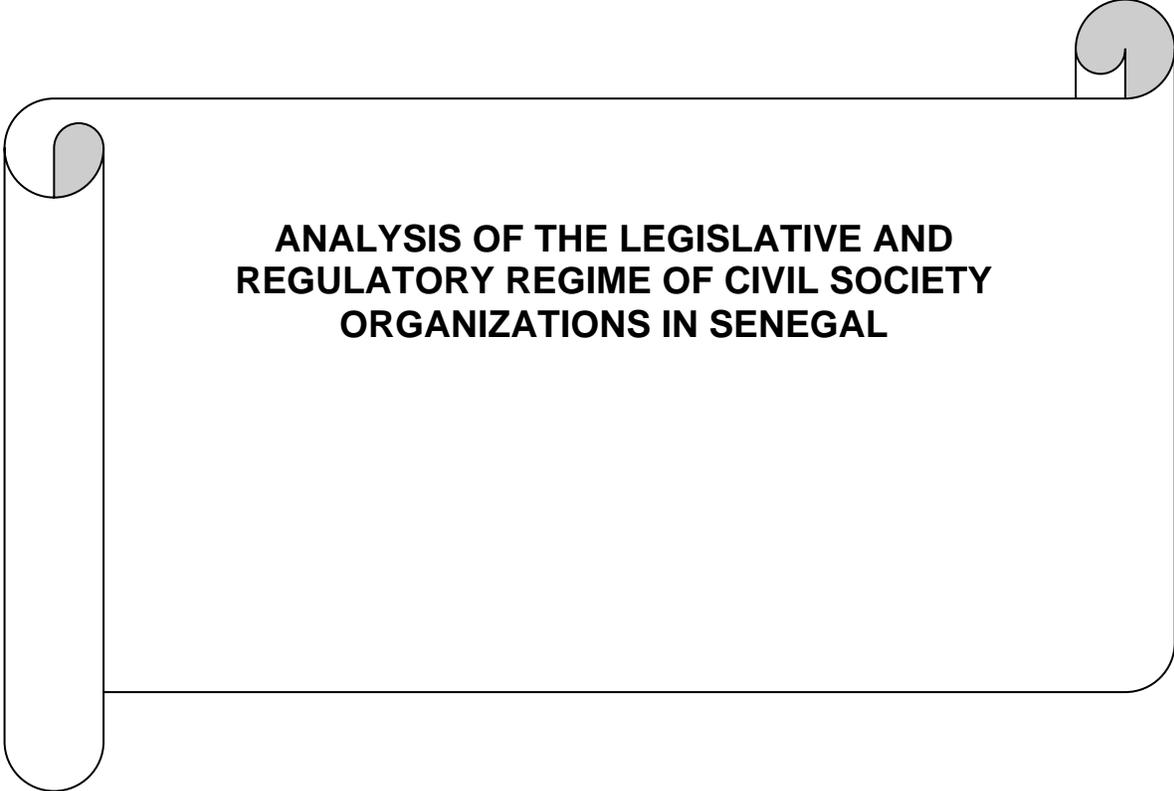


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**ANALYSIS OF THE LEGISLATIVE AND
REGULATORY REGIME OF CIVIL SOCIETY
ORGANIZATIONS IN SENEGAL**

In partnership with: International Center for Not-for-Profit Law

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Introductory note

The World Bank designates civil society **as the wide array of non-governmental, non-profit organizations which inspire public life, and defend the interests and values of their members or of others, based on considerations of an ethical, cultural, political, scientific, religious or philanthropic order: community groups, non-governmental organizations (NGOs), unions, organizations of autochthonous populations, charitable organizations, religious orders, professional associations and private foundations.**¹

The rule of law imposes the necessity of structure and of the limitation of public powers by law. As a consequence, it is a matter of legally establishing the guarantee of the protection of fundamental rights and liberties of persons with respect to the possible abuses of the State and of the political power. After the introduction of participative democracy in the 1990s in Africa, this requirement to govern while respecting the principles of the rule of law has been sustained by actors emerging from associations, from unions, from non-governmental organizations (NGOs), and from various social and economic groups which enjoy relative autonomy of action and of initiative, called to be deployed outside the framework of State intervention: the civil society.

Civil society must be understood as the whole of interpersonal relationships, along with social, cultural, economic and religious structures, that are deployed in a given territory outside the structure and intervention of the State.

Civil society has existed in Senegal since the colonial period, but this reality would not see the conceptualization tested until the 1990s. It is around that time that the majority of the national NGOs, women's groups, etc., were created, but what gave civil society its visibility was, irrefutably, the development in favor of democracy and private media.

In Senegal, the civil society organizations are dynamic and play an active role in the definition and follow-up of public development policies.

The basic legal system organizing the creation and the operation of the civil society organizations (CSOs) is generally considered to be favorable, insofar as it is based on the principle of declaration, rather than that of prior recognition. Nonetheless, taking into account the identified priorities at stake, the relationships between the government and the CSOs and the world financial crisis, the legislative and regulatory framework could be improved. In fact, with respect to the importance of their role in national life, the CSOs ought to benefit from an environment which is favorable to carrying out their projects and programs.

Also, it is appropriate to analyze the legal and institutional framework in which the CSOs evolve, notably the conditions of creation and of operation; and to identify the constraints and the gaps of the framework; and to formulate, as a consequence, pertinent recommendations with a view to improving that framework.

¹<http://go.worldbank.org/UY9DUO62F0>

I. PROVISIONS OF THE GENERAL LAWS

A. General Legal Framework:

Before obtaining its independence on June 18, 1960, Senegal was a former French West African colony. The Senegalese system was thus inspired by civil law, because of its historic past with France.

The Senegalese Republic is a unitary, not federal, State. Its administrative, territorial and local organization was established by the decree of September 10, 2008, defining the territorial jurisdiction and the county seat of the regions and departments. The territory thus comprises:

- administrative districts (45 departments and 117 arrondissements), and
- local communities (14 regions, 150 communes, 353 rural communities).

The principal laws and regulatory texts are accessible on the website of the official Journal of the Republic of Senegal², but only for the texts adopted from the year 2001 onward. The prior texts are available from the National Archives office in Dakar, which issues copies for a modest fee. Thus, except for some recent texts and some major texts prior to 2001, such as the Code of Civil and Commercial Obligations or the 1996 decree regarding the NGOs, the legislation appears to be poorly known and difficult to access.

Public access to the law is also limited by the quasi-esoteric nature of the legal jargon and by the high rate of illiteracy in French, the official language of the Republic of Senegal.

The principal reference texts pertaining to the subject of this study are the following:

Codes and laws

- Code of Civil and Commercial Obligations (French abbreviation COCC) in its articles 811 to 826;
- Labor code and its articles L6 and following, concerning professional unions;
- Law No. 81-17 of May 6, 1981, concerning political parties;
- Law No. 90-07 of June 26, 1990, concerning organization and control of enterprises of the para-public sector and the control of legal entities of private law receiving financial aid from the public power;
- Law No. 92-40 of July 8, 1992 (amended) pertaining to the general tax code;
- Law No. 95-11 of April 7, 1995, establishing the public interest foundation in Senegal; and
- Law No. 2001-01 of January 15, 2001, pertaining to the environmental code. With the adoption of this law, the management of the environment in Senegal is no longer the sole jurisdiction of the State. Alongside the State services, one notes the presence of the local communities, associations, NGOs and public and private enterprises. In fact, article L5 of the code establishes the principle “of the cooperation between the State, local communities, associations, governmental and non-governmental organizations, and citizens.”

² See http://www.jo.gouv.sn/rubrique.php3?id_rubrique=2

Regulatory texts:

- Decree No. 76-040 of January 16, 1976, setting the particular obligations to which the popular education and sports associations, as well as cultural associations, are subject;
- Decree No. 76-199 of February 17, 1976, setting the conditions of granting and withdrawal of recognition as a public interest association;
- Decree No. 95-415 of May 15, 1995, on foundations;
- Decree No. 96-103 amending decree No. 89-775 of June 30, 1989, setting the modalities of intervention of non-governmental organizations;
- Decree No. 97-347 of April 2, 1997, pertaining to the delegation of the powers of the Minister of the Interior to the governors of regions for the issuing of receipts of declaration of associations;
- Decree No. 2007-545 of April 25, 2007, concerning the Code of Government Contracts whose article 2 subjects certain associations to the provisions of said code;
- Memorandum service instruction No. 2919/MINT/DAGAT/DEL/AS of May 12, 1997, concerning the deconcentration of the procedure of recognition of certain associations; and
- Order No. 66-07 dated October 3, 2006, concerning the conditions of granting and withdrawal of approval to sports associations and groups.

B. Constitutional Framework:

In its preamble, the Senegalese Constitution of January 22, 2001 affirms its adherence to the Declaration of the Rights of Man and of the Citizen of 1789 and to the international instruments adopted by the United Nations and the Organization of African Unity, notably the Universal Declaration of Human Rights of December 10, 1948; the Convention on the Elimination of all forms of Discrimination against Women of December 18, 1979; the Convention on the Rights of the Child of November 20, 1989; and the African Charter on Human and Peoples' Rights of June 27, 1981.

The preamble proclaims, moreover, the respect of the fundamental freedoms and rights of the citizen as the basis of Senegalese society.

The Republic of Senegal guarantees to all its citizens fundamental individual freedoms, economic and social rights, as well as collective rights. These freedoms and rights are, notably: civil and political liberties: freedom of opinion, freedom of expression, freedom of the press, freedom of association, freedom of assembly, freedom to travel, freedom to demonstrate, (...).³

Freedom of association

Article 8, paragraph 1, sets out the principle, while requiring the conditions of lawful exercise of the right. Freedom of association is guaranteed more specifically by article 12 of the Senegalese Constitution, which nevertheless restricts the exercise of this right by groups whose purpose or activity would be contrary to the penal laws or directed against the public order. The freedom to create unions and professional associations is recognized for all workers by article 25 (paragraph 3).

Article 12

All citizens have the right to freely form associations, economic, cultural and social groups, as well as companies, provided that they conform to the formalities laid down by the laws and regulations. Groups whose purpose or activity are contrary to the penal laws or directed against the public order are prohibited.

Article 25 (paragraph 3)

The freedom to create unions or professional associations is recognized for all workers.

Freedom of expression

The freedom of expression is set out, in addition to in the above-referenced article 8, more specifically in articles 10 and 11 of the Senegalese Constitution. We note, however, that certain commentators have observed a decline over the course of recent years of political rights in Senegal due to the expansion of the power of the Executive and of

³Article 8 of the Constitution of January 22, 2001.

the party in power, as well as a marginalization of the opposition. This trend has notably translated into the postponement of the municipal elections of 2008 and the arbitrary reduction of the mandate of the President of the National Assembly.⁴

Article 10

Each and every person has the right to express and to freely distribute his opinions by word, pen, image, and peaceful march, provided that the exercise of these rights does not harm the honor or the consideration of others, or the public order.

Article 11

The creation of a press organization for political, economic, cultural, sporting, social, recreational, or scientific information is free and is not subject to any prior authorization. The regime of the press is set by law.

Right to equality

The preamble of the Constitution proclaims the rejection and the elimination, in all their forms, of injustice, inequality, and discrimination. The Constitution affirms, moreover, the equality of all the citizens before the law, without distinction based on origin, race, sex, or religion. Men and women are legally equal.

Article 1

The Republic of Senegal is secular, democratic and social. It ensures equality before the law of all citizens, without distinction based on origin, race, sex, or religion. It respects all beliefs.

Article 7

The human person is sacred and inviolable. The State has the obligation to respect and to protect the human person.

Every individual has the right to life, liberty, security, the free development of his or her personality, and to bodily integrity, especially protection against any physical mutilation.

The Senegalese people recognize the existence of the inviolable and inalienable rights of the human being as the basis of all human community, of peace and of justice in the world.

All human beings are equal before the law. Men and women are legally equal.

The law favors the equal access of women and men to the tenure of office and occupation. In Senegal, there is no privilege of place of birth, of person or of family.

The international texts

The rights of civil society are rooted in part in the concept of freedom of association as it is guaranteed by a number of international texts such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and a rather long list of other conventions and declarations of human rights. Thus, recently, in June 2009, operational directives of the *Convention on the Protection and Promotion of the Diversity of Cultural Expression* regarding the role and the participation of the civil society were approved by the Conference of the Parties. This text recognizes “*the fundamental role of the civil society in the protection and promotion of the diversity of cultural expression.*” *Article 5 of this text provides:* “The Parties must encourage the civil society to participate in the implementation of the Convention by associating it, through the appropriate means, with the development of cultural policies and by facilitating its access to information regarding the protection and the promotion of diversity of cultural expression and by favoring the strengthening of its capacities in the matter. For that purpose, the Parties could provide flexible and effective *ad hoc* mechanisms.

⁴ See the 2009 report of the organization, *Freedom House*, which has reduced the grade granted to Senegal from 2 to 3 (on a scale of 1 to 7, where 1 represents the most favorable situation for political rights in a given country). Report available in English on the organization's website:

<http://www.freedomhouse.org/template.cfm?page=363&year=2009>

The *Cotonou Agreement* between the European Union and countries from Africa, the Caribbean, and the Pacific, signed in June 2000, also introduced a new requirement, that of seeing civil society as a stakeholder in the process of consultation, implementation, and evaluation of development strategies.

Limiting provisions

The provisions of the last provision of article 12 of the Constitution, as indicated previously, restrict the exercise of the right of association for the groups whose purpose or activity would be contrary to the penal laws or directed against the public order.

Likewise, concerning the freedom of expression, article 10 subordinates its exercise to the respect of honor, and to the consideration of others, as well as of the public order.

It emerges from the provisions recalled above that the Constitution, while establishing the principle of freedom of association and freedom of expression, refers to the law or to regulations for the conditions of their exercise.

Article 10

Each person has the right to express and to freely distribute his opinions by word, pen, image, and peaceful march, provided that the exercise of these rights does not harm the honor and the consideration of others, or the public order.

Article 12

(...) Groups whose purpose or activity would be contrary to the penal laws or directed against the public order are prohibited.

C. Types of Organizations:⁵

Besides their numerical importance, civil society organizations (CSOs) are characterized by their diversity, in their form as well as in their areas of activity.

With regard to the organizational form, the legal framework provides for the association, the non-governmental organization (NGO), the foundation, and the trade union. The association is the most common form and can be further divided among the community-based (5,000), sports and cultural (2,500), professional (700, including 252 unions), educational (300), health (150), religious (2,000), and political (154) associations. At the same time, 487 non-governmental organizations (NGOs) have been approved, of which about 40% are of Senegalese nationality. (The political and religious associations will not be addressed in this report.)

As for the areas of activity of the CSOs, they concern all sectors of national life (agriculture, health, education, culture, sports, etc.).

The constraints on civil society in Senegal may vary depending on the substantive goal of each CSO. It is notable, for example, that religious associations, human rights organizations and social service providing organizations – though they may be all registered as associations – are subject to very different regulatory treatment by the Senegalese authorities.

No constraints are reported⁶ for religious organizations in Senegal and registration of religious organizations as associations before the Ministry of Interior is generally granted without difficulty. Senegal is a deeply religious country with a large majority of Muslims and a minority of Catholics. The relationships between the various

⁵ For the content of this report, the civil society organizations include non-profit, non-governmental organizations such as associations, foundations, unions, etc., that is, the organizations of the private sector which do not distribute profits, which are self-governing and supported by volunteer work. Even though this definition includes, in theory, unions, political parties, cooperatives and potentially religious associations, this report excludes such organizations or touches on them only superficially, inasmuch as they are governed by distinct laws.

⁶ See, for example, Freedom in the World, 2010, Freedom House and U.S. State Department, Bureau of Democracy, Human Rights, and Labor, [International Religious Freedom Report 2009](#) October 26, 2009

religions are good and the State is respectful of religious freedom in the country, and even “continues to provide free airline tickets to Senegalese Muslims and Christians undertaking pilgrimages overseas.” Religious organizations are not only free of constraints in Senegal, but sometimes have shown ties to the political world and have used their influence to support the agenda of political candidates.⁷

Human rights organizations benefit from the generally favorable climate for CSOs in Senegal. Most reports⁸ show that human rights organizations do not encounter major constraints in their daily activities. Nonetheless, as they are in a position to be potentially critical of the government, they sometimes experience a more burdensome relationship with the administration. RADDHO is one example of that situation, as the organization had to wait five years to finalize its registration process. Note also that due to its field of activity it cannot count on any support from the government. In addition, the corporate sector is more inclined to support organizations that have “good ratings” with the government than those that do not. RADDHO, which was created in 1990, filed an application in 2000 to obtain the public interest status under Senegalese law; to our knowledge, this status has not been granted. Other human rights organizations, which were created before RADDHO, like ONDH (1987), are not expressly recognized as PBOs but are treated as such unofficially. Other organizations, which are not directly involved in human rights but promote citizen participation like the “Mouvement Citoyen” (Citizens’ Movement) and are more likely to criticize the government, have expressed the feeling of being ostracized by the administration. The government may sometime block funding for projects it does not approve of. Such was the case for funding offered by the Open Society Initiative for West Africa (OSIWA) to address the phenomenon of the “Talibés” (minors enrolled in studying the Koran and compelled to beg for money in the streets).

For most CSOs, the major challenge, whatever their statutory purpose, seems to be self-sustainability (see also the sections below on economic activities, government funding and tax incentives). Access to financial resources is very limited in the Senegalese legal framework for the vast majority of the CSOs that do not have either PBO status or NGO status.

Let us now analyze the legal and institutional framework applicable to CSOs depending on their organizational form. It is according to organizational form that the legal framework addresses the life-cycle of each organization - notably their conditions of creation and operation. By examining the rules applicable to each legal form, we will identify the constraints and the deficiencies and be able to formulate, as a consequence, pertinent recommendations with a view to improving them.

1. Associations

Fatou Sarr⁹ emphasizes in her report drawn up in 2005¹⁰ that: “The association movement does not constitute a new event in Senegalese society. Well before colonization, the various segments of society combined their efforts with a view to finding suitable responses to their daily, even existential, problems. The groups founded on the basis of age (*fedde* or *maas*), gender (*mbotaay*), belonging to a fraternal, regional or ethnic society (*dahira*), and other more or less associative structures constitute the historical or traditional forms of expression of a solidarity whose principal creed is *mboolo moy doolé* (strength in unity, in Wolof).”

The association is by far the most common type of civil society organization. It is governed by the provisions of the Code of Civil and Commercial Obligations which, in 1968, took the place of the French law of July 1, 1901, concerning associations, which remained in effect after the accession of the country to independence in 1960. Many people still refer to the idea of “Law 1901 association” to designate these structures. The expansion of the civil society can be perceived as a sign of democratic vitality in a country. Thus, in Senegal, the association movement has seen an explosion in the shifting of the democratic opening of the 1980s. There were close to 8,200

⁷ See, for example, Fatou Sarr, “Impact of the Dakar and Beijing conferences on the civil society organizations in Senegal and their influence on politics,” IFAN/UCAD, Interim report, p. 19 and “Maraboucratie” au Sénégal, Le lobby confrérique, un frein à la démocratie, <http://senblog.viabloga.com/news/maraboucratie-au-senegal> (fr.)

⁸ See above Fn1

⁹ Researcher at the Fundamental Institute of Black Africa (IFAN) of the Cheikh Anta Diop University of Dakar (UCAD).

¹⁰ “Impact of the Dakar and Beijing conferences on the civil society organizations in Senegal and their influence on politics,” IFAN/UCAD, Interim report, p. 21.

associations declared in Senegal in 2004.¹¹ Today the number of declared associations probably surpasses 10,000, although this estimate is not precisely documented.

a. Popular education and sports and cultural associations

Commonly called sports and cultural associations (SCA), they are governed by the provisions of article 821 of the COCC [Code of Civil and Commercial Obligations] and those of decree No. 76-040 of January 16, 1976, setting the particular obligations to which popular education and sports associations, as well as cultural associations, are subject.

Under the terms of article 2 of the above-referenced decree, popular education associations are those which dedicate the essential part of their activities to the development of the human being in his various aspects, with a view to conscious and effective integration into society, as well as unions responsible for structuring and coordinating the activities of those groups at the national level.

And according to article 3, the activities whose popular educational nature is recognized in Senegal are practiced in the framework of youth movements, secular, confessional, political and professional movements, youth exchanges, educational communities, educational leisure associations, as well as rural or urban boarding homes, youth homes, and socio-educational boarding homes of educational and training establishments.

As for the sports education associations, they are made up, on the one hand, of groups whose activity has the purpose of practicing amateur sports and, on the other hand, unions in charge of structuring the activities of these groups at a national level, in accordance with article 4. These activities concern a wide range of sports disciplines.

Concerning the cultural associations, they are governed by article 6. These associations dedicate the essential part of their activities to art and oral or written literature, to theoretical or applied research, notably in the sector of arts and letters, science, history, geography, linguistics, philosophy, ethnology and religion. Contrary to other associations, the SCAs may, even if they are not recognized as public interest associations, receive grants from the State or other public communities, according to article 821, paragraph 3 of the COCC.

b. Recognized public interest associations

Article 820 of the Code of Civil and Commercial Obligations provides that a declared association may be recognized as a public interest association by decree.

Authorized foreign associations may also receive this recognition (Art. 825).

Associations which are recognized as a public interest association are governed by decree No. 76-199 of February 17, 1976, setting the conditions of granting and withdrawal of recognition as a public interest association.

Nonetheless, this text does not contain the definition of public interest. It is on the occasion of each request that the purpose and the action of the requesting association are examined to see if they are sufficiently worthy of interest and justify recognition as being in the public interest.

Two years after its registration, an association may request its recognition as a public interest association. That is granted by decree of the President of the Republic, according to the opinion of the Minister of the Interior. The approved foundations are also found to be in the public interest. All can benefit from donations and bequests and from public grants.

In Senegal, associations recognized as public interest associations are few in number.

c. Associations participating in the public health effort

Associations participating in the public health effort are governed by article 821 of the COCC, whose paragraph 3 provides that, even if not recognized, the associations can receive grants from the State and other public communities.

¹¹ *Id.* p. 30.

These associations are, in particular, the health committees which exist alongside all the health structures of Senegal.

d. Economic interest groups (EIGs)

The Economic Interest Groups (EIGs) are entities which implement, for a fixed length of time, the means for developing the economic activity of their members.

They are governed by various acts which have been in effect since 01/01/1998. They are:

- The Uniform Act concerning General Commercial Law,
- The Uniform Act concerning the Law of Commercial Companies and Economic Interest Groups, and
- The Uniform Act concerning the Organization of Insurance Companies.

Business law in Senegal has thus been completed since 1998 by the Uniform Act of the OHADA (Organization for the Harmonization of Business Law). These companies are also governed by:

- Decree 86.104 of August 19, 1986 and Decree 95.364 of April 14, 1995, concerning the creation of the NINEA and the National Repertoire of Enterprises and Associations.
- Law 95.34 of December 29, 1995, and Decree 96.869 of October 15, 1996, concerning the status of the *Entreprise Franche d'Exportation* [Free Trade Zone Enterprise].

2. Non-governmental organizations (NGOs)

Non-governmental organizations (NGOs) are regularly-declared, private, non-profit associations or organizations, whose purpose is to lend their support to the development of Senegal and which are approved as such by the Government. They are governed by a specific text: Decree No. 96-103 of June 30, 1996.

According to the figures communicated by the Directorate of Community Development of the Ministry of the Family, which ensures the oversight of NGOs, some 487 approved NGOs are working in Senegal, of which 303 are national organizations and 184 are foreign organizations. Among the latter, some 100 organizations have a headquarters agreement, which places them under the oversight of the Ministry of Foreign Affairs. The existence of such a headquarters agreement gives the NGO diplomatic status and a *de facto* place outside the field of obligations attributed to the other NGOs by Decree No. 96-103, in particular the obligation to obtain administration approval for its investment program.

A bill reforming the provisions of the 1996 decree was prepared in 2004 and the approval process was started, but it has not yet been adopted.

3. Foundations

Foundations are governed by Law No. 95-11 of April 7, 1995, establishing the public interest foundation of Senegal, and by Decree No. 95-415 of May 15, 1995, concerning the application of the above-referenced law. The foundations are subject to law, constituted by at least one person, having assets to allocate which are intended for carrying out a goal of general interest.

4. Trade unions

They are governed by the Labor Code, specifically its articles L6 and following. Persons exercising the same profession, similar crafts or related professions contributing to the production of defined products, or the same professional occupation, may freely constitute a trade union. Any worker or employer may freely join a union in the framework of his profession.

They are of an indigenous origin and are set up in three categories: employers' unions, employees' unions, and unions of workers with informal employment. They are in general very organized and very combative. If the employers' unions and the unions of workers with informal employment have the State as their target in their various claims, the employees' unions, by contrast, work more closely with the heads of enterprises and the State, both of which are considered as major providers of jobs. In any case, when the contradictions between unions do not manage to find a satisfactory outcome, the State then steps in as the principal regulator of the interplay of relationships of strength.

5. Community-based organizations (CBOs)

The term community-based organization (CBO) encompasses structures acting essentially at the local level which have no formal status, following the example of a *de facto* association. There is no defined legal framework for these organizations, which are nonetheless very widespread, especially at the neighborhood level and in rural areas. In contrast to the associations on which the provisions of the Code of Civil and Commercial Obligations¹² impose a prior declaration and registration, the informal existence of CBOs is apparently tolerated by the administration. Some initiatives have nonetheless been undertaken to institutionalize the status of CBOs. Thus, a proposed decree has been prepared, it seems, at the initiative of the Minister of Decentralization, to confer a proper legal regime on the CBOs. Nonetheless, just like the 2004 bill regarding NGOs, this proposed legislation is still pending. It is, however, possible to wonder at this stage about the opportunity to create a specific statute for the CBOs. Insofar as these organizations are induced to become formalized, it would seem reasonable to apply the existing law (i.e., the COCC) to them, at least for CBOs that do not have the purpose of promoting their members' economic activity. Nonetheless, the fact that the government attempted to regulate the legal status of CBOs demonstrates at least that the role of CBOs, whatever their field of activity (health, human rights, child protection, economy) is acknowledged and perceived as valuable by the State administration.

6. Role and involvement of CSOs

The involvement of CSOs in the development of private enterprise and micro-enterprise offers an opportunity to fight poverty in rural areas, where there are persistent difficulties linked to illiteracy, the absence of basic socio-educational infrastructures, the lack of markets for agricultural products, and the inadequacy of modern means of communication -- in short, persistent insecurity. CSOs are the pressure groups which are likely to play the role of interface between the populations and the public powers.

As intermediaries between the State and the citizens, CSOs have become indispensable in the deepening of participatory democracy and the defense of human rights, especially of the vulnerable groups (women, young people, the unemployed, children, prisoners, etc.). Indeed, this particular context of economic and social crisis explains the birth of various CSOs. The expansion of CSOs has been necessitated by the need to apply local solutions to difficulties of all sorts encountered by the populations at the lowest economic levels.

A careful examination of civil society shows undeniably that the privileged sectors of intervention of the CSOs are, in particular: health, education, human rights, sustainable development, and transparency of citizen participation. These sectors of intervention have been particularly fertile, with CSOs responding to the pressing social needs of the people at the lowest income levels.

Certain CSOs are created by public policies, for example in health matters, with the health committees or even in matters of economic development with the economic interest groups or the village groups, etc.

The needs to which CSOs are trying to respond are the following:

- offering the populations a stronger guarantee that their concerns will be dealt with;
- facilitating the involvement and the participation of the populations;
- making skills and know-how available to the populations in order to respond effectively to their problems.

The State has the reputation of being partial, whereas CSOs seem anointed from their birth with a presumption of efficiency. Thus the State itself often prepares the way for the creation of a CSO (economic interest group, community interest group, sports and cultural association, producers' group, etc.).

As it happens, the simple appearance of a CSO in a given field seems to confer on it a sort of legitimacy of birth with respect to the people, who would be less favorable to a CSO which had an organic link with the State (that is the

¹² Article 812, paragraph 1.

case of the CSOs put in place by the Ministry of the Family and of National Solidarity and the political powers and/or movements).

Fundamentally, the phenomenon of creation of CSOs was probably a partial political response to the aspiration towards new modes of regulation of social life, giving a large role to the function of mediation and being more attentive to concrete methods of achieving transparency of public action.

In Senegal, the emergence of CSOs is a quasi-corollary of disengagement of the State, of a lassitude and of a desire for liberalization of the sectors, according to a continuous movement which has culminated with the democratic opening and the end of the monopolies (audiovisual, press, etc.).

The existing situation presents a large array of CSOs carrying out missions in diverse sectors and whose powers and status are quite heterogenous.

One notes from the outset the unequal weight of the CSOs. Certain ones have a great deal of means, being provided with significant resources and occupying a prominent place in the economic and social life. Others are limited to short-term interventions, since they do not have their own personnel and are barely known beyond the tight circle of actors. Despite a limited field of action, weak power, or reduced material means, certain CSOs show themselves to be key institutions for the protection of certain rights and freedoms and for local development.

Heterogeneity remains one of the characteristics of these CSOs, whether it is in their missions, their powers, or their status.

This diversity of their missions concerns the large sectors of economic and social life.

There is also heterogeneity in terms of the benefits and statuses that the CSOs have at their disposal.

To formulate a global synthesis, we can deduce that the Senegalese CSOs are particularly visible in five societal domains, which constitute their spaces of intervention:

- professional space: that of the unions which, in their worker and employer make-up, are in fact the oldest elements of the modern Senegalese civil society;
- the space of human rights and public governance: that of the human rights organizations and the organizations which are interested in the management of public affairs. They are in general also very well-organized. It is in general during critical periods marked by a strong political and union tension, and where human rights run a real risk of being abused unless such organizations are active. The leadership is generally supplied by intellectuals; such organizations are also most often affiliated with strong international networks;
- socio-economic space: that of the associations, groups, and NGOs which intervene in varied sectors, but whose principal vocation is to create or to facilitate the conditions of access to well-being by acting in the fields of education, health, revenue, etc. Their targets may be either the same members of the organization in question, or persons outside the organization, i.e., the community. It is in this civil society that one finds above all the most diverse forms of organization from the point of view of their legal status.
- cultural and religious space: these are the organizations whose sectors of intervention touch culture, religion, etc. Their targets could be either members of the organization in question, the State, or the community. While the organizations that become active around cultural issues are well-structured, it is not the same for most of the organizations whose concern is religion and who have traditional religious chiefs for guides.
- social relationship spaces: these are the organizations which intervene in the specific sector made up of social relationships, with a view to changing them in order to have more equity, more dignity, etc. In particular, today there are social relationships enshrined by tradition, but which are being questioned because they are suffering in their practices from a lack of democracy, while the social environment has become fundamentally democratic. This concerns social relationships between different sexes, between children and their parents or adults in general, between minorities and the dominant classes, etc.

II. CONSTITUTION AND DECLARATION

A. Purpose

Article 8 of the constitution of January 22, 2001, “*guarantees to all citizens fundamental individual freedoms, economic and social rights, as well as collective rights,*” in particular freedom of association. Article 12 provides that “*all citizens have the right to freely establish associations, economic, cultural and social groups, as well as companies, provided that they conform to the formalities issued by the laws and regulations.*”

Across these provisions, one notes that the Senegalese legal framework recognizes CSOs as being a subject of broad scope by allowing them to pursue a whole range of objectives on the condition that this does not harm national security or public mores.

Thus, the purpose of the foundation must be the carrying out of a work of general interest with a non-profit motive, by the application of goods, rights or resources.

As for the trade associations, their purpose is “*exclusively the study and the defense of economic, industrial, commercial, agricultural and artisanal interests.*”¹³

Article 1 of Decree No. 96-103 of June 30, 1996, establishing the modalities of intervention of the NGOs, provides that: “*the purpose of NGOs is to lend their support to the development of Senegal.*” That is why, in the Senegalese countryside, there are organizations known for their active and regular involvement in various sectors, especially in the resolution of problems related to human rights and to the exercise of democracy: the RADDHO (African Assembly for the Defense of Human Rights) and the Civil Forum, in particular. It is in general during the critical periods marked by strong political or union tension where human rights run a veritable risk of being abused that such organizations are active.

In addition to these two organizations, there are others that take action to preserve the rights of women and to promote parity in the representative jurisdictions such as the Front Siggil Jigeen, the Senegalese Council of Women, etc.

Other associations, groups and NGOs intervene in the varied sectors with the principal purpose of creating or facilitating the conditions of access to well-being and taking action in education, health, revenue, etc.

For the associations specifically, a limit relative to the purpose is established by article 814 of the COCC, which provides that: “*associations other than the legally constituted political parties or the groups which are attached to them may not have a political purpose and must prohibit all political activity.*”

B. Voluntary or Obligatory Registration

Where democracy and individual and collective freedoms exist, civil society is supposed to be free, because it can make the choice to keep its independence with respect to the political society, or to be in a collaborative relationship with it. In such a context, the dominant managers of expression of civil society can just as well be the declared or tolerated associations.

In Senegal, the principle which prevails is that of obligatory registration, in any event, as regards the letter of the texts. Thus article 812, COCC paragraph provides that: “*The association is formed freely without any prior formality than that of the prior declaration and of the registration of this declaration.*” An analysis *a contrario* of this article confirms that in order to form an association it is necessary to have a preexisting declaration and to request its registration. That seems to eliminate the possibility for an association to exist legally in an informal manner. This analysis is corroborated by the reading of article 818 of the COCC which provides that: “*From the time of its constitution, the association must be declared by the submission of its bylaws with the competent authority.*” In fact, the only CSOs whose informal existence is tolerated in Senegal seems to be the CBOs which act at the neighborhood level or in rural areas, most often to respond to practical or even strictly economic needs.

¹³ Article L6 of the Labor Code.

Furthermore, the procedure of declaration and registration in effect in Senegal cannot be qualified as declarative. The administration exercises, in fact, significant prerogatives in the process which leads to registration of the declaration of an association, if in no other way than through the performance of a morality investigation on the person of the directors, or even due to the absence of pre-set deadline imposed on the Ministry of the Interior to issue the receipt of registration of the declaration of an association with inter-regional or national scope, or whose purpose goes beyond the path of registration on a provincial scale. The associations which are likely to adopt a critical position with respect to the government must sometimes wait a long time for their receipt to be issued. In one case in particular, that of the RADDHO association, working for the defense of human rights, the delay extended to five years. However, for this specific case, it would seem that the organization in question had not provided the official documents required to obtain the approval. In the meantime, the association, which has no legal personality, has an extremely reduced capacity to work for the development of its corporate purpose.

Thus, we can generally conclude that the current procedure to create a CSO is long and complicated.

C. Conditions required for the Declaration and the Registration

a. For associations

The associations are formed freely without any formality other than that of their registration by the Ministry of the Interior. This is a very painstaking procedure and it can be relatively long.

Article 811 of the COCC defines the association as “the contract by which two or more persons undertake their activity in common, and as needed, certain goods, for a definite purpose other than the sharing of profits.”

The file for request of recognition is filed with the administrative authority of the jurisdiction where the headquarters of the association is located (sub-prefectures at the level of villages and arrondissement, prefectures at the level of communal lands). It must include the bylaws, the minutes of the organizational meeting, the composition of the boards of directors, the list of founding members, for whom the first and last names, professions, ages, domiciles and nationalities are required, along with a tax stamp of 1,000 FCFA on each page of the bylaws.

The administrative authority transmits it, for investigation, to the competent police services (police office in the urban centers, gendarmerie brigades in the rural zones). This investigation bears principally on the morality of the members of the association, as well as on the possible risks related to its recognition.

If all these verifications reveal that there are no reservations, the prefecture or the sub-prefecture transmits the file with its reasoned opinion to its hierarchical superior, the Governor of the region.

The Governor of the region is required to issue, except in the case of a duly reasoned rejection, a receipt of recognition within a maximum term of three months counting from the submission of the file. The local registration with the Governor does not apply to associations whose activities go beyond the sphere of one region, to religious, and to foreign organizations.

If the association has a multi-regional or national scope, or presents the nature of a religious or foreign association, the Governor transmits the file to the Directorate of General Affairs and the Territorial Administration (DAGAT) of the Ministry of the Interior, where it undergoes verifications regarding the regularity of the bylaws with respect to the laws; for example: the corporate purpose must be defined with precision and concern a single activity (with possibly connected activities); no discrimination among the members founded on race, political opinions (except for political parties) or religion (except for religious associations) is permitted. The Director of General Affairs and the Territorial Administration then issues, through delegation of the Minister of the Interior, a receipt or an authorization (in the case of foreign associations).

The refusal to deliver a receipt to a Senegalese association, just as in the case of its withdrawal, must be justified. Article 12 of the COCC provides in fact that: “the competent administrative authority may not refuse the registration except for reasons of legality and in particular:

- if the bylaws are not in accordance with the provisions of article 814 (of the same code);
- if the corporate purpose of the association is illicit or if there result serious and concordant presumptions that its constitution is in fact intended to bring harm to the public order;

- if the association constitutes, in fact, the continuation of an association which was dissolved by judicial authority or by executive power.”

The refusal of registration can be reason for recourse for excess of power before the Supreme Court, according to the modalities defined by law.

It has been emphasized above that the implementation of the procedure is not always as objective as the letter of the law leads one to understand. Thus, the morality investigation or the retention for fallacious reasons of the issuance of the registration receipt of the declaration have sometimes been used to, if not reject, at least defer the registration of an association.

b. For recognized public interest associations

Properly-declared associations which have been authorized for at least two years can obtain recognition as public interest associations. Article 2 of Decree No. 76-193 of February 17, 1976, setting the conditions of granting and withdrawal of recognition as a public interest association provides: “The request for recognition of public interest is signed by all the persons delegated for this effect by the general assembly of the association. The following are attached to the request:

- 1) an example of the official journal containing the extract of the prior declaration or the prior authorization;
- 2) the bylaws of the association, in duplicate;
- 3) the list of the members with the indication of their ages, their nationalities, their professions and their domiciles;
- 4) an extract of the deliberation of the general assembly authorizing the request for recognition of public interest;
- 5) a statement indicating the origin, the development and the purpose of public interest of the association;
- 6) the financial account of the last fiscal year drawn up following the rules of double entry accounting;
- 7) a statement of the movable and real estate assets and of the liabilities;
- 8) if applicable, the list of establishments that are dependent on the association, with the indication of their headquarters. Furthermore, it is necessary for the bylaws of the association to be in accordance with the model bylaws attached to the present decree. These pieces are certified to be sincere and true by the signers of the request.”

The request for recognition of public interest is then submitted to the governance or to the prefecture of the headquarters or to the prefecture of the headquarters of the association. The governor or the prefecture causes the process to proceed to the request that he then transmits to the Ministry of the Interior. The Minister of the Interior asks the opinion of the ministers who may be interested.

The decree of recognition of public interest is finally examined for an opinion by the Supreme Court. It is during a consultative assembly that the Supreme Court examines it based on a report drawn up by a consultant designated for that purpose.

The current criteria retained for the administrative authority in the air [sic] are the following:

- the action of the association must have a scope, and a sufficient repercussion, which supposes that its activities exceed the narrow local framework;
- the sector of its activity must correspond to a public interest or, at least, to a prominent moral interest;
- the financial situation must be healthy;
- the operation of the association must be democratic and organized in that way by the bylaws;
- the association must not depend financially on the State and must have true autonomy.

In reality, the burdensome criteria and procedures outlined above deter many associations from seeking public interest status. This is reflected by the low number of organizations that have been so recognized. In addition, it is obvious that certain associations that have been recognized as public interest associations do not meet all these criteria. Certain ones have obtained the status just because of a discretionary choice, a political desire or even because of the notoriety of their founders.

c. For EIGs

In order to establish an EIG, the members must draft by-laws, articles of association, and minutes of constitution and of nomination. If unable to draft the by-laws, interior regulation and minutes of constitution and nomination, the founders of the EIG may purchase a file from the Chamber of Commerce of Industry and Agriculture of Dakar comprising the documents below in triplicate:

- 1 – Bylaws
- 2 – Articles of association
- 3 – Minutes of constitution and of nomination

These by-laws, articles of association and minutes of general constitutive assembly must then be recorded in the fiscal services center of the site of the headquarters (Taxes and Estates). It is obligatory to affix one (1) tax stamp of 2,000 FCFA on the front of each page of the by-laws, of the Articles of Association and of the Minutes, that is, a total of 18,000 FCFA in stamps plus a registration tax of 29,000 FCFA. The entry and the registration in the commerce register are done at the office of the clerk of the regional court of the EIG's site of the headquarters by the founders with the following documents:

- an original of the recorded bylaws;
- an original of the recorded articles of association;
- the recorded minutes of the general assembly for constitution and nomination;
- a photocopy of the identity document of all the members of the EIG;
- an extract of the police record of the President; and
- 30,000 FCFA and a tax stamp of 2,000 FCFA.

The cost of constitution of an EIG amounts to about 79,000 CFA.

d. For NGOs

All the national and foreign associations which wish to establish themselves as an NGO must, in accordance with the provisions of article 05 of Decree No. 96-103 of February 8, 1996, setting the modalities of intervention of the NGOs, forward a request for approval to the oversight authority specifically designated in article 03 of said decree: Ministry of Women, Children and Family Affairs.¹⁴¹¹

This request is, in reality, a letter drafted by the person in charge of the board of directors, addressed to the oversight authority who delivers a receipt of it. To this letter, the association or the organization must attach a file consisting of:

- two (2) copies of the bylaws of the association;
- the act of recognition of the country of origin for foreign associations or a copy of the receipt of the declaration signed by the Minister of the Interior for the national associations having two (02) years of operation; likewise, the justification of at least two (02) years spent in Senegal is required for any foreign organization or association;
- the list of the principal members of the managing body with indication of their ages, nationalities, professions and addresses;
- a memorandum which presents the association or the organization;
- a program indicating the activities as well as the association's or organization's sources of financing.

In addition to providing these files, particular provisions apply to foreign organizations. In fact, after acknowledgement of receipt by the oversight Ministry, the file is transmitted to the Ministry of the Interior to obtain the order bearing the mention "authorization of implantation" of a foreign association or organization, also called "authorization to perform". An investigation of the people in charge of the organization is then entrusted to Interpol.

¹⁴ The proper name of this Ministry is highly fluctuating; currently it is called: Ministry of Women, Family, Social Development and Women's Entrepreneurship.

The order of implantation completes the request for approval file submitted to the Ministry of Women, Family, Social Development and Women's Entrepreneurship. This authorization of implantation or performance allows the organization to act officially in Senegal but no longer as an NGO. The opinion of the Minister of the Interior is also required for the associations of religious orders.

Once the file is complete, it is submitted to the Ministry of Women and Family for preliminary review carried out at the level of the Directorate of Community Development (D.C.D), and the evaluation of the admissibility of the file. For the requesting association or organization, it is a matter of meeting the conditions set by article 05 of the Decree of 1996.

We can cite here several cases of inadmissibility:

- prohibition of certain persons by law to establish an NGO if they have received a criminal conviction or have been declared bankrupt;
- if the required and clearly-described documents have not been provided;
- if the requesting organization has used a name which manifestly leads to confusion, or that cannot be clearly differentiated from that of an existing physical person or legal entity in the country;
- if an objective provided by the bylaws is clearly against the law.

The inadmissible files are rejected; the person in charge of the organization is informed of the reasons with a view to correcting or completing the file.

Those which are admissible are selected, and then technical sheets are transmitted to the interministerial technical commission, charged with examining the files for request for approval as an NGO.

The duration of the procedures can be long, because according to the people interviewed, the procedure is binding and slow. It can take several years. However, at this level, important efforts are being made by the Government of Senegal to achieve greater expeditiousness in the granting of the approval.

e. For foundations

Foundations are regulated by Law No. 95-11 of April 7, 1995. The request for authorization is transmitted to the Ministry of Finance, accompanied by a proposal of status consisting of the name, the headquarters, the list and contact information of the founders, the corporate name of the founding members who are legal entities, the statement of the objectives, the initial allocation and an attestation of blockage of funds released by the founders. The Ministry gathers the opinion of the minister before ensuring the technical oversight of the foundation as well as of the nature of its activities. It has a deadline of one month, renewable one time, to inform the founders of the progress of the procedures of the file or to notify them of a refusal.

The amount of the initial allocation cannot be less than 30% of the amount necessary to finance the activity of the foundation and must be provided in money or in kind (moveable or real estate asset). The amounts paid must be in the form of a deposit in banks in Senegal until the foundation achieves legal capacity. A decree authorizes the foundation and grants it recognition of public interest. "The decree recognizing the foundation's status as a public interest institution must, in particular, bear the following express mentions: name and headquarters of the foundation of public interest; express approval of the by-laws of the foundation which must be annexed to the decree of recognition of public interest; time period during which the foundation was established; if applicable, the number of representatives of the State on the council of the foundation and the first and last names and administrative responsibility of their designation."¹⁵

f. For trade unions

The founders must submit a declaration to the Regional Inspection of Work and Social Security of the jurisdiction where their headquarters is located. This office transmits notarial copies of the declaration as well as a report to the Minister of the Interior and to the territorially-competent Attorney General. The Attorney General reports his conclusions, within thirty days, to the Minister of the Interior and the Inspector of Work. On the basis of these conclusions, the Inspector of Work issues a receipt to the trade union, except in the case of a duly reasoned rejection. The directors of the trade unions must be of Senegalese nationality, have their legal domicile in Senegal,

¹⁵ Article 6 law n° 95-11 of April 7, 1995

and enjoy civil and political rights. The managing bodies must be renewed at least once every two years. Professional associations obey the same regimes as trade unions.

D. Register of CSOs

Currently, there is no register of CSOs in Senegal. At this time, only an inventory of NGOs and a database necessary for better information about their actions and their areas of intervention are kept up to date by the Directorate of Community Development.

CONGAD initiated a mapping of the CSOs that are members of its own network in order to have greater visibility of the activities carried out by the CSOs. Thus there exists a platform of non-state actors which endeavors to bring together all the CSOs that intervene in matters of citizenship and human rights, in particular. In certain regions, such as Saint Louis and Kolda, there is an observation post for good governance or other structures for coordinating the action of the NGOs.

The conferences of harmonization under the aegis of the regional development agencies are also opportunities to take a census of the NGOs intervening in the local communities.

E. Foreign Associations

There are specific rules for the establishment and registration of foreign associations. Associations whose headquarters are established outside of Senegal or whose headquarters are established in Senegal but whose governing body is made up of a quarter or a majority of members of foreign nationality are considered to be foreign. Foreign associations must recruit representatives locally. These representatives draw up a request for implantation with the Ministry of the Interior. The registration request files of these associations are subject to an additional investigation by the State Security Directorate.

The Ministry of the Interior issues an authorization which is different from the receipt issued to national associations, since the administration has discretionary power to deliver or to withdraw authorizations granted to foreign associations.

The granting of the authorization may be followed, for foreign foundations, by the signing of specific agreements with the State, such as headquarters agreements allowing them to benefit from certain advantages, examined case by case.

III. REGULATION AND EXECUTION

In Senegal, the law gives public powers the right to carry out detailed monitoring on the CSOs and more particularly on the NGOs.

In virtue of article 47 of Law No. 90-07 of June 26, 1990, concerning the organization and control of the enterprises of the para-public sector and the control of legal entities of private law receiving financial aid from the public power, the recognized public interest associations and the foundations in control may be subject to the control of the General Inspection of the State or to Financial Control.

The follow-up of the execution of the programs and projects, as well as the evaluation of the impact of the investment program of the NGOs are carried out by various bodies; the control carried out obeys practical modalities and in the event of misconduct, sanctions are provided to that effect.

The organizations in charge of follow-up and evaluation.

These bodies are located at the central level and also at the level of administrative districts.

The central departments of the oversight ministry.

The competent departments of the Ministry in charge of NGO oversight are held to ensure the follow-up of the investment programs.

Not cited in article 17 of the Decree of 1996, it nonetheless falls to the Directorate of Community Development, through its various departments, to ensure the coordination and follow-up of said programs.

An evaluation of the impact of the projects and programs of the NGOs may be required at any time by the government. According to information available at this time, no study of this nature has been carried out at the national level.

One must recognize that this new provision tried to clarify a rather fuzzy situation because, in 1989, the evaluation was carried out by the Minister in charge of NGO oversight or, with his agreement, by all ministerial departments, public or para-public organizations or by the NGOs themselves and their lenders.

Currently, the Oversight Minister can appoint technical ministries which are competent in the sectors which cover the NGO's program of activities, as well as their decentralized services at the regional level.

The NGOs which have a favorable regime in virtue of the approved investment program may be controlled by the competent departments of the Ministry of Finance, and in particular, the Directorate of Taxes and Estates and the Directorate of Customs.

The decentralized departments of the oversight ministry

The Ministry of NGO Oversight is represented at the level of the administrative districts of the Senegalese territory.

At the departmental level, we have the community departmental department and the regional department of community development at the regional level.

A coordination and follow-up committee could be assembled by the competent decentralized authority.

The modalities of control

The authority in charge of CSO oversight may, in the presence of the managers of the NGOs, visit their facilities, their infrastructures, or any other undertaking.

That makes it possible for the State to verify the conformance of the information contained in the memorandum and in the investment program with the reality in the field. Likewise, the authorities, through these various contacts, can evaluate the level of completion of the NGO projects and their socio-economic impact.

Those in charge of the NGOs are notified of the visits at least a week in advance. The regulation implicitly prohibits any unannounced inspection. The NGOs must not be subject to any power of searching their premises and of seizure of documents and other media found there, without objective reasons to take such measures and a prior judicial authorization. All the activities with respect to inspection must respect the obligation to protect the private life of the donors, beneficiaries and personnel, and likewise, the right to protect the legitimate confidentiality of the organization.

Foreign NGOs must not be subject to these requirements of reporting and inspection except as regards their activities in Senegal. In 1989, the governor was responsible for the visits; that is why he was notified in time and in the event of incapacity, he could delegate his representative. But since 1996, there has been no more mention of this authority.

Independently of the control exercised by the Ministry in charge of overseeing NGOs, the competent departments of the Ministry of Finance can control the "equipment and materials exempted from fees and taxes or subject to another favorable regime in virtue of the investment program."

The production of the annual report

Any NGO which benefits from the advantages granted in the framework of carrying out accepted programs of investment by the Government of Senegal, is required to present an annual report to the Ministry overseeing the NGOs, and to do so three (03) months after the closure of its fiscal year. For the NGOs residing outside of Dakar,

the report is submitted at the level of the regional department of community development, who is in charge of routing it to the Ministry.

It is a general report, taking stock of all the activities of the NGO during the preceding year. The NGOs who have many investment programs or projects should provide a report for each project or program. These reports, drawn up in five (5) copies, must be submitted to Ministry in charge of overseeing NGOs and to various ministries in charge of the sector of activity in which one of these projects intervenes.

Out of concern for transparency and ethics, the NGOs must submit an annual report of their accounts and activities to their members or administrators. Likewise, they must be accountable to the donors and lenders for the use of the donations, in a sufficiently precise manner so that it is possible to evaluate the respect of the conditions attached to the donation.

The NGOs may also have their accounts verified by institutions or by a person independent of their management structures (accounting firms, expert accountants, etc.). When controls are carried out, in the event that misconduct or noncompliance is detected, the NGOs incur sanctions provided by the applicable rules.

The sanctions provided

According to the nature of the misconduct or noncompliance, the sanctions provided are of an administrative, fiscal, customs, or legal nature.

The administrative sanctions

The Decree of 1989 had expressly provided for a single type of sanction: the withdrawal of approval. On the other hand, the Decree of 1996 innovated by differentiating the administrative sanctions from the fiscal sanctions. The second new feature of the same decree is the introduction of graduated sanctions.

In fact, it is not always fair to inflict a single sanction (withdrawal of approval), even for “benign” misconduct. That is the reason for which, out of concern for respecting the principle of proportionality, “the approved NGO may be warned or suspended for any justified reason other than those relating to the withdrawal of approval.” These decisions fall under the jurisdiction of the Ministry overseeing the NGOs

The withdrawal of approval, which is the highest administrative sanction, is the consequence of serious misconduct or noncompliance.

The fiscal sanctions

The Decree of 1996, in its article 26, defines “fiscal misconduct” as being “any misappropriation of equipment, material and tax-exempt equipment.”

In the current state of Senegalese regulation, only the NGOs who have proposed an investment program and who have benefited from tax exemptions are liable to sanctions.

It is, in fact, prohibited for NGOs to use the materials which should serve for the carrying out of investment programs and for which the State of Senegal has granted its aid, for purposes other than those intended.

It may be a matter of their use in the context of another program, or of their sale without respecting the formalities provided. The commission of such misconduct gives rise to the application of sanctions.

In order to investigate infractions of the tax legislation, the tax and estate inspectors have the right to visit, not only the professional premises, but also the premises used as living quarters. After all inspections, the tax and estate inspectors must obligatorily send the taxpayer a notification of adjustment accompanied by written minutes.

The customs sanctions

The Customs Code defines a custom infraction as being “any action, omission or abstention which violates the laws or rules and which is liable to a penalty provided by the code.”

The finding of infractions is done by minutes of seizure and by affidavit made by a process-server. The prosecution is done by all legal means.

The rights of prosecution and of repression which are the purview of the customs administration are extinguished by the transaction. The extinguishment may intervene before or after judgment.

Beyond the sanctions provided (fiscal adjustment, seizures, etc.), the matter may be brought before the court.

The legal sanctions

Legal pursuits are engaged by the customs administration, and by the administration of taxes and estates. Defense is made to the judge dealing with the matter to excuse the offenders on the intention. "He may neither give provisional release of the merchandise, nor moderate the fees, confiscation or fines, and may not order the use to the detriment of the administration."

The philosophy which underlies the Decree of 1996 is to allow the Government of Senegal to assure itself of the sincerity of the purpose of the NGOs, to provide them with a canvas for their organization and operation, to facilitate the optimization of their mission, to measure the true scope of their actions in real time, and to take corrective measures in the event of well-known dysfunction.

A. Regulatory authorities

Article 3 of Decree No. 96-103, amending Decree 89-775 of June 30, 1989, setting the modalities of intervention of non-governmental organizations (NGOs) provides that "the oversight of NGOs is assured by the Ministry of Women, Children and Family Affairs."

The State control of the NGOs is carried out both at the central level and at the decentralized level.

At the central level, it falls to the Directorate of Community Development, through its various departments, to ensure the coordination and the follow-up of the actions of the NGOs.

This directorate is charged with:

- designing a coherent policy of community development in application of the national orientations and in collaboration with the other ministries in question;
- supporting the basic initiatives with a view to effective participation of the populations in the process of economic, political, social, and cultural development;
- implementing a strategy of leadership, enabling social mobilization, organization, sensitization, education, training, and the participation of the populations around the policies, projects and national development programs;
- monitoring the coherence, coordination and evaluation of the activities of the non-governmental organizations throughout the national territory;
- editing an inventory of the organizations regularly kept up to date and a database of data necessary for better information regarding their actions and their zones of intervention;
- lending advice and assistance to the organizations;
- participating in the formulation, the execution and the follow-up - evaluation of the projects and programs initiated by the Ministry of Women, Children and Family Affairs, directed toward the beneficiary populations;
- carrying out studies in the sector of research and development, culminating in orientations and operational actions in matters of leadership and community development.

The Ministry in charge of NGOs may appoint technical Ministries which are competent in the sectors which cover the NGO's program of activities, as well as their decentralized services at the regional level.

It includes the "leadership" division, the division of "support to the NGOs and grass-roots community organizations" and the division of "studies and evaluation of basic projects."

At the local level, the oversight of the NGOs is represented at the level of administrative districts. Thus, at the departmental level, we have the community department and the regional department of community development at the regional level.

A coordination and follow-up committee may be established by the competent decentralized authority.

B. Internal governance

Senegalese law leaves relative freedom to the CSOs as concerns their governance and their internal organization. In fact, even though a large margin of maneuver is left to certain ones of them, one must often regret the interference of the State in the self-governing of other CSOs, notably foundations and NGOs.

Thus, for the associations, article 814 of the COCC provides “The bylaws must provide (...) the conditions under which the general assembly and the board of directors will meet ... “. Likewise, article L7 of the Labor Code provides: “The founders of any trade union must submit the bylaws and the list of persons who, no matter what their title, are charged with its administration and its management.” Thus one notes that these types of CSOs benefit from a freedom of choice in the organizations and the administrators charged with implementing their actions, as well as their mode of operation.

Certain of the CSOs have a tendency to give minimal respect to the by-laws and other texts that govern them. In fact, to a growing extent, concerns about the risks of deviation from the various orders of CSOs are appearing, notably, political recuperation, lack of engagement, indifference, and the use of the associations for ends that are often “self-serving.” Consequently, the necessity of equipping the Senegalese CSOs with a code of ethics and rules of professional conduct has come up. This legal instrument would make it possible to consolidate their gains and to remain productive while adapting, in the process, to societal changes. In fact, in the context of their missions, the CSOs should take the leadership role in their respective environments with complete independence, transparency, dignity and equity.

By contrast, foundations and NGOs are subject to substantial government interference in their internal governance. In fact, for foundations, “The State designates representatives who can sit on the foundation councils with a deliberative vote. They must account for their mission to the administrative authority that named them, following the directives received from that authority. The duration of the term of the representatives within the board of the foundation may not exceed three fiscal years. At the expiration of the anticipated term, the administrative authority must designate new representatives.”¹⁶

For the NGOs, their investment program must be adopted in a consensual manner by the Community of NGOs and the other departments of the State involved in the intervention of NGOs. The investment program (IP) is a document which consists of a description of the program or the projects to be executed, the targeted objectives, the volume of investment, the schedule of execution, the material and human means necessary to carry it out, and a plan of the actions to undertake.

According to Article 14 of the 1996 Decree, “the NGO submits an investment program to the oversight authority for its examination and approval.” Delays have been observed in the approval procedure, which penalizes the CSOs’ pursuit of activities. There is a need to prepare a procedure manual, clearly setting out the conditions and modalities of this control.

In fact, the legitimacy of the State requires that it remain the guarantor of the general interest. It should only make sure of the seriousness of the CSOs and not handicap them.

C. Declaration

Under Senegalese law, any modification which occurs in the administration of a CSO should be submitted in the form of a declaration to the Administration. Likewise, certain CSOs are held to provide the competent authority with a report of their activities. The Labor Code provides, to that effect, that “the modifications made to by-laws and the changes which occur in the composition of the management or administration of the union must be brought, under the same conditions, to the attention of the same authorities and verified under the same conditions. In the first half-year following the end of each fiscal year, the statutory directors of all unions are held to communicate to the Minister of Labor and to the State Attorney General of the jurisdiction, an annual report showing, in particular, the

¹⁶ Article 13 of law No. 95-11 of April 7, 1995

statistics of their work force, the amount of contributions deposited, and the financial situation, in particular the balance sheet of the union for the preceding year.”¹⁷

The Code of Civil and Commercial Obligations submits the associations to the same obligation: “As of its establishment, the association must be declared by submission of its bylaws to the competent authority (...). The modifications made in the administration of the association and those that may be made to the by-laws will be published in the same form.”¹⁸ For the foundations, in accordance with article 18 of Law No. 95-11 of April 7, 1995, the foundation is required to inform the administrative authority of any modification or amendment which it wishes to make to its by-laws, to its method of organization and operation in the case of a foreign foundation represented in Senegal. The request mentions in detail the changes to be made to the by-laws.

The obligation to provide a report of activities also applies to the foundations. In fact, article 14 of Decree 95-415 provides that “the foundation draws up every year, concerning the fiscal year just past, the statements and financials [sic] and the annexes, the inventory of the elements of the assets and liabilities, the report on the situation of the foundation and its perspectives at short, medium and long term.”

This obligation also applies to every NGO which benefits from advantages granted in the framework of carrying out investment programs accepted by the Government of Senegal. The NGO is required to present an annual report to the Ministry in charge of NGO oversight, and to do so three (03) months after the closure of its fiscal year.

For the NGOs residing outside of Dakar, the report is submitted at the level of the regional department of community development charged with routing it to the Ministry.

This is a general report, taking stock of all the activities of the NGO during the year just past. The NGOs which have several programs or investment projects must furnish a report for each project or program. These reports, drawn up in five (05) copies, should be submitted to the Ministry in charge of overseeing NGOs and to various ministries in charge of the sector of activity in which each one of these projects intervenes.

Nevertheless, it is appropriate to note that there is no legislative provision regarding the accessibility to the public of these declarations.

D. Execution of the Laws and Sanctions

In the event of breach of the law, the CSOs can be subject to administrative sanctions. In fact, “The approved NGO can receive a warning or a suspension for all the justified reasons except those relative to withdrawal of the approval.”¹⁹ This decision can only be made by the minister in his role as administrative authority. Consequently, it constitutes an administrative decision which could be appealed for reasons of excess of power before the Supreme Court.

E. Dissolution and Liquidation of Assets

Under Senegalese law, the initiative of voluntary dissolution of a CSO cannot be taken except by a unanimous decision of its members or following the provisions provided by the by-laws.

As for involuntary dissolution, it can be done either by the administrative authority or by the judiciary authority.

Thus, the associations can be dissolved by a decision of the court for invalidity of contract, for disagreement among associates, or for rare and repeated disregard of their obligations (political activities except for political parties, discrimination founded on race, religion, or political opinion).²⁰ Popular education and sports associations as well as cultural associations can do so by decree in the case of infraction of their obligations of registration and on the modalities of their declaration, of if they do not present sufficient technical guarantees with respect to the purpose assigned by the bylaws.²¹ The foundations may be dissolved by decision of the minister in charge of Finances,

¹⁷ Art L 8, last paragraph

¹⁸ Art 818 of the COCC

¹⁹ Art 23 decree No. 96-103

²⁰ Art. 816 of the COCC

²¹ Article 821, paragraph 5

particularly in the case of serious irregularities in the manner of management or of operation, placing the public order and mores, the general interest, or their patrimonial interest in peril.²² The Attorney General of the Republic may, finally, request the dissolution of a trade union from the civil tribunal, in the case of violation, by that association, of its obligations.

Regarding the liquidation of the assets of the dissolved CSO, the COCC provides that “Except for particular legislative provisions, the assets of the dissolved association are returned or liquidated according to the by-laws. Lacking such statutory provisions, it is provided at the liquidation of the assets of an association dissolved by judicial decision made at the request of all interested parties, or at the behest of the public minister.”²³

The liquidation of the assets of dissolved trade unions is organized by article L, 14 of the Labor Code, which provides: “In the case of dissolution, whether voluntary, statutory, or pronounced by judicial order, the assets of the association are returned according to the bylaws or, lacking statutory provisions, following the rules determined by the general assembly, or lacking this, by a judicial decision. In no case may they be distributed among the members.”

As for what concerns the foundations, article 22 of Decree No. 95-415 of May 15, 1995, pertaining to application of Law No. 95-11 of April 7, 1995, instituting the public interest foundation in Senegal provides: “The legal entity of the foundation subsists for the needs of the liquidation until the closure of the liquidation. One or more liquidators are named or revoked in accordance with the provisions of the by-laws. If the dissolution of the foundation is pronounced by a decision of the court, at the request of one or more founders or by all interested parties, this decision designates one or more liquidators who act following the rules set by the by-laws.”

Senegalese law on CSOs does not provide provisions with respect to a possibility of appeal to the administration or to a jurisdiction against the decisions regarding involuntary dissolution.

IV. ACTIVITIES OF CSOs

A. Legal Capacity of CSOs

NGOs are created at the initiative of individuals or of groups of persons (physical persons or legal entities). They may be national or international in their composition and their field of activities.

In law and in practice in Senegal, “association” designates the union of a number of persons with a specific purpose; when it enjoys legal personality, it has an identity distinct from that of its members to appear in court, acquire goods...CSOs also enjoy rights and attributions appropriate to legal entities such as the right to contract with third parties or to acquire real estate.

They are organizations of private law. This legal nature leads the greater part of the cases to a legal regime of private law (which does not authorize the associations to exercise prerogatives of public power) except for the cases where the law and the regulation allow the application of the rules of public law.

The creation of associations is guaranteed by fundamental principles: the freedom of association and of meeting. These are enshrined by article 11 of the convention of preservation of human rights and fundamental liberties and by the 2001 constitution of Senegal.

Article 7 of the fundamental law, in paragraph 2, sets out the general principle of freedom, and its article 8 “guarantees to all citizens, fundamental individual freedoms, economic and social rights, as well as collective rights.”

Among these freedoms and rights, we may cite civil and political liberties; these include “freedom of opinion, freedom of expression, freedom of the press, freedom of association, freedom of assembly...”

Finally, article 12 of the same constitution specifies that “all citizens have the right to freely form associations, economic groups...provided they conform to the formalities laid down by the laws and rules.”

²² Art 21 of decree No. 95-415 of May 15, 1995

²³ Art 817

Freedom of association translates into a flourishing associative life in Senegal when one counts declared associations, recognized by the State: they have a headquarters, a set of by-laws; they have submitted a request to the administrative authorities, the morality of their directors having been investigated beforehand.

In law and in practice in Senegal, “association” designates the union of a number of persons with a specific purpose; when it enjoys legal personality, it has an identity distinct from that of its members to appear in court, acquire goods... CSOs also enjoy rights and attributions appropriate to legal entities such as the right to contract with third parties or to acquire real estate.

Thus article 819 of the COCC provides: “An association whose bylaws have been properly submitted and whose declaration has been registered possesses a juridical personality; it may receive the contributions from its members and acquire, in return for payment, all the moveable or real goods necessary for its operation. It may not make acquisitions without payment except through a donation from one of its members.”

And article L.15 of the Labor Code stipulates “Trade unions enjoy juridical personality. They have the right to appear in court, to acquire without authorization, as a donation or in exchange for payment, moveable and real goods. They may, before any repressive jurisdiction, exercise all the rights reserved for the civil party, relative to the facts bearing a direct or indirect harm to the collective interest of the profession that they represent.”

Likewise, for the NGOs, the granting of approval allows the organization to act officially as an NGO in Senegal and thus to obtain juridical personality.

B. Expressive and Public Policy Activities:

Civil society plays the role of a social actor who pursues three objectives:

- evaluating and criticizing the existing rules in one sector or another of life with a view to their improvement;
- suggesting and proposing new rights and rules more in accordance with the interests of the social groups;
- defending and exercising the existing rights when they are in phase with the expectations of the social groups in question.

The purpose of civil society is to be a rampart against the arbitrary and against injustice, but also a force of pressure and of proposition likely to guide the course of things in a direction favorable to the aspirations of the population, or to be quite simply a framework of practical organization of the means of improving the conditions of life of the people.

Thus, in Senegal, an NGO is free to pursue its objectives. The only requirement in the matter (other than a non-profit motive) is that the objectives pursued and the means employed to this end are legal.

The variety of objectives which an NGO can pursue is modeled after its own diversity, but also after the importance of the value of its contribution to a democratic society.

These objectives can include research, education, health, the defense of positions on issues which are the subject of public debate (whether or not the position defended conforms to the declared policies of the public powers), the promotion of human rights, the protection of the environment, and sports.

Through the multiple activities that they carry out and their utility, NGOs also contribute to the carrying out of the purposes and principles contained in the charter of the United Nations and in the constitution of the Republic of Senegal.

For the Government of Senegal, all these objectives must allow NGOs “to lend their support to the development of Senegal.” That means simply that NGOs are called upon to bring Senegal technical assistance through the provision of experts, technicians, equipment and know-how.

Out of concern for equity and the respect of freedoms, but also, a guarantor of solidarity and social cohesion, the State of Senegal, in addition to conditions of forms and of foundation, prohibits NGOs from engaging in “any activities of a nature to create within the population discrimination founded on considerations of an ethnic, confessional or political nature.”

The rule of law asserts the necessity of a framework and of the limitation of the public powers by law. As a consequence, it is a matter of legally founding the guarantee of the protection of the fundamental rights and freedoms of persons in the face of possible abuse by the State and by the political power. Since the introduction of participative democracy in the 1990s in Senegal, this requirement to govern while respecting the principles of the rule of law has been borne by the actors of the civil society originating from associations, unions, non-governmental organizations and various social and economic groups who enjoy a relative autonomy of action and initiative called to deploy outside the framework and the intervention of the State. They are called to deploy despite the legal prescriptions and the pressures on the part of the administration. In fact, article 814 of the COCC provides that “associations, other than the legally constituted political parties or the groups which are associated with them, may not have a political purpose and must prohibit all political activity.” Quite recently, the President of the Republic, during an interview granted to a French daily newspaper, declared: “There is no civil society in Senegal, just politicians who move forward in masks, because they do not dare assume their responsibilities.”

Despite everything, civil society has adopted a posture of vigilance vis-à-vis the public powers and is authorized to issue critical judgments with respect to the acts committed by the latter and likely to contravene the democratic rules, to violate the intangible principles of the State of law and the requirements for transparency in matters of governance.

C. Communication and Cooperation

The Senegalese legal framework poses no obstacles to the right of communication and to the cooperation of the CSOs. In fact, the representatives of the civil society, individually or in the quality of [representatives], have the right to communicate and to cooperate with other elements of the civil society. Article 28 of decree No. 96-103 provides that: “each NGO, approved under the conditions set in article 8, may associate with other NGOs, with a view to ensuring the coordination of their activities in one or more organizations of the same legal form.” The reform of 1996 concerning the local communities offered excellent opportunities for participation and cooperation of the CSOs in the instances of consensus-building and with the local [and] foreign communities.

No provision of Senegalese positive law forbids the CSOs from communicating or cooperating among themselves as long as that is in accordance with the purpose for which they were created.

Concerning in particular the cooperation among enterprises, it is appropriate to specify that it would not be for the purpose of seeking profit. In fact, unlike companies, CSOs do not pursue a profit motive.

D. Financing

a. Foreign funds

NGOs, when implementing their objectives, may request and receive contributions, donations and bequests in kind or in money, as well as financing from national or international organizations (provided they have the authorization of the Ministry of the Interior for donations and bequests of real estate).

In fact, in a worldwide context marked by globalization at a forced march pace, not only the economy but also the culture, the “Civil Society” has become an essential actor of development. This confers singular responsibilities in countries which seem to live at the margin of a divided and troubled world.

Facing these development challenges to which Senegal is subjected, the civil society actors are confronted with a recurring problem, made more difficult by the degradation of the world economy. It is a matter of searching for financing.

In Senegal, the means of financing CSOs and their proven economic dependence causes numerous doubts to weigh on the credibility and even the viability of these organizations. Nonetheless, the independence of Senegalese “civil society” in and of itself should be perceived as being under construction.

The law forbids a political party from receiving subsidies from abroad or from foreigners established in Senegal, on penalty of dissolution, according to article 4 of Law No. 81-17 of May 6, 1981 concerning political parties.

CSOs, however, may receive financing from abroad. In this respect, they are subject to the common banking law, notably, the opening of a bank account.

The Senegalese legal framework of CSOs has no specific provisions regarding the financing of domestic associations by foreign funds (for example, a ministerial authorization, the obligation to deposit funds in a bank controlled by the State, etc.).

b. Economic activities:

The law governing CSOs gives little to no indication regarding the capacity of these organizations to undertake economic or commercial activities.

The provisions of the Code of Civil and Commercial Obligations concerning associations mention only non-marketable resources. Thus, an association having acquired legal personality after the registration of its declaration “may receive contributions from its members (...). It may not acquire without payment except through the generosity of its members.”²⁴ When the association acquires the recognition of public interest, “It may benefit from public grants and be authorized to receive donations and bequests from any person.”²⁵

The only mention of an economic activity appears indirectly in the example of model by-laws of the associations recognized as public interest associations. Article 11 of these model by-laws concerning the resources mentions expressly that the resources may include the product “of the resources created exceptionally and if it is applicable with approval of the competent authority.” A note indicates that the resources are the “authorized collection plates, conferences, raffles, lotteries, concerts, balls and shows for the benefit of the association.” It thus seems that an association, if it is recognized as being in the public interest, finds itself with the possibility of conducting exceptional economic activities in direct connection with its non-profit corporate purpose.

The provisions of the Code of Civil and Commercial Obligations concerning popular education and sports associations, as well as cultural associations and the associations of participation in the public health effort, likewise make no reference to economic resources.²⁶

With regard to the recognized foundations of public interest, the raffles and lotteries with payouts are the only resources presenting an economic nature which appear in the list of expressly authorized resources.²⁷

The admission of the intervention of CSOs into the field of economic activities thus appears, at least with respect to the letter of the law, doubly limited under Senegalese law. In fact, it targets the recognized public interest associations or foundations which constitute a small part of the CSOs. Furthermore, only accessory economic activities are mentioned in the law.

In addition, regardless of the particular regime of the NGOs, Senegalese tax law offers no preferential tax treatment to CSOs that would implement standard economic activities (see section V. Taxation, below).

c. Public financing:

In the terms of article 820 of the COCC, an association, recognized as a public interest association, may benefit from public grants (...).” Given the limited number of recognized structures in the public interest in Senegal, that means that the large majority of CSOs have no access to this public financing (grants, for example). We note that the principle thus announced is not always applied coherently or rigorously. In the framework of the evaluation, certain structures that were encountered indicate having benefited from State grants even though they were not officially recognized as being in the public interest. The reality nevertheless remains that outside of certain types of organizations such as NGOs, which receive substantial attention and support from the public powers, the majority of CSOs do not benefit from any organized and significant aid on the part of the State. However, for some time, partners such as USAID have undertaken a policy of financing the associations, targeting their implementation of substantial projects.

In application of the Code of Obligations of the Administration and of the Law pertaining to the Code of Government Contracts, Decree No. 2007-545 of April 25, 2007 pertaining to the Code of Government Contracts provides in its

²⁴ COCC, article 819 paragraphs 1 and 2.

²⁵ COCC, article 820.

²⁶ COCC, article 821, paragraph 3.

²⁷ Law No. 95-11 of April 7, 1995, article 15.

articles 2 and 3 the possibility for CSOs to enter into government contracts as a legal entity of private law on behalf of a contracting authority and will be subject to the rules which apply under the conditions stipulated in articles 31 to 34 of the decree.

For information, NGOs are subject to the procedure of awarding of government contracts as it results from the Community Directives (WAEMU) and from Decree 2007-545 of April 25, 2007, pertaining to the Code of Government Contracts (articles 1 to 3).

In the framework of the policies of promotion of small and mid-size enterprises and of microfinance, a tendency has been observed of awarding the implementation of a program to CSOs as an intermediary with a reputation of being closer to the populations.

d. Other restrictions

The work of the National Financial Intelligence Processing Unit (CENTIF) indicates to us that NGOs, which number approximately 470, of which 295 are national and 175 are international, receive particular attention in the framework of controls. The reasons cited relate to the requirements of the fight against money laundering and the financing of terrorism.

The State also invokes the necessity of monitoring in view of the potential criminal dimension of the financial flows.

The relationships between the State and CSOs, notably NGOs, in Senegal are marked by recurring tensions due to the absence of communication and collaboration between them, which nonetheless remains essential.

At every turn, CSOs denounce the administrative slowness, the absence of grants and State support for the initiatives, the failure to respect the commitments concerning State participation in the carrying out of programs and projects, and control of the management of CSOs based on suspicion of their directors.

The Administration often accuses NGOs of not having coherent programs of activities with harmonized economic development objectives, and of getting the resources from abroad and not providing information about the use of the funds.

Overall, there is no restriction on the ability of CSOs to seek financing, provided that it is in accordance with their corporate purpose, in particular the pursuit of a non-profit motive.

E. TAXATION

A. Fiscal Treatment of the Revenue of CSOs:

Except in the framework of the special status of development NGOs, there is no provision under Senegalese tax law organizing preferential fiscal treatment of the resources of CSOs. The traditional resources of CSOs, such as member dues, donations and grants, are not subject to commercial taxes (tax on companies or VAT), but they are principally of a non-marketable nature. On the other hand, all economic or commercial activity implemented by a CSO falls into the field of commercial taxes.

Thus, every legal entity “engaging in exploitation or in operations of a profit-making nature” is subject to the tax on businesses.²⁸ The non-profit associations or organizations are exempt from taxes on companies.²⁹ However, the scope of the exemption is not clear. In particular, it remains to be defined whether a CSO engaging in, for example, economic or commercial activities connected with the carrying out of its non-profit corporate purpose is considered as a “non-profit organization” in the sense of the above-referenced exemption. If not, it falls under the principle of liability under activities of a profit-making nature. With respect to several exchanges that took place with the tax administration on this point, it seems that the latter consideration prevails.³⁰

²⁸ Article 4-10^e of the General Tax Code (GTC)

²⁹ Article 5-7^e of the GTC

³⁰ Omar Alioune Ciss, in “Fiscal, Traité Pratique de la Fiscalité Sénégalaise” [Fiscal, Practical Treatment of Senegalese Taxation], (Ed. Comptables et Juridiques, 2003), § 1066-3, p. 78 and 79, seems to go in that direction. He indicates that other legal entities subject to the tax on companies in the sense of article 4-10 of the GTC “are, notably, the trade unions when they engage in commercial operations and the associations which regularly organize fee-charging sports or cultural

Likewise, in matters of VAT, every physical person or legal entity carrying out affairs arising from an economic activity in Senegal, including delivery of goods or services, is taxable.³¹

According to the law, the operations mentioned above, when carried out by CSOs, are taxable, including when they are done on an occasional basis.³² Otherwise, it matters little “whether the operations are carried out with third parties or with the members of the association.” Thus, “when the services of [the CSO] are offered to its members in exchange for dues which they receive, they enter into the field of application of the VAT.”³³

The tax administration does not seek out charitable or philanthropic works for payment of VAT when they carry out a taxable operation whose performance is mainly ensured by donations or grants and recognized as such by ministerial order.³⁴ We note, however, that at most a dozen organizations appear on this list (see tax incentive for donations, below).

For NGOs specifically, the Government of Senegal may grant the exoneration of fees and taxes on supplies, material and equipment, with the exception of lubricants, imported or acquired on national territory and intended for carrying out their programs.³⁵ Finally, we note that NGOs may, under certain conditions, request the payment of their suppliers’ invoices without payment of VAT. This necessitates prior formalities before the tax administration for the purposes of requesting the approval which allows them to benefit from invoicing without payment of VAT.³⁶

B. Tariffs

The Government of Senegal grants NGOs temporary admission of vehicles for utilitarian use, acquired locally or imported, for carrying out their programs.³⁷

The effects and objects being used as the personal effects of non-Senegalese agents of NGOs, their spouses and members of their family are admitted without payment of duty, entry fees, or taxes with equivalent effects. This exemption is granted only for a time period not exceeding six months counting from the date of first installation. In order to obtain this exemption, the interested parties must produce, in support of the declaration of importation:

- a detailed inventory of the effects, dated and signed personally, accompanied by a certified attestation by which they declare that the objects belong to them;
- a certificate of field assignment issued by the NGO which has hired them.³⁸

In order to benefit from the advantages thus mentioned, the NGO submits to the oversight authority an investment program for examination and approval. The exemptions granted on the basis of said program are carried out according to a calendar whose duration may not exceed two years.³⁹

C. Tax Incentives for Donations

Contributions made by businesses for the benefit of works or organizations of general interest of a philanthropic, educational, scientific, social or family nature, designated by order or decree, are considered as deductible charges up to the limit of 2 per thousand of annual turnover of the contributing business.⁴⁰

Contributions from individuals to these same works or organizations may be deducted up to 0.5% of gross income.⁴¹

events.” The exemption of the non-profit associations or organizations provided in article 5 of the GTC is, however, not mentioned in the work.

³¹ Article 283 of the GTC.

³² *Id.* “Fiscal, Traité Pratique de la Fiscalité Sénégalaise” [Fiscal, Practical Treatment of Senegalese Taxation], § 2216, p. 400 and 401

³³ *Id.* the author citing letter No. 198/DGID/LEG 2 of April 10, 1998.

³⁴ *Id.* § 2216, p. 401.

³⁵ Decree No 96-103 setting the modalities of intervention of NGOs, article 9.

³⁶ Article 309 of the GTC.

³⁷ *Id.* Article 10.

³⁸ *Id.* Articles 12 and 13.

³⁹ *Id.* Article 14.

⁴⁰ Article 8-3 of the GTC

⁴¹ Article 36-5 of the GTC

It should be noted that there are no more than a dozen recipient organizations eligible to receive tax-deductible donations from individuals or enterprises.

It should be noted that the recognition of public interest of an association or of a foundation or even the approval of an association as an NGO does not confer on it *ipso facto* the benefit of tax incentive for donations. Thus the scope of the tax incentive for donations to works or organizations of general interest is extremely limited, even insignificant.

D. Management Fees

There is no ceiling for management fees or salaries paid by CSOs in Senegal.

VI. CONCLUSIONS

Under the terms of the present evaluation, one can affirm, in a general way that in Senegal CSOs benefit from a certain freedom provided that, nonetheless, they conform with the laws and regulations in effect. This is all the more true given that the legislation in effect has been enacted in a participatory manner, with the involvement of all the actors concerned.

Nonetheless, the bottom line of the legislative and regulatory framework could be improved by taking into account the priority issues that have been identified, relationships between the government and CSOs, and the worldwide financial crisis.

Several strategic recommendations could thus be formulated.

A. Priority Issues

CSOs must, more than ever, position themselves as essential points of contact with the powers in the preparation and implementation of public policy.

To that end, they must, in particular, make gains in effectiveness and independence with regard to the State, political parties, and other opinion leaders.

This requires a reinforcement of the legal and institutional framework of the CSOs.

In Senegal, there is a bill and a proposed decree pertaining to the institutional framework governing NGOs.

This reform is intended, in particular:

- to govern the framework of the NGOs by a law, which should reinforce the protection of these associations which have been governed up to now by a decree;
- to facilitate the conditions of approval for the foreign associations or organizations which would no longer be required to demonstrate sufficient experience in their country of origin;
- to limit the powers of the oversight authority in matters of granting of approval; from now on, this approval would be granted on assent and not on the advice of an ad hoc commission;
- to reinforce the methods of the NGOs to which the State would have the obligation and no longer the option of granting exemptions; it is even anticipated to provide a VAT exemption on local purchases of goods and services intended for the carrying out of the approved programs.

Finally, there would be concordance between the duration of the validity of the exemptions and that of the programs. This validity would no longer be limited to two (2) years.

B. Position of the Government

The constraints of the legal order which CSOs often confront are:

- obstacles to creation;
- obstacles to the operational activity;
- obstacles to expression and to actions of support;
- obstacles to contacts and to communication;

- obstacles to resources.

Other than the obstacles to resources, the Government sometimes reacts negatively to critical positions being taken by CSOs on political issues (e.g., dysfunction of the electoral process) and acts of poor governance (corruption, impunity) for which the public powers may be responsible. The latter have a tendency, in such cases, to accuse CSOs of taking partisan positions, if not clearly labeling them as “Trojan horses” of the opposition.

C. Financial Crisis

In the absence of reliable statistics, one can assume that the CSOs, just as other structures, have been hit by the financial crisis.

This situation could translate into a reduction of financing received and thus into difficulties implementing the projects and programs of CSOs.

D. Strategic Responses

Several concrete initiatives could be taken with a view to improving the legal and institutional framework of CSOs.

a. On the legal framework

To improve the legal framework, consideration should be given to both process and substance. The legal reform process should be inclusive, participatory and consultative, with both sectors in dialogue over priority reform areas. (see recommendation 2, below) Through the consultative process, stakeholders could build on this assessment report in order to (i) conduct a comprehensive review of the legal framework in order to agree on the prioritization of reform needs; (ii) review previously proposed laws and decrees governing NGOs in order to determine how these past proposals may be relevant for current reform efforts; and (iii) follow up on specific recommendations included in this assessment report below.

This reform should tend towards a reinforcement of the independence of the means of intervention of CSOs.

b. At the institutional level

As highlighted in the report, a significant concern at the institutional level is the heavily bureaucratic, multi-tiered registration process, which can, at least in some cases, lead to significant burdens and delays in securing legal entity status. For associations in particular, registration is a lengthy and complex, overly bureaucratic, 4-step process, which includes: (a) filing a request for recognition and supporting documentation with the administrative authority; (b) an investigation by the police services into the morality of the members of the association; (c) transmission of the file to the governor of the region; and (d) in the case of national associations, the transmission of the file to the Ministry of Interior, where it is subject to verification on a range of issues.

Such a registration procedure runs counter to international good regulatory practice and international legal norms that emphasize that registration should be a straightforward, inexpensive and quick process. The “morality” investigation is particularly disturbing. According to international law, the acquisition of legal entity status is a fundamental aspect of the freedom of association. In many countries, the registration process requires submission to a single registration authority – and not to four authorities, as is the case in Senegal. Clearly, a streamlined registration process that relies on reduced institutional involvement would be a desirable goal of any reform process.

A few courses of action seem indispensable in any reform for the improvement of the legislative and regulatory framework of the CSOs, notably:

- 1) Revise the procedures governing the registration of the associations in order to remove the requirements which place unnecessary burdens on respect for freedom of association. More specifically, streamline the registration process for associations, in order to ensure compliance with international standards relating to freedom of association. The registration process should be clear, predictable, inexpensive and quick, with objective standards and appropriate procedural safeguards in place.

- 2) Reorganize the oversight of the non-profit sector in order to better coordinate the perception and action of the State. In fact, there is no branch of government which has a global vision of the sector and its regulation. Certain sectors, such as the NGOs, have substantial visibility, while the vast majority of other CSOs work essentially in the shadows and without the support of the public powers. One option that could help achieve that goal could be the creation of a structure composed of representatives of the government ministries that oversee the nonprofit sector and representatives of the non-profit sector in all its various components, whose mission would be to gather the background information regarding the sector, make it public, provide expertise and coordination to the government's action and policies toward the nonprofit sector. One model of such a structure is the French Conseil National de la Vie Associative (CNVA).
- 3) Improve the representation of the associations in the national consultative bodies, for example, on the economic and social council.
- 4) Revise the provisions which govern the resources of the associations in order to develop the financing capacities of the sector:
 - o By expressly addressing the question of the economic and commercial activities that CSOs have a right to conduct in connection (or not) with their corporate purpose and the possible tax consequences. [The importance of CSOs being able to engage directly in economic activities, at least to a certain extent, is fundamental to the financial viability and independence of the civic sector as a whole.]
 - o By developing regulations which grant CSOs a preferential tax regime for activities and resources of an economic nature in connection with the conduct of the non-profit purpose. [The law can encourage CSO engagement in economic activity – again, within appropriate limits – through some level of tax exemptions on the income from economic activity.]
 - o By enlarging the capacity of CSOs to benefit from grants and other public financing. [Most state financing is currently routed to NGOs and the few public interest associations. This is unsurprising, in light of the development role NGOs play and public interest role of those few associations recognized as such. Limiting state funding by organizational form or status is unnecessary, however, as it (a) ties the hands of the government in selecting the most appropriate CSO to implement a grant project or service contract, and (b) limits the ability of all CSOs to seek and secure, *on a voluntary basis*, state funding where such funding may be most appropriate to fulfill their mission purpose.]
 - o By enlarging the notion of public interest, which is at present uselessly restrictive, as made clear by the few numbers of public interest associations. [Currently, the recognition of public interest status is frustrated by poorly defined criteria, excessive documentation and an overly bureaucratic decision-making process. For the public interest status to be meaningful, application procedures must be clarified and simplified.]
 - o By developing tax incentives for philanthropy toward CSOs, which in the current state of fiscal legislation have an insignificant scope. [Encouraging philanthropic giving is vital to both the financial viability and independence of CSOs. Consideration could be given to linking tax incentives with donations to public interest associations and NGOs.]
- 5) Promote transparency tools in the management of CSOs, notably the adoption of an accounting nomenclature specific to CSOs.
- 6) Simplify the administrative oversight of NGOs, notably by simplifying the approval process of programs and investment projects, as well as the approval process of donations and bequests.

ANNEXES:

Lessons learned from the field surveys

THIES

1) Issues:

At the level of Thiès, the Organizations of the Civil Society are confronted with a major problem of organization connected with their capacity. It appears that certain ones of them have serious difficulties in properly accomplishing their mission.

The platform of non-state actors has put in place a program of reinforcement of the institutional and organizational capacities through several training sessions.

Nonetheless, the application of these training modules at certain CSOs presents problems, notably for the organizations of women, precisely because of the absence of qualified human resources to increase the training.

It is thus urgent to **put in place a program of institutional support for all CSOs.**

A second issue concerns the financing and access to resources for CSOs. In Thiès, certain projects have permission to access more or less significant financing, notably the UICN-Netherlands Project and the Project of Good Governance, which have allowed women's organizations to use some resources to accomplish their activities. However, these partners run projects with complex procedures and constraints which require recourse to professionals (senior consultants who cannot be underwritten by these associations).

2) Current legislation or legislative bills in development:

It was an issue of legislation in development at the initiative of public powers in the context of CSOs which has put the latter on alert. There has even been an official reaction on the part of the CONGAD on this subject.

CONGAD, which adopted a **code of ethics**, has carried out a **cartography of the interventions of NGOs** for visibility and perfect clarity of their activities.

There is not at this time sufficient information about the initiatives of the public powers in the matter, but it remains clear that certain major constraints have been encountered by most of the NGOs for getting their investment program signed.

This situation seriously handicaps these CSOs who cannot correctly execute their budget and implement their program of activity.

3) Position of the government:

These restrictions are today so common that there is a legitimate suspicion about the intentions of the public powers as regards certain NGOs.

With regard to conferences of harmonization, organized by the administrative authorities, several NGOs are excluded from the process even though the participation of all the actors should be the rule.

4) Financial crisis:

The question of the performance of NGOs is today widely affected by the purpose of the projects and the development of budgetary support. The purpose of the projects affects the NGOs in particular as regards the maintenance of their already-trained personnel at the same time that they are burdened with charges linked to these

workers (social contributions, charges, miscellaneous): these are factors of disequilibrium which threaten the performance of CSOs.

5) Strategic responses:

At the legal level, it must be pointed out that many initiatives have been undertaken to lead the public powers to discuss the status of NGOs, taking into account the transfers which have intervened. To date, despite the desire to do so, especially on the part of CONGAD, no mixed commission of reflection with a view to adapting the texts has been put into place.

The installation of such a commission constitutes an adequate response to the need for strengthening of the Civil Society.

KOLDA

1) Issues:

The major challenges and issues which CSOs confront in the Kolda region are essentially linked to two factors: the return of peace to Casamance, which is a major concern of NGOs which, in the past, have had to play an important mediation role in the crisis in the South. Yet, one notes a tendency toward disengagement in this process following threats and volitions to exclude them.

But it is essential for the CSOs of our region to continue to fight for the return of peace through credible and concerted actions.

The second major challenge concerns the fight against poverty. In fact, the region is considered to be very poor, even though, paradoxically, it has extraordinary potential from the point of view of its natural resources. It is thus the responsibility of CSOs to fight so that this economic potential may be exploited as much as possible, and for the benefit of the interests of the local populations.

In this respect, the issue is based on the necessity of reinforcement of the institutional organization of CSOs around a reinforced axis. There is a strong tradition of association in the region which gives rise to a rather dense associative movement, based on traditional villages and culture, but which, with the failures of the State, has turned into large, credible movements.

Nevertheless, all of the vague desires of the large federations with a regional focus ended up, through implosion, with small structures, a fragmentation of organization without scope. One of the challenges thus consists of the emergence of strong, local CSOs, capable of weighing in on the issues above. There are certainly groupings by activity family (producers) or by NGO (CONGAD), but the challenge remains to create strong, expanded organizations in order to take the leadership.

2) Current legislation or legislative bills in development:

Regarding the legislation and the initiatives in this matter, as we perceive them, the current legislation regarding NGOs is not satisfactory because it is a matter of a limiting framework, which describes a technical frame of intervention. That is linked to the suspicion which has always considered NGOs to be subversive structures.

As an example, this text prohibits NGOs from dealing with political issues, while one cannot work on local development without talking about policy in matters of education, training, etc. The correspondence from the representatives of the State remind us endlessly of the legal requirements which must be respected. Basically, in the spirit of this text, "liberticide", NGOs are marginalized and muzzled. It is perhaps the very name NGO which creates problems (non-governmental organizations). "Did not the President of the Republic at the start of the regime change once speak about NGOs as veritable resistance forces; no one knows what NGOs do, or where they get their money from? And what do they do with it?" These questions alone provide information about the state of mind of the public powers as regards the NGOs.

That is, the relationships are always tense between the public powers and CSOs, who are in some way, counter-powers.

3) Position of the government:

One notes at this time a tendency, on the pretext of harmonization and coherence of public policies or of public security, at this time a tendency [sic] toward a takeover of the association movement.

Of course, it is good to harmonize, in a given geographic area, the various interventions of the actors. However, it is not possible to tell, for example, a village organization or an NGO how to build a well or how to inscribe their initiatives within a precise budgetary framework. The fight against terrorism is today a reason invoked for going over the activities of civil society organizations with a fine-toothed comb.

It is not rare in the framework of partnership to be required to produce the list of members of the NGO with the identifying personal data. The feedback obtained from certain financial establishments bears witness to the very severe control over the bank accounts of certain organizations of the Civil Society, and especially of their sources of financing.

4) Financial crisis:

The drastic reduction of the aid to development is observed on the ground (end of Austrian cooperation in Kolda, rationalization of the interventions between partners in development, in particular in the European Union with concepts of "countries of concentration"). This rarefaction of resources brings about a fierce and lively competition among the various CSOs to capture the available resources. Added to that is a State that thinks that NGOs are sufficiently rich, and it therefore does not contribute any grants to them.

It is not even rare for administrative technical services to request support from NGOs for their mission, while the opposite should be happening.

5) Strategic responses:

The concrete responses consist of making CSOs aware that they should first of all and above all count on their own strength by initiating their own mobilization strategies, for example, in developing expertise in a sector such as civil engineering (in the manner of GADEC, which has become a veritable agency of execution for development projects).

It is the same for CONGAD, which is positioned as an operator in certain programs.

It remains evident that in the face of the development of microfinance tools and the changes in progress, increased monitoring of the new private operators and the microfinance institutions which are enriching themselves more than they are enriching the populations is necessary.

LOUGA

1) Issues:

The issue is to make CSOs credible in a context of confusion over the role of the various interveners claiming their place in civil society. CSOs do not communicate enough about their role, their place, and their responsibilities. It is thus necessary to strengthen them and to reinforce them to make them capable of playing their role as social regulator.

NGOs do not communicate about the work in the field. In this respect, the preparation of the cartography of NGOs is a fundamental issue for the CSOs of Louga.

2) Current legislation or legislative bills in development:

The current legislative framework or the new text which is being discussed and about which there is an absence of communication are sources of concern. The major problem resides in the renewal of the investment programs and the granting of the administrative authorizations which are necessary for the circulation of vehicles admitted for temporary transit.

3) Position of the government:

The Coordination of the activities of NGOs with the public policies constitutes an alibi of encirclement for the governments. The evaluations by the Ministry of NGO Oversight do not combine the decentralized department of the State, which is an evident source of frustration.

The last harmonization meeting in Louga was a veritable courtroom trial of the CSOs. In reality, the representatives of the State are unaware of the operation of the NGOs and the constraints which they must face.

4) Financial crisis:

It is a reality that leads to a fragilization of the civil society. The creation of agencies and the preparation of large State projects have seriously competed with CSOs. Outsourcing takes the money. Several projects have been stopped for lack of financial means.

5) Strategic response:

At the level of Louga, there is CONGAD and the platform of non-state actors that are structures of coordination of the NGOs and unions. However, today there is a need for stronger structures, a veritable coalition of forces to bid together, in the framework of common committees for drafting projects.

DIOURBEL

1) Issues:

For Diourbel, the greatest concern is the non-intervention of the partners in development in the region, despite holding several submission workshops. Historically, Diourbel has always been the poor relation of the interventions of the partners in development.

At the level of public policy, the Region is forgotten except for the holy city of Touba, where one notes a strong concentration of associations coming largely out of the informal sector.

2) Legislation or legislative bills in development:

No information about the evolution in progress in the sector except for the press reports about the vague desires of the management of CSOs by the State.

In reality, the current texts anticipate an involvement on the part of CSOs, notably in the framework of decentralization. This involvement is more theoretical than operational. It is necessary to see the case of the NGOs that are aligned on the commerce convention in the absence of specific provisions which concern them. A guidance law pertaining to CSOs seems indispensable to us.

3) Position of the Government:

The conference of harmonization at the level of the ARD [regional development agency] presents several vague desires for restriction, but also constitutes an opportunity for dialogue. It is up to the CSOs to use it to make a true space for democracy.

4) Financial crisis:

Currently the crisis is such that, at the fiscal level, the CSOs are not in a position to respect their engagements to the State and the Social Security Organizations (the personnel loads, old age pension

insurance, social security fund, employer contributions, etc.). At this time it is essential to develop strategies of self-financing by putting in place income-generating activities such as the management of a shelter to protect against any failure of outside financing. There again, the tax administration comes down to collect taxes due as a result of this activity. Yet, the State must understand and moderate the costs so as not to compromise the projects at the base.

5) Strategic responses:

What is urgent and what is lacking in Diourel is the holding of general assemblies of the CSOs, a sort of rally to make the diagnosis and find suitable therapies as well as the essential actions to undertake in order to reinforce the Civil Society.

SAINT-LOUIS:

1) Issues:

It is to find the vitality and the originality of NGOs. Everything happens as if the NGO programs are now carried out by the State. Since the end of the integrated development plan for health and the projects of the FNUAP (United Nations Population Fund), the State is the one who sets the orientations.

It is thus necessary to put an end to the suspicion of NGOs.

2) Legislation and legislative bills in development:

The current legislative and regulatory framework makes it possible, overall, for NGOs to play their role on the condition that they are associated at the conception, at the implementation, and at the evaluation of the projects and programs.

3) Position of the government:

One has the impression that the harmonization workshops at the level of the regional development agencies are conceived to divest the NGOs. After the regime change, the lenders make no further efforts to accompany the CSOs, in part because of the discourse of the public powers.

4) Financial crisis:

This crisis is a reality to the point that certain persons develop strategies of inveiglement that are completely at odds with the financing, even when they do not fall within their fields of action.

CSOs are no longer in a position to honor the payment of certain royalties due to the State, for example, the payments due for vehicles acquired in the framework of the PDIS (Integrated Health Development Program) (one continues to pay despite the end of the project).

5) Strategic responses:

The positioning of NGOs in the decision-making jurisdictions is a major challenge. It is a matter of integrating them into all the levels, notably by means of the observation post for good governance. It is at this price that they can influence a participative and citizen culture.

The grouping of CSOs into a federation and the promotion of good governance is a measure of success. The public financing of NGOs could be obtained by means of the valorization of the local products.

It is necessary to work to harmonize the programs of the NGOs.

FATICK

1) Issues:

For the time being, since CSOs want to be the interface between the populations and the State, the mastery of the policies and programs in their intervention space, as well as the ability to intervene to play their role of old woman, of advocate, appears to be an essential issue.

2) Legislation:

The current status ensures CSOs of the correct execution of their mission. Since the regime change, grievances and restrictions are noted. We are not associated in the definition of public policies. In practice, the persons responsible for CSOs have the impression of being the straight man. Yet it is important to participate in the definition, the follow-up and the implementation of all the projects and development programs: that is the participation of the active citizen.

3) Position of the Government:

In Fatick, honestly, a dynamic and fertile partnership exists with the decentralized departments of the State. Nonetheless, the conferences of harmonization are the occasion to control and to snoop into the practices of NGOs. Putting that aside, there is not such a major restriction. That is perhaps due to the opening of the persons in charge of the NGOs and the representatives of the State who work in a frank collaboration.

4) Financial crisis:

Undoubtedly, we live a context of rarity of financial resources, the consequence of the reduction in the volume of financing. We feel it very strongly here in Fatick and that has an impact on the life of the populations. It is the cross and the banner to find financing up to the level of the demands of the CSOs that are no longer able to execute their programs.

Only the large NGOs are still able to capture financing which is, in any event, far from their expectations. All of that has repercussions at the level of the fight against insecurity.

5) Strategic responses:

The strategy to develop must be focused on reinforcing the movement of the CSOs in a dynamic of coalition and of sharing the fight. A true synergy of self-defense actions, taking into account the community of interest and in the face of the same types of aggressions suffered by the CSOs. This is only what can give force to the civil society.

Now it is urgent to take advocacy actions before the authorities, but also and especially before the populations so that they may appropriate the struggles of the civil society.

The civil society is essential in the process of democratization. There can be no true democracy without a strong and dynamic associative movement, capable of playing a necessary anti-establishment role.

TAMBACOUNDA

1) Issues:

The great problem of good local governance: economic, social policy to upgrade the potential of the region of Tambacounda and Kédougou constitute the major issue.

In this framework, the civil society is one actor among so many others, which must play its role. A significant issue is the reinforcement of the organizational and institutional capacities, to mark its territory (structuring, with a view to clearness in its forms of expression, as institutional framework), the frontier being very difficult because of the sector of intervention, which is citizenship. There are rather differentiated forms of organization which could lead to confusion. That is why, in Tambacounda, we are already working in this framework with CONGAD for a clarification and an identity of the NGOs.

2) Legislation and legislative bills in development:

There is not yet a legislative framework for the civil society. In this scenario, an implication of the actors of the civil society is necessary. For NGOs, we have always claimed the necessity of reviewing the obsolete decree. The idea of a bill had been stopped, a process committed. It would be necessary in any case to move towards the defense of the interests of the populations.

This project should integrate the dimension of ethics in the activities of NGOs. Our desire is to go towards a moralization of the NGO community and to condemn injurious practices.

It is also necessary to monitor the autonomy of the NGOs, to professionalize them and reinforce them. We already have here a framework of interaction and consensus building.

3) Position of the Government:

In fact, there is a problem of coordination and harmonization of the activities of the NGOs. The State has an important traditional function; all this must be organized so that “the orchestra” functions correctly. The State seeks to regulate that. With globalization, the financial partners guide our governments toward sectors or themes (fight against terrorism). What is important is to give priority to the inclusive processes, thus the risks will be mastered. The ministries are seeking to invent structures and tools to sweep away the initiatives of CSOs (attempt to impose an authoritarian regime on the youth movements and women’s movements).

4) Financial crisis:

In Tambacounda, we felt the crisis come very early. Before, financing arrived in an isolated manner. But today, the networks, the groups and the coalitions can make it possible to access resources more easily. It is in that way that we have implemented the networks for food security, at the sub-regional level (DADIO); with integrated programs which have allowed us to obtain important financing.

In the framework of the activities of the platform of non-state actors, we emphasize:

- training;
- the assembly of portfolios;
- expertise;
- conduct and management which can prepare us to access resources.

There are serious difficulties regarding access to resources, especially for CSOs which lack qualified human resources.

There is also competition between the CSOs of the North and the African ones for access to financing.

5) Strategic responses:

- ✓ publish the study of the legal and legislative framework and provide an opportunity for the other actors to share it.
- ✓ adopt a bill to improve the framework of intervention of the NGOs;
- ✓ reinforce the dynamics of consensus-building and of cooperation among the actors of development in order to formulate the recommendations and make them materialize.