land assets, consisting mainly of land attached to public buildings or communal amenities that do not include agricultural lands; and (3) rural lands, most of which are covered by the national land law and enforceable through official state institutions.

Changes in the ways that public lands are managed and used have affected certain areas, such as the land adjacent to riverbanks and watercourses, which is particularly valued for irrigated and floodplain cultivation. These lands were initially to be managed solely by the state, but in practice this proved unrealistic. As a result, and as detailed in this report's chapter on Registering Property, management control has passed to local rural communities, which treat these properties as national land. Often economically and ecologically sensitive, these areas are covered by the regime for public lands, although the law now stipulates that the local governments, in whose territory they are located, should be involved in decisions regarding their occupation and use. Although the national authority decides whether to initiate projects on this type of public land, it must consult the regional council first and then inform it about its decision. Projects initiated by any other body are jointly agreed upon with the regional council and a central government official, following advice from the municipality or rural community responsible for the site. Areas

covered by special land management plans prepared by local governments and approved by the state are managed by the region, municipality, or rural community concerned.

Rural land accounts for about 95 percent of Senegal's national territory. Most rural lands were held under customary regimes following independence, but with the post-independence legislative framework they are now covered by the common law regime of the national land law. Territorial lands include all the land that a rural community needs for housing, farming, livestock rearing (pastures and rangelands), and woodlands, along with the expansion of these areas. The boundaries of each territory are determined by decree. These coincide with the boundaries of the rural community, and the land within them is regarded as a space for development, not as a legal and economic asset. As such, it belongs to no one, does not form part of any estate, and consequently has no rightful owner, since if everybody owns everything then no one owns anything.

This administrative power gives rural councils the authority to allocate and withdraw land and to monitor land use. Land is allocated free of charge to beneficiaries who must live in the rural community and be able to use the land productively. Any natural or legal person who is allocated a plot receives a means of production for an indeterminate period. When they die, their heirs are allocated the land, provided they can put it to productive use.

The existing system of land ownership and control in Senegal is almost universally recognized as a constraint to agribusiness development. Furthermore, it appears that the system is largely dysfunctional since farmers who have been allocated plots on national land, which were previously covered by customary rights, find it impossible to acquire real land rights. The procedures set out to assess productive land use and allow use rights to be converted to leases or land titles are simply beyond the reach of local people. Furthermore, because so many of the rural councils are unable to manage common areas of national lands in a sustainable manner, the land is treated as vacant and ownerless land and often ends up being overexploited. In other words, current land management practices are undermining the security of land tenure, the sustainable use of natural resources, and the goals of agricultural modernization programs.

RECOMMENDATIONS

- Encourage the formation of strong producer groups by means of technical assistance focusing on crop husbandry, training in farming as a business, organizational management, and marketing for selected agricultural value chains. One of the most effective agricultural development tools would be to help create agro-industries by supporting the value chains between the producer and the market, a key element in this process.
- Support the creation of a specialized department within APIX with technical expertise in agriculture to promote and facilitate specific investments in agriculture. Given the difficulties that investors face for land and infrastructure, direct, hands-on support to investors would be instrumental.
- Focus more support and attention to the processed food sub-sector. This will not only help Senegal better compete with imported food products, but also expand the local market for agricultural commodities.

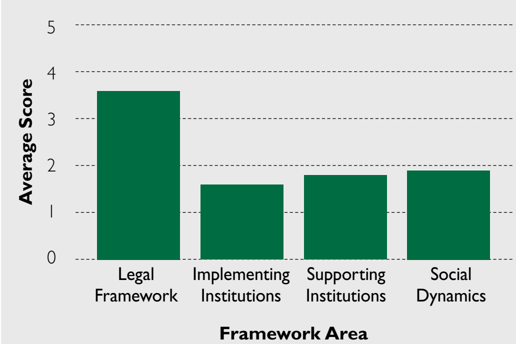
EMPLOYING WORKERS

Well over 70 percent of Senegal's population depends on agriculture for its livelihood, producing crops and livestock for both family consumption and generation of income. Most of Senegal's farming takes place on small-scale plots granted to families by Rural Councils, officially recognized customary entities (detailed further in this report's chapter on Registering Property). With only one cropping season per year for farmers who do not have access to irrigation, some take on informal work during the dry season. The majority of farmers has no access to extension services,[35] finds it difficult to purchase quality seeds and fertilizer, records low levels of productivity, and sells crops immediately following harvest due to the urgent need for cash.

EMPLOYING WORKERS

Doing Business Ranking 2010	172
Doing Business Ranking 2009	173
Difficulty of hiring index	72
Rigidity of hours index (0–100)	53
Difficulty of firing index	50
Rigidity of employment index (0–100)	59
Firing costs (weeks of wages)	38

EMPLOYING WORKERS



A full regime of labor laws exists in Senegal, designed with the overall goal to protect the country's workers. The state entities responsible for enforcing the law, however, lack financial and logistical means to oversee compliance with core labor requirements, thereby weakening the overall impact of the system. In the rural areas, traditional, informal labor practices are typically the norm, which tends not to adhere to the laws. Illiteracy rates are high (at least 58 percent of the adult population), which exacerbates farmers' ability to both access technical information and form legally recognized and registered groups.

Most workers employed in the agriculture sector are engaged on a non-contractual (informal) basis. By employing workers informally, enterprises (which themselves are often informal) avoid paying taxes and abiding by the nation's strict labor laws, especially the imposition of high costs upon termination of employment. Both employers and workers regard taxes on salaries to be of no benefit, but rather a pool of money that "disappears" into the state coffers for uses other than those for which the taxes are intended. The pensions paid to retired employees arise from the national pension plan *(Institut de Prévoyance Retraite du Sénégal*—IPRES) taxes, which are on average 14 percent of a worker's salary), which are said to be "extremely weak" and largely insufficient to sustain the retiree and his (or in the rare case, her) family. There are also taxes paid in to cover work-related injuries and illnesses, known as *Caisse de Securite Sociale.* The tax averages 12.5 percent of the salary, paid entirely by the employer. There is also an income tax of about 3.5 percent, paid by the worker.

35 A notable exception is those who are included in the SAED irrigation scheme in the Senegal River Valley.

Indeed, Senegal faces a number of challenges in labor and employment that go beyond the issues examined by *Doing Business,* which looks exclusively at the ease with which workers can be hired and fired and other specific indications of labor-market flexibility. The fact that the vast majority of Senegalese do not work for formally registered companies means that the regime of labor laws has little practical application to them. Moreover, all enterprises, whether formal or informal, face the central challenge of the quality, responsiveness, and readiness of Senegal's workforce. The very issue of literacy is at the core of the country's workforce issues. With more than 60 percent of the nation illiterate, including around 70 percent of the women, the country's workforce issues must begin with the very basics. The country must also firmly address its culture of engaging children in its workforce.

On a more positive note, Senegal enjoys one of the lowest rates of HIV infection in Sub-Saharan Africa (1.4 percent), although malaria and other serious diseases are a real concern.

LEGAL FRAMEWORK

BASIC HUMAN RIGHTS AND LABOR RIGHTS

The preamble to Senegal's Constitution of January 7, 2001, affirms the state's adherence to, among other instruments, the charters of the United Nations and the Organization of African Unity, the Universal Declaration of Human Rights, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child. Pursuant to Title II, Articles 8 and 12 of the Constitution, all citizens are guaranteed their individual fundamental freedom, economic rights, and social rights, as well as "group rights." Specifically, individuals have the right to form associations and economic, cultural, and social groups or societies, provided that their aims or activities do not conflict with the penal laws or public order. Article 25, also listed under Title II, guarantees workers the rights to seek employment, to join labor unions and defend worker rights through union activity, to strike within the limits of the law, and to "participate in the determination of the conditions of work."

Despite representations in the Constitution, women's rights are frequently not honored, particularly in rural areas. Women have fewer opportunities than men for education and formal employment. Of the female population over the age of 15 years, 70.2 percent are illiterate.[36]

Furthermore, although the Senegalese constitution states that the minimum age for employment is 18, child labor is reportedly common in the agricultural sector, primarily because of the prevailing poverty that affects rural farmers, resulting in all members of the family having to work. According to the U.S. Department of Labor, 30 percent of all children in Senegal participate in the "worst forms of child labor," including around 33 percent of boys and 26.7 percent of girls.[37]

Moreover, according to various sources consulted during this diagnostic, authorities sometimes limit the rights of freedom of association and assembly. In March 2008, police officers broke up a banned demonstration against rising prices for basic commodities such as rice, oil, milk, and soap. According to Amnesty

36 United Nations Development Programme, *Human Development Report* (2007–2008).

37 United States Department of Labor, *2007 Findings on the Worst Forms of Child Labor—Senegal* (August 27, 2008). The 1999 UN Convention applying to the issue defines the "Worst Forms of Child Labor" as the following:
- all forms of slavery or practices similar to slavery, such as:
  - the sale of a child;
  - trafficking of children, meaning the recruitment of children to do work far away from home and from the care of their families, in circumstances within which they are exploited;
  - debt bondage or any other form of bonded labour or serfdom;
  - forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- Commercial sexual exploitation of children, including the use, procuring or offering of a child for prostitution or the production of pornography
- Use, procuring or offering of a child by others for illegal activities, including trafficking or production of drugs.

International, police used batons and tear gas to crack down on the demonstrators and they assaulted journalists covering the demonstration.[38] Nonetheless, Freedom House considers Senegal to be "free," a designation not attributed to several of the country's neighbors.[39]

Companies that export fresh produce from Senegal to EU countries are required to have GlobalGAP certification, which imposes some "socially responsible" codes of conduct to protect the rights as well as health and safety of their workers. An increasing number of exporters of various agricultural products also seek fair trade certification, according to which farmers are not only protected in terms of their rights and well-being, but also ensured a minimum guaranteed price for their produce.

LABOR LAW

Senegal's fundamental labor legislation, Labor Regulation No. 97-17 of December 1997, is based on the French overseas labor code of 1952, which provides for collective agreements between employers and trade unions and for the fixing of basic minimum wages by the government on recommendation of advisory committees. The code also provides for paid annual leave and child allowances. The right to strike is recognized by law, and there are special labor courts. The law provides for the core labor standards as enunciated by the International Labour Organization.

KEY LAWS

- International treaties, including Convention on the Rights of the Child
- Constitution, Part II (2001)
- Labor Regulation No. 97-17 (2007)

Provisions governing the hiring of agricultural and agro-processing workers are generally accessible. Immigration laws allow for migrants to enter and work in Senegal according to seasonal needs. The Labor Regulation, however, is inflexible and cumbersome with respect to termination of workers. It also significantly limits the ability of employers to manage the defining of work schedules, for instance.

Although not an agricultural enterprise, one Senegalese company involved in interior design reported that while customer demand for its products far exceeds its current level of production, Senegal's labor laws (along with difficulties accessing finance) make expansion far too risky. The company's owner cited rigid overtime regulations, restrictions on work hours, and the high costs of firing workers as barriers to expansion.

With the exception of large agribusinesses, particularly those that export to EU and other international markets, nearly all medium and small-scale enterprises do not employ workers on a formal basis, due in large part to the labor laws. The other reason both employers and employees cite for preferring informal work relationships is the high rate of tax levied on a worker's salary. An estimated 70 percent of Senegal's enterprises are registered under the *Groupement d'intérêt économique* (GIE), a semi-formal system of business registration that costs as little as *Franc de la Communauté Financiere Africaine* (FCFA) 70,000 to register. This contrasts with the FCFA one million for companies enlisted with the company registry which are obliged to respect all labor and tax laws.

During this diagnostic, several directors of GIEs reported that they in fact provide a variety of benefits for their workers, including breakfast and lunch, free medical check-ups every few months, payment for work-related injuries and illnesses, and worker savings and loans schemes. One owner of a medium-sized agro-processing company that informally employs 70 workers said the union of agro-processors had repeatedly pleaded with various state entities to relax the labor laws as well as to lower the taxes on workers' salaries so that workers could be employed on a contractual basis. The union reportedly was ignored by all except the *Fonction Publique* (Public Service Department),

38 UNHCR, Refworld (citing *Amnesty International Report 2009—Senegal)* (May 28, 2009).

39 Freedom House, *Freedom in the World* (2008)—Senegal (July 2, 2008).

which indicated that it would "keep its eyes closed" to informal employment of workers.

Given the seasonal nature of agriculture, many workers are employed on a seasonal basis, including by the large-scale agro-enterprises. One exporter of horticultural produce acknowledged that no laws exist concerning the social welfare of seasonal workers. The exporter further stated that the company allows its seasonal workers to establish an informal insurance scheme, which covers them in the event of ill health or injury. Such an arrangement constitutes the exception rather than the rule, however, as companies that do not export to international markets are not only much smaller, but also less likely to observe labor laws and regulations.

Senegal's labor regulations allow for skilled expatriate labor and management expertise to be brought into the country in the event there are no nationals with the required skills. The laws also theoretically provide equal protection between "fixed" and migrant workers. Several interviewees noted that migrant workers come to Senegal from neighboring countries during seasons of peak activity and that they usually do not encounter difficulties becoming employed.

Occupational safety and health requirements pertaining to on-the-job worker protection are clearly spelled out by Labor Regulation 97-17, Section XI: Hygiene and Safety. With the exception, however, of companies that export and are required to have one or more certifications (e.g. GlobalGAP, fair trade), these provisions are generally ignored, mainly because labor inspectors lack the financial and logistical means to conduct their inspections. Moreover, inspectors are poorly paid, resulting in a lack of motivation to productively perform their jobs. Those who have additional qualifications or skills tend to move to the private sector, reportedly, once the opportunity arises. In addition, workers are reportedly reluctant to call attention to their employers' failure to follow the health and safety mandates, preferring to work out informal arrangements whereby they do not "blow the whistle" in exchange for some sort of compensation from the employer.

Widespread national illiteracy also contributes to agricultural workers' exposure to unsafe working conditions. Since many workers cannot read, they are often exposed to dangerous chemicals (including pesticides) without being aware of the risk posed to their health. Moreover, unless they belong to a union or association that is able to inform them of their rights, illiterate workers may have no knowledge of the existence of occupational safety and health laws.

IMPLEMENTING INSTITUTIONS

MINISTRY OF PUBLIC SERVICE, EMPLOYMENT, LABOUR AND PROFESSIONAL ASSOCIATIONS

This ministry is charged with implementing and enforcing Senegal's labor laws as well as addressing other key workplace issues, including occupational safety and health. The ministry lacks the staff and resources it needs to effectively assume these roles, however, particularly in regions beyond the capital. The ministry also reportedly suffers from high staff attrition due to its unattractive salaries and frustrating work conditions.

KEY IMPLEMENTING INSTITUTIONS

- Ministry of Public Service, Employment, Labour and Professional Associations
- Labor unions
- Employers

LABOR UNIONS

In Senegal's recent history, labor unions have represented a powerful force in the country's politics, economy, and culture. Senegal's unions were among the first movements of organized labor to form in French West Africa. Today, the major labor unions in Senegal are the **National Confederation of Senegalese Workers**

(CNTS) and the **National Association of Senegalese Union Workers (UNSAS).**

Senegal's industrial workforce is almost entirely unionized. However, although no data on the percentage of agricultural workers belonging to labor unions could be located, it is unlikely that many workers outside of those employed formally by the small number of large scale agro-enterprises are members of a labor union in Senegal. In other words, Senegal's labor unions are largely irrelevant to the interests of workers employed in the informal sector, which constitutes the vast majority of agricultural workers.

EMPLOYERS

With the exception of companies exporting certified products (GlobalGAP, organic, and/or fair trade) to international markets, Senegal's private employers are far from meeting the welfare of agricultural workers and farmers. While companies generally do not interfere with workers' right to associate freely, they neither endeavor to provide a safe and healthy working environment nor offer opportunities for further training and education.

Equal employment opportunity for women appears to be a major issue. Several interviewees mentioned that women tend to be less favored than men when it came to most positions. From the numerous complaints about the inflexible regulations concerning paying taxes on workers' salaries, and the difficulty of letting workers go, it is highly unlikely that the private sector is able to work with government agencies to streamline labor requirements. The fact that such a large proportion of Senegal's SMEs are registered as GIEs indicates that the private sector seeks a low-cost option to more formal employment of workers unless the existing labor regulations are changed.

Companies that export certified products—from large multinationals to small enterprises—are required by outside authorities to ensure worker safety, including training on and equipment for safe use of pesticides. Large producers of horticultural crops that employ sophisticated equipment, and all exporters that are required to have HACCP (Hazard Analysis and Critical Control Points) certification, find that they must provide workers with in-depth training to enable them to do their jobs properly and according to international standards. One company mentioned provision of additional support to seasonal workers through setting up an insurance scheme. As noted, several of the smaller GIE-registered companies stated that they try to provide workers with health care, meals, and other benefits.

SUPPORTING INSTITUTIONS

FARMER FEDERATIONS AND PRODUCER ORGANIZATIONS

Unlike traditional labor unions, organizations geared toward assisting the interests of small farmers are highly relevant to the current and future efforts of Senegal's agricultural workforce. One organization that groups all rural (including farmer) organizations is the **Rural National Coordination and Cooperation Council (CNCR),** which aims to promote dialogue and cooperation between members, as well as to establish partnerships between its members and public and private partners.[40] The CNCR works in conjunction with the **Association for Promotion of Development at the Basic Level (ASPRODEB),** which has three objectives: (1) to support producer organizations to put together and establish development programs; (2) to provide producer organizations with professional support and advice toward the goal of implementing their program objectives; and (3) to assist producer organizations to negotiate technical, economic, and financial partnerships.

The ASPRODEB focuses on economic development for smallholder farmers, while the CNCR's role is primarily concerned with overall rural development. For example, the ASPRODEB is trying to help groundnut growers

40 The CNCR is also reported to be responsible for conducting studies on how laws concerning land tenure and use of family labor can be revised.

form viable producer organizations and negotiate contracts with SUNEOR, Senegal's largest cooking oil manufacturing company. A small grain-processing company said it hopes to receive assistance from the ASPRODEB to set up contracts with small-scale farmers for maize and millet production. One of the directors of a private agro-processing plant said that "ASPRODEB is the only organization which can successfully negotiate contracts with small-scale farmers." Time will tell if it can become a significant player in setting up producer organizations and linking them with buyers on a sustainable and mutually profitable basis.

The large irrigation scheme established along the Senegal River valley and its delta (SAED) began transferring the management of irrigation into a union comprised of farmers who benefit from the scheme. The resulting **Water Users Union** benefits from extension services as well as some material assistance (plowing of land, distribution of seeds and other inputs) from SAED for the production of rice (major crop) and a range of vegetable and other crops under irrigation. SAED officials noted that they lack sufficient tractors and that certified rice seed is in short supply, but generally felt that producers benefiting from their program were succeeding in significantly boosting production. SAED also supports its producer organizations via training that focuses on maintenance of the irrigation system and water management, as well as helping them to become more commercially oriented. In the same zone, where a tomato paste factory exists, the tomato growers are organized into a strong and vibrant union that negotiates the amount of land to be planted, the price range within which they sell fruit, the amount each farmer will produce, as well as providing for bulk procurement of inputs.

Notwithstanding these efforts, the majority of Senegal's farmers, most of whom cultivate an average of two hectares, do not belong to farmer federations or producer organizations and therefore rarely benefit from their technical

KEY SUPPORTING INSTITUTIONS

- Farmer federations and producer organizations
- Education and training institutions
- Media

and material assistance. There are a few fresh fruit and vegetable producer organizations, such as the Federation of Fruit and Vegetable Producers in the zone of Niayes (FPMN), which provides its members with assistance in several areas (linkages to markets, access to finance, bulk procurement of inputs, access to adequate irrigation). The FPMN desires sizable assistance (primarily financial) in order to carry out its roles. Its major constraints include enabling members to have sufficient access to water; organizing strong, commercially oriented producer organizations; providing adequate access to credit; and being more competitive with the large, multinational fruit and vegetable exporters.[41] These needs were echoed by representatives from Senegal's National Union of Fruit and Vegetable Producers (UNPM), which reported that its members would benefit greatly from financial and technical assistance to become GlobalGAP certified.[42] According to a member of a farmers' union that focuses on onion production operating in the zone from Dakar to St. Louis, the union was useful for negotiating contracts with buyers and ensuring that no side-selling takes place, but the financial assistance available through the union falls far short of the producers' needs for purchase of inputs (covering only 30 percent of total costs). As a result, members typically procure most of their inputs from input suppliers who charge interest and expect repayment immediately after harvest, when prices are at their lowest, indicating that the union is only of minimal use to its members.

In 2003, a small federation of processors of dairy products was launched, and it currently has 128 members. Unlike the fruit and vegetable federations, the dairy federation appears to provide significant technical support and training for its members. The federation employs

41 Several individuals in Senegal's fresh produce exporting business, along with a representative of SEPAS, the umbrella organization for all Senegalese small-scale fresh produce exporters, complained not only that the multinational companies were destroying their livelihoods, but that none of the multinationals' profits were reinvested back into the country, and therefore is of no use to the country's development.

42 The USAID-funded Kenya Horticulture Development Program had an important impact on enabling large numbers of small-scale producers of fruits and vegetables to achieve GlobalGAP certification, and a similar program could be of great use in Senegal.

consultants to provide training on milk processing and strengthening the organization of the federation. It also helps dairy farmers with procurement of semen for artificial insemination (AI) and with negotiations on price of animal feed and milk sold to the processors. Most of the dairy processors are small enterprises registered as GIEs. The federation's representatives stated that these enterprises look upon "agribusiness" as something to be feared; to them, promotion of agribusiness would result in their small-scale members being put out of business. Clearly the word has taken on a meaning of its own. Noted as being of even greater threat to their industry, however, is the problem of inability of members to access credit due to the lack of land titles. The federation does not feel this issue is one that it can address, however, instead saying the matter must be resolved by the state.

EDUCATION AND TRAINING INSTITUTIONS

There is widespread dissatisfaction with agricultural education and training available in Senegal. The universities are said to be geared entirely toward scientific education, with no practical training. Furthermore, only a very small percentage of students are enrolled in agricultural disciplines and, aside from what is provided by NGOs, donors, and private companies, virtually no opportunities for continuing education or acquisition of new skills in agriculture exist. One large horticultural export company had to bring in professionals from France to train the staff at the local agriculture college in production and post-harvest handling techniques applicable to their operations. Training required for achievement of GlobalGAP or other certifications is also brought in from other countries, such as via the EU's Pesticide Initiative Program (PIP) program.

Training in economics, business, and law tends to be strongly "Dakar-centric" and therefore offers little of relevance to the agricultural sector, including agricultural labor. Lawyers' associations do exist, but are not known to delve into agriculture-related issues. Given how few labor disputes make it to the courts (estimated at 5 percent), it is highly unlikely that lawyers' associations are concerned about labor dispute resolution or legal developments related to agricultural employment.

MEDIA

Senegal's media enjoy a high degree of freedom and are known to be very professional, but are mostly focused on what happens in Dakar, and therefore give little coverage of rural matters. The media could report on issues related to agricultural labor and employment without fear of government reprisal, but such subject areas are unlikely to attract media attention, with the exception of large, formerly state-owned enterprises such as the cooking oil company, SUNEOR. The latter expressed the feeling that it is "under a microscope" and therefore has to be extremely careful not to do anything to cause public outcry. This situation, however, is not applicable to most agro-enterprises.

SOCIAL DYNAMICS

A CULTURE OF INFORMALITY IN THE AGRICULTURAL SECTOR

Although laws are in place concerning safety and hygiene at the workplace, most agricultural workers are employed on an informal basis, and therefore do not enjoy these rights. Moreover, the government entities responsible for enforcing these laws lack the ability to conduct the inspections required. Workers who have no contract have no means of ensuring that they are provided a safe and humane working environment. With the exception of some of the large agro-enterprises, no provisions are made to take care of workers' needs insofar as health, education, and shelter for their families.

There is also an imbalance between the needs of workers and employers, both in the formal and informal agricultural sector. The laws are such that it is extremely difficult for an employer to let an employee go, without facing years of legal battles and high legal expenses. On the other hand, the informally employed workers have no legal recourse in the event they feel they are treated unfairly, exposed to risks at the workplace or not provided due benefits (e.g., health insurance and overtime pay). Employers assert that the inflexibility of the laws with respect to firing workers, together with the high taxes paid on workers' salaries, serve as a major disincentive for expanding their workforce. Workers who are not engaged on a contract fear loss of their job if they complain about work conditions or unfair treatment by their employers. The small percentage of agricultural workers who are formally employed generally belong to strong labor unions that provide significant assistance in the case of a labor dispute.

Given the seasonal nature of farm work, much of Senegal's agricultural workforce is engaged only on a part-time basis. For example, one agro-processing factory stated that only one-third of its workers are employed the year around. Workers from neighboring countries (Guinea, Mali, Gambia) easily cross the border to work in Senegal during the peaks in the agricultural season. There is no real provision of basic social services to these migrant workers.

Senegal's labor regulations are seen as protecting the rights of the workers at the expense of the financial concerns of employers. Although employers have asked the national legislature to review and revise the labor laws, no new legislation has been passed that adequately addresses the employers' requests. Employers do not feel they are treated fairly by administrative tribunals or courts in labor disputes, nor do they believe enforcement of the law is fair and consistent.[43] One person interviewed said the legislature in Senegal does not consider agricultural work as being what is normally thought of as "labor," and did not recognize the importance of ensuring rural informal workers the same rights as afforded to formally employed staff in, for example, the manufacturing industry. For the most part, employers contend that no efforts are being made to simplify and reduce paperwork requirements with respect to labor regulations.

BASIC SKILLS AND HEALTH

Senegal's adult population has a literacy rate of less than 30 percent for women and about 51.1 percent for men (as measured in 2002). One foreign horticultural enterprise found that it had to provide nearly all the training for both skilled and semi-skilled staff needed to work on its farm and packhouse.

On the other hand, Senegal has a relatively healthy population, with one of the lowest rates of HIV infections in sub-Saharan Africa. The United Nations estimates life expectancy at birth to be 52.9 years, and most of the urban and a large proportion of the rural population have access to clean drinking water. In part because of the large quantities of drugs that move through the country, drug abuse poses a problem in Senegal, mainly among the poor living in urban areas. Alcohol abuse was reported to have experienced a "massive rise" in Senegal in 2008. That said, the widespread practice of Islam, which eschews alcohol, results in a lower apparent rate of alcohol used in Senegal than in other Sub-Saharan states.

GENDER

Although Senegal may not have any laws that restrict women or minorities from undertaking agricultural (or other types of) work, girls, especially in rural areas, are far less likely than boys to attend school, which is reflected in the extremely high adult female illiteracy rate in the country (70.2 percent). As a consequence, women face more difficulties than men finding employment. Although the law prohibits marriage before the age of 18, poor rural families often give away their daughters well below that age in exchange for income, further exacerbating girls' likelihood of not attending school beyond the first few years. While no statistics could be found for the agricultural sector, the World Bank reports that in the manufacturing sector, only 11.9 percent of full-time employees, and 4.77 percent of

43 According to one report, "widespread public tolerance and acceptance of corruption based and cultural and social norms and traditions" is one of the factors facilitating non-transparent and corrupt governance. *See* USAID/Management Systems International, *Corruption Diagnostic: Senegal* (August 31, 2007).

employees in senior positions are women. Thus, woman can hardly be said to have the same employment opportunities as men in Senegal.

Domestic violence is not uncommon in Senegal, especially in the rural areas. The situation is unlikely to change unless there is a change in mentality, whereby girls are given equal opportunities in education, and women command the same rights (in reality) as men in the workplace.

CHILD LABOR

Senegal has laws that prohibit the employment of children under the age of 18, although 15 year olds can legally be engaged as apprentices. In rural areas, however, having children participate in farm work is considered part of their "social development." As with enforcing other laws, the entities responsible for ensuring that children are not subjected to the "most difficult" or "dangerous forms" (e.g., applying pesticide, herding livestock) of work in rural areas lack the means to ensure that these regulations are respected. Moreover, religious students ("talibes") are sometimes put to work in the fields of their Marabouts as young as the age of 8 or 9 years old. This type of employment is tacitly considered a subject outside of the jurisdiction of Senegalese law.

ENGAGEMENT OF YOUTH

During this diagnostic, almost every state agency advised that the technical competency of staff members is at a high risk of disappearing with fluxes of older staff entering retirement in the nearing years. Several private companies also complained that graduates of higher education programs in Senegal, from the universities to the vocational schools, are often unprepared for entry-level work and need to be trained on the job. Youth who are fortunate enough to receive higher learning typically study theory, but are usually not provided any field practice, whether they are headed for the agricultural, industrial, or service sector. Schools do not have materials to provide students with hands-on training experience, nor with land, equipment, or facilities to work on. This adds to the high cost of hiring youth and reduces professional effectiveness, notably in the public sector where on-the-job training is more lackluster than typically in the private industries.

As is the case for many countries in Sub-Saharan Africa, agriculture is looked down upon as a profession. Young people offered the opportunity for higher education or specialized training are much more likely to pursue other professions, such as information technology, business, and medicine. Moreover, the revenues sent back to the country from Senegalese in the diaspora influence the goals of young men, many of whom try to (illegally, in most cases) emigrate to countries in Europe or North America, rather than staying at home to farm.

One model for creating agricultural jobs for youth in Senegal that seems to be working well is organic farming—an environmentally friendly approach to production that typically employs twice as many hands as conventional farming. There are several prominent certified organic farms in Senegal, all of which are export crops. These include an organic banana cooperative in the Casamance, First Lady Wade's organic gardens program, a girls education program using organic farming ingredients in Kaolack, and a large-scale, 10,000-hectare produce farm certified organic near Richard Toll. The entrepreneurs managing these initiatives are proving that if youths are trained, they will be motivated to work on farms and are able to make a sustainable profit in rural areas doing so. The government and donor programs would do well to invest in better training for youth in strategic agricultural sectors for products where domestic and foreign demand is growing, the environment is protected, and older people are tending toward retirement.

RECOMMENDATIONS

- Revise the labor laws so that they are much less onerous for employers to dismiss staff for economic reasons.

Specifically, reduce the administrative burden and costs incurred when staff are fired and allow for much greater flexibility with respect to overtime regulations and restrictions on work hours.

- Reduce the amount of tax employers and employees are required to pay for pension (IPRES) as well as work-related health insurance *(Caisse de Securite Sociale)* and ensure that monies paid for these taxes are used for their intended purposes in a clear and transparent manner. This, together with the first recommendation, would encourage both employers and employees to revert from the current trend of informal employment, which offers no protection to workers, to legally recognized contractual work wherein employees would benefit from both a reasonable pension and coverage of work-related injuries and illness.
- Ensure that the government entities responsible for enforcing laws and regulations on occupational safety and health, as well as the minimum age of workers, are provided the means and motivation required to conduct their work effectively and thoroughly (i.e., covering rural as well as urban workplaces).
- Revise the agricultural curricula at colleges and universities so that students gain skills of use to the both the public and private agricultural sectors. Develop incentives to make agriculture an interesting discipline for students, such as through assisting graduates to secure good jobs, providing opportunities for study in other countries, and creating internships with agro-industries and other agricultural enterprises.
- Encourage the formation of strong agricultural producer organizations with technical and financial assistance focusing on crop husbandry, training in farming as a business, organizational management, and marketing. With respect to high-value crops destined for export, additional support should be provided to enable farmers to achieve GlobalGAP and other certifications.
- Increase social marketing to farmers to teach risks of incorrect pesticide usage to human health during application and consumption and better-integrated pest management and organic pest management strategies.
- Improve literacy rates, especially for women, by enforcing compulsory education for all children ages 6–16. This will not only boost the overall skill level of the labor force, but also enable workers to protect themselves against some work-related risks, such as unsafe use of pesticides.
- Sponsor awareness-raising campaigns on the importance of allowing girls to reach maturity before marriage. Provide incentives to families who keep their girls enrolled in school until they have completed their secondary education.

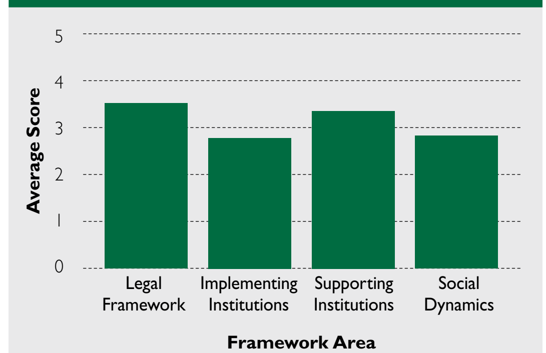
REGISTERING PROPERTY

Access to land is a major problem in Senegal. Outside of Dakar, much of the land is *Domain National* (DN), owned by the state. In a nation of more than 12 million people, there are only about 102,000 land titles, including state and other forms of land. Less than 5 percent of Senegal's population lives on land to which it has clear title. Most are households in Dakar and a few other cities. The vast majority of rural Senegalese do not have title to the land where they live and work. In some cases, they have long-term legal rights to occupy or work the land; in many others, however, they do not. And very few rural Senegalese are able to use their land or land rights as collateral to access credit. Meanwhile, investors and businessmen find that acquiring land is a tortuous process, often requiring bribes and favors to local politicians.

REGISTERING PROPERTY

Doing Business Ranking 2010	166
Doing Business Ranking 2009	164
Procedures (number)	6
Duration (days)	124
Cost (% of property values)	20.6

REGISTERING PROPERTY



Tenure insecurity can take many forms. Local governments may seek land to lease to agribusinesses or to resort operators, or to expropriate for public purposes. The state can, by simple decree, withdraw agricultural land from the *zone de terroir* and convert it to state use. When a household expands and needs additional lands, it may attempt to convince the local council to grant it more land, even at the expense of neighbors. As the population grows, farmers push into marginal lands, displacing herdsmen, often with the tacit or active consent of local authorities. Meanwhile local elites may use access to land as a political tool, granting it to clients and allies and denying it to economic rivals and political opponents.

Tenure insecurity can be costly in a variety of ways. Where there is insecure tenure or unclear title, landholders, users and potential buyers will forgo investment in improvements, such as planting trees and other long-term crops, or constructing roads, buildings or irrigation works. On the other hand, landholder and users may try to reduce their insecurity by altering their own investment patterns or those of tenants. To give a specific example, tenure insecurity is likely to reduce fallow periods, because leaving land fallow can threaten a landholder's tenure. Even with fertilizers or new crop strains, land must lie fallow for a time. But as the population grows, the demand for arable land increases, and tenure is in part determined by intensity of land use, fallow periods decline and the land's fertility decreases. The choice not to farm land is a form of investment, but it cannot be secured without reliable tenure.

Like most Sub-Saharan countries, Senegal faces an environmental crisis driven by population growth and the persistent degradation of natural resources. Senegal's forests, fisheries, and arable land are all under steadily growing pressure. In many rural areas, soil fertility and productivity is stagnant or declining due to a combination of overuse, and poor management of fertilizer and other inputs. Competition for access to increasingly scarce land, weak enforcement of laws and regulations, and poor administration by the rural councils all combine to make corruption a serious problem in land use and management. This is not only a rural problem; land speculators in urban areas have been known to bribe officials to gain title to coveted properties, and there are persistent allegations of urban mayors favoring their electoral supporters in allocating lots. However, the uncertainty of title and access to rural land is a particular disincentive to investment in agriculture.

Meanwhile, in Dakar, growing demand for urban land has rapidly driven up land prices. This makes it difficult for Senegalese of modest means to pay for decent housing; it also makes urban land more expensive for investors. On the outskirts of the capital, the small "market farms" that provide much of the city's fresh produce are under growing pressure to sell the property.

Senegal's land issues are well documented.[44] Donors and the government have made various attempts to engage with them. To date, however, there has not been a clear political mandate to engage with these issues. If anything, the opposite is true; the government gives lip service to reform, but does not seem interested in either major changes to the law or sweeping reforms of enforcement.

44 An overview of the literature up to 2000 can be found in the bibliography of Philippe Lavigne Delville, *Harmonising Formal Law and Customary Land Rights in French-Speaking West Africa, available at* http://www.gret.org/ressource/pdf/harmonising.pdf. A number of more recent papers are cited in Les Defis Du Developpement Local Au Senegal, Rosnert Ludovic Alissoutin (2007), partial text available online at http://tinyurl.com/lvf657 (French only).

LEGAL FRAMEWORK

The legal framework for land use in Senegal is complex and includes provisions enacted in the colonial era as well as several laws enacted this decade. The legal regime for land is national, as opposed to regional. (In fact, most commercial laws in Senegal are multinational. Business law falls under the 16-country OHADA framework, while financial laws are under the 8-country WAEMU system. For further discussion of these frameworks, see this report's chapter on Enforcing Contracts.)

KEY LAWS

- The Law on National Domain (passed in 1964)
- The "Decree of 1932" on land registration (a colonial-era act, but still valid)
- The Law on land administration (Loi Fonciere)
- The Law on State-Owned Lands *(domain de l'Etat)*
- The Law of Eminent Domain *(dematriculation)*
- The Local Government Code (passed in 1996)
- The Law on Wildlife (passed in 1986)
- The Law on Forestry (1998)
- The Law on the Environment (2001)
- The Law on Mining (2003)
- Agro-silvo-pastoral law (2004)

The most important of Senegal's land laws is the **1964 Law on the "Domain National"** (DN), which abrogated customary land tenure and nationalized most of the land. Under this law, the state is the exclusive trustee of this land and is responsible for its management. The DN is subdivided into four categories:

- Urban zones *(zones urbaines)*
- Zones for special use *(zones classées)*
- Zones for agricultural production *(zones de terroir)*
- Development zones *(zones pionnières),* which remain under the control of the state.

Of these, the *zones de terroir* are by far the most important for agricultural production. Privately owned land exists, but is rare outside of Dakar and the larger towns.

Originally, DN land was administered directly by the state through the Directory of Lands. Today, land administration in Senegal is closely linked to decentralization, which was implemented in the early 1970s and reformed in 1996. In rural areas, authority over land belongs not to the central state but to rural councils *(communautés rurales)*. These councils are responsible for the management of land and natural resources in their territory *(zones de terroir)*. Rural councils have the duty and power to allocate land to those who can show they develop and use it productively *(mise en valeur)*. In theory, farmers who use their land productively have their access to this land protected by law.

Despite the extensive body of legislation on land tenure and on decentralization, customary rules and practices regarding land are still widely applied in rural areas. Rural councils also make a great many ad hoc decisions, which may or may not be consistent with the laws. Officially, DN land cannot be bought, but only allocated by the rural councils. In practice, informal rental and sale arrangements are common.

Senegal's laws on natural resources—the mining, forestry, wildlife, and environment laws—are generally well written and consistent with international best practices. However, there is a severe shortage of personnel and resources to ensure enforcement. For example, interviews reported that the country does not have nearly enough forestry agents to patrol all the protected forests, national parks, and wildlife reserves. As a result, violations are quite common.

LOCAL GOVERNMENT

In 1996 the new **local government code** recognized the regions, municipalities, and rural communities as seats of local government. A wide range of competencies was transferred to local governments, including culture, health, education, town planning, and the management and use of state, public, and government lands. This devolution of powers was to be accompanied by funding from the Senegalese state and access to its services according to agreed terms of use.

The boundaries of these new local governments did not entirely match the administrative boundaries that were in place when they were created. Therefore, the regions do not

always correspond to the regional administration, which is managed by a governor. Within regions there are departments, which are managed by prefects; sub-prefectures, which are managed by sub-prefects; and villages, whose chiefs *(chefs des villages)* are nominated by local citizens but appointed by the sub-prefect. Thus, decentralization has created a three-tier system with central, regional, and local levels (municipalities and rural communities). Meanwhile, the national government operates on five levels: national, regional, departmental, sub-prefectural, and village.

This seems complicated because it is. Ideally, it is supposed to give Senegalese citizens a great deal of say in local government and administration. In practice, conflicts between the different branches and levels are common. However, in rural communities where most agricultural production takes place, the local authorities tend to be much stronger than the state. Rural councils exercise a great deal of power at this level, while state representatives such as the sub-prefects and *chefs des villages* are little more than record-keeping bureaucrats and tax collectors.

ZONES DE TERROIR

National domain land accounts for about 95 percent of Senegal's total territory, and most of this is *zones de terroir.* This includes all the land that a rural community needs for housing, farming, livestock rearing, woods, and possible expansion. The boundaries of each territory are determined by decree, and are administered by the rural council under the oversight of the local sub-prefect.

Land is allocated by the rural councils free of charge; beneficiaries must live in the rural community and be able to use the land productively. When they die, their heirs are allocated the land, provided they can put it to productive use.

In theory, the rural council can withdraw plots for two reasons: to sanction noncompliance with the conditions of allocation, particularly the productive use requirement, in which case the land is withdrawn without compensation; or in the interests of the community, in which case the landholder should be allocated a similar plot if practicable—although this is not possible in most rural communities. Under the law of 1964, "productive use" *(mise en valeur)* is supposed to be defined for each region by an order of the prefect, but this never seems to have been done. So the question of what constitutes *mise en valeur* is left to the discretion of the local councils.

The land system does have some positive aspects. Rural Senegal is still a land of small farmers. If the country were to somehow switch to a system of pure fee simple ownership, concentration of land ownership in the hands of wealthier farmers and entrepreneurs would be possible. Poor farmers could become landless tenants and sharecroppers, or part of a great drift into the cities. This was one reason the Senghor administration opted for the domain national system back in the early postcolonial period. Flawed though the current system is, it does support a large population of small, relatively independent family farmers on the land.

IMPLEMENTING INSTITUTIONS

COURTS

Senegal's court system receives a great many land cases. In Dakar, land disputes account for about 20 percent of the court's workload; in St. Louis, it is "between a third and half"; and in Kaolack, "about half." Common types of cases include boundary disputes, arguments over rights to use land, disputes arising from decisions of the rural councils,[45] and disputes over who has the right to use land.[46]

The courts are reported to be technically competent to handle land disputes. However, the court system is very slow. Access to the courts is also limited by fees and costs and by physical distance. In the Senegal River valley, for example, many villages are half a day's travel from the nearest courthouse. For further discussion of the court system, see this report's chapter on Enforcing Contracts.

KEY IMPLEMETING INSTITUTIONS

- Courts
- Government of Senegal
- Rural councils
- Land offices, including cadastre, Conservation Foncier, and bureau de domain.

THE GOVERNMENT OF SENEGAL

As noted, the government of Senegal pays lip service to reforming the land system. There is general agreement that the system is broken, but there has been no serious effort to change it. A reform committee was formed in 2006, but was not given any resources or significant support; it has met several times, but those interviewed for this report note that it has not done much of anything. The Ministry of Agriculture also set up a working group, but it missed its deadline for presenting recommendations and nothing has been heard from it since. The president has stated that he would like to send missions

45 These are very common. Rural council decisions are often at odds with the law. They may not be written down, and they may be delivered by a single council member, or a small group of the council, rather than the council as a whole.

46 In theory, only inhabitants of a particular village have the right to use its land. However, it is very common for a villager to lease land, or sell rights such as herding rights, to persons from another village. It is also quite common for émigrés to want to invest in land, even though they are no longer resident in the village. A great many land disputes seem to include, or be based on, accusations of ineligibility.

to neighboring countries to examine their land systems, but this has not yet happened.

The government has the power to administer some lands directly, particularly the "zones for special use" and the *"zones pionnières."* In a few cases, the government leases land directly to agricultural investors, but this is relatively rare. More often, the government may convert *"terroir"* land into another form—which it can do by simple decree—thus removing control from the rural councils. In theory, this should only happen when there is an overriding state interest, such as the promotion of development or irrigation schemes. A recent example is in the lower Senegal River valley, near St. Louis, where the government converted large tracts of land in the last few years. There have been widespread allegations that individuals and businesses with political or administrative contacts have benefited, as the state has granted them the best of the converted land.

RURAL COUNCILS

No aspect of Senegal's land system has attracted as much criticism as the system of administration by rural councils. The councils are widely alleged to be corrupt, incompetent, and the tools of entrenched local interests. Councils are implicated in widespread violations of the laws on land, wildlife, and the environment. They are said to be responsible for tenure insecurity and all its negative consequences, from undercapitalization to exhaustion of the soil.

There are a few things to be said in the councils' defense. For all their power at ground level, the councils are not self-funding; they rely on the central government for their budgets. The state is not particularly generous in this regard, granting only about 3 percent of the total national budget to local government. The councils thus have few resources to devote to proper land management. They tend to have few staff, and those tend to be underpaid. Few councils can afford a secretariat or the keeping of proper records; thus, it is unusual for a council to have complete written records of land use assignments. Council members are elected officials, not professionals; nobody offers them training in law, land management, accounting, or agronomy. They are expected to do a critical job, but not given the tools that would make it possible.

Villagers regularly ignore the law, forcing the councils to turn a blind eye to land rentals and sales. Indeed, villagers regularly "get ahead of" the councils and thereafter pull them along. For instance, clearances of forests or other protected lands that have not been authorized by the council are often retrospectively approved, because too many locals are implicated for a reversal to be politically feasible. Similarly, when a landholder dies, the family plot is usually reallocated to the heirs as a matter of course, without determining whether they are capable of putting it to productive use.

That said, the councils bear much responsibility for the problems of land management. Few are run in a professional manner. Council meetings are often delayed or held without announcement, and individual council members often act ex parte, claiming authority that they legally lack. Political cronyism is widespread; many jobs go to unqualified clients or family members rather than competent staff. Few councils make any effort to familiarize themselves with the relevant laws. Many openly ignore or defy them. And land allocation may be used as a political tool, granted or withheld depending on whether the council approves of a particular petitioner or not, used to reward friends and punish opponents.[47]

Illegal land sales and rentals are on the increase nearly everywhere, especially in peri-urban zones and areas of irrigated farming. It is widely believed that rural councils' involvement in these has evolved from "tolerating a necessary evil" to "active participation for profit." Meanwhile, a combination of population growth and council reluctance to withhold land from voting petitioners has contributed to the widespread fragmentation of farms in rural areas. Certain regions of Senegal, such as the Peanut

47 In theory, the local sub-prefect is supposed to attend council meetings and monitor council actions. In practice, this seems to have little effect, as the sub-prefect does not have much real power over the council.

Basin, are seeing increasing numbers of non-viable micro-agricultural enterprises. This is not entirely the fault of the rural councils, but they are doing nothing to help matters.

LAND OFFICE

Each region has a land office, which contains three agencies: the cadaster, the *conservation foncier,* and the *bureau de domain.* These are branches of the national state, not the local government; land office directors are appointed by the Ministry of Finance. These land offices often have problems working with local authorities.

Land offices are generally underfunded, understaffed, and underequipped. The PAMOCA project has given a great deal of help, but many problems remain. Land registration is still very slow, especially in Dakar and the peri-urban areas around it; in some cases the backlog is years deep.

Cadaster. The state cadaster is a technical service that works within the regional land office. Its function is to survey and map land and to determine property boundaries. It is not concerned with land allocation, nor with the issuing of licenses. It does have responsibility for *morcellement* (subdivision), which is becoming more and more of a challenge as the population grows. Dakar has a particularly large backlog for *morcellement.*

Cadaster offices face a variety of challenges. There is no national map. Local authorities often make changes to property boundaries without properly recording them. Many offices are very short of equipment (though PAMOCA has been trying to help with this—see below). And all the cadaster offices are suffering from a drastic shortage of trained surveyors. Outside of Dakar, cadaster offices are not always able to carry out their basic functions. In some cities (such as St. Louis), a citizen requesting assistance—a survey or a subdivision—may be sent to a certified private surveyor. In others (such as Kaolack), there are no private surveyors, and the citizen may have to wait for months or years.

Conservation Foncier (CF). This office is responsible for the registration of land, including privately owned land and apartments. It is thus particularly busy in urban areas, where there are many more land titles. Thus, Dakar has four *bureaus de foncier,* but Kaolack and the entire Peanut Basin have just one.

The CF is supposed to authorize *morcellements* before the cadaster can survey and finalize them. It works closely with the tax authorities, who want to know about new taxpayers.

BUREAU DE DOMAIN

The bureau is responsible for zoning, and also for the direct administration of state lands. Investors who want a zoning change must apply here.

SUPPORTING INSTITUTIONS

SURVEYORS

Senegal is running out of surveyors. The reason for this is simple: the national university stopped training surveyors more than 20 years ago. Since then, one single class of surveyors has been trained—11of them, in 2006–2007—thanks to a donor-funded program at the Ecole Polytechnique in Thiers. But otherwise, all of Senegal's surveyors date back to 1986 or before.

As a result, the number of surveyors is steadily dropping. The youngest ones are middle-aged; most are within five years of retirement. There is already a painful shortage of surveyors, especially outside Dakar. (Ten of the 11 donor-trained surveyors ended up in Dakar.) St. Louis has a total of three surveyors: one is in public service, two are private, and the publicly employed one will retire next year. Kaolack has exactly one surveyor for the entire city. By way of comparison, 10 years ago St. Louis had six surveyors, and Kaolack had eight. Some of the shortage can be minimized by surveyors' assistants and draftsmen, but this is a stopgap measure. Already local cadaster offices are turning away work, and one of them privately admitted that the quality of work has also suffered. In the absence of surveyors, "surveys" are sometimes carried out by completely untrained individuals, resulting in "maps" that have no legal force but are used anyway.

PAMOCA

PAMOCA is a project funded by the European Union and the African Development Bank to support land surveying and cadasters across Senegal.[48] Its goals include developing a national map, cross-indexed with both satellite images and with local records. (The national map is partially complete at this time; it includes maps for 76 cities and regions, covering about a quarter of the country's area.) It has also provided training and equipment to cadaster offices across Senegal and has tried to assist the government in policy formation.[49]

There is universal agreement among surveyors and officials of the land offices that PAMOCA's assistance has been enormously helpful. The offices in St. Louis and Kaolack both stated that they could not function without PAMOCA-provided equipment and technical assistance. The national map, if implemented, would be a tremendous step forward.

KEY SUPPORTING INSTITUTIONS

- Surveyors
- PAMOCA (EU and ADB-funded land project)
- State Inspector General Corps

Unfortunately, PAMOCA is due to close in December 2009, and there is no prospect for an extension. Nor is any donor involved in a follow-on project.

STATE INSPECTOR GENERAL CORPS (IGE)

The IGE was created in 1964 and is currently operating under a June 2007 decree. It is tasked with fighting fraud and corruption, primarily through conducting audits of public agencies, and also with proposing reforms.

In theory, the IGE is the highest organ of administrative control over public expenditures. Its budget is earmarked by the treasury, and its inspectors cannot be removed from office during their seven-year terms. It has wide investigative power: IGE inspectors can have access to all government documentation and information and can compel testimony from all government employees.

In practice, the IGE's ability to fight corruption is limited.[50] Its resources are limited, and it is certainly not able to investigate all or even most allegations of corruption. It also reports to the president, who has chosen to keep almost all of its reports confidential. The president is supposed to refer the IGE's reports to the judiciary for further investigation and prosecution, but this rarely happens. In a 2007 case, the president acknowledged that the IGE had given him evidence that some rural councilors had been involved in illegal land deals, but stated that he would instigate no legal proceedings against them. This was presented as an exercise of executive discretion, but the effect has been to deter complaints against rural councils: nobody believes that these will be taken seriously.

SOCIAL DYNAMICS

SENEGALESE DIASPORA

Senegal's rural communities have sent large numbers of "émigrés" to Dakar and abroad. Émigrés tend to be young adults, mostly male, and to send part of their salaries home.[51] In many villages, the numbers of émigrés is so large that they have major effects on the local economy. On one hand, remittances may allow their families to invest in tools, fertilizer, seed, and other inputs for agricultural production. On the other hand, émigrés often want to buy a plot of land in the home village—for such reasons as status and prestige, to produce a second income stream, to provide for their families, or to build an eventual home. This can cause a range of problems, since (1) an émigré who has transferred his residence is generally not eligible to use domain land in his home village; and (2)

48 Descriptions of the project and its goals (in French) can be found at http://www.devex.com/projects/63699 and http://www.aps.sn/aps.php?page=articles&id_article=55445.

49 For instance, PAMOCA has aggressively lobbied for the re-opening of surveyor training. The government has verbally committed to this on several occasions, and even went so far as to promise 200 million francs (about US$450,000), but so far no courses have been developed or offered.

50 USAID, *Corruption Assessment: Senegal (2007)* at 70, *available at* http://www.afrimap.org/english/images/documents/USAID-Senegal-Corruption-PNADK548.pdf.

51 Remittances from abroad totaled 640 billion francs in 2008, or about US$1.4 billion. The figure for remittances to rural communities may have been even larger, since these include internal remittances from émigrés in Dakar and other large towns.

domain land that rests unused is likely to revert to the control of the rural council for reassignment. However, village authorities may be reluctant to deny such requests, since émigrés, as a group, may bring in a great deal of money.

In sum, émigrés are an important source of capital for rural Senegal, but the émigré/remittance system leads to many legal and social complications.[52]

SOCIAL STRATIFICATION

Many of Senegal's rural communities are socially stratified and hierarchical. Often a few families dominate the economic and political life of the community. The leaders of these families tend to be very well entrenched, maintaining their power through patron-client relationships, and long-established control over local resources, including land. They are also aided by conservative cultural norms that include deference to authority and respect for traditions. Many local political leaders may be local religious leaders as well, or closely allied to them by family connections or common economic interests.[53]

Rural councils tend to be dominated by members from these traditional "best" families. For instance, attempts by the central government to interfere with local elites are likely to be met with noncompliance or outright defiance. Simply put, it is very difficult for any outside force to alter the existing social and political patterns of a traditional rural community, or to convince local elites to enact reforms that are not obviously in their interests.

CHANGING ATTITUDES TO LAND

Rural Senegalese did not traditionally view land as a commodity. Use, rather than ownership, was most important. This is gradually changing as more and more Senegalese cycle through urban areas where private land is the norm. Rural Senegalese are becoming more comfortable with owning land and also with buying and selling it. This does not always interact comfortably with the existing legal framework, which does not envision the sale of *domain national* land between private individuals.

RECOMMENDATIONS

- **Create a new land law.** Senegal's current land regime is not working very well. This is a large and complex topic, and dealing with it will need real political commitment on the part of the government. Absent such commitment, donor engagement would be a waste of time. On the other hand, if the government ever does decide to move on this issue, it will be potentially one of the most important reforms of the last 20 years. The USAID may want to coordinate with other donors in monitoring this issue, especially the multinationals (the World Bank, the African Development Bank (ADB), and the IMF), the EU, and France.
- **Extend the work of PAMOCA.** The PAMOCA project will expire at the end of 2009. No other donor is working in this area. This is unfortunate, because PAMOCA's work is crucial. The project provides invaluable assistance to cadasters and land offices across the country, and also is in the process of developing a modern national map. It would be a tremendous waste if PAMOCA's work were to be left unfinished. Picking up the project, or creating a follow-on, could be done fairly cheaply; both the ADB and the EU have expressed interest in cooperation.
- **Train and licenses surveyors.** Senegal desperately needs new surveyors. The *manqué des geometres* was a recurring theme throughout the interviews. The situation is already bad, and—as the last generation of surveyors retires—is about to grow much worse. PAMOCA made an unsuccessful attempt to convince the government and the university to train a new generation; some donor should be able to build on this.
- **Provide technical assistance to rural councils.** Assistance to rural councils may seem counterintuitive, given the

52 For a more detailed discussion of this, see Lorenzo Cotula and Camilla Toulmin, FAO of the United Nations, *From Till To Tiller: Linkages between International Remittances and Access to Land in West Africa,* Ch. 3 (Senegal) (2004).

53 Universal suffrage and representative democracy have had some impact on the dominance of traditional elites. Rural councils are elected; two-thirds of each council is elected directly, while one-third is chosen by representatives of local agricultural cooperatives. Thus, would-be leaders must compete in democratic elections. However, election by universal suffrage does not necessarily guarantee real representation. "[T]he lists of candidates are prepared by political parties and independent lists are not authorized. Few parties have transparent and democratic procedures for drawing up these lists, and competition between the ruling party and its rivals is rarely fair, given its hold over the administration and the resources at [its] disposal…The mechanisms for involving and informing local people are not always as effective as anticipated by the law, and it is not uncommon for mayors and presidents of regional and rural councils to be [accused of] mishandling or misappropriating power and corporate funds." Jacques Fay, Le Hub Rural, *Land and Decentralization in Senegal* (May 2008).

generally low reputation of the councils. Donors have avoided close engagement with the councils, likely for just this reason. But part of the councils' problem is that they cannot carry out their assigned functions even when they want to: they lack the funds, staff, training, and technical expertise. It is probably worthwhile to try at least a pilot project, giving technical and legal assistance and training to councils (perhaps newly elected ones) in a few selected areas and then checking after a year or two to see if there are testable differences in outcomes (i.e., fewer land disputes in the courts, more investment, increased productivity).

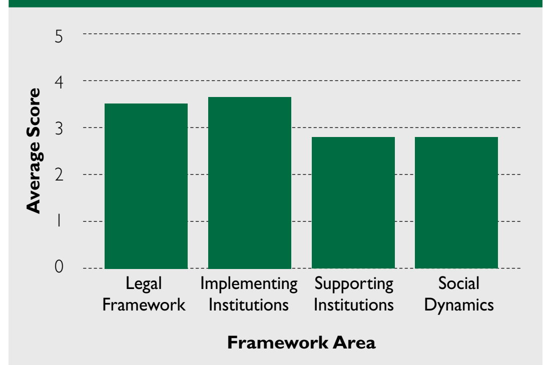
GETTING CREDIT

Senegal's financial sector is robust. There are 18 commercial banks and several hundred microfinance institutions (MFIs). The sector has been liberalized and privatized for over a decade. Eight banks are either foreign-owned or have significant foreign investment. No bank has gone bankrupt in the last 20 years and the commercial banks all appear to be stable and liquid.

GETTING CREDIT

Doing Business Ranking 2010	150
Doing Business Ranking 2009	147
Legal rights index	3
Credit information index	1
Public registry coverage (% adults)	4.4
Private registry coverage (% adults)	0

GETTING CREDIT



Unfortunately, this vigor does not extend to the agricultural sector. Agricultural lending in Senegal accounts for less than 5 percent of the total portfolio of the financial sector, despite the importance to the overall economy. Much of this comes not from banks but from MFIs. Lending is concentrated geographically in Dakar; much of Senegal's rural population has no contact with banks or MFIs whatsoever, either as borrowers or as depositors.

Total deposits in the financial sector are about 1,700 billion francs, or about US$3.8 billion. The total loan portfolio is about 1,500 billion francs, or about US$3.4 billion.[54] Both these figures divide roughly 90 percent/10 percent between banks and MFIs: in cash terms, banks are far more dominant. However, because MFI loans and deposit accounts tend to be smaller, MFIs are roughly equal to banks in terms of number of depositors and number of loans granted.

Most of the banks' capital, and almost all of the MFIs', come from short-term deposits. A few banks have attracted outside investment, including investment from local pension funds and insurance companies. Most banks, and a few MFIs, offer certificates of deposit, but these account for less than 10 percent of all deposits.

Few banks issue bonds or borrow on international markets.[55] As a result, the majority of bank loans are short term; over 50 percent are for one year or less, and less than 5 percent are for more than five years.

Interest rates in Senegal are low by regional standards. Government bonds pay 4.25 percent. Commercial bank loans are typically around 10–13 percent. MFI loans vary much more widely, and can go as high as 18 percent.

Loans for capital investment are rare. Loans to farmers, fishermen, and herdsmen are very rare; they total less than 1 percent of all loans. The primary constraints are (actual and perceived) high risk, which makes both banks and MFIs reluctant to loan, and also the inability to provide collateral. Few farmers have clear title to land, and very few banks will lend against future harvests. When loans to processors and exporters are included, total loans to the entire agricultural sector are just over 4 percent of Senegal's total financial sector portfolio.

54 Central Bank figures, first quarter of 2009. These numbers are a moving target; deposits grew 13 percent year-on-year from the first quarter of 2008, while loans grew 11 percent.

55 Senegal uses the regional capital market in Cote D'Ivoire.

This is strikingly disproportionate to the agricultural sector's share of GDP (about 16 percent).[56] Part of this is because—with the notable exception of rice—most agriculture in Senegal is not very capital intensive. But the major reason is that lenders simply do not like agriculture: it is too risky, returns are too low, and banks and MFIs have not invested in developing agricultural expertise. Commercial banks are strongly committed to real estate, commerce, construction, and the service sector, but they are just not very interested in agriculture.

Overall, agricultural lending can be described as severely depressed. The sector is starved for investment and is in desperate need of credit.

LEGAL FRAMEWORK

Senegal is somewhat unusual in that most commercial and financial activity takes place within legal frameworks that are regional, not national. For the financial system, there are two such frameworks: the OHADA and the WAEMU.

OHADA

The OHADA is the *Organisation pour l'Harmonisation en Afrique du Droit des Affaires,* which translates into English as "Organization for the Harmonization of Business Law in Africa." Sixteen West and Central African countries are members[57] and have agreed to standardize their business and commercial laws. These laws are supported by a multinational legislature (which passes the laws and periodically reviews them), a supra-national court (which preserves uniformity of practice by issuing decisions and interpretations applicable throughout the OHADA territory), and a permanent secretariat (which includes most general commercial laws). OHADA members agree to accept these laws—which are typically inspired by French models, though with reference to international best practices—as their own.

The OHADA at this time has nine uniform acts. These include the laws on contracts, corporations, bankruptcy, the transportation of goods, surety, and collection of debts. If a Senegalese law comes into conflict with the OHADA, OHADA law prevails.

The OHADA is generally considered a success; the laws are widely perceived as modern, reasonable, and well drafted, and their consistency across a wide region is believed to have encouraged both outside investment and interregional business.[58]

KEY POLICIES AND LAWS

- OHADA's nine uniform acts of commercial law, including laws on collection of debts and contracts
- WAEMU's banking law *(Loi Bancaire)*
- Other WAEMU laws, including the laws on MFIs, capital markets, money laundering, counterfeiting, and payment instruments

WAEMU

Eight West African countries comprise the West African Economic and Monetary Union (WAEMU). These countries all use the CFA that is pegged to the euro; they also share a single central bank (see below). Less well known is that they also share a common framework of financial laws. The BCEAO, WAEMU's central bank, includes a secretariat that drafts laws on banking, money (not including insurance) and credit. These drafts are then submitted to the individual governments for review. If consensus is reached, a final draft is then approved by a Council of Ministers of all the countries, and then passed by the individual country parliaments.[59] In this manner, the eight WAEMU countries have produced a body of specialized financial law, based on a combination of French models and international best practices that is consistent throughout the WAEMU region. The WAEMU laws cover an area that is narrower but deeper than the OHADA laws; while the OHADA deals with general business and commercial laws, the WAEMU is focused purely on the financial sector.

56 About half of all loans to the agricultural sector come from banks, and about half from MFIs. In round numbers, agricultural loans are only a little over 2 percent of total bank loans, but between 15 percent and 20 percent of MFI loans. Much of that 2 percent is coming from CNAS (see discussion of banks below), and much of that is short-term funding for the cotton and groundnut campaigns.

57 The West and Central African Francophone countries, plus Guinea Bissau. The Democratic Republic of the Congo is not a member, but is expected to join soon.

58 See Claire M. Dickerson, *Harmonizing Business Laws in Africa: OHADA Calls the Tune, available at* http://law.bepress.com/cgi/viewcontent.cgi?article=3073&context=expresso. The OHADA itself has a Web site at www.ohada.com.

59 This system has been described as "transparent but slow." It can sometimes take several cycles before a consensus is reached among all member states. Most of the laws to date have needed 1–2 years of consultation before they are ready to be approved and passed. However, this gives abundant notice to affected parties, and every law has been passed by the national parliaments very quickly once all member states have agreed.

Thus, Senegal's banks are governed by the WAEMU *Loi Bancaire,* passed in 1995 after the devaluation of the franc and the subsequent banking liberalization under the WAEMU. The Loi is a modern and adequate legal framework. It includes provisions for bankruptcy, liquidation, and merger of banks and allows the purchase of banks by foreign investors. Since it is a WAEMU law, it is identical throughout all eight-member states. The banks consistently reported that they are pleased with the Loi, and two banks noted that it made it very easy for them to do business across borders.

Other WAEMU laws include the laws on MFIs (just passed in 2007), capital markets, money laundering, counterfeiting, and payment instruments.

Loans in general are governed by applicable contract law, in this case the OHADA Civil Code. There is a specialized law for secured transactions, but there are not yet laws for finance leases or factoring. (The WAEMU is considering a finance leasing law, which makes the national governments reluctant to act in this area. However, no action is expected until at least 2010.) MFIs were only partially regulated until 2007, when the WAEMU promulgated a law giving regulatory authority to the BCEAO.

CREDIT INFORMATION

There is no credit information bureau in Senegal or any formal system of aggregating credit information. However, there is an informal system: a "black list" of bad borrowers, kept and administered by the central bank. The black list is simply a database of several thousand names with minimal notation: lending bank, date of loan, and size of arrears.[60] There is nothing resembling a credit-rating system. Banks contact the central bank to place names on the list or to inquire whether a loan applicant is already there. There is no trading or sharing of credit information with other members of the WAEMU or any other entities outside Senegal.

Both the government and private sector are interested in developing a more advanced credit information system. Compuscan, a South African company that runs a number of credit bureaus across Africa, recently signed an MoU with Equinoxe, a local Dakar firm, to develop the IT infrastructure for a bureau. Meanwhile, the Senegalese government has committed to the IMF that it will develop the necessary legal framework.

REAL PROPERTY AND MORTGAGES

Real property is by far the dominant form of security in Senegal. The majority of commercial bank loans, and a large minority of MFI loans, are secured by real property mortgages. Because most landowners in Senegal do not have clear title, only a small minority of Senegal's land is available for mortgaging. This has a sharply negative effect on agricultural lending.

SECURED TRANSACTIONS

Secured transactions of moveable property other than vehicles are rare in Senegal. Banks dislike taking moveable assets except as part of a larger package dominated by real property, i.e., a warehouse, its contents, and the land it sits on. Village *commercants* (i.e., general stores) are willing to lend against a future harvest, but only at very high interest rates. A few MFIs will take security interests in machinery or even inventory, but these represent a small portion of even the MFI loans.

ACCOUNTS RECEIVABLE FINANCING

Accounts receivable financing exists in Senegal but is not common. The only form that is frequently used is reverse factoring, in which a bank customer offers to sell to the bank the invoice of a large, respected client at a discount. Given the long payment times on many commercial debts, especially to government vendors, accounts receivable financing would seem a natural development in Senegal. However, banks show little interest in this at this time.

ENFORCEMENT

Enforcement of loan agreements is a major problem in Senegal. The court system is slow, overcrowded, and corrupt, and judges have

60 The list is kept without much concern as to privacy issues, outdated information, false positives, or other types of errors. There is no formal procedure for protesting inclusion or requesting removal. Presumably, one would ask the bank to do so.

only a limited understanding of contracts and commercial law. (For a more detailed discussion of this issue, see the chapter on Enforcing Contracts.) Banks respond to this by overcollateralizing. Almost all large commercial loans are secured by at least 125 percent of their value, and 150 percent or even 200 percent is not unheard of. In almost all cases, the primary collateral is real property.

IMPLEMENTING INSTITUTIONS

CENTRAL BANK

Senegal does not have a central bank of its own. Instead, it shares the central bank of West African States, or BCEAO *(Banque Centrale des États de l'Afrique de l'Ouest)* with the other eight West African countries that comprise the WAEMU.

The BCEAO acts in most regards like a normal national central bank, with responsibility for issuing currency, setting monetary policy, overseeing foreign exchange, and regulating the banking sector. It is supposed to be politically neutral and financially and administratively independent of any government. Interviewees in the financial sector sometimes complained that the BCEAO was overly bureaucratic and high-handed, but consistently gave a high opinion of the BCEAO's competence and impartiality.

The banking community is generally satisfied with the BCEAO's regulatory regime, but MFIs are less so; they are pleased to be regulated, but feel that the bank's regulations were passed hastily, without enough discussion with the sector, and are too rigid.

The BCEAO and the West African Banking Commission work together with Senegal's Ministry of Finance to regulate banks and MFIs.

BANKS

At this time, there are 18 banks in Senegal. They are somewhat peripheral to a discussion of agriculture, because they are not very interested in agriculture. Eight of the 12 seem to make no agricultural loans whatsoever. As noted in the introduction, the banks as a whole devote a bit more than 2 percent of their portfolio to agricultural lending, even though agriculture accounts for over 12 percent of GDP and employs nearly half the population. However, this figure is even worse than it sounds, since about half the loans are coming from a single bank (CNCAS).

The banks' lack of interest runs deep. No bank, other than the CNCAS, has ever had even a moderate level of engagement with agriculture. Other sectors, including trade, real estate, and construction, offer lower risks and higher returns. Since banks seldom venture into agricultural lending, their staff generally lack appraisal skills and market knowledge specific to the sector.

KEY IMPLEMENTING INSTITUTIONS

- The central bank (BCEAO)
- Banks, including the CNCAS, the state agricultural bank
- MFIs
- Commercants

The only bank that devotes significant energy and attention to agriculture is CNCAS *(Caisse National de Credit Agricole de Senegal),* the partly state-owned agricultural bank. The CNCAS has a portfolio of about 70 billion francs, of which about 60 percent are loans to agricultural producers, processors, or exporters. The government grants a subsidy to CNCAS loans of 5.5 percent, so the CNCAS can charge (for instance) 7 percent to a borrower but collect a total of 12.5 percent interest.[61]

The central bank does not keep detailed statistics of loan types, but anecdotal evidence suggests that more than half of all commercial-bank agricultural loans go to just three crops: groundnuts, cotton, and rice. Bank lending is concentrated in Dakar, though the CNCAS is quite

61 In theory, but in practice, the government does not always pay its bills on time.

active in the Senegal River valley and the Peanut Basin. Banks largely ignore the informal sector, since it lacks documentation or collateral.

MFIs

Senegal's MFI sector is robust. There are currently over 700 MFIs registered with the Ministry of Finance.[62] They account for about 9 percent of the country's total portfolio, but this figure is likely to increase; MFI loans have more than doubled in the last four years.

The MFI sector shows tremendous diversity. Some MFIs accept deposits, while others are strictly lenders. Some are affiliated with NGOs, some with religious organizations, and some have a charitable purpose but most are strictly for profit. Their interest rates vary wildly, from 10 percent—lower than banks—to the legal maximum of 18 percent. And while the majority of MFIs are small, at least six have assets in excess of $1,000,000. The largest MFI networks are as big as most commercial banks.

The MFI sector accounts for about half of all agricultural lending in Senegal. Most MFI loans are small and short term for the purchase of inputs, especially seeds and fertilizer. Loans for the purchase of land and equipment are relatively rare, because these require long-term funds, and this is the sector's greatest weakness. Most MFIs have very little access to funds other than short-term deposits, so they are unable to make loans lasting more than a year.

Many MFI loans are made to agricultural cooperatives rather than individuals. The cooperative may distribute the money and assist in enforcing repayment. Some MFIs may make loans to smaller groups, with the group members agreeing to guarantee each other. MFIs are, as a group, willing to engage with the informal sector. MFIs make use of a wide range of techniques to encourage repayment, from group responsibility to public shaming. Overall, they are effective; the sector's repayment rate, around 98 percent, compares favorably to that of the banks.

The MFI sector does have significant weaknesses (in addition to the lack of long-term capital). In particular, MFIs suffer from a lack of technical training, a lack of internal controls, and a lack of management capacity. Small MFIs, in particular, tend to have few experienced personnel and to lack modern IT capacity. The sector in general has an internal brain drain problem, as their best people tend to be poached away by the commercial banks.

COMMERCANTS

Many small farmers obtain credit from local *commercants*—broadly speaking, the general store in the village. Commercants are often willing to extend credit against the harvest, allowing the farmers to purchase clothing, tools, and dry goods. However, interest rates are very high—2 percent per month is common—and it is not unusual for a commercant to end up claiming most of a farmer's harvest. Relations between farmers and local commercants vary widely, but it appears that they are often exploitative, and they can demand high interest rates and enforce payment because they are local monopolies. Cooperatives can sometimes negotiate better terms for their members.

SUPPORTING INSTITUTIONS

AGRICULTURAL COOPERATIVES AND "MUTUELLES"

Farmers that are grouped into strong producer organizations have a significant advantage over the majority of Senegal's farming community. For instance, in the case of rice farmers in the SAED irrigation scheme, the proof that they are receiving extension assistance as well as subsidized inputs facilitates their access to credit. Similarly, tomato growers producing for Senegal Food Canning Company (SOCAS) are able to get credit on the basis of the contract they have with the processing factory. For both groups of farmers, there is a system of "solidarity," whereby if one member defaults on repaying his (or in the rare case, her) loan, the other members of the group will cover the debt for them.

62 Under the relevant (WAEMU) legislation, the Ministry of Finance has regulatory authority over MFIs. The number of MFIs is expected to decrease over the next two years, as the 2007 MFI law has placed more stringent restrictions on them. This is deliberate; the government wants "fewer, but larger and stronger" MFIs.

Farmers may form unions, as have vegetable producers in the zone from Dakar to St. Louis (National Union of Fresh Produce Growers of Senegal, or UNPM). Smaller groups within this union contribute toward savings and loans schemes (called mutuelles), from which they borrow to purchase inputs. The amount available to them through these schemes is only a fraction of what they need, however, so most end up purchasing inputs on credit from the agri-input dealers.[63] Thus the farmers are trapped in a vicious cycle where they can never progress from anything but a minimal level of production, a situation that could be corrected if they had titles to their land and therefore access to more reasonable terms of credit.

KEY SUPPORTING INSTITUTIONS

- Credit insurance
- Accountants
- Legal profession
- Notaries
- Educational institutions
- Agricultural extension service

Some organizations are aware of the need for farmers to be organized into strong producer organizations and provided training in accounting and "farming as a business" so as to have better access to credit, but these seem to be few in number. The NGO "Association for Promotion of Development at the Basic Level" (ASPRODEB) has just begun a pilot project with groundnut farmers in Senegal, working with an initial number of six cooperatives for which the ASPRODEB is providing technical as well as financial assistance. The aim of the project is for a number of professionally organized and commercially oriented producer organizations to be self-sustaining and involved in value addition activities by the end of 2010. Another NGO working with rice producers in northern Senegal—"Plateforme des Initiatives du Nord"—is helping rice producers organize themselves into "micro-enterprises" that are capable of repaying credit via improving both their business skills and production practices. By focusing on specific geographical areas, and restricting themselves to only working with as many farmer groups as they can effectively handle, they have succeeded in boosting rice production through timely provision of inputs on a credit basis, as well as collection and packaging of the rice for bulk sale shortly after harvest.

That said, most agricultural cooperatives have very limited access to credit; banks are not interested, and MFIs have only limited funds.

TONTINES

A *tontine* is not so much a system of credit as a means of gaining access to capital. In its simplest form, a group of individuals agree to each contribute a certain amount of money regularly—say, $10 per person per month—into a pool. At regular intervals, members of the group can take all the money from the pool and use it to make purchases, typically of small-scale capital equipment—a motorbike, a sewing machine, a refrigerator, or the like. Each member gets a turn. Tontines are considered "traditional" and informal, but they are an important method of credit accumulation, especially for poor farmers and small-scale agricultural processors. Tontines are particularly popular with women.

CREDIT INSURANCE

One company in Senegal offers credit insurance. The company is partly state-owned, spun off from a previous SOE that insured exports. It covers approximately 0.4 percent of the country's total portfolio.

AGRICULTURAL INSURANCE

Senegal has a system of agricultural insurance, but it is small and weak. A single company, jointly owned by the government and several insurance companies, offers a range of products including drought, flood, fire, disease, and pest insurance. So far, less than a tenth of 1 percent of all crops is insured. One problem is that premiums are quite high (although the state is willing to subsidize half the cost of crop insurance). Another problem is that few farmers are

63 For example, one onion grower interviewed in St. Louis explained how he used two of his irrigation pumps and his television as a guarantee to purchase seeds on credit from a seed supplier. Not only did he end up paying FCFA 60,000 rather than the sale price of FCFA 48,000 for his seeds under this arrangement, the supplier insisted on being repaid immediately after harvest. Because all onion growers are harvesting at the same time, all small-scale growers have to sell their produce when prices are at their lowest. The onion producer said he did have access to storage facilities, to could store his harvest for a period of time until prices are higher—except for the fact that he is obliged to repay the credit to the seed supplier at harvest time.

aware that the program even exists. There is little coordination between the insurance company and banks—i.e., no bank offers agricultural loans bundled with insurance.

ACCOUNTANTS

Banks say that they are generally content with access to accounting services. MFIs do not feel a strong need for highly trained accountants, as most of their financial transactions are relatively simple.

Many large firms in Senegal keep at least two sets of books—one for tax purposes and one "real" set that is strictly for internal use. Unsurprisingly, banks are generally suspicious of books and financial statements presented to them for credit purposes.

THE LEGAL PROFESSION

Lawyers are common in Senegal, particularly in Dakar, and no interviewee expressed concern about access or cost: "One can always find a jurist." There are several thousand lawyers in Senegal; the great majority of these are concentrated in the capital. Most banks have in-house counsel, but use outside lawyers as well when needed, especially for litigation.

Dakar has a number of lawyers who specialize in particular aspects of credit or finance (i.e., commercial mortgages). It also has offices of several international law firms. Outside Dakar, almost all lawyers are solo practitioners, and the general quality of legal assistance in the credit sector is not always high. Agricultural producers and processors located outside Dakar have very limited options in choosing legal services.

NOTARIES

There are a number of financial documents that must be notarized, including mortgages and checks for over CFR 25 million. There are 32 notaries in the entire country. Most notaries are located in Dakar.

Notarized documents also have significant evidentiary weight under the Code of Civil Procedure. As a result, many parties to commercial transactions have documents notarized even when there is no formal requirement to do so. At this time, access to notaries does not seem to be a major restriction on credit transactions. (For further discussion of notaries, see the chapter on Enforcing Judgments.)

EDUCATIONAL INSTITUTIONS

All the banks complain that university graduates lack basic skills. Both the banks and the MFIs do a great deal of internal training (subject to available resources). This is a large and continuing cost for banks and financial institutions, especially as trained staff members tend to move to better-paying jobs in higher-tier institutions or with competitors. All actors in the financial sector reported shortages of IT specialists, risk analysts, and general managerial skills.

Poor business skills are also an issue for loan efficiency. Most banks agreed that a significant percentage of their borrowers misuse loan funds, most often by using them for noncommercial purposes. Intermingling of personal and business funds is believed to be widespread. This is in part a cultural issue (see Social Dynamics, below) but is also in part due to a weak system of business education.

AGRICULTURAL EXTENSION SERVICE

Senegal has an agricultural extension service *(Division des Filieres),* but it is weak and underfunded. The service workers are underpaid and lack necessities such as vehicles and basic equipment. The service would like very much to help connect farmers to credit, but at this time is unable to do so.

SOCIAL DYNAMICS

SUPPLY AND DEMAND

Most Senegalese businesses say that access to credit is a serious constraint. However, while the demand for credit is real and pervasive, there are constraints on it. Most small businesses (especially individual entrepreneurs) finance their initial operations primarily with their own funds and capital. Many of these entrepreneurs are suspicious of formal credit and would rather rely solely on their own resources and those of family and friends. Small Senegalese businesses often have a foot in the informal economy and are usually trying to minimize their exposure to scrutiny from the state. The current rate of bank penetration is around 9 percent—respectable by African standards, quite low compared to the OECD. (The government has announced that it wants to increase this to 20 percent by the end of 2012; this seems optimistic.)

As noted above, most farmers in Senegal lack clear title to their land and so cannot pledge it as security. Many farmers are illiterate and most are unsophisticated about credit. Outside of the Senegal River valley and the Peanut Basin, agricultural productivity is low, which means farmers have a very limited capacity to repay loans.

On the positive side, Senegal's savings rate is fairly high by African standards. Several factors contribute to this. Senegal is relatively urbanized, with 48 percent of the population living in towns and cities. MFIs are widespread and have penetrated rural areas. Most people have confidence in MFIs and the banking sector; there has not been a major bank failure since 1989.

That said, the agriculture sector remains underserved both for loans and deposits. Senegal's banks are still focused on collecting deposits from civil servants and other elites; customers who are illiterate and unsophisticated do not find them to be user-friendly. The average small Senegalese farmer still has little by way of savings, and is likely to keep them in cash or valuables rather than as deposits in a bank.

POLITICAL AND RELATED LOANS

Corruption affects access to credit in a variety of ways. One of the most obvious is in politically motivated loans. Two banks privately admitted to carrying "a few" of these, as did one MFI. In the case of the MFI, according to those interviewed, the loan was made defensively, to avoid difficulties with a prominent local figure.

Political loans may be repaid, not in cash, but through political means—for example, the borrower exercising influence on behalf of the bankers who made the loan possible. The peculiarly interlinked nature of Senegal's banking sector makes this easy. A bank official may be a former deputy minister, or a future agency head, and may currently have an interest in a business that sells to the government and/or needs government licenses. In such cases, there is little expectation of repayment unless the recipient fails to deliver the expected payment. The loan will be classified as a non-performing loan (NPL) and eventually written off.

Another occasional problem is related loans, in which banks or MFIs make loans to their own shareholders, directors, or officers, or to business associates or family members of these people. Interviewees agreed that this occasionally happens with both banks and MFIs, but that it is not a major problem. Many of the banks have credit procedures, including credit committees, which are professional enough to make related loans rare.

Political and related loans tend to raise banks' bad loan ratios. Perhaps as important, they also make it more difficult for borrowers without connections to get access to credit and reduce the amounts available to real investors.[64]

GOVERNMENT VENDORS

Many large businesses are also vendors to the government. Senegal's government takes up almost 20 percent of GDP and is by far the largest single purchaser of goods and services. The government, unfortunately, does not always pay its bills on time. Vendors often have to wait for weeks or months to collect on their invoices. The arrears can be large enough to have a noticeable macro-economic effect; in late 2008, for instance, arrears in government payments to the private sector peaked at about 225 billion francs, or almost 3 percent of GDP. Vendors will sometimes apply for bridge loans to tide them over, which tends to reduce the supply of available credit.[65]

The government also makes occasional direct interventions in agricultural markets. Sometimes

64 This seems to be less of an issue in Senegal than in a number of other countries that have had CLIRs in recent years. Senegal's banking system seems to have much less of a problem with political loans and self-loans than the banking systems of (for instance) Nigeria, Burundi, Kenya, or Tanzania. In Senegal, such loans exist, but seem to be relatively uncommon, and not seriously damaging to the financial system as a whole.

65 The government does not regularly update its projected recourse to the financial sector. This increases the uncertainty as to the general availability of credit. On June 5, 2009, the government signed a Letter of Intent with the International Monetary Fund that included, among other things, a commitment to start doing this. *See* http://www.imf.org/External/NP/LOI/2009/sen/060509.pdf, at 12.

these are financed directly from the treasury, but sometimes the government takes short-term loans from local financial institutions. Such interventions may raise local banks' awareness of agricultural issues, but in the short term they tend to reduce the total supply of local credit.

REGIONAL INTEGRATION

Senegal's financial sector shows a moderate level of regional integration; several banks make loans across borders, and 5 of the 18 banks are partially owned by other West African banks. Two of the large MFI networks have a presence in neighboring countries as well. Unfortunately, this financial sector integration has yet to show any significant benefits to Senegal's agriculture; money is not flowing from the region into the agriculture sector, nor is anyone coordinating agricultural lending across borders (i.e., by coordinating loans to a producer in one country and a processor or shipper in another).

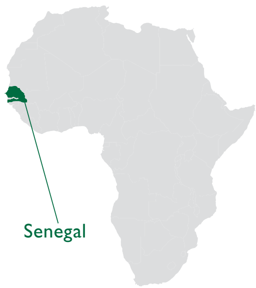
WOMEN AND CREDIT

Women have very limited access to credit. While Senegal has many female small entrepreneurs, women are underrepresented in the civil service and other forms of "steady" employment. Married women do not usually have property in their name and so cannot provide collateral. While a few MFIs make a deliberate attempt to reach women customers, most do not.

RECOMMENDATIONS

- Provide capacity-building assistance to the MFI sector that addresses the lack of skills, especially in credit analysis, risk analysis, financial management, and IT.
- Provide basic business skills training including training on the finance and credit systems. This training should include a focus on drafting a sound business plan, analyzing loan terms, and negotiating a written contract.
- Help develop standardized forms and contracts for agricultural loans and other transactions. This would be a fairly cheap and simple reform that could pay large dividends in terms of convenience and efficiency. (It is possible that such forms might already exist in another OHADA country; if so, they could easily be ported to Senegal.)
- Support development of mobile banking. Senegal seems like a very plausible location for such a project as (1) 95 percent of the country is covered by mobile telephony, (2) mobile phone penetration is very high, and (3) Senegal has enough trained technical personnel to implement and support mobile banking. A legal and regulatory framework may have to be developed first. Possible models here could include Kenya and Botswana, both of which have seen explosive expansion of phone banking in the last three years. Customers in these countries can pay funds across banks, pay third parties, receive real-time confirmation of transactions, purchase utilities such as pre-paid electricity, and view statements using any cellular network. As a result, both countries have seen very rapid growth in bank penetration numbers and in the total volume of deposits.
- Assist banks in developing agricultural lending products, including technical assistance to train bankers in how to evaluate, draft, and finalize these products. This will require a show of interest from the banks, and may have to be done in conjunction with a development credit authority.[66]
- Assist banks in developing new products (such as invoice financing and finance leasing) that, while not specific to agriculture, can easily be adapted to the needs of the sector.
- Bolster support to the agricultural extension service. This service currently suffers from underfunding and general neglect, and is not receiving donor assistance.
- Consider a development credit authority for one or more of the large MFI networks. The big MFIs are probably a better target than the banks, as they are already much more engaged with agricultural lending.

66 A discussion of USAID's Development Credit Authority is found at http://www.usaid.gov/our_work/economic_growth_and_trade/development_credit/.



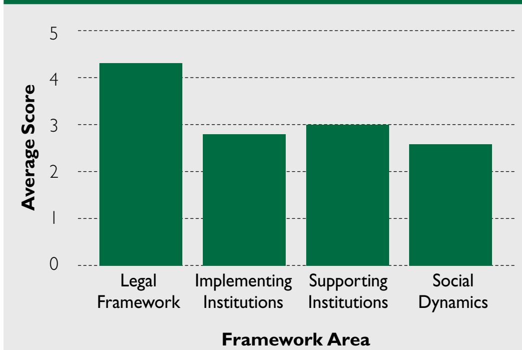
PROTECTING INVESTORS

With a *Doing Business* ranking of 165 out of 183 countries for Protecting Investors, Senegal clearly has a long way to go before a sound corporate governance structure is in place. The *Doing Business* ranking, however, may not accurately reflect the true situation in Senegal. The World Bank's indicators place heavy emphasis on the accountability of directors and the ability of shareholders to bring suits, and these are indeed weaknesses. But the general climate for investment in the agriculture sector is not as bad at these indicators would suggest.

PROTECTING INVESTORS

Doing Business Ranking 2010	165
Doing Business Ranking 2009	164
Disclosure index	6
Director liability index	1
Shareholder suits index	2
Investor protection index	3

PROTECTING INVESTORS



Senegal officially welcomes foreign investment. There is no discrimination against businesses conducted or owned by foreign investors. In fact, there are no barriers regarding 100 percent ownership of businesses by foreign investors in most sectors. There is no recent history of expropriation or nationalization. There are no restrictions on the transfer or repatriation of capital and income earned.

Corruption is a significant problem but it is, by regional standards, moderate; Transparency International ranks Senegal 85th in the world, the second best in the West African region and comparable to many middle-income countries around the world.[67] Senegal enjoys high levels of both political and economic stability: the country has never had a coup or a civil war, it has enjoyed consistent modest economic growth since 2002, and the currency is pegged to the euro. And while the company law is rather weak, the general commercial legal framework is quite strong, grounded in OHADA-based laws that are largely consistent with international best practices. And in the agricultural sector particularly, the government has made a strong, public commitment to protect and encourage investment and to expand the sector beyond the current status quo. The government's GOANA plan, as detailed previously in this report, may be over hyped, but it is indicative of a generally supportive attitude toward investment in the sector.

It should not be surprising, then, that Senegal's foreign direct investment (FDI) flows are higher than the *Doing Business* indicators would suggest. Senegal's Inward FDI Performance Index[68] is 0.42, which is roughly average for Sub-Saharan Africa. The FDI has varied widely from year to year in the last five years, but has never been less than US$60 million and has averaged over US$100 million per year. Total FDI stock at the beginning of 2008 was approximately US$550 million, or about 5 percent of GDP. These figures place Senegal in the middle of Africa, not near the bottom as the *Doing Business* rankings might suggest.

67 Transparency International, *Corruption Perception Index* (2008).
68 A measure of how well the country attracts inward investment. A country that attracts exactly the global average amount of per-capita FDI would have a score of exactly 1.0. Thus, Senegal only attracts 42% as much investment as a perfectly "average" country would.

Arguably the corporate governance factors that the *Doing Business* rankings assess represent an advanced level of investor protections, perhaps beyond what Senegal should be prioritizing given its many other needs. Most Senegalese businesses, especially in the agricultural sector, need to address basic good business practices—bookkeeping and management—rather than disclosure duties and shareholder protections. Certainly corporate governance is a necessary part of a modern commercial legal framework and will increase in importance as Senegal's economy continues to grow. Ensuring that an adequate structure is in place and utilized as the need for stronger corporate governance develops will be important. In the meantime, Senegal should support and encourage a culture of good business management, which will benefit the broader business community and lay the foundation for more advanced corporate governance practices to come.

LEGAL FRAMEWORK

Senegal is somewhat unusual in that most commercial and financial activity takes place within legal frameworks that are substantially regional, not national. For the financial system, there are two such frameworks: the OHADA and the WAEMU. From an investor's point of view, the OHADA is the more important of these.

OHADA

In the *Doing Business* analysis of Protecting Investors, although there is some difference in the "Shareholder Suits" sub-indicator, almost all OHADA members have the exact same scores for Disclosure and Director Liability. This reflects the fact that OHADA's company law mandates a moderate level of disclosure but does not provide for director liability. This, in turn, reflects a general hostility of French and French-based company law toward director liability: French law itself barely recognizes this concept, and is not eager to permit it except under the most extreme and unusual circumstances. Thus, France itself has the same sub-scores as the OHADA countries under the *Doing Business* analysis. Because the French disagree sharply with *Doing Business* about the importance of director liability, countries that follow the French model are penalized under the methodology.

KEY POLICIES AND LAWS

- OHADA uniform codes on business
- WAEMU shared laws on the financial sector
- Investment Code (2004)
- Investment treaties
- African Organization for Intellectual Property shared system for protection of IPR

Putting this issue aside, the OHADA company law must be considered adequate for Senegal's current needs. The Uniform Act relating to Commercial Companies and Economic Group Partnerships was passed in 1997, and is largely consistent with international best practices. The law allows for a wide range of corporate structures, including partnerships and limited liability corporations, giving significant flexibility to persons wanting to start a new business. It covers board and shareholder meetings, mergers, dissolution, and registration. It sets forth clear duties and privileges for shareholders, corporate officers, and managers; it clearly distinguishes between corporate and individual liability; and it avoids a number of common errors, such as a minimum capital requirement for most types of business.

The law has some weaknesses. Rights of shareholders, particularly minority shareholders, are given relatively short shrift, as are the duties and liabilities of management and board members, conflict of interest transactions, and derivative actions. These issues are important to good corporate governance and, as the business environment in Senegal develops, will become increasingly significant. At some point it will be desirable for the OHADA's secretariat to review the law with an eye toward modernizing and upgrading it. That said, the current law does not appear to be a significant problem for investors or businessmen.

Copies of the law are widely available across Senegal: every lawyers' office has one, and they are also available at APIX. The law is also available (in French only) online. An international investor will find few surprises and no pitfalls in the law, and an investor from France or elsewhere in the OHADA sphere will find it instantly familiar.[69]

DISCLOSURE INDEX

Country	Director Liability	Shareholder Suits*	Investor Protection	Average Score
Senegal	6	1	2	3
Mali	6	1	3	3.3
Cote D'Ivoire	6	1	3	3.3
Congo, Rep.	6	1	3	3.3
Gabon	6	1	3	3.3
Benin	6	1	3	3.3
Burkina Faso	6	1	4	3.7
Guinea-Bissau	6	1	5	4.0
Cameroon	6	1	6	4.3

*The "Shareholder Suits" subindicator varies because it is partly driven by procedural issues that are a matter of local, national laws or regulations instead of the OHADA law. For instance, a country may receive a higher or lower score depending on "whether the plaintiff can directly examine the defendant and witnesses during trial" and "whether the standard of proof for civil law suits is lower than that for a criminal case." For details, see http://www.doingbusiness.org/MethodologySurveys/ProtectingInvestors.apsx.

WAEMU

As summarized previously in this report, eight West African countries comprise the West African Economic and Monetary Union (WAEMU). These countries all use the West African franc, which is pegged to the euro. They also share a single central bank and a common framework of financial laws. The WAEMU laws cover an area that is narrower but deeper than the OHADA laws: while the OHADA deals with general business and commercial laws, the WAEMU is focused purely on the financial sector. The WAEMU laws include the laws on banking and MFIs and the law governing capital markets—in Senegal's case, the regional capital market in Abidjan, Cote D'Ivoire. Further discussion of the WAEMU can be found in the chapter on Getting Credit.

INVESTMENT TREATIES

Senegal and the United States signed a bilateral investment treaty in December 1983; it was ratified by the U.S. Congress in 1990.[70] The treaty provided for "most favored nations" treatment for investors, internationally recognized standards of compensation in the event of expropriation, free transfer of capital and profits, and procedures for dispute settlement. Senegal has signed similar agreements for protection of investment with France, Switzerland, Denmark, Finland, Spain, Italy, the Netherlands, and Japan. Senegal has been a member of the WTO since 1995; it has never filed a complaint, nor had one filed against it.[71]

INTELLECTUAL PROPERTY

The Senegalese legal system enforces private property rights, including intellectual property. Senegal is a member of the African Organization of Intellectual Property (OAPI), a grouping of 13 Francophone African countries, which has established among its member states a common system for obtaining and maintaining protection for patents, trademarks, and industrial designs. Senegal has been a member of the World Intellectual Property Organization (WIPO) since its inception and is a member of the Berne Copyright Convention. Local statutes recognize reciprocal protection for authors or artists who are nationals of countries adhering to the 1991 Paris Convention on Intellectual Property Rights.

By regional standards, Senegal is fairly serious about intellectual property rights (IPR). While it is certainly possible to buy counterfeit goods and pirated CDs in the streets of Dakar, enforcement actions do take place, and Senegal does not appear to be a major exporter of IPR-violating goods. At least one local law firm specializes in IPR; it does a steady business in civil actions against violators, and is regularly able to obtain and enforce court judgments.[72] Senegalese Customs has a limited ability to enforce the laws, but Customs officers have participated in trainings offered by manufacturers on how to detect counterfeits.

69 For a case study of business experiences under OHADA, see *The Cameroonian Experience Under OHADA: Business Organizations in a Developing Economy, available at* http://works.bepress.com/cgi/viewcontent.cgi?article=1001&context=claire_dickerson. The article deals with Cameroon, but much of it is relevant to the experience of investors and businesses in Senegal.

70 Senegal Bilateral Investment Treaty, *available at* http://www.state.gov/documents/organization/43585.pdf.

71 As of September 2009, the WTO's database shows no disputes involving Senegal either as a complainant or a respondent. See www.WTO.org.

72 Subject to the normal, slow functioning of the courts. Enforcement is relatively rare; the most common pattern is that, once a judgment is obtained, the violator agrees to a settlement. For discussion of problems with the courts, see this report's chapter on Enforcing Contracts.

CORPORATE GOVERNANCE

Corporate governance (CG) is not a new or unfamiliar concept in Senegal. While only a few businesses are of a size to require or implement advanced corporate governance procedures, these include some of the best-known enterprises in the country. Most businessmen are at least broadly aware of CG issues, even if they have little effect on their own lives and work.

In the long term, education on CG's importance and its requirements may be necessary. Given the current state of the economy in Senegal and the small number of companies to which complicated corporate governance procedures would apply, this is not a top priority, but training and awareness programs and simple education materials for judges, attorneys, and business people will eventually be required. Along these same lines, enforcement of these provisions will be key.

INVESTMENT CODE AND INVESTMENT INCENTIVES

The government of Senegal offers a number of targeted incentives to investment. These are included in Senegal's Investment Code, a national law passed in 2004 and has been amended several times in the last few years. The code specifies tax and customs exemptions according to the size of the investment, classification of the investor, and location (investments outside of Dakar receive longer periods of exoneration from taxes).[73]

For purposes of this assessment, most interesting is the incentive to invest in *l'agriculture au sens large*—agriculture in the general sense, including farming, fishing, herding, and agricultural processing. In order to qualify for these incentives, a company must show that it will export at least 80 percent of its output—*l'entreprise doit justifier d'un potentiel à l'exportation d'au moins 80 percent de son chiffre d'affaires.*[74] An investor that can fulfill this requirement will qualify for the following incentives:

- Unlimited recruitment of expatriate workers
- Duty-free importation of capital goods
- Exemption of customs duties on vehicles
- Exemption from various taxes, including the land tax and income tax on dividends
- Exemption from various fees, including fees for registering or modifying registration of corporate documents; and
- Unlimited transfer of monies in and out of the country, subject only to the restrictions of the WAEMU money-laundering act

Unfortunately, APIX has not been able to provide statistics on how many firms have taken advantage of this regime. Anecdotal evidence suggests that it has been more of a windfall to existing firms than an incentive to new investment.

To attract and retain investors, a country must, as a threshold matter, have laws that provide adequate investor protections. This begins with ample *access* to law, so that investors can review in detail the legal environment that is afforded by the state to protect—or not protect, as the case may be—their capital investments. With respect specifically to investors in agricultural production and processing, adequate protection includes a sound legal environment for cooperatives; a legal framework for companies that conforms to international best practices of corporate transparency and accountability; reasonable incentives and strong protections for investors, both domestic and foreign; and sound systems for resolving disputes and enforcing the law.

IMPLEMENTING INSTITUTIONS

COURTS

Investors are generally very interested in the ease of dispute resolution. This remains a challenge in the commercial sector and a disincentive to investing in Senegal. Simply put, Senegal's courts are slow and not very consistent or reliable. There are some bright spots—the level of expertise of the magistrates is not bad, and outside of Dakar the courts are not always overloaded—but overall the system is troubled, and has only a limited capacity to protect investors.

73 The list of all possible incentives is fairly complex. There are incentives for being a large firm, for making an investment above a certain level, for using local inputs, and for locating in less industrialized regions of the country.

74 A list of incentives can be found—in French—at http://www.investinsenegal.com.

For a more detailed discussion of the court system, see the chapter on Enforcing Contracts.

KEY IMPLEMENTING INSTITUTIONS
• Courts • APIX • Regional stock market • Special economic zones

APIX

As detailed in this report's chapter on Starting a Business, APIX is Senegal's investment agency. APIX is intended to be a "one-stop shop" for investors, bringing incorporation, registration, and licensing under a single roof. In theory, it has primary responsibility for promoting investment in Senegal, though in practice other government agencies often infringe upon this. APIX is also an information resource. Copies of relevant commercial laws and other informative materials, including booklets and pamphlets explaining applicable legal processes and investment advantages, are available at the APIX offices and on their Web site. APIX provides some but not all materials in English.

For the purpose of protecting investors, APIX is very much a mixed bag. On the positive side, APIX staff members are generally well informed on the legal framework and the commercial environment, and are able to answer pertinent and important questions about investing in Senegal. A number of different approvals needed to secure a business license, including Ministry of Finance and Customs, can be obtained there fairly quickly. On the minus side, APIX is not particularly friendly to small investors, especially small local investors. It is supposed to provide help in finding funding and partners, but—according to interviewees—generally does not. And it is not so much a true one-stop shop as an interface across a pre-existing tangle of permitting and licensing systems. Some of these are no better than they ever were, so that some permits can take many days or weeks to acquire.

STOCK MARKET

Senegal's stock market, the *Bourse Regionale des Valeurs Mobilieres* (BRVM, http://www.brvm.org), was opened in September 1998 to serve as a regional financial market for the member-states of the WAEMU. The BRVM is located in Abidjan, Cote D'Ivoire. Listing requirements for companies include five annual reports and a share capital of at least 500 million francs. Only one Senegalese company (Sonatel) is currently listed there, though others have been in the past.

SPECIAL ECONOMIC ZONES

Until recently, Senegal has not been aggressive about the development and use of special economic zones, such as industrial areas that benefit from concentrated government services (utilities, licensing, customs, etc.) and tax incentives for companies oriented, in most instances, to exporting goods. There exists a Dakar Free Industrial Zone (ZFID), but it is largely inactive and stopped issuing new licenses in 1999. Firms already located there may continue receiving benefits until 2016. In 2007, Senegal's government signed an US$800 million agreement with Jafza International of Dubai to establish, construct, and run the Dakar Integrated Special Economic Zone (DISEZ) for sanctioned investments outside of Dakar. At the time of signing, the DISEZ was scheduled to open in 2010 and expectations of job creation ranged as high as 30,000 jobs. The government reserved 10000ha for expansion of the zone, with the possibility of constructing a power station and refinery nearby to tackle a lack of electricity capacity, a big obstacle to foreign investment.

SUPPORTING INSTITUTIONS

CHAMBERS OF COMMERCE

As detailed in this report's chapter on Dealing with Licenses, every large town in Senegal has a chamber of commerce. The chambers provide information and support to local businesses, and also act to some extent as their representatives in shaping policy. Some also

provide trainings, reference materials, and conferences for education and networking opportunities. They may also provide informal dispute resolution.[75] The effectiveness of local chambers varies considerably from place to place, but the better ones can provide significant help and support to investors.

ACCOUNTANTS

As business processes become more complex, having capable professional communities well informed and trained in modern business practices also grows in importance. With regard to corporate governance requirements, accountants are a particularly important community. Audit and financial reporting requirements are central to transparency and openness in corporations, and reliable and well-trained accountants and tax professionals are imperative to this process.

KEY SUPPORTING INSTITUTIONS

- Chambers of commerce
- Accountants
- National Council for Rural Co-operation (CNCR)
- Senegal River Basin Authority

Although Senegal appears to have an adequate supply of qualified auditors and accountants, the need for these will certainly increase. Accountants are organized into ONECCA *(Ordre National des Experts Comptables et Comptables Agréés du Sénégal),* which regulates the profession and enforces rules of ethics and professional conduct. All companies in Senegal are required to file annual financial statements, which must be reviewed and approved by an ONECCA member. Statements are presented in accordance with the SYSCOA system (the West African Accounting Council *(Système Comptable Ouest Africain)),* which is based on generally accepted accounting principles (GAAP) in France.

NATIONAL COUNCIL FOR RURAL CO-OPERATION (CNCR)

The CNCR is supposed to be the voice for rural agricultural cooperatives, giving small producers some input into policy formulation. The CNCR represents producers' associations and plays a role in dialogue between the government, donors, and producers on agro-related issues. There are a number of criticisms of the CNCR, most notably that it does not reflect the voices of small-scale farmers on the ground and that it is not very effective in protecting small producers' interests. Nonetheless, the organization gives producers' associations an official channel and some chance to participate in policymaking processes.

SENEGAL RIVER BASIN AUTHORITY

The *Organisation pour la Mise en Valeur du Fleuve Sénégal* (OMVS, http://www.omvs.org/) was founded in 1972 by Mali, Mauritania, and Senegal to manage the Senegal River and its river basin. The OMVS is of particular interest to investors in the agricultural sector because it regulates the availability of water in the country's most important agricultural region. Several interviewees expressed concern that the coordinating body lacked the capacity required to ensure that all members comply with the regulations and conventions. Some of these may be nationalist posturing ("our neighbors are stealing our water") or simply an attempt to explain low

75 The Dakar Chamber, by far the largest in the country, has a system of formal alternative dispute resolution (ADR), offering both arbitration and mediation services. This is discussed in this report's chapter on Enforcing Contracts.

TRYING TO RECRUIT INTERNATIONAL INVESTORS, THE CHALLENGES OF START UP AND TAKE OFF REMAIN

Mr. Dinash Patel and his younger brother are Indian nationals who relocated to Senegal from Gambia in 2008. Their primary language is English, and their French language skills are limited. The two brothers previously owned a construction company in Gambia, but decided to relocate to Senegal due to concern for their financial security in Gambia. As the older Mr. Patel explained, "if someone comes [after one's investment there], you have to leave the country." The Patel brothers would like to establish an agribusiness on 5,000 hectares near Richard Toll in the general vicinity of the Africa 21 farm where they plan to produce fresh vegetables including onions, potatoes, tomatoes and carrots mostly for local and regional markets, as well as counter-season, organic products for markets in the European Union for products such as peanuts and horticultural crops. The company plans to produce around 80 percent of its output for local and regional markets, and the remaining 20 percent of the products will be produced for markets in the EU.

Mr. Patel states that the government of Senegal is in favor of his investment project, and that his company is fully registered with APIX. The required cadastre survey of his farm has now been completed, but legal formalities remain for the brothers to obtain an operating permit to use the property. Thus far, it has not been possible to obtain free and clear title to the property, nor even a permit to use the property. Mr. Patel has attended numerous meetings with APIX but the agency has yet to provide a letter of instruction. Instead, APIX simply states that he must negotiate with the local community leaders to gain access to the land. The Patel brothers have agreed to plant 10,000 trees for the benefit of the local community that will provide them with fuel and fodder, as well as transit rights for livestock to search for pasture and water.

After more than six month's dedicated effort to obtain the desired parcel, Mr. Patel is becoming discouraged. He has a temporary permit to use 500 hectares of land, but the duration of the permit is for only one year. He believes that he is getting the run-around by the local community, the regional tax and land office, and the central government. However, he says that he is patient and will be willing to wait a year or more to overcome the delay, but he is becoming less and less hopeful of the outcome of his investment. He plans to spend around US $3million for irrigation and other on-farm investment, and around US $3.5 million for a packing shed and cold storage facility.

When asked if, in hindsight, he believes that it would have been better to take on a local partner within government as an in-house "champion" for his investment, Mr. Patel said that while he needs immediate assistance to break the logjam that is limiting the availability of land, he does not see the need for a partner who may provide little benefit over the long term. He sees political partners as being transitory, at best, since it is not clear how long a government official may remain in a position of influence.

water levels, but there may be a real underlying issue. Certainly any investment in agricultural production in Senegal will want to be assured of consistent access to water.

SOCIAL DYNAMICS

Most businesses in Senegal are small, family-owned and operated, and focused on making enough profit to meet the family's immediate needs. Sizable investments, whether foreign or local, are rare. Because of this, a strong corporate governance culture has not yet developed. Nonetheless, actions can be taken to reduce risk for investors in Senegal.

CORPORATE GOVERNANCE AWARENESS

For the great majority of businesses, sound corporate governance practice is not a priority. Outside investors should keep this in mind: Senegalese partners may just not be very engaged with (for instance) concerns about protecting minority shareholders.

As discussed, the most pressing corporate governance issue in the country is simply promoting good basic business practices, such as bookkeeping and financial management. Thus, there is a great need for training in basic business skills.

In terms of more advanced corporate governance practices, although it may not yet be time for many businesses in Senegal to draft complicated statutes on shareholder rights and director duties, it is not too soon to start socializing these concepts. Corporate governance is not taken seriously by most within the business community because it has not been historically implemented and its importance is not understood. Building capacity and awareness not only within the private sector but also within the public sector, particularly the courts, and universities will be key to ultimately building these practices into the commercial sector in Senegal.

PREDICTABLE INVESTMENT ENVIRONMENT

Senegal enjoys, by regional standards, one of the most stable and predictable of environments for investment. The country is macro-economically stable; the international financial crisis has slowed growth but has not resulted in any major collapses or catastrophes within Senegal. Although the end of President Wade's term will give rise to some uncertainty, no one expects serious turbulence or violence. The government's policymaking process is, by regional standards, transparent; agencies often hold public hearings, and there is considerable discussion of business issues in the media. Nasty surprises from the government, such as a sudden change in law or policy, are fairly rare.

Senegal's government is consistently tolerant toward foreign investors. There is no recent history of nationalization or expropriation, and most investors are allowed to do business in peace without major political harassment. With a few exceptions (the controversial revocation of a mobile phone license in 2007), the government is perceived as a friendly neutral.

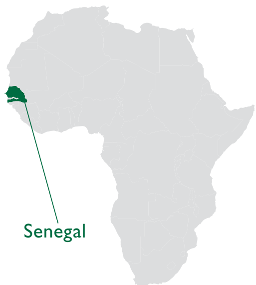
There are challenges to predictability in the business environment. Business opportunities are sometimes unclear because the private sector perceives public procurement to be corrupt. Ministers and other public sector officials sometimes change without warning, resulting in a loss of efficiency and a need for new relationships and knowledge to be developed. Costs of doing business can be difficult to judge, especially for a foreign investor; for instance, contacts with government agencies may involve unofficial fees, or significant delays to those who refuse them. With particular regard to agriculture, the private sector remains largely unconvinced that the government is really committed to prioritizing this sector's development.

RECOMMENDATIONS

- Engage with OHADA on the company law. This is an issue that will have to be addressed, not in Senegal alone, but regionally, at the OHADA secretariat. There may be reluctance to move away from the French model on the issue of directors' liability, even if it means continuing low scores from the World Bank. That said, it is 12 years since the company law was passed; it is one of OHADA's oldest laws, and is probably due for a re-examination.
- Assist Customs to enforce IPR. No donor has done this recently. Customs has expressed an interest in receiving training and other support. The sincerity of this request is difficult to judge, but it seems worth looking into.
- Review the Investment Code's incentives, especially with regard to agriculture. APIX's incentive system is complex, and it is not clear whether it is really helping the agricultural sector. Anecdotal evidence suggests that it may be giving windfalls to existing enterprises rather than stimulating new investment. APIX does not seem able to answer this question, so it seems a good target for donor assistance.
- Consider technical assistance to APIX. As noted, APIX's performance is mixed, with clear strengths and weaknesses. It might be worthwhile to do a management analysis and/or a performance review. Based on a model that provides for sustainability and

continuous updating, create a single, online repository of commercial laws.

- Without re-creating donor-supported work that has been done in the recent past, move forward with the creation of a workable law on cooperatives that supports the cooperative model as a sustainable means of local investment. Program support for FBOs—whether donor or government funded—should include widespread education of FBO participants on the content and the practical implications of this law.
- Analyze and evaluate all donor and government support directed over the past five years to FBOs with an eye toward lessons learned and pitfalls to be avoided. Identify those interventions that were started and then abandoned (such as Web sites or technical assistance initiatives) and determine whether they should be revisited or re-launched.
- Create linkages between more well organized FBOs and Senegal's business schools, forming partnerships in marketing and business development services.



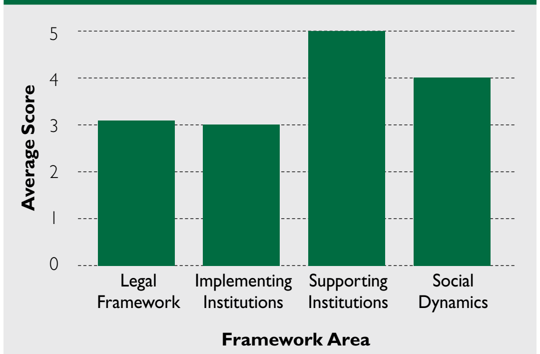
PAYING TAXES

Taxes are a major part of the Senegalese economy. In 2008, taxes accounted for 87 percent of government revenue and 20 percent of GDP. Tax revenue rose in 2007 by approximately 20 percent (4 percent of GDP) over the previous year, due to a moderate broadening of the tax base, productivity bonuses for tax inspectors, modernization of the tax department, and higher priced oil and gas exports that generated additional tax revenue.

PAYING TAXES

Doing Business Ranking 2010	172
Doing Business Ranking 2009	173
Payments (number)	59
Time (hours)	666
Profit tax (%)	14.8
Labor tax and contributions (%)	24.1
Other taxes (%)	7
Total tax rate (% profit)	46

PAYING TAXES



With its current program of tax reforms, Senegal is moving in the right direction. Nonetheless, dissatisfaction with the country's overall tax system, including the cumulative burden of the many different taxes that businesses must pay, runs deep.

Taxes are required to provide sufficient revenue for needed government services. While opinions differ on what constitutes a good tax system, most would agree that a good system should follow two main principles: fairness and efficiency.

The underlying concept of a fair system is equity, or impartiality, between taxpayers. First, this means that all taxpayers in similar circumstances should have similar tax burdens. Taxes that impact one group (such as wage-earners) more harshly than another (such as investors) are not equitable.

Second, an equitable system is generally perceived to be progressive—that is, where upper-income taxpayers are required to pay a larger share of their income in taxes than lower-income taxpayers, in an attempt to equalize the tax burden based on one's ability to pay. The classic progressive tax is a graduated income tax.

Regressive taxes, on the other hand, require lower-income families to pay a greater percentage of their income in tax than do upper-income families. The classic regressive tax is a sales tax. Under the fairness principle, over-reliance by the state on regressive taxes is considered to be bad tax policy.

Taxes should also be broad-based; that is, they should be spread as wide as possible over the population, or across sections of the economy, to minimize the individual tax burden.

The cornerstone of an efficient tax system is simplicity. In other words, tax determination and assessment should be easy to understand by an average taxpayer. Furthermore, the tax collection and assessment systems should not impose costs that are greater than the amount of revenue raised. In this regard, a tax system that has an excessive number of regulations along with a large number of exceptions ("loopholes") is the antithesis of a simple system. A second aspect of an efficient tax system is neutrality. This is the notion that decisions by taxpayers to produce or purchase a particular good or service should not be made on the basis of differential tax treatment.

Ultimately, the fairness and efficiency of a tax system can have significant impact on whether individual citizens and entrepreneurs, particularly smaller and micro-enterprises, choose to join the formal sector. If they believe that the tax system is fair and that the state will use their tax revenues wisely, they are more likely to participate.

The *Doing Business* indicator for Paying Taxes compares the amount of tax that a medium-sized company must pay or withhold in a given year and measures the administrative burden of tax payments of countries worldwide. According to *Doing Business,* the effort required to pay taxes in Senegal is more than twice the regional average. Only four countries in Sub-Saharan Africa require a greater number of tax payments.

Specifically, in the most recent *Doing Business* report (September 2009), Senegal ranked 172 out of 183 countries surveyed in terms of the burdensome nature of its tax regime. The country slightly improved in comparison ranking from the previous year, when the country it ranked 173.

The procedures that are required for an enterprise to comply with Senegal's tax laws are quite onerous when compared to the West Africa region and especially when compared to the group of developed countries that make up the Organization for Economic Cooperation and Development (OECD). The percentage tax rate, while high, is considerably less than the weighted average value of countries within the region, and is generally in line with the OECD.

The AgCLIR indicators examine the legal, institutional, and social dynamics underlying tax collection and compliance across Senegal's six primary agricultural zones—Dakar, Saint Louis, Kaolack, Tambacounda, Kolda (Diaobe market place), and Ziguinchor. The scores indicate that significantly more could be done to serve Senegal's agricultural sector with regard to the administrative and financial burdens of taxation.

LEGAL FRAMEWORK

TAX CODE

Senegal's tax code provides general tax provisions and detailed instructions on how and when to file the different types of tax declarations that are required of the nation's taxpayers. The code covers corporate taxes, personal income taxes, land taxes, value added tax (VAT), and other provisions such as taxes on interest payments, bank transactions, leasing, and deductions (detailed later in this section). The code contains1,083 articles, with separate classifications for 13 different categories of economic endeavor, such as petroleum, mining, new investments, and common law. Simplification of the tax code is a priority within the country's main tax authority, with tax simplification part of an overall, four-year (2008–2012) program for tax improvement.

WAEMU ACCOUNTING AND IMPORT STANDARDS

As a member of the WAEMU, Senegal has harmonized its laws related to finance, accounting, and public accounts with the other union members. This provides comparable systems to facilitate the analysis of financial accounts for all WAEMU member states, and simplifies the exercise of multilateral surveillance of their national fiscal policies. Although there is no direct linkage between Senegal's tax code and the WAEMU, the administrative framework governed by the WAEMU has an indirect impact on tax accounting within Senegal's national accounts.

The WAEMU does have a direct bearing on the tax regime for products imported into Senegal. Namely, the WAEMU legislation governs the system of preferential tariffs for trade between member states, and specifies a common external tariff (CET) scheme for products imported by any member state from locations outside the WAEMU. In January 2000, Senegal successfully put into place a new import tariff structure that conforms with WAEMU regulations.

In 1998, the WAEMU established a standardized system for tax accounting in West Africa. Its main objective was to create uniform accounting practices within the Economic Community as a means for providing homogeneous accounting data.

KEY LAWS

- Tax code
- Provisions of the West African Economic and Monetary Union (WAEMU)
- Investment code
- General business laws and regulations pertaining to social security, labor, and specific business permits and licenses (construction, food safety, health, tourism, etc.)

INVESTMENT CODE

Senegal's investment code provides equal tax incentives for foreign and local firms. First, in most sectors, there are no barriers to a 100 percent ownership of businesses by foreign investors. Also, special incentives are provided to companies willing to locate outside the Dakar region. The investment code defines eligibility for investment incentives according to a firm's size, the type of activity, the amount of the potential investment, and the location of the project. To qualify for incentives, the investment must amount to at least CFA five million (US$11,000) and create a minimum of three jobs.

Enterprises operating in "priority" sectors are eligible for investment code advantages. These sectors include manufacturing, tourism, banking, trading complexes, and cultural activities. These priority sectors also benefit from the "Common Regime," which includes two years' exoneration from duties on imports of goods not produced locally for small and medium-sized firms, and three years for all others. Also included is exoneration from direct and indirect taxes.

Enterprises located in less industrialized areas of Senegal benefit from exemption of the lump-sum payroll tax of 3 percent, with the exoneration running from 5 to 12 years, depending on the location of the investment. The investment code provides for exemption from corporate income tax, duties, and other taxes, phased out progressively over the last three years of the exoneration period.

Exoneration from the minimum personal income tax and from the business license tax is granted to investors who use local resources for at least 65 percent of their total inputs within a fiscal year. Large firms (with at least CFA 200 million, or US$450,0000 in equity capital) are required to create at least 50 full-time positions for Senegalese nationals and to contribute hard currency equivalent to CFA 100 million (US$225,000). Firms are expected to report company products, production, employment, and consumption of raw material to justify their tax exoneration.

Export-oriented firms that export at least 80 percent of their products can qualify for investment incentives under Senegal's Free Export Company *(Enterprise Franche d'Exportation—*EFE) scheme. These companies are taxed at a preferential rate of 15 percent. They are also exempted from the following: (1) income taxes from distributed dividends; (2) all forms of taxes based on salaries; (3) Customs and stamp duties for production and transportation equipment; and (4) taxes on salaries, business license taxes, land tax, and all registration and stamp duties.

ADDITIONAL TAX-RELATED PROVISIONS

Other advantages provided by Senegal's legal framework for agricultural taxes include:

- Land taxes are not regressive; instead they are assessed in proportion to their asset values. The proportional rates applied to

agriculture do not result in discriminatory treatment against any particular segment of the agricultural community.
- Duty drawback provisions exist to provide the export of value-added agricultural goods. Equipment imported for purposes of agricultural value addition is provided advantageous tax treatment, and goods used for the transformation of agricultural products for export are given partial exoneration of duty.
- Agricultural products are not subject to export taxes.
- Taxes on agricultural products at local, national, and regional levels are transparent and accessible to all interest parties. Investment promotion programs that include tax incentive packages are available to agribusinesses.

SENEGAL'S TAX REGIME

Senegal's fiscal year begins on January 1 and ends December 31. The main elements of the tax regime can be summarized as follows:

Corporate taxes. The corporate tax rate in Senegal is 25 percent, compared to a tax rate of 35 percent in 2002.

Personal taxes. Individual taxes include a salary tax on the employee (3 percent for a Senegalese worker, and 6 percent for a foreign worker), as well as a general income tax. Individual income is generally aggregated and taxed at progressive rates ranging up to 50 percent. Taxable income is computed by deducting income-generating expenses and other allowable deductions from the taxpayer's gross income. Under the law, dependants such as spouse and children can be claimed only if they have no separate income of their own. Some categories of individual income, such as income from real estate, are taxed at flat rates.

Value Added Tax (VAT). The VAT is generally payable on the sale of goods and services at a standard rate of 18 percent. However, some domestic and imported consumer goods, such as fruit, vegetables, and paper, qualify for a reduced rate of 10 percent. Furthermore, an equalization tax is applied to local purchases at 2 percent and to imports at 5 percent. Rental of unfurnished properties for residential purposes are exempted from the VAT.

Capital gains. In Senegal, capital gains are taxed at the rate of 33 percent. In certain circumstances the tax is deferred or reduced. Tax on capital gains from sales or transfers of land and buildings is levied at a rate of 15 percent on the net gain realized from the sale.

Property tax on undeveloped land. All land situated in urban or metropolitan areas that is either undeveloped or developed with buildings not fixed permanently on the property is taxable. The tax is levied at 5 percent of the rental value of the land (which is computed as 5 percent of the property's market value).

Property tax on developed property. This tax is levied on houses, warehouses, and factories; land used for commerce and industry; and in general, all commercial or industrial installations. Property tax is levied at a rate of 5 percent on the rental value of the facility, except factories and similar industrial establishments that are taxed at 7.5 percent of their rental values.

Rental income tax. Income from real estate is taxed at a flat rate of 20 percent on the net amount. In computing the amount of taxable income, deductions can be made for the cost of repairs and maintenance of the property, the property tax paid by the owner in respect of developed land, and the cost of interest on borrowings related to purchasing and maintaining the property.

Dividends. Dividends are subjected to a payment at source at a maximum rate of 10 percent of their gross amount, if the entity that receives the dividend is the actual beneficiary.

Indirect taxes. Indirect taxes have long been the mainstay of Senegal's tax system, with import duties by far the most important. Other indirect taxes include business license tax, export taxes, real estate tax, registration, and stamp taxes.

Customs and duties. Under the common external tariff structure established with other member nations of the WAEMU, Senegal has four simple tariff rate categories:

- 0 percent on cultural and scientific goods, agricultural inputs, and capital goods and computer equipment not available from local production
- 5 percent on raw materials, crude oil, and cereals for industry
- 10 percent on semi-finished products, intermediate goods, diesel, and fuel oil
- 20 percent on consumer goods, capital goods, and vehicles.

Petroleum tax. In addition to the oil and gas taxes set by the WAEMU in all member states, Senegal imposes taxes on these petroleum products, along with contributions to the Oil Imports Security Fund *(Fonds de Sécurisation des Imports de Produits Pétroliers)*. Taxes represent two-thirds of the price of petrol at the pump. Senegal has also imposed a tax on the state electricity company, SENELEC, and a depreciation tax that falls disproportionately on private businesses.

Agriculture-related taxes. Senegal maintains an array of other taxes on agricultural imports, some of which were also changed in January 2000 to conform to the common external tariff, as shown below:

- Senegal assesses a "community solidarity tax" of 1 percent to assist landlocked WAEMU member states, such as Niger, Mali, and Burkina Faso, which suffered revenue losses due to the CET.
- Senegal assesses a statistical tax (ST) of 1 percent of the customs value of merchandise, applied to all goods.
- In the past, Senegal applied a regressive protection tax (DPT) to compensate for the decline in tariff protection of community enterprises following the implementation of the CET. This tax was applied for four years starting in July 1999, with two levels of protection (10 percent and 20 percent).
- Senegal applies an import tax *(Táxe Cónjoncturelle à l'Importation*—TCI), a compensatory tax to offset losses due to world price fluctuations and "unfair" trade practices. It is applicable to bovine meat, poultry meat, concentrated milk, potatoes, onions, bananas, maize, rice, sorghum, millet, wheat flour, refined vegetable oils, sugar, concentrated tomato, and cigarettes. It is adjusted every six months, based on a trigger price system.
- Senegal also applies a reference value system of tax valuation. This method predetermines the customs value of certain agricultural imports based on amounts established by Customs as a means for preventing tax evasion and to combat "unfair" competition.

Taken all together, the combined rate of duties, tariffs, and fees amount to a maximum of 52 percent of the import value. On top of these duties, importers are obliged to pay a unified 18 percent VAT at the port of entry.

Not surprisingly, most of Senegal's agricultural sector finds taxes to be burdensome and an inhibitor to growth. A case in point is the proliferation of taxes on irrigation equipment: one of the most effective means to increase agricultural productivity and output (with corresponding positive impacts on international agricultural competitiveness and food security) would be to support and encourage the use of crop irrigation schemes. This would not only increase crop productivity but also enable the harvest of several different crops over the course of a single year. However, the high level of import duties and taxes on irrigation supplies and equipment (currently at least 38 percent) discourages agricultural investments in these productivity-enhancing schemes.

Another source of dissatisfaction in the tax system is the cost impact on Senegal's agricultural value chains resulting from taxes on transport

FRANK AND EARNEST

Over the course of this AgCLIR assessment, the team had an opportunity to interview senior members of a private firm that provides tax advice and assistance to companies that operate in Senegal. This firm has been operating in Senegal for many years and has an excellent reputation for providing sound and reliable tax advice. We consider this company to be an excellent source of information that provides a useful and realistic comparison with government's plans and aspirations for improved tax administration in Senegal. The following is a summary of the frank and open responses by company officials to the team's questions:

- When compared to neighboring countries such as Chad and Cameroon, tax administration in Senegal is very fair.
- In general terms, taxes in Senegal are very high. Businesses need assistance to understand what the tax laws require. Senegal's tax legislation contains many old laws. While some modifications have been made, tax legislation is not consistent with today's business environment in the country. The model for Senegal's tax legislation should be France.
- Senegal has a difficult business environment. The tax authorities are not helpful. Companies are not sure if they are paying the correct amount of tax. Tax enforcement sometimes borders on harassment. A company with an annual turnover of US$1 million will sometimes receives a tax bill for US$2 million, which is clearly impossible.
- The DGID's most important task is to ensure the actual application of existing tax laws. Some tax agents are uninformed and poorly prepared to enforce tax legislation. There are also instances of low levels of corruption within the agency.
- The entire system of tax administration must be changed. Taxpayers do not see the value received for the taxes they pay. The two major issues with the DGID are (1) the agency's willingness to change in order to improve Senegal's methods of tax administration, and (2) the poor capabilities of DGID's staff.
- The amount of business taxes should be reduced, as should the number of tax returns that must be filed.
- The tax authorities should be closer to the taxpayers. There is a big gap between what tax authorities would like to do and on-the-ground reality in Senegal.
- The only penalty assessed for improper tax filing and payment in Senegal is a fine. No one goes to jail for tax fraud or corruption.
- The government of France is providing a tax advisor to the DGID. However, it is unclear if the advisor has been fully accepted by the agency and is useful in this role.

and post-harvest services. Although the country has no specific transport-related taxes for agriculture, the high taxes on petroleum products drive up the transportation cost for agricultural products and have a direct, negative effect on food security and agricultural competitiveness.

IMPLEMENTING INSTITUTIONS

MINISTRY OF ECONOMY AND FINANCE (MEF)

This ministry is the highest tax authority in Senegal and is responsible, along with the central bank and other national authorities, for formulating and implementing national tax policy. While considerable change has been made in recent years in the decentralization of tax administration in Senegal, the central government still retains authority over the vast majority of taxes collected. In fact, local governments have extremely limited power to tax and limited authority to directly raise revenue. Consequently, most municipal governments are still heavily dependent on the national government for their revenues. Local government revenues include sources such as market taxes, stamp taxes, and real estate taxes.

GENERAL TAX AND LAND AUTHORITY

A division of the MEF, the *Direction Générale des Impôts et des Domaines* (DGID) is charged with the administration of tax policy and collection in Senegal. The main office of the MEF and DGID headquarters is located in Dakar. DGID regional offices are located in Senegal's 11 regional capitols.

The DGID is responsible for the collection of tax revenue. In addition, it is responsible for the administration of all national land classified as National Patrimony *(Domain National)* including land management, land registration, and land titling. Approximately 95 percent of Senegal's land is classified as Domain National and is administered by the DGID. As detailed in this report's chapters on Registering Property and Dealing with Licenses, the productive use of this national land is controlled largely by rural councils.

KEY IMPLEMENTING INSTITUTIONS

- Ministry of Finance
- General Tax and Land Authority Investment Code
- Customs administration

In 2008, the DGID formulated a strategic plan covering its operations for the period 2008–2012. This plan, known as the Strategic Development Plan for Fiscal Administration *(Plan de Développement Stratégique de L'administration Fiscale*—PDSAF), is based on an internal diagnosis of strengths and weaknesses of Senegal's tax administration. The plan sets forth a course of action for improving and streamlining tax administration in Senegal at the central as well as the regional levels. The plan also defines the resources required and the anticipated results, along with specific targets to be met for the 2008–2012 period. The primary objectives of this initiative are to improve the quality of care and services to the clients (the taxpayers), to enhance the efficiency of tax administration, and to improve the skills and capabilities of the agents employed by the DGID. Its goal is to help create a stable, highly positive business environment in Senegal to lead to increased opportunities for economic growth.

The diagnosis carried out by the DGID and reiterated over and over throughout the field assessment, however, revealed many shortcomings in the organization's institutional framework as well as its operating practices. At the institutional level, the complexity of regulations and procedures, poor communications with taxpayers, and slow, inconsistent enforcement procedures were some of the many problems noted. Every available report and interview acknowledged a fragmentation of information and services, a multiplicity of uncoordinated field activities at the taxpayer level, and an inconsistent interpretation of tax regulations.

The relatively young staff that is committed to reform and implementation of the plan is seen as a key asset to the DGID. Furthermore, considerable opportunity exists to use technological developments, particularly in information management, as a means for improving efficiency and record-keeping.

Key elements of the administrative reform now underway at the DGID are innovation and responsiveness. This implies a culture of personal responsibility throughout the organization, the incorporation of new technology, and a positive reaction to changes in the country's legal and economic environment. Improved performance is based on teamwork and a commitment by all employees to transparency, professionalism, and ethical behavior.

As part of its reform program, the DGID is establishing five additional service centers nationwide, to better serve taxpayers outside Dakar. It also plans to streamline the country's tax code, which now contains an astonishing 1,083 articles with separate classifications for 13 different categories of economic endeavor, such as petroleum, mining, new investments, and common law. The agency wants to consolidate these into a single simple document that would also serve as a guide on completing tax returns.

While it remains to be seen how effective the DGID will be in achieving the objectives of its strategic plan, its efforts to date in formulating the plan and starting to create a culture of reform within the organization are quite impressive. During our visit, regional DGID representatives exhibited enthusiasm for their work and a strong desire to provide good customer service to those served by a regional office.

SUPPORTING INSTITUTIONS

Since Senegal's tax code is quite complex, a considerable number of private tax accountants, auditors, and lawyers along with their respective associations provide advisory services to agribusinesses that face a complex and contradictory set of rules while seeking to comply with tax legislation. Brokers in the transport and warehousing sectors provide services that facilitate the verification and payment of export and import taxes, and fees. Most agribusiness cooperatives and associations are tax-exempt as non-profits, but the products they deal in may be subject to taxation. Furthermore, cooperatives are not immune to the impacts of implicit taxes and local fees. Many donors and a growing number of NGOs support cooperatives in Senegal. Many of these provide accounting, training, and advisory service if needed.

KEY SUPPORTING INSTITUTIONS

- Professional accountancy bodies
- Chartered accountants and CPAs
- Big Four accounting firms
- Media
- Regional regulation body

Some of the better-known supporting institutions are the following:

- Professional accountancy bodies, including the National Order of Certified Public Accountants and Chartered Accountants of Senegal *(Ordre National des Experts Comptables et Comptables Agréés du Sénégal*—ONECCA)
- Certification and auditing firms, such as Ernst and Young, Ltd., Dakar, Senegal; Deloitte, Touche, Thomatsu; Thiaba Camara Sy, Dakar, Senegal
- Accounting news, such as EIN news monitoring (see http://www.einnews.com/senegal/)
- An accounting regulation body, the West African Accounting Council *(Système Comptable Ouest Africain*—SYSCOA). This council is based on the Uniform Act of Accounting Principles under the OHADA treaty.

SOCIAL DYNAMICS

In Senegal, there is deep dissatisfaction within the business community concerning the country's overall tax system. There are two parts to this problem. The first relates to the number of tax declarations that must be made and the number of tax payments required for specific taxes, such as VAT and taxes on salaries during a calendar year. The second part concerns the excessive number of different taxes that are assessed on diverse business activities and different business facilities.

In addition to an excessive number of declarations for certain tax payments, businesses are saddled with a large number of relatively minor taxes for which declarations must be made. For example, taxes are imposed on signboards placed in front of a business showing the name of the establishment—the larger the sign, the greater the tax. Signs are considered to be "advertisement" and therefore taxed. In the words of one small business owner, the philosophy of the government seems to be, "if it moves, tax it."

Under its food security program, the Senegalese government continues to follow a multiyear policy of protecting small-scale producers from ever-increasing costs of farm inputs for agricultural production. In this regard, it provides subsidies to small farmers for many types of seed and most fertilizer that are used for the production of basic food products.

During the world food crisis of 2008, in response to increasing international prices of food, Senegal abruptly reduced the import taxes on several products, including rice and powdered milk. These moves are undoubtedly costly in terms of foregone revenue, as well as the direct cost of subsidies. In the words of one critic of Senegal's fiscal policies, "Senegal wants to subsidize consumers as well as producers, but does not have the funds available to do both."

In light of these reduced fiscal inflows, combined with the budgetary pressure caused by subsidized agricultural inputs, there seems to be a sense of extreme anxiety by tax officials toward increasing the amount of tax revenue. Since existing businesses are established, well known, and easily identifiable, they become "soft" targets for the government's attempts to extract additional tax revenue to offset shortfalls in other areas. Many businesses are concerned that the government has a near-predatory attitude toward existing SMEs as a source of additional tax revenue.

It appears that existing business enterprises are indeed reaching a saturation point in terms of the amount of taxes that are extracted. It also seems that the business community pays a disproportionate share of taxes to offset agricultural subsidies and shortfalls from other sources of tax revenue. Clearly, there is a need for a broader tax base with simpler rules to reduce the tax burden on Senegal's SMEs.

Tax reforms are usually controversial, attracting intense political debate. The choice is often perceived as between two immoveable, conflicting objectives: on the one hand, that of lower taxes with more contented taxpayers but less government revenue, and, on the other, that of higher tax rates with highly discontented taxpayers but greater revenue leading to smaller fiscal deficits. In reality, it is possible to have a win-win situation between government and taxpayers whereby better tax administration leads to greater efficiency and increased tax revenue, which can be used to offset tax reductions—or at least, the avoidance of tax increases.

Despite the impressive strides made by the MEF and DGID to improve and modernize tax administration in Senegal, considerable work remains to be done in tax reform.

RECOMMENDATIONS

The World Bank and Price Waterhouse Coopers recently published a report[76] that highlights the successful practices of a win-win government and taxpayer relationship. This analysis, a study of some 90 tax reforms in 65 different economies, points to the 4 most successful reforms, each of which would be beneficial to improve Senegal's current tax burden. The recommendations are as follows:

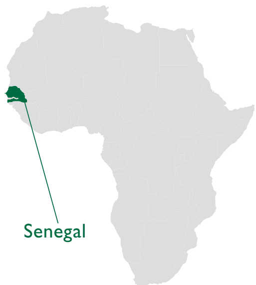
- **Online filing.** There are clear advantages of filing taxes online. Using technology that is readily available can reduce administrative costs, reduce administrative errors, increase efficiency, and speed processing time. The DGID would be well served to incorporate online filing of income taxes with its 2008–2012 Strategic Development Plan for Fiscal Administration.
- **Combine taxes.** Senegal has three different taxes on salaries, and at least two different taxes on property. If the base is the same (amount of salaries, or property value), an obvious improvement is to combine the different taxes into one. Having multiple taxes increases the bureaucratic burden for both the taxpayer and the tax administration.
- **Simplify tax administration.** Senegal requires special accounting books for tax purposes. Furthermore, many types of taxes are covered by more than one law. In Senegal, businesses spend a lot of time complying with tax regulations. Increasing the complexity of tax rules for businesses is unlikely to bring more revenue; quite the opposite is more likely. Countries that do not require special books have on average 10 percent more revenue (as a percentage of GDP) on average than countries that do.[77] Furthermore, having a clear tax law increases tax revenue by an average of 6 percent.
- **Reduce tax rates and broaden the tax base.** Broadening Senegal's the tax base would result in a fairer tax system

76 World Bank Group with PricewaterhouseCoopers, *Paying Taxes 2008—The Global Picture, available at* http://www.doingbusiness.org/documents/Paying_Taxes_2008.pdf.
77 World Bank, World Development Indicators database.

and would permit some amount of tax relief to the business community.

In addition to these general recommendations, this report makes the following specific recommendations to improve Senegal's tax burden in the expectation of achieving a fair and efficient system for agribusiness to thrive and prosper:

- Support the DGID's work to simplify and streamline the tax code and to reduce the number of declarations that must be made by taxpayers. Specific needs include institutional strengthening of the regional tax offices, including facilities and equipment, as well as staff training throughout the agency.
- Encourage the DGID to broaden the tax base to increase the number of taxpayers and thereby alleviate the disproportionate tax burden on SMEs in Senegal.

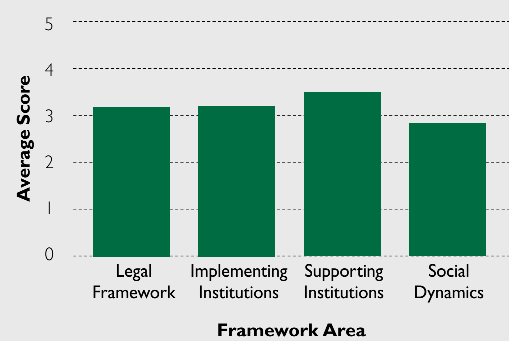


TRADING ACROSS BORDERS

This chapter is divided into two parts: Trade Policy and Trade Facilitation. Trade policy pertains to Senegal's commitment to building formal trade relations with its immediate neighbors, the African continent, and international markets, through such mechanisms as mutual tariff reductions and streamlining of trade processes. Trade facilitation refers to the simplification and harmonization of a country's international trade procedures, in line with current best practices and globally accepted standards. A sound environment for both trade policy and trade facilitation is a prerequisite to moderating problems of cross-border flow of agricultural products. An efficient and properly regulated trade regime is required for a country to capture the opportunities offered by global and regional trade partners and the related economic benefits of reduced poverty and food insecurity.

TRADING ACROSS BORDERS	
Doing Business Ranking 2010	57
Doing Business Ranking 2009	64
Documents for export (number)	6
Time for export (days)	11
Cost to export (US $ per container)	1,098
Documents for import (number)	5
Time for import (days)	14
Cost to import (US $ per container)	1,940

TRADING ACROSS BORDERS



TRADE POLICY

As noted in the Starting a Business chapter, Senegal's economy is tied closely to agriculture, which engages over 75 percent of the country's workforce. Notwithstanding heavy workforce engagement in the sector, as previously noted, Senegal is one of the highest per-capita importers of food in the world, bringing in about 70 percent of its basic food needs—particularly rice, wheat, vegetable oil, milk powder, and consumer-ready goods. Agriculture accounts for only about 17 percent of Senegal's GDP, with industrial activity (19 percent) and services (64 percent) accounting for far greater shares. GDP growth in recent years has hovered between 4 and 4.7 percent. Rapidly rising energy and food prices raised inflation to 6 percent in 2007 and 2008—the highest level since the 1994 devaluation.

As highlighted in the World Bank's *Doing Business 2009* report (issued in September 2008), as well as the most recent report, Senegal has improved its business climate for agricultural exporters over the past five years. The government has reduced the steps needed to export and has implemented several measures to reduce costs for companies that export 80 percent of their production. Exporters have access to establish their facilities in free zones *(zones franches)*, import duty-free inputs used in the manufacturing of export goods, and pay reduced fees to obtain documentation required by foreign markets' importers. Food-processing companies in the fruits and vegetables, cereals, and fish sectors hope that in the future, tariffs on imported packaging materials, such as glass packaging and cardboard boxes, will also be reduced for finished products destined for local sales.

Fishing is a key economic resource and a major source of foreign exchange. Other agricultural exports are dominated by peanut products, cotton, mangoes, papayas, melons, *haricots verts* (French green beans), and cherry tomatoes. Total agricultural exports in 2008 were valued at USD$400 million.

Imported goods continue to bear duties that fluctuate with undocumented and unpredictable frequency based loosely on domestic supply and demand for similar products, notably food staples. There are several state agencies responsible for taking inventory of available quantities and prices of onions, milk powder, wheat flour, sugar, and rice, among other products in the country, and reporting to the head offices based in Dakar. This information is then used to make predictions about future supply and demand and consequently to launch stakeholder group conversations that have resulted in bans of imports. Such bans, although respected by most authorities, are not properly communicated to the World Trade Organization (WTO) or to external trade partners through formalized channels.

LEGAL FRAMEWORK

INTERNATIONAL COMMITMENTS

Senegal engages actively in international trade policy negotiations and is a signatory or member to several important trade-related agreements. The country's ministries, trade support agencies, and private sector face numerous challenges, however, to fully taking advantage of preferential trade access to Western markets. Various studies detail these challenges and are available online on the Web sites of the Food & Agriculture Organization (FAO), the WTO, the World Bank, Intracen, the Integrated Framework, the USAID, and the U.S. Department of Agriculture (USDA).

KEY TRADE POLICIES AND LAWS

- International commitments: WTO, FAO, Cartagena Protocol on Biosafety, etc.
- International trade preference schemes: EBA, AGOA, etc.
- Regional pacts: ECOWAS (including CET), OAPI, WAEMU
- Domestic law and policy: Accelerated Growth Strategy, Agro-Sylvo-Pastoral Law, etc.
- Law and policy pertaining to special economic zones
- Laws regulating the sale and distribution of seed, fertilizer, pesticides and herbicides
- Export laws and regulations, including SPS mandates

In brief, Senegal has been a member of the WTO since 1995. It became a signatory to the International Plant Protection Convention (IPPC) in 1975 and it is a member of the World Organisation for Animal Health (OIE) and the FAO's Codex Alimentarius, a collection of internationally recognized standards, codes of practice, and other recommendations pertaining to food, food production, and food safety. As a least developed country (LDC), Senegal has benefited from preferential trade access to European markets under the Everything But Arms (EBA) initiative since 2008 and continues to participate in West African regional negotiations with the EU to develop an Economic Partnership Agreement (EPA) in 2009. As a member of the Economic Community of West African States (ECOWAS), Senegal enjoys preferential trade access among regional country members via the Common External Tariff (CET) regime and is working to refine details of its implementation. Senegal belongs to the Permanent Inter-State Committee for the Fight Against Sahel Desertification (CILSS) as well as to the African Organisation for Intellectual Property Protection (OAPI). The government has signed the Cartagena Protocol on Biosafety (a supplement to the UN Convention on

Biological Diversity) but has yet to draft a plan for implementation. National organic standards do not exist, but organic production is increasingly at a healthy pace, certified by European and American standards organizations.

Since 2000, Senegal has been eligible for preferential access to the U.S. market for over 9,000 line items of products as a beneficiary of the African Growth and Opportunity Act (AGOA) and the Generalized System of Preferences (GSP). As a member of the West Africa Economic Monetary Union (WAEMU), it is a signatory to a recent agreement for Trade Development and Investment between WAEMU and the United States. Since 2000, however, Senegal has exported negligible amounts of agricultural products to the United States due to its inability to meet U.S. sanitary and phytosanitary (SPS) requirements and market-driven norms. Its small shipments have included fish and seafood, dried hibiscus leaves, *haricots verts* (French green beans), and tropical fruit spreads.

Senegal is also developing economic relations with Iran and Libya, courting investors in agricultural and manufacturing industries, and building a foundation for greater bilateral trade of agricultural products among others.

DOMESTIC LAWS AND POLICIES

Senegal has several new initiatives that focus on agricultural output and food security. The Grand Offensive for National Food and Abundance (GOANA) and Return Toward Agriculture (REVA) initiatives have been widely perceived as reactionary to the global food crisis that affected the import-dependent country and the dangerous waves of emigration by canoes of youth toward Europe, respectively. In April 2008, the GOANA promised subsidies and tax breaks for agricultural inputs, but then failed to provide those subsidies, resulting in a domino effect of unpaid credit on the backs of businesses and farmers. The REVA called for youth to become trained farmers and to return to rural areas to farm to reverse urbanization and youth unemployment. Both initiatives are under-funded given their ambitious agendas.

Senegal's Accelerated Growth Strategy (SCA) aims to coordinate donor funds by sectoral goals, including those invested in agriculture. The Agro-Sylvo-Pastoral Law (LOASP), drafted in 2007 to improve land and labor management, is widely considered one of the most well thought out initiatives, but it has yet to be enacted by decree.

In spite of these initiatives, Senegal does not have a coordinated, cross-sector national agricultural strategy. Its ministries, private sector, and support organizations coordinate to some extent by sector on developing norms, fixing the government price minimums, and establishing trade policy. As further discussed in this chapter, Senegal's various protectionist measures are at odds with the goals of its membership in more liberal trade regimes.

SANITARY AND PHYTO-SANITARY (SPS) MEASURES AND STANDARDS

Quality controls required by the EU and other export markets, including sanitary and phytosanitary (SPS) measures on agricultural products represent a significant issue facing the Senegalese trade community. Senegal's agricultural community has a strong interest in complying with international SPS norms as applied to products for export but often lacks the knowledge or means to improve existing production systems. The country also is concerned that its food imports are safe, although imposition of foreign import rules beyond the mainstream of international standards are considered a trade barrier that conflicts with international agreements.

SPS-related norms in Senegal are developed by stakeholder groups encompassing representatives from the public and private sectors. The Senegalese Association of Norms (ASN) manages sectoral committees to develop norms based on current production practices, international standards, and target market requirements. After the sectoral committee develops a draft standard, it is published for one to two months and ideally communicated to the WTO. Following this phase, the committee invites the public to comment at a public meeting on the norm. Then the Administrative Consultative Council makes a recommendation to the president. The council is comprised of four public members (representing the Ministry of Economy and Finance, the Ministry of Commerce (MOC), the Ministry of Industry, and the Primature) and six voluntary private sector members. The president then signs a decree enacting the norm.

Although the majority of the 50 food-related norms developed to date are voluntary, 14 have been rendered mandatory. Mandatory norms exist for production of rice, tomato concentrate, alcohol (chemical) based vinegar, meat transportation, vegetable oils enriched with Vitamin A, wheat flour enriched in iron and folic acid, iodized salt, SPS certification, and Customs documents. The ASN is in the process of developing a Senegalese norm governing the production of peanut paste based on U.S. aflatoxin requirements and is working closely with the MOC's Division of Interior Consumption (DCI) to develop norms for production of local fruit based juices.

These norms are available to the public at the ASN library for a cost of approximately 1,000 FCFA per page. Each norm consists of 4–30 pages. The norms are not available online. Norms can also be studied free of charge within the on-site ASN library.

IMPLEMENTING INSTITUTIONS

FOOD SAFETY ENFORCEMENT AGENCIES

Enforcement of food safety norms during production and processing in Senegal are conducted by a number of different ministries: the MOC enforces processed food standards; the Ministry of Fish and Seafood enforces fresh and processed fish and seafood production and exportations; the Ministry of Agriculture enforces norms governing fruits and vegetables; and the Ministry of Livestock enforces standards for livestock and related products.

The MOC's DCI upholds standards through inspections and sampling and by ensuring exporters meet foreign market requirements for sanitary standards by product and country. For each of the products subject to one of Senegal's obligatory production norms, the ministry may provide auditors to randomly inspect production facilities to ensure the company is meeting the norms. This visit entails visual inspection and sampling that is conducted in the MOC's laboratory for specific pathogens described in the official norm. Depending on the results of the lab analysis, the company is categorized at a risk level of 1–4 and given a specific amount of time to resolve the problem. If results of the analysis produce a high number of problems, the MOC can shut down the company. Auditors will return to inspect the company and take future samples at different frequencies dependent on the risk category of the company.

TRADE POLICY: KEY IMPLEMENTING INSTITUTIONS

- Ministry of Commerce, Division of Interior Commerce (MOC/DCI)
- Ministry of Agriculture, Department of Plant Protection (MOA/DPV)
- Ministry of Fish and Seafood
- Ministry of Livestock
- Ministry of Environment
- Ministry of Commerce (MOC) Laboratory
- CERES-LOCUSTOX Laboratory
- Food Technology Institute (ITA)
- Livestock Laboratory
- Institute of Agriculture Science and Research (ISRA)
- Department of Plant Protection (DPV)

The second method for SPS norms enforcement is implemented through the documentation and lab analysis required by foreign markets, particularly for food exports. This enforcement is laboratory-based and the lab analyses are governed by the relevant ministries. For example, the EU requires fish and seafood companies export markets to run tests for heavy metals and histamine levels. These analyses are systematically conducted by the Food Technology Institute, which has an accord with the Ministry of Fish and Seafood. The results are used by the company to obtain the required SPS certificate required for export. Each ministry has accords with labs in Senegal to conduct tests. Some laboratories may have accords with multiple ministries to conduct multiple analyses. Regardless of the lab and the test, there is a general need for improved quality control in each of the laboratories. The United Nations–WAEMU-sponsored *Programme Qualite* is working with the Senegalese government to address some of the quality control problems throughout the laboratories.

Labs in Senegal are not yet accredited internationally, although they may be members of some accreditation organizations such as ISO or subject to some oversight by the relevant ministry. Although laboratory managers have expressed a desire to become internationally accredited, interviewees cited a significant problem—the government does not provide financing for accreditation.

In the fields, the Directorate of Plant Protection (DPV) is responsible for ensuring SPS norms are respected for crops destined for export. The DPV aims to prevent new incidences of pests and illnesses in the fields, as well as further destruction from those existing already. The DPV also inspects imported and exported crops and issues SPS certificates for exports.

Unfortunately, notwithstanding numerous past capacity-building efforts, the DPV faces significant obstacles against effectively conducting its work. It has serious budgetary constraints to the point where some of its border inspection posts do not own offices within the port limits, have no electricity, and possess no equipment to conduct inspections. In addition, the DPV's most technically adept staff members who respond to infestations are aging and retiring with few technically competent younger staff to replace them. There are few if any, advanced scientists on staff. All together, these problems mean that turnaround time for response to identifying pests, identifying treatment, and applying treatment is slow.

The government does not own planes to spray on a large scale for infestations. In the past, Senegal worked with the government of Mauritania to spray in the Senegal River valley against locusts during a state of emergency. However, spraying is not often timely enough and producers of rice, tomatoes, and other important staples experience significant crop losses while waiting for even the most capable of DPV staff to organize the spraying assistance, or even to find petrol for their vehicles or to identify the pest attacking production.

Informal entry of illegal foods into Senegal is frequent and unchecked due to the lack of border authorities' capacity to prevent the entries. There is a lack of equipment, cold storage, awareness, and harmonization of documents and processes at the regional DPV port level impeding inspections. Exporters cite problems clearing shipments of products in foreign markets due to discrepancies in SPS certificates issued by the DPV. Fee structures for certificate issuance at the regional level largely depend on the discretion of the DPV inspector and are not accounted for in a standardized way throughout the country. There are multiple SPS certificates among the different regions in use, with inspectors needing training on which form to use for which occasion and how to fill in all of the fields. Inspections of goods for import or export rarely happen, even in Dakar where most challenges appear to be less, due to costs that would be incurred by the DPV for unwrapping pre-wrapped products and due to costs of laboratory analysis for samples.

The DPV cites as its budgetary priorities the following: equipping the training center and dormitory to permit greater training opportunities for farmers and DPV technicians; improving non-chemical integrated pest management; and decreasing pesticides' negative effects on humans and the environment through increased outreach and training to farmers on application and health consequences.

Senegal's recently completed participation in the OIE's Performance of Veterinary Services (PVS) evaluation and will support a forthcoming OIE-led gap analysis. The detailed PVS is being distributed to donors and is available from the Minister of Livestock upon request.

DUTY DEVELOPMENTS

Many businesses confirm that it is often harder to do large-volume regional trade than it is to trade with Europe. This is due to various factors, including poor infrastructure linkages and informal fees assessed on shipments traveling by land. The USAID supports a West Africa Trade Hub project to undertake a study on the cost of these corrupt practices along the main trade corridors of West Africa. An ongoing study involves the trade route between Senegal and Mali.

In addition to well-known corruption at the borders and at mid-country check points, there is a general failure at borders to apply correctly regional bands of tariffs under the WAEMU Common External Tariff (CET). The four bands range from 0 percent to 20 percent and cover a broad list of products. There continues to be debate on the creation of a fifth band, potentially assessed at 35–50 percent for a class of "sensitive" products that each member country of the WAEMU and ECOWAS may designate. Harmonization and evolution of the CET are discussed at the ECOWAS level under the Common Agricultural Policy (CAP).

Although significant strides have been taken to encourage exports through investment incentives and duty-free exports and imports of inputs for export-oriented products, duties on imports remain arguably counteractive to the government's goal of food self-sufficiency.

The government uses trade bans and subsidies to regulate imports in order to boost domestic production and consumption, but it fails to inform its trading partners of these bans and further fails to fully fund subsidy programs. These policies often result in higher costs for both domestic producers and consumers.

The Senegalese government could provide incentives to lower food costs by instead eliminating duties on imported inputs for products prepared for domestic consumption and to subsidize or lower the cost of electricity or water. For example, sugar is a high-cost input for production of goods destined for domestic consumption because it must be sourced domestically at higher prices. The reality is that this protectionist policy perpetuates illegal and untaxed entry of sugar from The Gambia and Europe to keep domestic prices low. Sugar is imported duty-free when it is used to prepare products for export.

SUPPORTING INSTITUTIONS

RESEARCH AGENCIES

There are increasing amounts of new seeds introduced in Senegal. The process to import and certify seeds is transparent, although

FOOD SAFETY IN SENEGAL

Senegal has enjoyed the support of sizeable investments from donors for improving its food safety system across processed foods, plant health, and animal health sectors. It benefits from the EU/UNIDO's Quality Program being harmonized and implemented across the WAEMU (Phase I) and ECOWAS (Phase II) countries, as well as significant support from the French government, FAO, USAID, and USDA, among other donors. Each donor is working, primarily with the Codex Alimentarius office based in the Ministry of Health, the Ministry of Environment, the Ministry of Commerce, and in collaboration with committees and standards-setting agencies such as the Senegalese Association for Standardization (ASN), to help Senegal implement standards aligned with the WTO's SPS Agreement and UN/FAO's Codex Alimentarius into its national policies and standards.

Senegal's implementation of international food safety norms is a steady work in progress. As a result of assistance efforts, Senegal boasts a state of the art, fully equipped, and well-staffed food analysis laboratory within the Ministry of Commerce—even able to conduct analyses of vitamin A in betacarotene form—a food analysis required by international labeling standards previously only available to the Senegalese by shipping samples to Europe. Costs are expensive and one challenge the lab may face is managing adequate budgetary capacity to offer cost competitive services and to stock necessary reagents. Several other labs are also working towards improving capacity for internationally accepted analysis of pest residues and microtoxins to gain international accreditation.

As donors focus assistance efforts on supporting public development of international food safety standards, Senegal continues to apply this approach to developing specific standards for local raw materials that do not have standards, i.e., fresh ditax juice, saba preserves, etc. Meanwhile the private sector is leading implementation in response to global market demand, without significant enforcement measures yet adequately funded by the government of Senegal (GOS). The USAID and USDA continue to collaborate with the Ministry of Livestock to improve veterinary services and reduce animal disease incidences and prevalence rates to improve animal health and productivity, collaborate with the Ministry of Agriculture and the DPV to build staff capacity in the regions to identify pests, improve rapid response, and provide assistance to mitigate threats to crops destined for export and local consumption. In 2007, the USAID and USDA through the West Africa Trade Hub successfully accompanied several Senegalese (and regional) food processors to implement an operational HACCP plan according to Codex and U.S. norms, resulting in increased exports of tropical fruit processed goods to the United States.

For greater details on Senegal's specific needs and status of the animal health and food safety systems, in-depth critical reviews are available upon formal request from the GOS: the completed Performance of Veterinary Service (PVS) tool conducted by the World Organisation for Animal Health (OIE) and the Critical Review overseen by the Codex Alimentarius. The Ministry of Livestock has already released the PVS to USAID and is finalizing its draft work plan for veterinary services on the results of the tool.

both the public and private sectors advocate improved capacity and certification of farmers to multiply the seeds. New, higher-yielding peanut varieties have been introduced in recent years and research is being conducted to improve seeds of onions and tomatoes. The Institute for Scientific, Agricultural Research (ISRA) is the primary institution that conducts field trials and multiplication efforts with farmers and agribusinesses in multiple regions across Senegal. When new seeds are developed or introduced in-country, the ISRA first evaluates its growth feasibility in the regional climates of Senegal, and then works with its network of farmers to multiply the seed, permitting the multipliers to recoup their costs by selling the seeds. The seeds are certified by a committee led by the ISRA. All the seeds are required to be certified but this is difficult to enforce. Seeds developed by the ISRA in the past have included hybrid and non-hybrid varieties of corn, rice, and groundnuts.

The ISRA manages 33 research stations and 120 scientists conducting research in Senegal. Funding from donors, government, universities, and the private sector permit the institution to produce and distribute 25 different animal vaccines, develop artificial insemination and animal herd management strategies, develop technologies to desalinate soils, and improve water management systems.

Due to the approaching retirement of its most technically competent scientists and better development of communications and outreach of advances made in agricultural strategies and products, the ISRA needs more trained scientists on staff. It manages OAPI patents according to contract terms with funding partners.

Another institute, the Food Technology Institute *(Institute Technologie Alimentaire*—ITA), researches and develops new processed-food products and processing equipment in response to private partner demand and occasionally to government request. Private companies and donors fund independent research at the ITA to take advantage of local expertise and conditions to process locally grown foods. The ITA also provides training to businesses and organizations on how to process foods and on hygiene in good manufacturing processes. It is developing a program to formally train food processors in hazard analysis and critical control points (HACCP).

The ITA has several unaccredited laboratories on site and works under national agreements with various ministries. The labs have microbiological, chemical, and toxicity analytical capacity and expect ISO 170025 accreditation by December 2009 for mycrotoxin analysis, with support from the European Union. The ITA manages patents under contract with its clients under the OAPI.

Other labs in Senegal include the livestock laboratory, managed by the Ministry of Livestock, and the Ceres-Locustox laboratory, which analyzes maximum pest residue levels on fresh crops.

TRADER SUPPORT ORGANIZATIONS

There are several associations that actively support trade in Senegal. UNACOIS *(Union Nationale des Commerçants et Industriels du Sénégal)* is an organization consisting of about 150,000 informal traders that have offices throughout Senegal. It is involved in the stakeholders groups with the MOC and ARM to negotiate trade policy, but its representatives feel UNACOIS is not involved enough. Informal traders, accounting for an estimated 98 percent of all informal workers in Senegal, supply the Senegalese market with everything from electronics to plastics to rice, onions, and vegetable oils—and soon enough, tractors. Like many interviewees during this assessment, UNACOIS traders expressed the view that the Senegalese government takes a piecemeal approach to trade policymaking. The pricing differences between imported goods and domestic-produced goods are decreasing, yet most imported products are still thought safer than those produced domestically. UNACOIS leaders advocate the need for greater SPS training to farmers.

Several organizations support export development: *Fondation Origine Senegal* (FoSen) supports branded exports of fresh fruits and vegetables and manages a cold storage facility at the LSS airport in Dakar. The Agency for the Development of Small and Medium Sized Enterprises (ADEPME) provides export assistance to SMEs in agricultural and non-

**TRADE POLICY:
KEY SUPPORTING INSTITUTIONS**

- Union of Senegalese Traders (UNACOIS)
- Permanent Inter-State Committee for Drought Control in the Sahel (CILSS)
- Business Owners Union (CNP)
- Senegal's Center for Foreign Trade (CICES)
- International Standards Office (BMN)
- Senegal's Development Program for Agricultural Markets (PDMAS)
- USAID's Accelerated Growth Program (SAGIC)
- African Agricultural Exporter Association (AAFEX)
- USAID's West Africa Trade Hub (WATH)
- Senegalese Exporters Agency (ASEPEX)
- Agency for the Development of Small and Medium Sized Businesses (ADEPME)
- Origin Senegal Foundation
- Afrique Management Council (AMC)
- Veritas Office
- French Association of Quality and Accreditation (AFAQ)

agricultural industries. The *Bureau Mis au Niveau* (BMN) supports companies to improve hygiene standards and good manufacturing practices for food sales in domestic and export markets. The Senegalese Export Agency (ASEPEX) sponsors trade shows, is developing market information for several industries including processed foods, and hosts Senegal's AGOA Resource Center—a one-stop information window for exporters targeting the U.S. market through AGOA. Donor-backed projects such as the West Africa Trade Hub (WATH) and the African Association of Exporters (AAFEX) provide technical SPS studies and food safety training to potential exporters and sponsor trade show participation as well.

SOCIAL DYNAMICS

SOCIAL AND BRAND MARKETING FOR QUALITY CONTROL

There are several brands managed by different entities seeking to promote quality standards in Senegalese products. The representation "NS" denotes *Normalisation Senegalaise,* or Senegalese Norm. This is a brand created and managed by the ASN to promote a product's adherence to the official Senegalese norm. The ASN trains internal auditors to evaluate whether a company adequately and consistently respects the norm relevant to its product and to manage laboratory testing of product samples. A certification committee then awards the NS brand to the company for use on its label. The NS program is new and has one large client so far.

Similarly, *"Origine Senegal"* is a brand managed by the *Fondation Origine Senegal* and is most often used to promote fresh fruit and vegetable exports. "100% Afrique" is a private, quality-control brand being developed by a private food processor and exporter to serve as a private label marketing African products adhering to criteria developed by the company. It is in use mostly for processed local grocery products distributed by Free Work Services in Dakar and in Europe.

CHALLENGES PRESENTED BY TRADE PREFERENCE SCHEMES

Through the EBA, the AGOA, and other trade-preference programs, the large markets of the EU, the United States, and other regions of the world aspire to be open to Senegal. In 2007, the top five AGOA beneficiary countries were Angola, Chad, Gabon, Nigeria, and South Africa. At the same time, Senegalese exports under AGOA have been negligible. Producers and traders face many hurdles in taking advantage of these opportunities.

Chiefly, quality controls imposed by large, developed markets, including SPS measures on agricultural products, serve as a major "non-tariff barrier" facing Senegal's exports. Existing laboratories, though improving, are perceived as not capable of testing and verifying product standards due to the lack of necessary technical information, equipment, and trained staff. Senegal needs significant investment in the institutional capacity and technical expertise of local and regional institutions that can carry out conformity assessments for product standards and production processes. Investment in relevant scientific educational opportunities at vocational schools, universities, and training centers is also necessary.

When considering support for and investment in these areas the matter of institutional governance cannot be neglected. Monies directed toward capacity-building should not fall prey to corruption, waste, or conflict of interest.

ROADBLOCKS AND WEIGH STATIONS AS A TRADE POLICY ISSUE

A fundamental issue with respect to the transport of goods to market in Senegal and West Africa generally—but one that appears remarkably absent from the regional trade policy agenda—is that of the overwhelming cost of roadblocks and weigh stations in the region. The extent to which this issue overwhelms the regional trade environment makes it a policy issue that lawmakers should be discussing at the highest levels. The costs and time lost by trucks forced to stop for random police checks result in dollars lost and time wasted at rates that would be unheard of in more developed economies less tolerant of petty corruption. Although the individual bribes routinely sought from truckers are usually not large, they accumulate dramatically. More important, the time lost in transport presents untold costs in trade opportunity: fresh agricultural goods that might otherwise be suitable for market—whether domestic or international, exported processed or raw—are vulnerable to loss as a result of these indefensible delays.

Governments, donors, and investors are intent on building better roads and bridges, improving customs and other border processes, and otherwise strengthening the facilitation of transport in Africa. Yet smooth passage along domestic roads is generally neglected as a trade policy issue. The previously mentioned study by the USAID-supported West Africa Trade Hub should provide critical new data on the subject that may spur action. Specifically, executive or legislative action in ECOWAS and WAEMU countries that effectively bans random roadblocks and reduces the number of weigh stations is necessary. At this time, however, the vast and disparate local interests vested in maintaining this infrastructure for corrupt or otherwise misguided purposes remain underexplored, insufficiently discussed, and, as a result, virtually intractable.

RECOMMENDATIONS

- Work with the ASN to develop a national standard for each product along various agricultural supply chains. The supply chain approach has proven successful and is cited by public and private sector members as a model that should be replicated in areas of trade policy, strategic development, and agricultural research.
- NS branding for the Senegalese market should also be considered.
- Harmonize fee and operating structures throughout regions for the DPV and MOC/DCI to improve financial sufficiency, fairness in treatment, and improved documentation for products destined for export. To address a general lack of adequate staff and material resources, a fee for service system could provide monetary resources to improve at least materials at regional port-based offices. For regional DPV offices, larger companies already provide funds for petrol if DPV services are needed—this informal system might be standardized into a monitored fee for service system.
- Develop formal collaboration between Customs and the DPV at regional borders to leverage inspection resources of suspicious incoming shipments. Formal coordination should begin at the Dakar level and be introduced formally to regional port offices of the DPV, DOC/DCI, and Customs. DPV border agents should be uniformed and staffed, with equipment and budgets to conduct inspections of imported goods—including those entering illegally by pirogue or truck.
- Provide greater scientific training within the DPV at different levels to better identify pests, plant illnesses, and effective rapid response measures. Advanced training should be provided on condition that impact is effectively measured. Scientific training could be provided to young candidates or junior DPV professionals through scholarships to regional centers based in Niamy or Cotonou or to Western universities on condition that students return to work for the DPV's public service for three years as phytopathologists or entomologists after graduation. There should be coordination among all training participants' lists with other projects that sponsor trainings to prevent duplicative efforts; i.e., SAGIC and PDMAS should coordinate participants' lists for all individual and group-sponsored trainings.

- Update food inspection laws to conform with regional standards from the ECOWAS and WAEMU.
- Prepare a cost-benefit analysis with government partners to prove that trade policy is more economically beneficial to domestic producers if regulated not by impromptu or seasonal bans but by less price interference and reduced duties on imported inputs for domestic production.
- Social marketing funds should support existing branded quality control programs such as the ASN's public sector brand NS. NS promotes norms established by a governmental transparent process based on international, science-based standards. The success of NS would also contribute to financial sustainability and sufficiency of the ASN to continue and expand upon their work of building SPS norms through stakeholder consensus and of educating consumers about the importance of food safety in products bought in Senegal.

TRADE FACILITATION

The efficiency and predictability of international trade transactions for Senegal's agro-business sector is critical. The implications for both business and humanitarian can hardly be overemphasized. Imports not only supply the country with the majority of its basic food needs, but also provide essential agricultural inputs such as irrigation equipment, seeds, and fertilizer. The government has targeted as vital to future economic growth increased agricultural exports, now centered on fish and unprocessed fruits and vegetables. Additionally, essential products to provide some degree of food security for landlocked neighboring Mali depend on the functioning of the Dakar port.

Senegal's trade in agricultural products is generally transparent and efficient, although handling of bulk commodities such as rice needs improvement. Several exemptions are granted to agricultural products, and there are special procedures in place for expeditious handling of perishables. In recent years, clearance times have been significantly reduced generally to no more than 48 hours through innovative IT applications, reform efforts by the Dakar Port Authority and the State Customs Administration (Customs), and a comprehensive approach that partners both national authorities and private stakeholders. Moreover, the port process for Mali transit cargo must be considered a best practice for the region.

TRADE FACILITATION: KEY LAWS

- Customs Law, 87-47 (1987)
- WAEMU Customs Code (RegulationNo.9/2001/ CM/WAEMU)
- World Customs Organization's (WCO) 1999 Revised Kyoto Convention
- WTO Agreement of Customs Valuation (Article VII of the GATT 1994)
- Pre-inspection law—Decree No. 91-1221 (November 14, 1991)
- WAEMU Common External Tariff

As Senegal's lead border agency, Customs is at the forefront of reforms. To control rising transaction costs, Customs must expand its use of international best practices related to risk management and WTO valuation. Priority should also be given to the following:

- expanding Dakar's bulk terminals that handle vital food staples such as rice and wheat;
- accelerating regional integration to promote interregional trade; and
- addressing transport issues, such as outmoded rail links on the major trade corridors and the numerous informal payments associated with road transport.

If unattended, these issues will endanger the country's current competitive position and slow the growth of international and regional trade.

LEGAL FRAMEWORK

Although considerable transparency and predictability of Senegal's legal requirements regulating process is in place, the redesigned Customs Web site will further enhance information availability when it is brought online, as currently planned. The legal framework for the trade process, however, is outdated. The national **Customs Law, 87-47 of December 28, 1987,** governs trade except for provisions contrary to the **WAEMU Customs Code (RegulationNo.9/2001/ CM/WAEMU),** which is only partially complete and in many cases not followed. Uncertainty about acceptance of electronic documents and signatures will impede efforts to permit planned paperless transactions and pre-arrival clearance for reliable traders, many of whom are bulk traders in staple food products. Efforts underway to draft a new customs code need to be given increased priority.

Senegal is the first and only West African country to accede to the **World Customs Organization's (WCO) 1999 Revised Kyoto Convention,** which lays out the principles for modern customs procedures. When Senegal took this action in March 2006, it accepted without reservation rules that promote trade facilitation, such as standardization and simplification of goods declarations, minimum customs control to ensure compliance, and trade partnership. Customs appears committed to implementing these principles, although its limited human capacity, slow progress in redirection of staff to more critical functions, and lack of flexibility in personnel regulations are obstacles to achieving these goals.

Valuation of imports remains an outstanding and contentious issue for agro-business traders. Although Senegal implemented the **WTO Agreement of Customs Valuation (Article VII of the GATT 1994)** in July 2001, the country was granted multiple waivers to apply officially established minimum values on 30–35 sensitive imports, many of which are staple food products including sugar, rice, condensed milk, and vegetable oil. The waivers result in declared imported values significantly higher than the price paid or payable for the goods, which is the WTO basis of valuation. For sugar, the minimum value can exceed three times the price paid, and, for rice, up to 30 percent more. Since duty rates are assessed against these minimums, transaction costs are increased significantly. The current waiver by the WTO expired on June 30, 2009, although Senegal requested an extension. Customs is preparing for the elimination of its waivers by developing a valuation database to be completed in 2010 using standards and guidelines of the WCO.

The legal basis for Senegal's pre-inspection program is **Decree No. 91-1221 of November 14, 1991,** although the program did not become mandatory until 2001. Imports valued over 3M CFA (US$6,800) must be inspected at their country of origin and imports valued at 1M CFA (US$2,220) inspected at importation. Exemptions apply to perishable foods if cooled (but not frozen). These services often work as a temporary measure by countries while developing a mature and reliable customs service.

Under the pre-inspection program, inspections, valuation, and risk recommendations are performed by an international firm under government contract. Contracting out for these functions—which are normally performed by Customs personnel—not only adds to transaction costs and delays but also impedes development of a fully functioning national border agency. Although the contract has provided needed scanner and electronic tracking equipment, such service should not be required beyond the 2012 contract expiration date.

Senegal is one of the eight members of the West African Economic and Monetary Union, created in 1994 to promote economic integration among countries that share a common currency. The union now operates as a limited customs union, adopting a **common external tariff** (CET) in early 2000. Rates range from 0 percent to 20 percent, with tariffs on most agricultural equipment low, although irrigation equipment is close to 38 percent (20 percent duty plus 18 percent VAT). Total taxes on powdered milk are 48 percent, while imported rice is 12 percent with that product and seeds enjoying VAT exemption.

Many special tariffs also apply to products that compete with domestic production. Of particular concern to agro-business is the approximately 10 percent seasonal tax on vegetables, rice, onion, potatoes, etc., to protect domestic production when world prices drop. Many agricultural interests believe the 20 percent, fourth band of the CET rate, coupled with the seasonal tariffs, are insufficient to allow domestic products to compete. They are anxiously awaiting the imposition of the expected 35 percent, fifth band (and Nigeria is even urging a 50 percent rate) of ECOWAS (Economic Community of West African States) that will then be adopted by the WAEMU. Senegal is a member of both regional unions.

Although unprocessed animal and vegetable products between WAEMU members are duty-free, lack of harmonization and simplified border procedures, along with other non-compliance issues, deter increased regional agricultural trade. Non-compliance has its roots in the falling revenues the CET and free regional trade has produced. To date, the WAEMU has failed to structure an equitable revenue-sharing plan to minimize the impact.

Senegal's government has created multiple economic regimes that apply to agricultural products. The majority are aimed at either expanding exports or allowing needed inputs to be processed expeditiously and with duty-free treatment. Of particular note is the agro-industrial regime in which an agro-business can import duty-free inputs as long as 40 percent of production is exported. The free export company regime, established in October 1996 principally for agriculture at large, grants multiple guarantees and privileges to export companies that demonstrate the potential to export at least 80 percent of its turnover. This scheme is used chiefly by fishing sector companies but has failed to attract a significant number of new investors.

IMPLEMENTING INSTITUTIONS

CUSTOMS

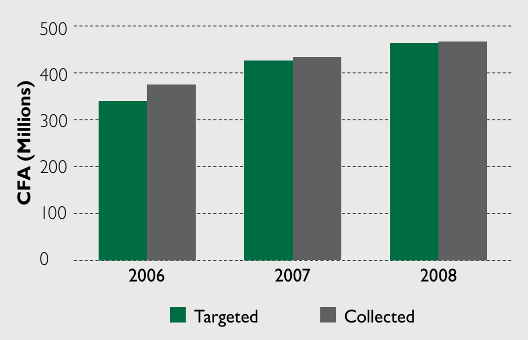
As the primary border agency in Senegal, Customs is leading reforms to reduce clearance times. It has introduced advanced IT applications to better manage its workload and resources. Its expedited clearance procedures for perishable products are fast and efficient. Although limited in application, Customs uses modern practices of account processing in lieu of payment before release and expedited processing for approved economic operators.

On the other hand, Customs' continued reliance on the use of a pre-inspection service for preliminary valuation and selectivity determinations adds to transaction costs. It also prevents the agency from developing capabilities to perform the full range of traditional customs functions.

Although Customs is primarily a revenue agency, it has also embraced its role of trade facilitator with clearance times at the port of Dakar, the major entrance and exit point of international cargo, reduced to same-day processing. There remains, however, a lack of a well-developed risk management (RM) program that would direct resources toward identified risks. Further process simplification and harmonization of regional procedures are required to further reduce transaction time and costs. In addition, an effective anti-fraud strategy must be developed to combat informal and fraudulent practices involving significant quantities of basic food products. This practice negatively impacts revenue collection, the domestic producer, and the legitimate trader.

Customs employs a staff of about 1,500 people. The agency processes approximately 120,000–130,000 imports and 20,000 export declarations yearly. A written code of conduct is in place. The agency's organization is appropriately modern. Recruitment is by rigorous examination and fairly free of political influence.

CUSTOMS COLLECTIONS



Recruits, most of whom are university graduates, attend two years of formal training at the National School for Public Administration.

The personnel system categorizes most officers as inspectors and does not permit the flexibility to hire and appropriately pay specialized professionals such as accountants, intelligence specialists, or IT experts. The practical result is illustrated by a recent experience of Customs: the agency secured a few patrol boats, but lacked qualified officers to operate them. Staff advancement depends primarily on seniority rather than on performance or qualifications. Salaries are not competitive with the private sector, which creates problems with retention, especially in the area of IT expertise. Ongoing efforts by Customs to develop appropriate career development channels for specialized skills should be supported.

TRADE FACILITATION: KEY IMPLEMENTING INSTITUTIONS

- Customs
- Leopold Sedar Senghor International Airport
- Dakar Port and Dakar Port Authority
- GAINDE 2000

Import and export clearance procedures for agricultural products at Dakar's **Leopold Sedar Senghor international airport** are efficient, fast, and simple. Limited Customs staff availability in late afternoons is the airport's only widely cited weakness. Export of air shipments is almost instantaneous. A facilitation center incorporating representatives of all regulatory agencies expedites processing. Imports of perishable products are granted provisional release upon filing of limited documentation and traders are given 15 days after release to file formal documentation and pay duties.

International trade processes at the **Dakar port** are fairly expeditious with normal customs processing completed within 24 hours. A limited number of shipments are released with only document review or scanning. Two scanners are at the port but with the impending arrival of four more units, scanning will be available at Rosso and Kalock to decrease time-intensive physical inspections. At these locations, Customs officers will need in-depth and continuous training to eliminate the reoccurring problem of unnecessary unloading of cargo for full inspection due to misinterpretation of scans.

Land-border clearance by Customs and the other regulatory agencies incurs minimum processing delays of 3–8 hours. Lack of integrated border management practices and harmonized procedures, even when both are members of the WAEMU, prevent further efficiencies. However, extensive delays of up to 5–6 days are experienced at both the Rosso border with Mauritania and at the Kidira border with Mali because of transport-related issues. Many strategic food products such as sugar, oil, and flour must be cleared at Dakar, which increases costs and delivery times for companies operating outside the capital that must divert cargo.

About 80 percent of goods that are transported through Senegal, as well as all imports arriving at the border that are cleared inland, proceed from the point of arrival under Customs escort at fees that are the highest in the region. Escorted products include sensitive agricultural products such as rice, sugar, fertilizers, tomato products, and vegetable oil. Fees from Dakar to Mali are 70,000 CFA (US$155) for two containers. (In contrast, Ivory Coast charges only 25,500 CFA (US$56) for a complete load.) This intervention, staged to deter illegal leakage

into the domestic market, demands a significant commitment of limited Customs resources, adds significant transactions costs, and delays initial departures. An electronic transit monitoring system will soon be piloted by Customs and should ultimately replace this policy.

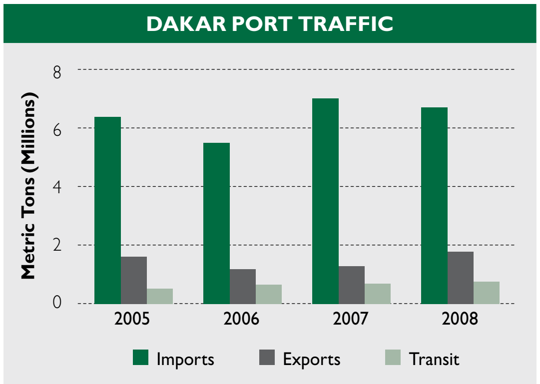
Risk management, the internationally recognized tool to direct resources more effectively across borders through intelligence-based selective controls, is at an early stage of development in Senegal. Risk assessments are conducted jointly by the private pre-inspection company and Customs personnel. They incorporate results into the pre-inspection review system. This process results in a designated risk indicator by color: (1) green—no review; (2) yellow—document review; (3) orange—scanner; and (4) red—intensive physical inspection. About 60 percent of cargo is reportedly designated orange or red.

As part of its developing use of RM, Customs also has an Authorized Economic Operators (AEO) program. This allows approved goods to be cleared without Customs intervention except on a random basis. Participation is limited, however, due to lack of program expertise. If strengthened, this initiative could significantly improve the flow of agricultural imports. Most traders in the sector are major reputable companies using advanced business practices that could easily verify shipment data.

Customs must assume full control of the RM functions and establish a permanent unit to evaluate data, gather intelligence, and define risks and targets. When combined with a needed post-audit function and an expanded authorized economic program, the result would be a dynamic RM approach to customs processing, in line with international best practices. However, Senegal needs technical assistance to reach this objective.

Application of IT processing of international trade transactions, despite starting in 1996, did not achieve significant results until 2002 when a separate implementation agency, **GAINDE 2000** *(Gestion Automatisee Des Informations Douanieres Et D'Echanges),* was created to finalize the project and run the system. The agency is jointly owned by Customs and the private sector with annual operating costs estimated at US$800,000. It is supported by self-sustaining fees of between 10,000 (US$22) and 15,000 CFA (US$33) per file with exports free. GAINDE has reduced pre-clearance times from 15 days in 2004 to about 24 hours in 2009. The clearance agent transmits the Intent to Import directly (75 percent) or through the GAINDE facilitation center (25 percent), and banks, insurance companies, and the pre-inspection company post their actions to the file. After approval, the printed file is presented to Customs and the other border agencies for normal processing.

GAINDE's success is attributable to good management and committed leadership, a dynamic trade facilitation center that assists users and tracks performance, and private-public ownership. The low level of computer literacy at the public border agencies, however, along with insufficient qualified IT personnel to service all border locations, needs to be addressed if additional modules, including electronic payment and manifest processing, are to be successfully implemented.

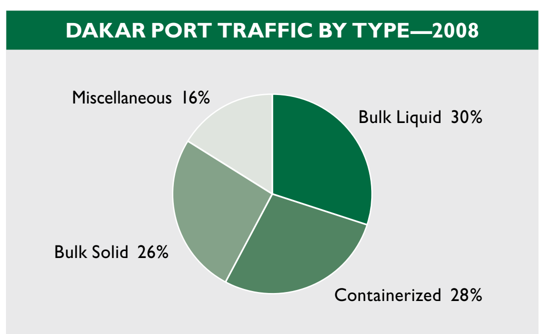


As of July 2009, GAINDE was not connected to Customs or interactive with other primary stakeholders. The objective of phase two, to be completed in 2011, is full integration with all stakeholders to achieve a full single-window system with the potential for paperless processing. When accomplished, full clearances should be within 24 hours and constitute a best practice not only for the region but other regions as well.

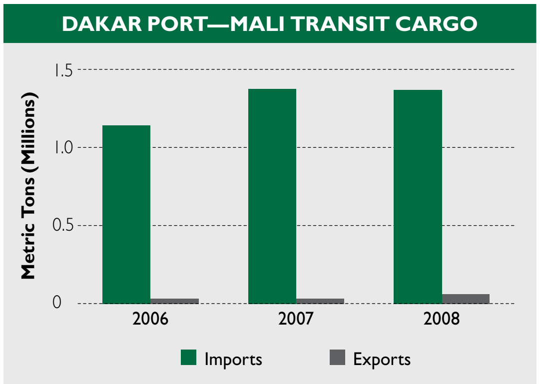
Informal smuggling of agricultural products such as sugar, tomato products, vegetable oil, and rice is prevalent and creates unfair competition for the legitimate trader and domestic producer. The two prime borders for this activity are with The Gambia and Mauritania, neither of which are members of the WAEMU. Efforts to combat this trade are inadequate. Having only one single border post, Rosso, along the 700 km Senegal River border with Mauritania, discourages regularized processing. Mauritania supports this trade, presumably to secure convertible currencies, by allowing numerous supply warehouses to operate along its border. In 2008, Senegalese Customs seized 700M CFA in illegal goods on this border, mostly in sugar (123,370 kilos or 58M CFA) and vegetable oil (16,570 liters or 12M CFA), which account for only a small fraction of smuggled products. An inter-border-agency comprehensive strategy that analyzes and prioritizes the threats and places resources accordingly must be adopted.

The **Dakar Port Authority** has recently improved its level of service to agro-business users, but further progress must be made to comply with international standards. Container capacity exceeds demand but bulk cargo facilities are inadequate. Namely, shiploads of rice and cereals often have to wait 4–5 days to dock, a factor that drives up shipping costs and prices paid by end consumers. The largest bulk wheat importer has a private terminal at the port so it does not incur these delays. Priority must be given to construction of a new bulk cereal terminal to meet future food-security needs.

The port bagging operation for bulk rice is efficient and cost-effective despite being labor-intensive. A 35 percent tariff applied when bagged bulk staple food items are imported, however, is not only high, but also not in keeping with international practice of assessing the container with the same duty as the product. Port pricing is somewhat higher than neighboring ports such as Abidjan, Ivory Coast, but location rather than costs controls port selection. Increasing costs must be controlled to continue the competitive position of Dakar port. APIX's ongoing study of cargo costs is addressing the cost issue.



Although the state owns the port, which is overseen by the Dakar Port Authority, many of the terminal areas are leased to private operators under long-term leases. After a controversial selection process, Dubai Port World (DP World) won the contract for the container terminal in 2008 and now handles 94 percent of this traffic. Bagged rice (6 percent) is the leading containerized commodity, but other essential food items such as vegetable oil, packaged



cereals, and processed food products are handled at the terminal. About 1500 TEUs (20-foot container equivalents) of perishable items are shipped in refrigerated containers monthly. The terminal has more than sufficient capacity to store these for indefinite periods under proper temperature controls.

Standard terminal benchmarks indicate significant improvements by DP World. Vessel wait time has dropped from 15 hours to almost zero. A truck can drop or load a container in 17 minutes. Average vessel turnaround time is 15 hours. Moves per hour have improved from below 15 to around 42, on the high range of international norms. Security has also improved, and Dakar became the first terminal operation in West Africa to secure ISO 8000-certification. Notwithstanding these accomplishments, Senegal still posts some of the highest handling fees in West Africa.

A factor that could erode facilitation gains is the 67-day average excessive dwell time for containers. Seven to eight hundred unclaimed containers remain at DP World in excess of 180 days. To date, no significant progress has been made to dispose of this cargo. If Customs cannot move this cargo to auction more efficiently, the resulting congestion will lead to inefficient processing and higher costs. This situation mirrors that found in Apapa (Lagos), Nigeria and Mombasa, Kenya, two of Africa's major ports.

The existing scheme for handling Mali transit cargo is a best practice for any port that must serve a landlocked neighbor. Dakar is critical to Mali's ability to meet its essential food needs. 95 percent of the traffic is imports (fertilizer, rice), while cotton dominates Mali's export trade. Under mutual agreement, an area within the port is designed as a Mali free zone, and all cargo passes there for expeditious handling, with clearance often completed in 30 minutes. Transport arrangements are transparent and well organized, with Mali truckers allotted two-thirds of the traffic.

The port has limited IT applications to manage its operation, an issue it is addressing. Senegal also lacks sufficient personnel knowledgeable of modern port operation and shipping procedures and capable of designing state-of-the-art logistical systems. A national center for maritime studies is planned to open in 2010. If successful, this could serve as a vital regional resource.

SUPPORTING INSTITUTIONS

CUSTOMS CLEARANCE AGENTS

The service provided by this sector to the international trader is critical. Agents must be both knowledgeable and ethical in behavior. In Senegal, high professional standards are apparent within the industry and traders have little difficulty in locating reputable firms to conduct their business. Fees are set by the state, so competition is driven by level of service which improves product quality. Use of the service is mandatory, a fact that conflicts with WTO principles. The sector is regulated by Customs in strong partnership with the private sector.

TRADE FACILITATION: KEY SUPPORTING INSTITUTIONS

- Customs clearance agents
- APIX
- Road transport industry
- Rail transport industry
- Air transport industry
- Providers of cold storage facilities

Although 55–70 firms are licensed to perform clearance and freight-forwarding services, just a few major international companies that offer complete logistical services dominate with 60% market share. Qualifications for agents are defined by both national and WAEMU legislation. These are harmonized throughout the region, detail ethical standards for the sector, and are sufficiently stringent to maintain a good level of professionalism. In lieu of an examination, multiple years of work-related experience are required. The industry has its own disciplinary council that issues warnings for irregular behavior, although Customs alone has the right to suspend and revoke licenses due to fraudulent behavior. Customs and sector/trade associations provide continuous training and university level courses are available in international transport logistics.

APIX

As discussed earlier in this report, the central institution for starting a business in Senegal is the **Agency for the Promotion of Investment and Major Projects (APIX).** APIX houses the one-stop-shops for investment promotion and business start-up. At the time of this diagnostic, APIX was also completing a highly anticipated report on port costs that should inform future policy in the area.

Moreover, APIX monitors and engages in public dialogue concerning the nation's major infrastructure projects, which are established by presidential initiative. Projects are based on a system of concession to the private sector, with such mechanisms as build-operate-transfer (BOT), leasing, or build-own-operate-transfer (BOOT). Each project is carried out under the supervision of a Major Project Steering Committee.

Presidential infrastructure initiative projects now underway include the following:

- Construction of a new international airport at Ndiass to help meet Senegal's demand for mid-term and long-term air traffic. The new airport will replace the existing Leopold Sedar Senghor airport at Dakar.
- Construction of a new toll road to link Dakar to Thies (60km). The road will also service the new international airport at Ndiass, some 40 km from Dakar.
- Construction of the West Africa Business centre. The building complex will be on the current airport site (800 ha).
- Conversion of the current Senegalese metric gauge (1.01m) railway into a standard gauge system (1.435 m). This effort aims to open up the country's passenger and goods traffic; to stimulate the exploitation of mineral resources in the country's eastern region, notably the phosphates of Matam and the iron ore of Faleme; and to provide an efficient railway service between Dakar and its suburbs.

A Steering Committee for Major Projects is normally established when these projects begin implementation. This committee is in charge of the coordination and technical follow-up of the actions related to these infrastructure projects, under the supervision of other structures or the various ministry departments involved.

ROAD TRANSPORT

Insufficient reliable vehicles, especially to haul refrigerated containers, are available to transport goods during peak harvest times. This leads to excessive spoilage and losses during shipment. Most trucks are limited to a 35-ton capacity, unlike those of Mali where the owners receive extensive state support. This limits the ability to transport efficiently and at low cost bulk commodities such as fertilizers. Most of the larger agro-businesses avoid these issues by providing their own transport. Fuel surcharges, escort policies, border delays, and unofficial road stops, when combined with poor infrastructure at some land border locations, result in high transport costs. Fees range from 43,000 to 54,000 CFA (US$95 to US$120) per metric ton for transport to the Mali border. A recent survey by a reliable transport company counted 52 unauthorized stops, each requiring a 1,000 CFA payment, between the Dakar port and Bamako, Mali, despite official agreement to limit these to three.

At land border posts, extensive delays are the norm. Delays at the Mali border are attributable to Mali's escort policy and at the Mauritania border to limited river transport and poor infrastructure. Since Mali only charges one escort fee for a 10-truck convoy, transporters delay moves to accumulate this number. Delays of 3–4 days are common at the Rosso border because the one ferry can only transport a maximum of 24 trucks each way, per day. Crossing fees range from 13,000 to 15,000 CFA (US$30 to US$33) for empties and 26,000 to 50,000 CFA (US$58 to US$110) for full loads. Trade consists mostly of transit cargo offloaded at Dakar for Mauritania and Moroccan fruit and vegetable imports. Roads and port infrastructure cannot accommodate the current traffic, security is inadequate, and no ongoing plans appear to address these issues.

RAIL

The joint project of the Senegal and Mali governments to privatize the rail service between Dakar and Bamako, started in 2003, has not yielded the desired improvements due to continued labor and cost issues. Transsrail, a private French-Belgium consortium that operates the service, transports only about 18 percent of the total goods transiting this corridor, even though the costs are about 15 percent cheaper than overland. If rail was rehabilitated, transport costs would decrease significantly, both through lower handling fees and the elimination of fees associated with Customs escorts and unofficial road stops.

AIR

Air freight rates between Europe and Senegal, around $6 per kilo for shipments over 45 kilos, are high (as is the case for almost all of Africa). With fees about double vessel rates and shipping time to Europe down to 6–7 days, about 85 percent of fresh fruits and vegetables are shipped via marine transport. Nonetheless, air service to international markets is adequate and sufficient space on carriers is available, including daily service to Europe.

Although adequate **cold storage warehouses** are available both at the Dakar port and airport, lack of such facilities in the rural areas is a restraint to expanding export of perishable food products. Opening of the World Bank–funded cold storage container freight facilities for perishables, planned for fall of 2009, will significantly improve the competitiveness of these products through application of best quality-control measures.

SOCIAL DYNAMICS

Senegal's government is committed to improved trade facilitation. This is demonstrated through the multiple reorganizations the country undertook to apply IT solutions to its international trade process. When coupled with intended moves by Customs to expand use of modern best practices, this foundation of commitment should move Senegal toward its objective of having one of the most transparent and efficient trading process internationally. High-level dedication will be required to overcome obstacles to integration of the other border agencies into the GAINDE system.

The private sector, represented in the agribusiness sector by large exporters and importers, uses its influence to promote increased efficiencies and lower costs. Often, however, private sector efforts are countered with the stronger state objective of protecting domestic producers. While a proper balance has been difficult to achieve, a growing partnership between the public and private sector creates the foundation for resolving this issue.

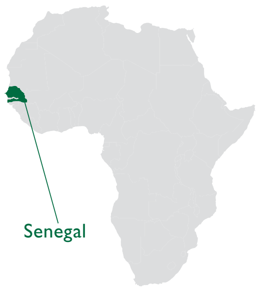
Notwithstanding the solid foundations of the OHADA and WAEMU, champions of regional integration are lacking in Senegal, as is an awareness of the mutual benefits to be gained by harmonization of border processing and increased regional trade. Generally the low level of confidence and trust among the neighboring counties impedes integration. An agricultural strategy aimed at supplying needed staple food crops regionally should be considered in coordination with efforts to reduce and harmonize border processing. Expanding the free flow of agricultural products within the WAEMU would attach investors seeking larger markets for goods.

RECOMMENDATIONS

- Institutionalize risk management as the core business process of Customs. This would include an RM unit, an active fast track clearance (AEO) program targeting agricultural traders, and a fully functioning post-audit division. Customs has a basic understanding of these programs but does not have the capacity for full implementation of these core processes designed to achieve the proper balance facilitation and control. Once a basic strategy with measurable goals has been agreed upon, advisors knowledgeable about risk management operations should be assigned to Customs to assist in establishing a risk management office to improve identification of high- and low-risk shipments, using data analysis to build profiles. Energizing the AEO program by initially targeting major agricultural importers as candidates to expedite clearances must be included within the scope. These resources should also assist in development of a post-audit unit that is an essential component of risk management. This comprehensive approach allows Customs to direct its limited resources more effectively, reduces physical inspection and scanning, and limits officer discretion. The regional WCO West Africa Trade Capacity Building Hub in Abidjan, Ivory Coast, could assist in identifying French-speaking resources for this effort. Another resource in East Africa is Uganda's Customs Administration that has a fairly well developed post-audit program.
- Support use of GPS technology to track transit shipments, which could eliminate costly Customs' escort policy. Customs is struggling to pilot the new GPS system for electronic tracking of shipments of sensitive transit cargo, which could significantly reduce transaction costs on affected shipments. It does not have the resources required to monitor movements on a continually basis, the training required to use the technology effectively, or the upfront partnership with the transport sector to facilitate implementation. Custom must find resources and reach out for advice and perhaps training to the few major transport companies that are using these technologies to monitor their own fleets. Consideration should be given to allow companies with such systems in place to travel without escort under terms of a memorandum of understanding that outlines reporting requirements and penalties for failure to comply. At the least sharing of the data might be feasible rather than two sets of equipment placed in the same vehicle. The experience of Kenyan Customs, which is further along in utilizing this capability, could be helpful as well although the systems use different technologies. A close relationship between these two customs services already exists because of Kenya's use of the Senegal's IT GAINDE system.
- Enhance anti-fraud and informal trade efforts through development and implementation of a comprehensive inter-border agency enforcement strategy. Customs, as the primary border agency, should lead the effort but all agencies involved in control of the borders should be active participants. Informal trade, particularly in basic food products, is rampant and remains basically unchecked. This stifles domestic

production, undercuts the ability of the international trader to effectively compete in the local marketplace, and negatively impacts revenue collections. No effective strategy identifying and targeting high-risk locations and commodities is in place nor is there an ongoing coordinated effort between the various border agencies, both national and local, to address the issue. Assistance should be given to these agencies as a collective body to conduct assessments in each region, prioritize these nationally, develop intelligence channels, and design a plan to redirect resources and equipment accordingly. Needed essential enforcement tools should be identified and requests for these resources should include the application and anticipated impact of deployment of these resources. Technical assistance of experienced fraud investigators, strategic planners, and practical exercises in preparing threat assessments will be need to be supported by the donor community.

- Improve Customs' legal framework both nationally and regionally. The WAEMU's incomplete customs union legislation results in lack of simplification and harmonization of border processes. Senegal's outdated national customs law impedes full benefits of anticipated electronic processing applications. Senegal is drafting a new customs code. International customs experts in Kyoto provisions should either review the draft or participate in its development to ensure compliance with key principles of the Revised Kyoto Convention including transparency, maximum use of IT technology, and trade partnership. Senegal, having acceded to this convention, must use this document as the blueprint for its legal framework to permit further advances in trade facilitation. However, the expertise to perform this review is not in place within the agency. The trade community must be brought into this drafting process so that passage will be facilitated. The WAEMU also needs an impartial party to assist in reconciling contentious issues, such as penalties, to bring about closure to the WAEMU customs union legislation. Only with completion can integration of border processes between members be initiated and the trade in essential food staples expedited.



ENFORCING CONTRACTS

Contracting for goods and services is an important aspect of agribusiness in Senegal, as in most agricultural countries. Contracts, formal and informal, are used throughout the supply chain—to purchase fertilizers and other inputs, to sell to markets and wholesalers, and to supply processors and exporters. Efficient contract enforcement is thus critical to the sector's health and economic growth.

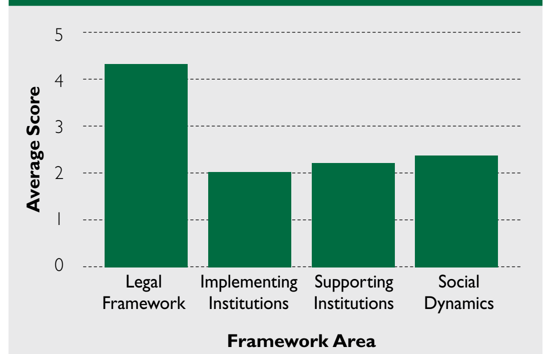
ENFORCING CONTRACTS	
Doing Business Ranking 2010	151
Doing Business Ranking 2009	150
Procedures	44
Duration (days)	780
Cost (% of claim)	26.5

Unfortunately, formal contract enforcement is a difficult and time-consuming process. In its most recent survey, *Doing Business* ranked Senegal 151 out of 183 countries surveyed in the area of efficient contract enforcement. This ranking decreased by one place from the previous year. In both years, *Doing Business* found 44 procedures were required to enforce a contract. The median time was 780 days and the cost was 26.5 percent of the total claim. This process is relatively poor for Sub-Saharan Africa—for Enforcing Contracts, Senegal ranks among the bottom third of countries surveyed. When compared to the 30 developed countries that make up the Organization for Economic Co-operation and Development (OECD), Senegal lags behind considerably.

The *Doing Business* methodology almost certainly understates the difficulty of collecting a typical commercial claim in Senegal. The methodology does not include one of the country's most common causes of delay: frivolous appeals by the defendant.[78]

For formal contract enforcement, the actual situation in Senegal may be even worse than *Doing Business* suggests.[79]

ENFORCING CONTRACTS



Senegal has a good set of contract laws, part of a generally complete and robust legal framework. Nonetheless, settlement of disputes is cumbersome and slow. Few judges or lawyers are conversant in commercial laws. Court cases are expensive and rarely resolved expeditiously. Decisions can be inconsistent, arbitrary, and non-transparent.

In Senegal, only the relatively rich can afford to go to court. For the rest, justice is largely out of reach. Because of the difficulties involved in enforcement, many SMEs simply do not use written contracts. Instead, such businesses restrict their clients to people they know or otherwise structure their transactions to avoid disputes. As a result, it may be difficult for such businesses to expand their client base and grow. In the absence of efficient courts or other resolution mechanisms, investment is deterred and business opportunities become more limited.

78 *Doing Business* tracks the time, cost, and number of transactions for the following enforcement action: "The Seller sells and delivers goods, worth 200% of the economy's income per capita, to the Buyer. The Buyer refuses to pay on the grounds that they were not of adequate quality. The Seller sues the Buyer to recover the amount under the sales agreement (200% of the economy's income per capita). The claim is filed before a court in the economy's largest business city with jurisdiction over commercial cases worth 200% of the income per capita and is disputed on the merits. Judgment is 100% in favor of the Seller and is not appealed." *See* http://www.doingbusiness.org/Documents/CountryProfiles/SEN.pdf at 40. In a Senegalese context, this would be rather unusual. As discussed later in this section, appeals in Senegal are easy, and the majority of commercial cases are appealed.

79 On the other hand, it may also be better, at least for agriculture. This is because the *Doing Business* indicator uses a transaction in the capital city, where the courts are much more overcrowded and slow than they are in rural areas. If the same measurement were made in St. Louis instead of Dakar, the numbers would be significantly lower.

LEGAL FRAMEWORK

CUSTOMARY LAW

In colonial times, Senegal had a formal system of customary law, including both religious tribunals *(tribunaux Musulmans)* and village forums. Between 1962 and 1973, however, these were dismantled, de-legitimized, or both. Accordingly, Senegal today has no formal, official system of customary law. Senegal does, however, still have traditional systems of dispute resolution, and these can affect contracts in various ways.

First, in many rural areas parties will submit disputes to the local rural council. The councils are not supposed to have a juridical function, but they sometimes exercise one nonetheless. The councils have the benefits of being fast and relatively cheap. However, since council members are not educated in the laws, have no resources for investigation or fact-finding, and may have interests in one side or another of the dispute, this is a risky business. Formal courts will not recognize these decisions.[80]

Second, many Senegalese will turn to religious leaders—imams, marabouts, or priests—for advice in family matters, and Muslim Senegalese may agree to go before an imam or marabout to settle a dispute. This can overlap with the enforcement of contracts when the dispute involves family land or a family-owned business. State courts are not supposed to recognize the decisions of imams, but they may if the imam has persuaded the parties to sign a contractually valid agreement settling their mutual claims.[81]

MODERN LAW

Senegal's legal system is based on French civil law and, more recently, the standardized law of the OHADA (in English, the Organization for Harmonization in Africa of Business Laws). The OHADA is a system of business laws and implementing institutions. Sixteen West African nations adopted this regime in order to increase their attractiveness to foreign investment. Because most of the member states are former French colonies, the OHADA laws are based on the French legal system.[82]

Senegal has well-developed commercial and investment laws and a complete legal framework for regulating business disputes. With a few minor exceptions, the laws are not the problem.

KEY LAWS

- Customary law
- OHADA uniform codes on business, including OHADA civil code
- Domestic commercial and investment laws
- Major international conventions on arbitration and commercial dispute resolution

Senegal is a signatory to all major international conventions on arbitration and commercial dispute resolution, including the New York Convention (on the Recognition and Enforcement of Foreign Arbitral Awards) and the Washington Convention (on the Settlement of Investment Disputes). Foreign creditors receive equal treatment under Senegalese law. Monetary judgments are normally in local currency.

IMPLEMENTING INSTITUTIONS

INFORMAL MEDIATORS

In the agricultural sector, especially at the level of SMEs, disputing parties often turn to an informal mediator.[83] This is typically a respected third party who is contacted to help resolve the dispute. Unlike an arbitrator, this person is not necessarily expected to be neutral; he or she may be associated with one party or the other. As one researcher puts it:

> *In business matters, a well chosen mediator may help convince someone to pay a debt, grant further delay, or settle a claim for less than he would have otherwise. Simply stated, one could say that, in Dakar, your best argument is who you know.*
>
> *Dakar "mediators" are not neutral third parties. Although one aspect of their roles is to*

80 Discussions with magistrates suggest that they would not be inclined to give a council's "decision" any weight at all.

81 The Senegalese state does not formally recognize religious courts or arbiters, so the court cannot recognize the imam's decision. But it can recognize an agreement entered into by the parties. Imams and marabouts are generally aware of this and, where large sums of money or land are involved, will often ask the parties to memorialize their agreement.

82 For further discussion of OHADA, see this report's chapter on Protecting Investments.

83 Some respondents described this process as "traditional". It is not clear whether this is a Senegalese tradition that has been adapted to the commercial environment, or a more recent "tradition" whose development has been driven by problems with the court system.

facilitate communication and negotiation between the parties, their essential task is to "convince" the other party to behave in a certain manner. They tend to be chosen as a function of their capacity to exert some kind of pressure on the other party. Respondents consistently described such pressure as of a "moral" nature. However, this use of the term requires qualification. Mediators have influence not because they resort to "moral arguments" not previously invoked, but because the weight of an argument depends on the identity of the person who utters it.[84]

Even individuals and SMEs who end up in court are likely to try informal mediation first.

COURTS

Senegal's court system shows a mixture of strengths and weaknesses. On the positive side, judges are appointed in a fair and meritocratic manner as a result of a competition supervised by other judges and law professors. Judges receive training that is, by regional standards, excellent.[85] Although courts are perceived as vulnerable to political influence at the highest levels, this tends not to be relevant to most commercial cases.

On the other hand, the judicial sector lacks resources. Few judges are competent in commercial issues, and none have specific training relevant to agricultural issues. Judges lack tenure and their salaries are low; this creates conditions for political interference in judicial decision-making by political and economic elites.

Corruption in Senegal's court system is a complex topic. There is a broad public perception that the courts are corrupt, but businesses and professionals give a picture that is much more specific and nuanced. There is general agreement that minor corruption among court staff is common—"speed money" to assure a case being moved up the calendar, and so forth. Transparency International, in its 2009 Global Corruption Barometer, stated that 30 percent of respondents who had contacts with the court system in 2008 reported paying a bribe. And there is a strong perception that the courts cannot be trusted on large cases involving high government officials and the very powerful. On the other hand, almost all interviewees stated that the courts could and often did judge impartially, and that judges did not normally take bribes to decide ordinary cases. Corrupt practices were often identified as having an impact, not on the outcome or quality of judicial decisions, but on the total duration of the judicial process. Respondents typically blamed legal officials or professionals rather than judges.

KEY IMPLEMENTING INSTITUTIONS

- Informal mediators
- Courts
- Arbitration centers
- Bailiffs

The biggest problem with the courts, all parties agree, is that they are simply too slow. It takes too long to bring a case to judgment, and then too long to get a judgment enforced. This would be a disincentive anywhere; it is especially so in Senegal, where many businesses suffer from cash-flow problems and simply cannot afford to wait months or years for their settlement. Delays come from lack of resources (especially research materials, IT, and trained clerks), overcrowded court calendars,[86] and sophisticated defendants gaming the system.

There are a number of ways a defendant can cause delay, but by far the most destructive is abuse of the power of appeal. Senegal allows appeals as of right, the appeals courts are slow, and an open appeal stays the execution of a judgment. Therefore, there is a strong incentive for a defendant to lay a frivolous appeal simply to gain more time before paying. Clever use of this tactic can stretch out a case by a year or more, in addition to time already spent securing the judgment and the additional time needed to execute on it once the appeal is done.

Unpredictability or inconsistency is another common complaint against the courts, especially

84 Julie Paquin, *Economic Development and the Enforcement of Contracts: An Empirical View from Senegal,* McGill University School of Law, available at http://ssrn.com/abstract=1126342, at 18.

85 Senegal has a well-equipped judicial training center. Judges are trained in both substance and procedure before taking an appointment, and are strongly encouraged to participate in additional training. Several other countries in Francophone Africa send judges to Senegal for training, and Senegal also sends trainers abroad.

86 Overworked courts seem to be common in Dakar, rare in the rest of the country. The St. Louis and Kaolack courts both reported that their calendars were full but not overly so.

from actors in the agricultural sector. There is a perception that judges and courts do not understand the issues of this sector well at all.

The court system has broad geographic coverage, but it is not well arranged for the needs of the agricultural sector. For instance, the Senegal Valley—the country's dominant agricultural area—is served by only three district courts, and much of the valley is 100 km or more away from the nearest courthouse.

Actors in the agricultural sector do not make much use of the courts. First, they are constrained by time. Second, the expense of using the courts, while modest by standards in more developed countries, places formal complaints beyond the reach of most rural residents. Third, courts are not available in rural locations, and pursuing a legal claim typically requires that a considerable amount of time be spent in urban areas where the courts are located. Fourth, the outcome of a formal process for conflict resolution is often seen as uncertain. Finally, there seems to be a cultural bias against the use of formal means for resolving contracts in Senegal. During the team's field interviews, one interviewee held the opinion that less than 5 percent of contracts are resolved through legal procedures in Senegal. One recent publication concluded that Senegalese firms will go to extraordinary lengths to resolve contractual breaches directly between the the contracting parties instead of involving third parties or engaging in formal resolution procedures.

THE ARBITRATION CENTER

There is a commercial arbitration center at the Dakar Chamber of Commerce. It is active and has resolved several cases each year since the early 2000s. The center offers several advantages, most notably that it is faster than the court system, and also that it can call on arbitrators who are specialized experts. Most of the arbitration center's clients are very large local businesses or foreign investors, and only a few cases have involved the agricultural sector even tangentially.

BAILIFFS

Bailiffs *(huissiers de justice)* are responsible for enforcement of court orders and judgments. They are not public servants, but rather licensed, self-employed professionals. Their number is quite deliberately kept small:[87] there are only 60 in the entire country, of which about 25 are found in Dakar. A creditor who has obtained a judgment can choose which bailiff to use for enforcement.

To become a bailiff, a candidate must study law, take a degree, pass an examination, and then undergo two years' training. The candidate must then wait until a position falls open, at which point the government chooses from among the pool of available candidates. Bailiffs do not often leave the profession, but must retire at age 65.

Bailiffs have a variety of powers that they can deploy for enforcement. The most common is the power to freeze assets. A bailiff can legally demand that a bank or other financial institution block the accounts of a debtor. (Clever and experienced debtors are, of course, aware of this and may go to various lengths to hide their accounts and other assets.) Bailiffs can demand police assistance, but are sometimes reluctant to do so because the police can be very slow to respond. Bailiffs can seize property and sell it at auction, after a certain amount of process.[88]

Bailiffs generally have a reputation for competency and are not widely perceived as corrupt. There are complaints about a shortage of bailiffs in Dakar, but not in the smaller cities. St. Louis had three bailiffs, and Kaolack just two, but there is general agreement that these were enough.

SUPPORTING INSTITUTIONS

NOTARIES

Notaries, like bailiffs, are independent professionals whose numbers are restricted by ministerial decree. There are only 32 notaries in all of Senegal. Most are found in Dakar; all other cities have just one or two notaries each.

87 This number is fixed by decree of the Ministry of Justice; it is periodically reviewed as the country's economy and population grow. The two bailiffs interviewed stated that this was to ensure a steady stream of work for all bailiffs, thus guaranteeing a high and steady income, and reducing incentives for corruption. In fact, there does not seem to be a broad perception of bailiffs as corrupt. On the other hand, it has been suggested that the bailiffs themselves lobby vigorously against any expansion of their number.

88 At least 8 days must pass after a decision before a seizure can take place; after that, another 45 days must pass before an auction, during which time the debtor can recover the seized property by paying the judgment in full.

Notaries are required for all incorporations, for certifying checks over CFR 25 million (about US$50,000) for mortgages and for the sale of privately owned land. They are not required but are often used for contracts. Notaries can, with the consent of both parties, notarize a contract such that upon certain types of default, it avoids the courts and goes directly to foreclosure; this is popular among large businesses.

AGRICULTURAL ASSOCIATIONS

Senegal has no shortage of agricultural associations. There are farmers' cooperatives, agro-processor associations, market groups, and regional associations of producers.

Many of these groups, however, seem to be of very limited effectiveness, especially in helping their members form and enforce contracts. The typical agricultural association seems to be used primarily for spreading information. In some cases, it may also help members get credit. Very few engage in collective bargaining of even the most rudimentary sort. This seems to be partly because of difficulties in administration, but largely because of lack of expertise and resources.

KEY SUPPORTING INSTITUTIONS

- Notaries
- Agricultural associations
- Legal profession
- WAEMU
- Enterprises engaged in contract farming

THE LEGAL PROFESSION

Lawyers have little interest in the agricultural sector. Senegal has a number of specialized law practices, but not one that specializes in agriculture-related work. For example, there is no interest in producing model contracts for use across the peanut sector. Rather, lawyers seem to "reinvent the wheel" each time they engage in developing agriculture-specific contracts, which diminishes the opportunity for incorporating lessons learned from the business environment and applicable system of law.

WAEMU

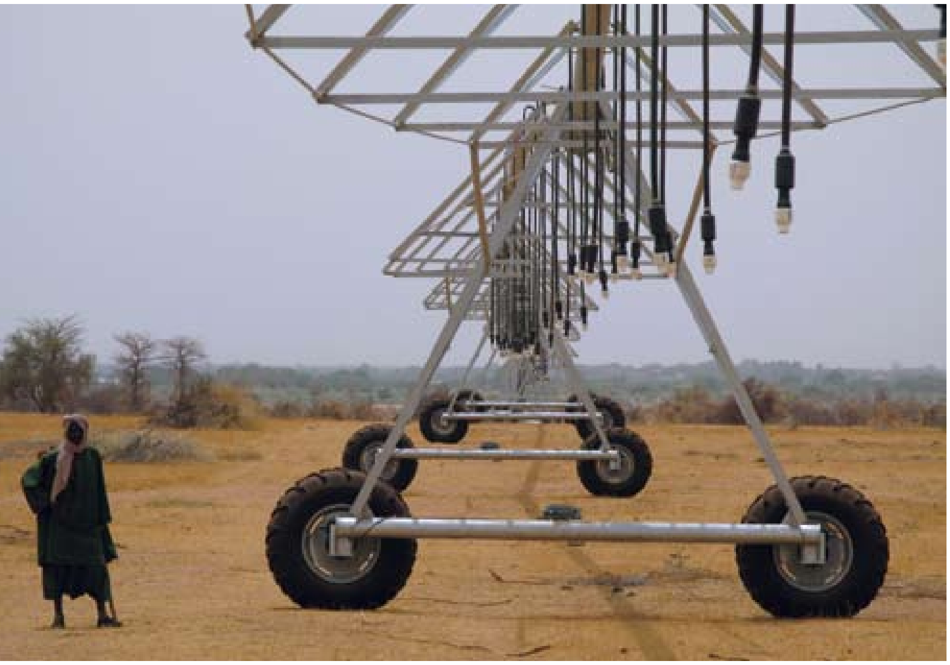
The WAEMU can be considered a supporting institution in the sense that all WAEMU members have agreed to enforce judgments delivered by the courts of other members. Thus, a Senegalese court order is valid across most of West Africa. Senegal also has bilateral agreements on enforcement with several countries outside of WAEMU. For instance, by a 1993 agreement, Senegalese court judgments are enforceable in Ghana simply by registration, and vice versa.[89]

CONTRACT FARMING

Contract farming could be an important supporting institution, but it is notable in Senegal largely by its absence. Since it is very common in other regions of Africa, including some of Senegal's neighbors, this bears some examination.

Contract farming refers to agricultural production based on contractual arrangements between farmers and agribusiness companies, whether oral or written, specifying the conditions for producing or marketing an agricultural product. Contract farming arrangements benefit small farmers by enabling them to participate in modern market chains. Specifically, they benefit by receiving inputs on credit, technical assistance, and often a guaranteed price, thereby allowing them to produce a higher-value commodity than would otherwise be possible. Contract farming provides agribusinesses flexibility by making it possible for them to expand (or reduce) their production volumes without major investments in land and farming infrastructure. It does, however, require that the agribusiness invest considerable time and effort for organizing, coordinating, mentoring, training, and supporting farmers to help them become reliable and responsible suppliers of farm products. Contracting with a large number of smaller growers generally involves high transactions costs and, under most circumstances, agribusiness firms prefer to contract with fewer, larger growers. Contracting is rare for basic staple foods produced for local

89 *See* http://www.belonline.org/business8.htm#WillthecourtsofGhanaupholdthejudgment.



consumption; it is much more common for industrial and/or export crops such as sugarcane, poultry, dairy, coffee, tea, and horticulture products. This is particularly true when the product is destined for export markets whose clients are willing to pay a premium for product quality and food safety.

Unlike many other countries in Africa, particularly Kenya and Ghana, very little contract farming occurs in Senegal. The main difference between these locations seems to be that in Senegal, most export agribusinesses prefer to grow their own crops under strict quality control procedures, especially when product quality and food safety standards are paramount. For seasonal export products that are readily available in local markets, such as mangos, it is simpler and easier for exporters to make spot purchases from reliable producers to fill their product requirements, instead of contracting with small growers.

Many agribusinesses in Senegal consider that the overall state of preparedness and development by small farmers is too limited for them to become reliable suppliers of high-quality agricultural products. They believe that the required investment in time, effort, and money required to upgrade the technical, financial, and managerial skills of small holders to help them become responsible and reliable suppliers is simply too great to make contract purchases attractive. This situation is explained in a recent analysis[90] carried out for Senegal's export tomato subsector, where the main exporter has chosen not to engage in contract farming.

As described in this analysis, in 2001 a French subsidiary company, Grands Domaines du Senegal (GDS) with food production and distribution affiliates in a number of countries in Europe, Africa, and Latin America began producing cherry tomatoes in Senegal. By the end of the 2006–2007 season, GDS accounted for some 99 percent of fresh tomato exports from Senegal. The company produces cherry tomatoes near Saint- Louis, in the Senegal River Delta where land and water are abundant.

GDS deliberately cut past smallholders in an effort to vertically integrate the supply chain. The company's production of cherry tomatoes relied completely on company facilities for crop production, harvesting, packaging, cooling, refrigerated storage, and transport. GDS established a conditioning station in the Senegal River Delta for handling and processing fresh vegetables; it also invested heavily

IMPACT ON RURAL POVERTY BY A VERTICALLY INTEGRATED AGRIBUSINESSES

The authors of the analysis of fine French beans in Senegal concluded that the reduction in the amount of this commodity produced by contract farmers is not necessarily bad, since the farm labor requirement and the income derived by the workers employed by a large, integrated corporate farm is substantial. Furthermore, since the workers employed by the corporate farm tend to be drawn from those members of the rural population who work the smallest, least-productive farms, the employment effect is favorably skewed toward the poorest of the poor.

90 LICOS Centre for Institutions and Economic Performance, Discussion Paper 217/2008: *Globalization and Poverty in Senegal: A Worst Case Scenario?* Miet Maertens, Liesbeth Colen, and Johan F.M. Swinnen Katholieke Universiteit Leuven Huis De Dorlodot, Deberiotstraat 34 B-3000 Leuven BELGIUM, http://www.econ.kuleuven.be/licos.

in high- technology production practices that include mechanized and computerized drip irrigation, along with the application of fertilizer and pest control products through the drip system. (These technologies—along with the required inputs such as improved seeds, fertilizers, and phyto-sanitary products—were imported from the EU.)

The net result is that the tomato export supply chain completely excludes smallholders, since all tomato production is realized on the exporter's large-scale plantations.

There are two main reasons for the company's strategy of complete vertical integration. First, the strategy is in line with the policy of the French parent company to which GDS belongs, and can be seen by similar operations in Mauritania and the Ivory Coast. Second, strict EU requirements for product quality and food safety—such as GlobalGap traceability and maximum pesticide residue levels—when combined with the general low capacity of the local smallholder farmers have induced the company to vertically integrate the production stage of its operations by establishing its own producing farms. Simply put, the company did not feel it could rely on smallholders for quality control or for consistent output.

A similar analysis[91] was carried out some time ago for the fine French beans *(haricots verts)* agro-industry in Senegal. Since its inception as an export crop from Senegal during the early 1990s, fine French beans have largely been produced by small farmers under contract with large-scale agribusiness exporters. This is because, unlike tomatoes, fine French beans are a relatively simple short-cycle crop that can be produced by small farmers without great difficulty during the rainy season, and product quality can be controlled by rigorous selection of exportable beans at the exporter's packing shed. Over a 15-year period from 1991 to 2005, fine French bean exports from Senegal increased from 3,000 tons to almost 7,000 tons, and represented nearly half of Senegal's horticultural exports at that time. Senegal ranks as the fourth most important exporter of fine French beans to the EU, after Morocco, Egypt, and Kenya.

Horticultural exports to the EU must satisfy a series of increasingly stringent public and private quality and safety standards. EU legislation imposes (1) common marketing standards for horticultural products; (2) sanitary and phyto-sanitary (SPS) measures; (3) general hygiene rules based on HACCP control mechanisms; and (4) traceability standards. In addition, industry standards for good agricultural practices (GAM) as well as traceability are required under GlobalGap, the retail food safety program for international markets in the EU, and to a lesser extent for markets in the United States. These standards have made the production and export of fresh horticultural products from Senegal even more complicated.

SOCIAL DYNAMICS

Both formal and informal contracts are common in Senegal's agricultural sector. The use of informal contracts—unwritten arrangements that may have some ambiguous terms—far outweighs the use of formal contracts. As in many countries, smaller and shorter-term transactions are more likely to be informal, while longer-term and higher-value transactions are more likely to be formalized and written.

Much of Senegal's agriculture still occurs at a village level, where social bonds are strong and agreements can be enforced by social consensus. Oral and otherwise informal contracts of moderate complexity are quite common. They are not recorded except by the joint memory of the parties and occasionally a witness.

Contracts are regularly used to underwrite the following arrangements:

- **The purchase of input supplies,** including seed, fertilizer, and farm chemicals by individual small farmers and/or their producer associations.
- **Crop credit.** Credit provided by input suppliers is the most common form of

91 LICOS Centre for Institutions and Economic Performance, Department of Economics, University of Leuven: *Trade, Standards, and Poverty: Evidence from Senegal,* Miet Maertens and Johan F.M. Swinnen (November 2006).

short-term credit for agricultural production. This can take various forms, including payment in cash and in kind.[92]

- **The pre-arranged sale of farm products.** For example, brokers and exporters of fine green beans *(haricots verts)* will informally contract with hundreds of small farmers to supply green beans on a pre-set delivery schedule. The buyer will typically provide seed, fertilizer, and farm chemicals whose value is deducted from the selling price when the producer delivers the final product to the exporter. Products that do not meet export quality standards are rejected by the buyer. In such an event, the producer is free to sell the rejected product on local markets at the best price possible.

Despite the common use of contracting procedures in agriculture, little use is made of formal resolution mechanisms when conflicts arise. A combination of factors appears to underlie this situation.

First, breach of contract usually occurs as a result of cash-flow issues. Senegalese businesses tend to be short on cash. This is especially true in the agricultural sector, where cash can take months to roll backwards from the final buyer of an exported product, through the exporter, processor, and wholesaler to the producer.

These conditions impact both contracts and their enforcement. Senegalese firms are generally aware of the risk of breach and the potential consequences of breach. However, cash-flow considerations often relegate enforcement issues to the background. Very few businesses in the agricultural sector can afford to be picky about their contracting partners. Meanwhile, the general shortage of ready cash also has an impact on the choice of solutions. Damaged firms and individuals are often willing to settle for a cash payment even if it does not make their damages whole. Quick money is preferable to specific performance or larger damages at a later stage.

The cash-flow situation also can make firms tolerant; businesses know from their own experience that perfect compliance is often out of reach, and thus come not to expect it from their partners. Senegalese businesses sometimes define reliability not as a matter of fulfilling contractual duties as agreed, but as the extent to which one can be expected to do his best in this regard.

Second, many Senegalese do not view contracts—even formal written ones—as a precise set of clear obligations to be fulfilled at all costs. Rather, terms of agreement are closer to an ideal: both parties agree they are very desirable, while recognizing they may be out of reach. This attitude probably reflects the general uncertainty of Senegal's business environment, where businesses are often left unable to perform for reasons (blackout, traffic jam, government not paying its bills) that are entirely out of their control.

Also, many Senegalese—especially in rural areas—are wary of litigation, which has the effect of turning a relationship based on negotiation for mutual gain into a matter of right and wrong. A court action may be seen as a personal attackon the defendant's probity. As such, it necessarily entails the destruction of personal and professional relations between the parties. It should thus be avoided unless there is no alternative.

There is also a perception of the judicial system as a dispenser of punishment in cases of bad conduct rather than as a problem-solving forum. During this diagnostic, several interviewees exhibited some confusion between the penal and civil functions of tribunals. Thus, starting a civil action has overtones of accusing the defendant of a crime.

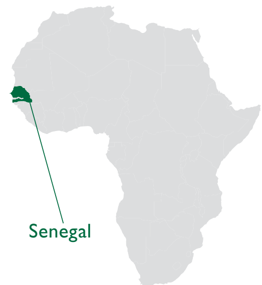
Consequently, as long as the damaged enterprise believes that the non-compliant enterprise is acting in good faith, but is simply unable to complete its contractual obligations, the damaged party tends to show extraordinary patience and will cooperate fully with the latter to help resolve the problem. On the other

92 For example, the AgCLIR team met with a fertilizer dealer who made credit sales of fertilizer and farm chemicals to local rice farmers. At the end of the season when the rice was harvested by the farmer, the supplier received unprocessed paddy as in-kind payment for the value of the input supplies received by the farmer.

hand, if the damaged firm perceives that the non-compliant firm is unwilling to take the necessary steps to resolve the issue, the former will engage in more aggressive action. For example, some firms will post "mug shots" on their premises (similar to pictures from a police lineup) of debtors who refuse to pay their debts for an extended period of time.

RECOMMENDATIONS

- Work with the courts to reduce the times to judgment and to execution or foreclosure. This idea should meet with enthusiasm from the government, since it directly addresses a *Doing Business* indicator, one that they have not so far addressed. That indicator is very limited in its scope, however; it does not cover, for instance, frivolous appeals. Nor is it specifically concerned with the particular interests of the agricultural sector.
- Work with local chambers and agricultural associations to facilitate the dissemination of information about local and foreign suppliers and clients and to encourage collective bargaining and the aggregation of orders.
- Encourage local banks and especially MFIs thatlend in the agricultural sector to consider invoice financing as one way to alleviate the cash-flow problems of agricultural SMEs. A significant proportion of enforcement problems arise because firms have cash-flow problems so severe that they cannot be selective in their business dealings.
- Produce a simple guide to the laws of collection and enforcement, in French and Wolof, clarifying legal rights but also explaining various options short of a lawsuit. Distribute it widely to agricultural associations and chambers.
- Encourage the Judicial Training Center in Dakar to include agricultural issues in its curriculum.



ANNEX I: RECOMMENDATIONS

This report contains over 200 recommendations that suggest—in terms ranging from the very broad to the highly specific—a variety of approaches to improving Senegal's environment for agricultural enterprise. Although each of the report's recommendations contributes to an overall vision for how Senegal can continue its emergence into the world economy, the following can be considered the **top** priorities:

CROSSCUTTING RECOMMENDATIONS

Recommendation: There is general agreement that the land tenure system is broken in Senegal, but there has been no serious effort to change it. Land reform needs to become a clearly articulated, politically supported, and well-informed process in order for Senegal to achieve long-term economic growth.

Short Term

- Convene a high-level forum to begin building political consensus around the issue of land reform (legal as well as institutional).

Long Term

- Create objective, achievable targets for reform of the land tenure system similar to the process underway as part of the Accelerated Growth Strategy.
- Review and revise all government economic growth strategies to include clear strategic and tactical plans for systemic land reform.

Recommendation: The vast majority of institutions visited as part of the AgCLIR diagnostic reported high attrition rates and a bubble of senior-level bureaucrats on the verge of retirement, without any real possibility of being replaced. The government needs a human resources strategy across every government office with a minimum of a 10-year timeline and a clear focus on staff replacement.

Short Term

- Institute an immediate and government-wide review of human resource capacity, with a focus on near and long-term staffing needs. These reports should highlight key constraints to hiring, firing, and planning for future needs.

Long Term

- The government and donors need to undertake a long-term review of human resource expenditures and move resources to where they are most needed, including rural government offices.

STARTING A BUSINESS

Recommendation: Build awareness of public, private, and donor programs available to assist agribusinesses through radio, television, and billboard programs.

Short Term

- Engage a short-term consultant to compile a gap analysis of agricultural support initiatives already underway or in planning stages through donors or the principal government entities.

Long Term

- Design outreach program to include multiple local languages, rural distribution points, and multiple media to ensure that intended beneficiaries are reached.
- Roll out communications plan with specific objectives in mind. Primary objective is to ensure use of existing programs and enhanced feedback loop from intended beneficiaries incorporated into overall design.

STARTING A BUSINESS (CONT'D)

Recommendation: Strengthen the Ministry of Agriculture's extension program.

Short Term

- In response to widespread dissatisfaction with extension services in Senegal, continue to support the institution building started under the World Bank's Agricultural Services and Producer Organizations Program (PSAOP). Specifically focus on assisting the agricultural extension services' ability to (1) provide relevant expertise, (2) scale up ISR/ITA innovations, and (3) target women agribusiness professionals typically missed by extension services.

Long Term

- (1) Utilize rapid (and low-cost) appraisal techniques to identify expertise needed in each region of the country on a recurring basis; (2) institute a "relevancy" program to ensure that services provided match up with services needed; (3) provide funding through a grant pool or other flexible funding instrument that allows for new and creative approaches to scaling agriculture-related technologies developed by ISRA/ITA and other local institutions; and (4) provide funding to specifically target female agribusiness professionals with extension services.

Recommendation: Broaden the scope of GOANA and future agricultural initiatives to include key infrastructure and support service constraints including power, water, and transportation

Short Term

- Identify key individuals within the president's office responsible for managing GOANA activities. Initiate a dialogue around the extension of GOANA incentives to agricultural building blocks including electricity generation and distribution (in particular, renewable energy), water and road infrastructure maintenance, and construction and rail expansion.
- Work with the broader agricultural community as GOANA II comes to fruition to support an increased focus on agriculture as a system and to move emphasis away from production-only interventions

Long Term

- Prioritize the movement of goods along key corridors, especially areas with strong agricultural potential
- Develop a national strategy for investment in agriculture-related infrastructure with specific intervention targets using a methodology that prioritizes movement of food from food-producing regions to food markets

Recommendation: Create incentives for students to study agriculture-related fields in secondary and post-secondary settings and work with the private sector to ensure that current curriculum meets their current and future needs.

Short Term

- Do a thorough review of secondary and post-secondary education to identify curriculum gaps for the study of agribusiness management, food agro-industry, and agricultural science and production.
- Compile a list of public and private sources of funding for potential support to current university structure with key focus on agribusiness management, food agro-industry, and agricultural science and production

Long Term

- Link president's office, Ministry of Agriculture, and Ministry of Education for consultations on educational needs during each budget formulation process at the beginning of each fiscal year; provide realistic and ambitious targets for creating a foundation of agro-entrepreneurs

STARTING A BUSINESS (CONT'D)	
Recommendation: Deepen the expertise and incentives offered by APIX to send an unambiguous signal to the market that Senegal is a destination for agribusiness.	
Short Term • Create a specialized department at APIX with technical expertise in agriculture to promote and facilitate agricultural-specific investment • Expand the state's incentive and investment focus in agriculture to the broader agribusiness community, in particular processing activities.	Long Term • Ensure that all marketing, investment promotion, and policies managed by APIX give special attention to agribusinesses, large and small. • Using *The Administrative Procedures Facilitation Centre* at APIX as a model, create a directorate for simplification, transparency, swiftness, and timeliness in the president's office or other suitably empowered office, to ensure that all ministries responsible for issuing permits, licenses, or other types of "permissions" do so in an atmosphere of efficiency, transparency, and speediness.
Recommendation: Continue to focus on cooperatives as a locus of agribusiness growth, specifically focusing on (1) legal reform, (2) institutional strengthening, and (3) internal organization/management.	
Short Term • Raise the profile of the pending cooperatives legislation through stakeholder roundtable, expert review and comment, and high-level support for legal reform in this area. • Conduct an institutional needs assessment of the cooperatives' registry with an eye towards replicating the service orientation at APIX or a wholesale combination of the two institutions	Long Term • Based on the reform of the cooperatives' legal framework, provide continued support and attention to cooperatives as a legitimate form of business expansion and start-up. Move the process of cooperatives registration to APIX or endow the cooperatives registry with similar resources to ensure a significant level of cooperative support.

DEALING WITH LICENSES	
Recommendation: Focus more support and attention to the processed food sub-sector.	
Short Term • Sponsor a sub-sector analysis to delve into issues of management and business expansion and general vocation training in the processed-food sub-sector. • Consider the idea of adding extension services to the processed-food sub-sector, much like the farming sub-sector.	Long Term • Develop a long-term strategic framework between the private sector and government focused on value addition of agricultural products, paying particular attention to food processing.
Recommendation: Encourage the formation of strong producer groups by means of technical assistance focusing on crop husbandry, training in farming as a business, organizational management and marketing for selected agricultural value chains.	
Short Term • Work with producer groups to educate them on the importance of strong licensing regime, and the proper use of hazardous agricultural chemicals and equipment. • Work with the cooperatives registry, key donor projects, and other agricultural trade groups to determine the extent of and strengths, weaknesses, opportunities, and threats to producer-based organizations in Senegal.	Long Term • Create a system of tax and investment incentives aimed at agricultural cooperatives. • Create high-level political buy-in (and associated public messaging) to make clear that producer groups are not to be used for political ends. • Work with the president's office, the Ministry of Agriculture, APIX, and other key institutions to "rebrand" agriculture-based farmer organizations to rid them of their storied legacy of political tools.
Recommendation: Focus on creating agro-industries by supporting the value chains between the producer and the market.	
Short Term • Institute an immediate review of agriculture strategies and rate them on their soundness from an agricultural "systems" perspective. Based on these analyses, make specific recommendations to inform revisions of government strategies and policies, focusing specifically on incentive regimes and other fiscal support to activities along agricultural value chains.	Long Term • Continue to reduce the licensing burden of firms in the Senegalese agricultural processing sector through a close review of the licensing based on three criteria: (1) the legality of the license, (2) the necessity of the license, and (3) the degree to which the license can be viewed as business friendly.

COMPETING FAIRLY

Recommendation: Support the Competition Commission in order to improve the efficiency and equity across the Senegalese economy.

Short Term

- Provide the Competition Commission with staff resources to investigate anticompetitive conduct.
- At the WAEMU level, clarify the respective roles of national and community competition law.
- Donors and government should partner with the media to publicize competition issues, including abuse of dominance, allegations of price fixing, and the general benefit to society from increased competition.

Long Term

- Provide the Competition Commission with staff resources to investigate anticompetitive conduct. While public resources are limited in Senegal, experience in similarly situated countries suggests that it is feasible to staff a competition agency. In Zambia, for example, the competition commission has a staff of about 20–25. In Tanzania, the competition commission has a staff of about 40. Placing human resources in the independent competition commission, rather than solely in the political branch of government, would be consistent with international best practices and recent competition reforms in France, which served as a model for Senegal's competition law when it was enacted in 1994.[93] Providing resources to the competition commission could reduce the gap between the law, which prohibits anticompetitive conduct, and current anticompetitive practices in the agricultural sector. This could in turn lower consumer prices and have positive poverty-reducing effects.
- Conduct capacity-building programs with competition authorities. Technical assistance could include short-term training programs, longer-term resident advisers, and/or staff exchanges with established competition authorities in other countries.
- Provide the Competition Commission with independent funding, rather than funding the commission through the Ministry of Commerce.
- Strengthen the competition regime to prevent collusive behavior.

93 In Senegal, this could perhaps be accomplished by shifting resources within the government. In particular, the government's recent commitment to phase out certain subsidy programs may free human resources that had overseen these programs. *See* Government of Senegal, Memorandum of Economic and Financial Policies, transmitted to IMF Dec. 5, 2008, at 42, *available at* http://www.imf.org/external/pubs/ft/scr/2009/cr0905.pdf (English) and http://www.imf.org/external/french/pubs/ft/scr/2009/cr0905f.pdf (French).

COMPETING FAIRLY (CONT'D)

Recommendation: Reform the fertilizer sector to improve the viability and competitiveness of Senegalese agriculture.

Short Term

- Conduct an independent cost-benefit analysis of the state's input subsidy regime. Interviews suggested that some of the problems affecting the state's fertilizer subsidy program have affected other subsidy programs as well, particularly the subsidy for seeds, another critical input. The value of such subsidy programs is much debated,[94] and Senegal-specific empirical evidence is needed to assess the past success of the program and guide future decisions. With resources, the Competition Commission may be able to undertake this role through its advocacy function.

Long Term

- At a minimum, remove political influence from the tender process, eliminate corruption, and better target farmers. As noted, there is a widespread belief among stakeholders that small farmers are not receiving the full benefit of the state's fertilizer subsidy. Eliminating corruption and better targeting small farmers, perhaps by tying fertilizer distribution to actual use and/or productivity gains, could reduce competitive distortions and benefit farmers. Among other things, the Agency for the Regulation of Public Markets (ARMP), to which irregularities in public bidding may be appealed, should continue to be supported, and appealing parties should be given tools to present evidence to the ARMP.[95]
- Strengthen the competition regime. The state's subsidy program relies on annual bidding by private firms. In an environment with no effective competition enforcement, bid rigging can be expected, resulting in higher prices for farmers. As detailed above, Senegal's competition authorities should be strengthened to prevent this type of collusive behavior.

Recommendation: Improve the protection of consumers in the marketplace from unfair, deceptive, or fraudulent practices.

Short Term

- Support capacity-building programs for the Ministry of Commerce and other implementing institutions, including consumer associations. Some stakeholders suggested that enforcement officials would benefit from better training on applicable standards and law enforcement techniques. Consumer associations have played an important role in protecting consumer interests in Senegal, but are resource-challenged.

Long Term

- Consider the need for a broad consumer protection law. An effort to study a possible broad-based consumption law is reportedly underway through the OHADA, and this or similar efforts should be supported. Among other things, the study should consider whether consumer associations should be granted standing to bring claims on behalf of their members.
- Improve the court system. Because most consumer protection laws are enforced through the courts, rather than the National Competition Commission, a healthy court system free of corruption is vital to the consumer protection regime.

94 *See generally* World Bank, *Fertilizer Use in African Agriculture, available at* http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/03/15/000310607_20070315153201/Rendered/PDF/390370AFR0Fert101OFFICIAL0USE0ONLY1.pdf; and *United Nations Food and Agriculture Organization, Policies and Actions to Stimulate Private Sector Fertilizer Marketing in Sub-Saharan Africa, available at* ftp://ftp.fao.org/docrep/fao/010/a1136e/a1136e.pdf?bcsi_scan_DA3493EE5FC9D524=0&bcsi_scan_filename=a1136e.pdf.

95 For further recommendations on eliminating corruption in Senegal generally, see *Corruption Assessment: Senegal* (Aug. 31, 2007), *prepared for USAID and available at* http://pdf.usaid.gov/pdf_docs/PNADK548.pdf.

EMPLOYING WORKERS

Recommendation: Improve the ability of Senegal's working age population to make significant contributions to the agricultural sector through enhanced vocational training, compulsory education, and cross-ministerial cooperation.

Short Term

- Undertake an analysis of what has worked and what has not worked in vocational training across Senegal—including donor and government projects
- Sponsor awareness-raising campaigns on the importance of allowing girls to reach maturity before marriage. Provide incentives to families who keep their girl children enrolled in school until they have completed their secondary education.
- Study, propose, and implement options for creating tax breaks or other incentives for companies that invest in worker training. There are many models for such a system throughout the world, including government training grants or subsidies, tax credits, and public-private training partnerships. These warrant further consideration from the perspective of what would work best in Senegal.
- Encourage the formation of strong agricultural-producer organizations with technical and financial assistance focusing on crop husbandry, training in farming as a business, organizational management, and marketing. With respect to high-value crops destined for export, additional support should be provided to enable farmers to achieve GlobalGAP and other certifications.
- Increase social marketing to farmers to teach risks of incorrect pesticide usage to human health during application and consumption and better-integrated pest management and organic pest management strategies.

Long Term

- Review law school and business school curricula to ensure that they are teaching not only general topics in labor law, but also the law as it pertains to the agricultural sector.
- Provide media training in the specific area of fair, thorough, and accurate coverage of labor and employment topics.
- Revise the agricultural curricula at colleges and universities so that students gain skills of use to both the public and private agricultural sectors. Develop incentives to make agriculture an interesting discipline for students, such as through assisting graduates to secure good jobs, providing opportunities for study in other countries, and creating internships with agro-industries and other agricultural enterprises.
- Create an inter-ministerial platform for collaboration between the Ministries of Education and Agriculture to bring literacy equity to Senegal within five years. Improve literacy rates, especially for women, by enforcing compulsory education for all children ages 6–16.

Recommendation: Encourage the hiring of more long-term contract employees by increasing the flexibility of the labor code and revising the labor taxes associated with hiring long-term employees.

Short Term

- Undertake an in-depth review of the labor code and the implementing regulations.
- Perform a gap analysis on the institutions responsible for monitoring enforcement of the labor code.
- Ensure that the government entities responsible for enforcing laws and regulations on occupational safety and health, as well as the minimum age of workers, are provided the means and motivation required to conduct their work effectively and thoroughly (i.e., covering rural as well as urban workplaces).

Long Term

- Revise the labor laws to make them less onerous for employers to dismiss staff for economic reasons. Specifically, reduce the administrative burden and costs incurred when staff are fired and allow for much greater flexibility with respect to overtime regulations and restrictions on work hours.
- Reduce the amount of tax employers and employees are required to pay for pension (IPRES) as well as work-related health insurance *(Caisse de Securite Sociale)*, and ensure that monies paid for these taxes are used for their intended purposes in a clear and transparent manner.

REGISTERING PROPERTY

Recommendation: Reform the land system from the bottom up and top down.

Short Term

- Extend the work of PAMOCA to continue assisting cadastres and land offices across the country, and complete a modern national map.
- Train and licenses surveyors with an eye towards filling the current and future shortages in the profession.
- Conduct a pilot project, giving technical and legal assistance and training to councils (perhaps newly elected ones) in a few selected areas and then checking after a year or two to see if there are testable differences in outcomes (i.e., fewer land disputes in the courts, more investment, increased productivity).

Long Term

- Begin an aggressive campaign to gain popular support for land reform through public and private consultations with government, donors, private sector, and civil society.
- Create a communications strategy that utilizes media including radio, television, and other locally acceptable formats to articulate the issue with the current system and propose ideas for reform.
- Create a new land law based on international benchmarks based on "best practice" and adapted to local custom.

GETTING CREDIT

Recommendation: Reduce information asymmetry based risks in the financial sector by further developing the use of secured transactions.

Short Term

- The central bank needs to keep detailed statistics on loan types to better inform policy and business practices in the future.
- Improve lenders' access to information on titles, claims, and past borrowing records. The existing system at the central bank is wholly inadequate to meet the needs of the agricultural sector or any other sector. A credit bureau, which would allow lenders to get more and better information on potential borrowers, is a necessity in terms of reducing risks (and therefore costs) in the banking business. Likewise, a pledge registry would enable lenders to establish the priority of claims on an asset and would be particularly helpful for both moveable and fixed property to be used as collateral.

Long Term

- Educate lenders regarding all aspects of agricultural lending through government- or donor-sponsored trainings on the possibilities within the agricultural sector. This should include tools to mitigate risk.

GETTING CREDIT (CONT'D)

Recommendation: Increase the strength and ability of the financial industry to support the agricultural sector and rural markets more broadly.

Short Term

- Provide the MFI section with capacity-building assistance that addresses the lack of skills, especially in credit analysis, risk analysis, financial management, and IT.
- Provide basic business skills training including training on the finance and credit systems. This training should include a focus on drafting a sound business plan, analyzing loan terms, and negotiating a written contract.
- Help develop standardized forms and contracts for agricultural loans and other transactions.
- Consider providing financial support to the agricultural extension service.
- Consider the use of a credit guarantee for one or more of the large MFI networks.
- Educate agribusiness leaders on how to prepare, present, and analyze financial projections so that they are readily understandable by loan officers.

Long Term

- Support development of mobile banking. A legal and regulatory framework may have to be developed first. Possible models could include Kenya and Botswana.
- Assist banks in developing agricultural-lending products, including technical assistance to train bankers in how to evaluate, draft, and finalize these products.

PROTECTING INVESTORS

Recommendation: Increase the attractiveness of investing in Senegalese agribusiness—to both domestic and foreign investors.

Short Term

- Create a single, online repository of commercial laws.
- Review the Investment Code's incentives, to ensure it is helping the agricultural sector overall and stimulating new investment.
- Analyze and evaluate all donor and government support directed over the past five years to FBOs with an eye toward lessons learned and pitfalls to be avoided. Identify those interventions that were started and then abandoned (such as Web sites or technical assistance initiatives) and determine whether they should be revisited or re-launched.
- Create linkages between better-organized FBOs and Senegal's business schools, developing partnerships in marketing and business development services.

Long Term

- Assist Customs in the enforcement of intellectual property rights.
- Support public awareness and training on good business practices and basic corporate governance through organizations and programs directed at small businesses and FBOs. Create education and training programs on basic business management, with a special emphasis on training rural entrepreneurs.

PAYING TAXES

Recommendation: Improve the efficiency and effectiveness of the tax system as it relates to agribusinesses.

Short Term

- Simplify the tax code. Combine taxes including taxes on property and taxes on salary to reduce the administrative burden and the widespread view that the tax system is "too complicated to deal with" For example, there ar there taxes on salaries that could be combined into one tax.
- Work with the private sector to teach accountants, auditors, and other service providers the unique aspects of agricultural business, including cash-flow issues and seasonality.
- Improve tax assessment procedures so that they are less arbitrary. Tax assessments should be based on actual conditions versus prior year tax payments or arbitrary estimates of local tax authorities.
- Support DGID's work to simplify and streamline the tax code and to reduce the number of declarations that must be made by taxpayers.

Long Term

- Increase the ability of the General Tax and Land Authority through (1) long-term commitment, (2) a needs assessment specific to administering taxes in rural areas, and (3) human resource needs. Focus in particular on strengthening regional tax offices, including facilities and equipment.
- Reduce tax rates on all types of agricultural businesses and broaden the tax base through the use of both incentives (e.g., six-month tax holiday when registering a business) and disciplines (e.g., auditing based on risk management techniques).
- Enable online filing.

TRADING ACROSS BORDERS

Recommendation: Work to improve the value of Senegal's agricultural products through branding and standardization of quality.

Short Term

- When a project undertakes a new supply chain to support, i.e., rice or cashews, management should work with ASN to develop a national standard for each product along the supply chain. NS branding for the Senegalese market should also be considered. The supply chain approach has proven successful and is cited by public and private sector members as a model that should be replicated in areas of trade policy, strategic development, and agricultural research.

Long Term

- Social marketing funds should support existing branded quality control programs such as ASN's public sector brand NS. NS promotes norms established by a governmental transparent process based on international, science-based standards. The success of NS would also contribute to financial sustainability and sufficiency of ASN to continue and expand upon its work of building SPS norms through stakeholder consensus and of educating consumers about the importance of the food safety in products bought in Senegal.

TRADING ACROSS BORDERS (CONT'D)	
Recommendation: Invest in the SPS regime to better protect animal and plant health	
Short Term	Long Term
• Harmonize fee and operating structures throughout regions for the DPV and the MOC/DCI to improve financial sufficiency, fairness in treatment, and improved documentation for products destined for export. To address a general lack of adequate staff and material resources, a fee for service system could provide monetary resources to improve at least materials at regional port-based offices. For regional DPV offices, larger companies already provide funds for petrol if DPV services are needed—this informal system might be standardized into a monitored fee for service system.	• Develop formal collaboration between Customs and the DPV at regional borders to leverage inspection resources of suspicious incoming shipments. Formal coordination should begin at Dakar level and be introduced formally to regional port offices of the DPV, the DOC/DCI, and Customs. The DPV border agents should be uniformed, staffed, with equipment and budgets to conduct inspections of imported goods—including those entering illegally by pirogue or truck. • Provide greater scientific training within the DPV at different levels to better identify pests, plant illnesses, and effective rapid response measures. Advanced training should be provided on condition that impact is effectively measured. Scientific training could be provided to young candidates or junior DPV professionals through scholarships to regional centers based in Niamy or Cotonou or to Western universities on condition that students return to work for the DPV's public service for three years as phytopathologists or entomologists after graduation. Coordinate all training participants lists with other projects that sponsor trainings to prevent duplicative efforts; i.e., SAGIC and PDMAS should coordinate participants lists for all individual and larger sponsored trainings.

TRADING ACROSS BORDERS (CONT'D)

Recommendation: Improve the value of customs services through enhanced risk management practices and anti-fraud efforts.

Short Term

- Institutionalize risk management methodology as the core business process of Customs. This would include an RM unit, an active fast track clearance (AEO) program targeting agricultural traders, and a fully functioning post-audit division. Customs has a basic understanding of these programs but does no have the capacity for full implementation of these core processes of a modern customs service designed to achieve the proper balance facilitation and control. Once a basic strategy with measurable goals has been agreed upon, advisors knowledgeable about risk management operations should be assigned to Customs to assist in establishing a risk management office to improve identification of high- and low-risk shipments, using data analysis to build profiles. Energizing the AEO program by initially targeting major agricultural importers as candidates to expedite clearances must be included within the scope. These resources should also assist in the development of post-audit unit, an essential component of risk management. This comprehensive approach allows Customs to direct its limited resources more effectively, reduces physical inspection and scanning, and limits officer discretion. The regional WCO West Africa Trade Capacity Building Hub in Abidjan, Ivory Coast, could assist in identifying French-speaking resources for this effort. Another resource in East Africa is the Uganda's Customs Administration that has a fairly well developed post-audit program.

Long Term

- Enhance anti-fraud and informal trade efforts through development and implementation of a comprehensive inter-border agency enforcement strategy. Customs, as the primary border agency, should lead the effort but all agencies involved in control of the borders should be active participants. Informal trade, particularly in basic food products, is rampant and remains basically unchecked. This stifles domestic production, undercuts the ability of the international trader to effectively compete in the local marketplace, and negatively impacts revenue collections. Neither an effective strategy identifying and targeting high-risk locations and commodities nor a coordinated ongoing effort between the various border agencies, both national and local, is in place to address the issue. Assistance should be given to these agencies as a collective body to conduct assessments in each region, prioritize these nationally, develop intelligence channels, and design a plan to redirect resources and equipment accordingly. Needed essential enforcement tools should be identified and request for these resources should include the application and anticipated impact of deployment of these resources. Technical assistance of experienced fraud investigators, strategic planners, and practical exercises in preparing threat assessments will needed to be supported by the donor community.

TRADING ACROSS BORDERS (CONT'D)

Recommendation: Reduce trade-related costs through legal and institutional reform, with a specific focus on inter-regional agreements and reducing the cost of transit.

Short Term

- Improve Customs legal framework both nationally and regionally. The UEMOA's incomplete customs union legislation results in a lack of simplification and harmonization of border processes. Senegal's outdated national customs law impedes full benefits of anticipated electronic processing applications. Senegal is currently drafting a new customs code. International customs experts in Kyoto provisions should either review the draft or participate in its development to ensure compliance with key principles of the revised Kyoto Convention including transparency, maximum use of IT technology, and trade partnership. Senegal, having acceded to this convention, must use this document as the blueprint for its legal framework to permit further advances in trade facilitation. However, the expertise to perform this review is not in place. The trade community must be brought into this drafting process so that passage will be facilitated. The UEMOA also needs an impartial party to assist in reconciling contentious issues, such as penalties, to bring about closure to the UEMOA customs union legislation. Only upon completion can integration of border processes between members be initiated and the trade in essential food staples expedited.
- Update food inspection laws to conform with regional standards from the ECOWAS and WAEMU.

Long Term

- Support use of GPS technology to track transit shipments, which could eliminate costly Customs' escort policy. Customs is struggling to pilot the new GPS system for electronic tracking of shipments of sensitive transit cargo, which could significantly reduce transaction costs on affected shipments. Customs does not have the resources necessary to monitor movements on a continual basis, provide the training required to use the technology effectively, or implement the upfront partnership with the transport sector to facilitate implementation. Customs must find resources and reach out for advice and perhaps training to the few major transport companies using these technologies to monitor their own fleets. Consideration should be given to allow companies with such systems in place to travel without escort under terms of a memorandum of understanding that outlines reporting requirements and penalties for failure to comply. At the least sharing of the data might be feasible rather than having two sets of equipment placed in the same vehicle. The experience of Kenyan Customs, which is further along in utilizing this capability, could be helpful as well, although the systems use different technologies. A close relationship between these two customs services already exists because of Kenya's use of the Senegal's IT GAINDE system.

TRADING ACROSS BORDERS (CONT'D)

Recommendation: Improve the value of customs services through enhanced risk management practices and anti-fraud efforts.

Short Term

- Institutionalize Risk Management Methodology as the core business process of Customs. This would include a RM unit, an active fast track clearance (AEO) program targeting agricultural traders and a fully functioning post audit division. Customs has a basic understanding of these programs but does not currently have the capacity for full implementation of these core processes of a modern customs services designed to achieve the proper balance facilitation and control. Once a basic strategy with measurable goals has been agreed upon, advisors knowledgeable of risk management operations should be assigned to Customs to assist in establishing a risk management office to improve identification of high and low risk shipments, using data analysis to build profiles. Energizing the AEO program by initially targeting major agricultural importers as candidates to expedite clearances must be included within the scope. These resources should also assist in development of post audit unit which is an essential component of risk-management. This comprehensive approach allows Customs to direct its limited resources more effectively, reduces physical inspection and scanning and limits officer discretion. The regional WCO West Africa Trade Capacity Building Hub in Abidjan, Ivory Coast, could assist in identifying French speaking resources for this effort. Another resource in East Africa is the Uganda's Customs Administration that has a fairly well developed Post Audit program.

Long Term

- Enhance anti-fraud and informal trade efforts through development and implementation of a comprehensive inter-border agency enforcement strategy. Customs, as the primary border agency, should lead the effort but all agencies involved in control of the borders should be active participants. Informal trade, particularly in basic food products, is rampant and remains basically unchecked. This stifles domestic production, undercuts the ability of the international trader to effectively compete in the local marketplace, and negatively impacts revenue collections. No effective strategy identifying and targeting high risk locations and commodities is in place nor is there a coordinated effort on-going between the various border agencies, both national and local to address the issue. Assistance should be given to these agencies as a collective body to conduct treat assessments in each region, prioritize these nationally, develop intelligence channels, and design a plan to redirect resources and equipment accordingly. Needed essential enforcement tools should be identified and request for these resources should include the application and anticipated impact of deployment of these resources. Technical assistance of experienced fraud investigators, strategic planners and practical exercises in preparing threat assessments will be need to be supported by the donor community.

ENFORCING CONTRACTS

Recommendation: Improve the use of contracts and trust in courts in order to facilitate a more modern trading system in the agriculture sector.

Short Term

- Work with local chambers and agricultural associations to facilitate the dissemination of information about local and foreign suppliers and clients and to encourage collective bargaining and the aggregation of orders.
- Produce a simple guide to the laws of collection and enforcement, in French and Wolof, clarifying legal rights but also explaining various options short of a lawsuit. Distribute it widely to agricultural associations and chambers.
- Encourage the Judicial Training Center in Dakar to include agricultural issues in its curriculum.

Long Term

- Work with the courts to reduce the times to judgment and to execution or foreclosure.
- Encourage local banks and especially MFIs that lend in the agricultural sector to consider invoice financing as one way to alleviate the cash-flow problems of agricultural SMEs.

ANNEX II: SUMMARY OF METHODOLOGY

Data for the *Business Climate and Institutional Reform* diagnostic for Agriculture (AgCLIR) is collected in a standardized, non-random way. The process relies on local consultants knowledgeable of local policy and business networks to arrange meetings with diverse actors in the economy who can inform an analysis of the business environment. The AgCLIR team finds and meets people who have insights on their community or who maintain a particularly influential role in the community to ensure rich and detailed data are collected to inform reports whose primary use is programmatic support for USAID missions and whose secondary use is to inform local governments, donors, and others interested in economic and policy analysis of the economy. Information is gathered to provide a "360 degree" view on the subject at hand. People from all angles of the business environment are interviewed, including members of the private sector, government, nongovernmental associations, and academia. The team interviews these "key informants" based loosely on the key informant methodology[96] frequently used in the social sciences. The information derived from these interviews is reported both qualitatively and quantitatively.

INDICATORS

The analytical foundation for this report is based on a set of indicators created for each subject-matter area, created in 2007 (and based on a model established in 1999). Specifically, the indicators are organized as follows:

- **Legal Framework.** These indicators first examine the laws and regulations of country being studied that serve as the structural basis for its ability to achieve and sustain market-based development. They pose the following questions: How clear are the laws, and how closely do existing laws reflect emerging global standards? How well do they respond to commercial realities that end-users face? What inconsistencies or gaps are present in the legal framework? Often discovered through this review are opportunities to make relatively small changes that may result in significant openings for business development and expansion.
- **Implementing Institutions.** Next, the indicators examine those institutions holding primary responsibility for implementation and enforcement of the legal framework and subsidiary laws, regulations, and policies. These institutions typically include government ministries, authorities, and registries, or, in certain cases, private institutions such as banks and credit bureaus. In addition, courts are often examined with respect to their effectiveness in addressing certain areas of the commercial law. With respect to international trade, the chief implementing institutions include customs, immigration, and other border authorities. Problems uncovered in all institutions often concern bureaucratic inefficiency, lack of resources and training, and, of paramount concern, real or perceived corruption.
- **Supporting Institutions.** These indicators look closely at those organizations,

96 *See* MN Marshall, "The Key Informant Technique" Family Practice 13: 92–97 (1996).

individuals, or activities without which the legal framework or policy agenda cannot be fully developed, implemented, or enforced. Examples include notaries, lawyers, banks, business support organizations (such as chambers of commerce) and private services, professional associations, universities, and the media. The indicators examine relative awareness of law and practice on the part of the institution, and the specific ways certain institutions increase public and professional awareness, work to improve the business environment, and otherwise work to serve their constituencies. In certain instances, weaknesses in one or more supporting institutions will be identified as a critical area for reform—for example, if a bar association has yet to be formed or if the media does not cover an issue of critical public interest, priority areas for reform will likely emerge. Often this area uncovers certain "champions of reform"—motivated organizations or individuals who are eager to serve as agents of change.

- **Social Dynamics.** Finally, the indicators examine less tangible, but often enormously important social issues that are relevant to a certain topic. These indicators attempt to uncover roadblocks to reform, including identification of vested interests that may have an interest in subverting change. They also examine the relationships between various sectors—public, private, and civil society—that inevitably must work together to bring about change. These indicators seek to identify significant opportunities in bolstering the business environment—including champions of reform or regional initiatives—as well as matters of access to opportunity and formal institutions. Often a full understanding of legal and institutional issues cannot be achieved without a nuanced consideration of a country's social dynamics.

For each of the four sections, there are from 5–10 **key questions.** These are scored according to the assessor's overall judgment, based on thorough research and investigation. To help an assessor determine a score, around 5–20 **supporting indicators** accompany each key question. These supporting points do not themselves receive scores, but instead are intended to guide the assessor in arriving at a consistent, factually based judgment on which the key indicator score is based. In implementing a country diagnostic, it is unlikely that an assessor will be able to find answers to *all* the supporting indicators, and in many instances a supporting indicator may not be relevant to a given situation. Assessors are instructed to be prepared, however, to explain how a score was determined, chiefly by referencing his or her findings based on the supporting questions. An example of a key question, along with its supporting indicators, is as follows:

THE LEGAL FRAMEWORK PERTAINING TO COMMERCIAL DISPUTE RESOLUTION IS READILY AVAILABLE, CLEARLY DRAFTED, AND EASY TO USE.

1. Print copies of law pertaining to commercial dispute resolution are readily available to members of the legal profession, the business community and the general public, including rural areas.
2. New laws are published according to a uniform, timely and consistently implemented procedure (such as through regular publication of an Official Gazette).
3. Law is published in all official languages of the country.
4. The law is user-friendly—clearly drafted, well-organized by subject, with a table(s) of contents at the front, and with article headings.
5. Law pertaining to all aspects of commercial dispute resolution is available on a regularly updated Internet site.
6. Courts post or otherwise very clearly identify the fees and costs involved with commencing commercial cases.

Indicator scores are used to assist interested readers in understanding relative strengths and weaknesses of a given area of the business environment. In all cases, indicator scores should be considered in conjunction with the written analysis provided in each diagnostic report. The score awarded each key indicator aligns with the following conclusions as they relate to specific questions that constitute each indicator:

1 = strong negative
2 = moderate negative
3 = neutral (or having some negative and some positive qualities)
4 = moderate positive
5 = strong positive

Indicator scores are not intended to serve as a stand-alone, number-based pronouncement on the state of affairs in a country. Rather, they should be read in conjunction with this report as a means of understanding the relative status of certain key indicators of a healthy legal and institutional environment for business and trade, and identifying priorities for reform.

INTERVIEWS AND REPORT WRITING

Interview subjects are invited to participate in the diagnostic interviews first by letter, then by a telephone call to arrange a convenient time and place for the meeting. The duration of the interviews is typically 1–1.5 hours and is attended by one or more team members with a specific expertise in the relevant subject area. For instance, team members interviewing the head of business registration and licensing in the Ministry of Trade and Industry would probably include the authors of the Dealing with Licenses and Starting a Business sections of the report. Meetings are usually limited to 1–2 of the team members.

Interviewers are encouraged to establish a rapport with their interview subjects. All interviews are off the record and not for attribution, which is key to garnering frank and honest assessments of the business environment in many countries. The AgCLIR indicators serve as a guide to conducting an interview with an individual or group of people who have knowledge of the targeted topic. Assessors do not bring indicators and supporting criteria into a meeting; they do, however, anticipate how each interview can contribute to understanding one or more key indicators. No single meeting provides answers to all key indicators. Strong advance planning and sound knowledge of the issues facilitate the most effective use of limited meeting time.

The indicators serve as a substantive guide to the diagnostic process, from the pre-travel planning stage to time spent by a diagnostic team in country to the drafting of the report. Assessors collate their notes from meetings and are encouraged to translate their raw notes into more summarized descriptions of the meetings on a nightly basis. Reports are due to the team leader three weeks after the assessment is completed. Each report is read, validated by the team leader, and either returned to the assessor for further work or integrated with the other chapters to form the final report within 6–8 weeks after the initial assessment.

USES OF THE DATA

There are a number of constructive uses for the AgCLIR indicators. By quantifying broad concepts of importance to businesses, the indicators can help decision-makers assess progress toward the achievement of intended development goals. The scores are useful in prioritizing areas for reform and, potentially, to track progress over time. Scores can be used to help design programs by highlighting areas that are particularly deficient or by showing which areas are worthy of particular praise or replication.

The ordinal data produced in the process of assessing the 1,000-plus AgCLIR indicators has a number of important limitations that should be stated explicitly. Using experienced practitioners to score each of the indicators, readers get expert analysis on the strength of particular aspects of a business environment. However, the subjectivity in indicator design and lack of precision in ordinal data[97] limits the reliability of these data for regression analysis. Similarly, a changing roster of team members over time limits the comparability of scores across countries. Finally, certain indicators have been revised to reflect recent development experience over the course of the AgCLIR project.

Although an effort is made to build in consistency within regions, we do not encourage comparisons of the *quantitative* component of AgCLIR assessments across countries, and in particular between years, without the prior understanding of what indicators and assessors have changed in the meantime.

97 AgCLIR indicators produce "ordinal" data. That is, the indicator scores represent a classification of answers from highest to lowest based on a continuum where a five is the best possible scenario and one the worst. Ordinal data allow for comparisons (much like the A through F grading system) but do not offer the level of precision necessary to quantify the level of difference between categories.

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BIZCLIR Business Climate Legal & Institutional Reform

AgCLIR: SENEGAL

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