



## Series 1 Senegal's new corporate governance code assessment: proven itself elsewhere, can the copied content be applied to Senegalese companies?

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### Abstract

Understanding corporate governance in Senegal is not an easy task due to many influences the country has suffered. The question of corporate governance is of real concern as well as the issues of convergence since the country's newest corporate governance code has proven itself elsewhere. Good governance is any company's concern. Hence, talking about the effectiveness of a corporate governance system is measuring the power to direct strategic activities for companies, the appointment, and control of executives to whom the daily management of the company is entrusted and above all to what extent corruption and bad governance affected these actions. Senegal has proposed a new code of governance to alleviate these issues. Even though this code has advantages, it also has weaknesses which addressed make a better governance approach.

**Keywords:** corporate governance, Senegal, good practices, code, administrators

### 1. Introduction

Senegal's newest corporate governance code offers administrators a set of good practices that have proven themselves in other countries. Aimed at corporate directors, this new code of corporate governance's good practices makes it possible to organize more efficiently the operation and the decision-making process of the most important bodies in the country. The administrators and stakeholders did validate this new code through active workshops.

The code is of a dozen pages in addition to annexes. The realization of the code is possible thanks to a collaboration between the working group N1 "administrative procedures, application of texts, good governance, fight against corruption and public contracts" of the Presidential Council on Investment (CPI) and the Senegalese Institute of Administrators (Isa).

It addresses the role and tasks of the Board of Directors, its composition, operations, and relationships with shareholders, senior management, and other stakeholders. It also emphasizes the commitment that directors make to their role, in particular by being vigilant, available, and loyal to the company.

It specifies good practices, in particular on the functioning of the Board, the creation of the Audit Committee, other Committees, the definition of the areas reserved for the Board, the training of the directors, the evaluation of its operation. Lastly, the code recalls that the Board must report to its shareholders the exercise of its mandate with relevance and transparency, which is the key to trust needed between the various players in governance to ensure that the company is efficient and sustainable.

Because the code is not a law or an obligation, it is not binding when not enforced. Whoever, companies, members of the board of directors and other leaders will understand their interest when applying it.

Even though this code has proven itself elsewhere, can its content be copied from these other horizons and be applied to Senegalese companies?

### 2. Understanding the code

The Senegalese code of corporate governance's good practices' implementation is gradual because it sometimes involves significant changes in the organization of the council and the distribution of powers between the concerned government bodies. Companies might include in their annual reports' governance chapter, their implementation plan, and why certain practices do not seem appropriate to them.

We should note that companies can choose either to comply with the code or not. The government is therefore highly recommended to recognize this code as the reference governance code. The State should require this code to apply to every state-owned company in Senegal. With the authorities' support, code compliance mechanisms could be in place as well as tools to evaluate and update the code for legal practices evolution and business adaptation.

In general, every company's concern is good governance. However, we should not set the bar very high right away in Senegal. We have to be reasonable in the process of implementing the code.

The objective is that companies that represent the public interest, that is, those whose disappearance or difficulties could have a significant impact on the country's economic environment, must have a higher level of responsibility than others. This corporate governance code may seem a little heavy for small and medium-sized enterprises (SME). Hence, we must see the possibilities of setting up a code specially adapted to this type of businesses.

In Senegal, the Uniform Act of the Ohada on the Law of Commercial Companies and the Economic Interest Group organizes companies' operations. However, we note a non-reflection of critical guiding principles of governance in the Uniform Act in its current state; the ISA undertook to draft this code. Initially, there was what is called an assessment of Senegal's corporate governance practices in the public and private sectors. This evaluation by the World Bank revealed that there were no good practices in Senegal. It was at the

end of this evaluation that it was decided to put in place an action plan to make recommendations in Senegal. And it was this plan that provided for the adoption of a corporate governance code since a code of good governance must have a significant impact on the business environment and thus contribute to improving the companies' business effectiveness and efficiency.

The State is trying to put the right men at the right place as nepotism is a great deal in Senegal. This code is, therefore, an opportunity to modernize the national economy. It will, thus, be confronted with several challenges. First, the composition of the boards is problematic since all members do not have the same understanding of companies' financial statements as well as other business-related issues. There is then a real need to ensure the training of decision-makers at the board level.

Nevertheless, it could help with the enforcement of transparency in the companies to make transparency an element of the decision.

The first step in implementing the code is to sensitize the government in avoiding nepotism and appointing the right men at the right place. The appointment of the directors on some boards is often not objectively done. Being nominated is sometimes a time of retribution for the political party holding power. The government must engage in this paradigm shift or cultural change by taking responsibility for appointing directors based on their usefulness to society and not because of their political activism.

### **3. The corporate governance view from 'elsewhere' as Senegal lacks operational mechanism**

Governance has become an essential dimension of policies and reforms in the fight against poverty and the achievement of development goals. In Senegal, governance occupies a significant place on the public policy agenda and constitute a strategic axis of economic and social policy.

In its will to take up the challenges of governance, the State elaborated the National Program of Good Governance (NPGG), which is new to West Africa. Anchored to the Delegation to the State Reform and Technical Assistance (SRTA), the program supports the operationalization of the governance strategy. It federates the flagship measures of institutional reforms, of setting up new mechanisms and administrative procedures as well as human resources development initiatives.

Today, issues related to the monitoring and evaluation of governance have led to the development of a diversity of evaluation frameworks, methods, and instruments for measuring government effectiveness, quality institutions and the perception of citizens. The Corruption Perception Index (CPI), produced by Transparency International, the World Bank's composite governance indicators and more recently the Ibrahim Index of African Governance, and Global Integrity Indicators, are many instruments used to assess governance in countries.

Until now, however, these governance measurement systems were mainly the preserve of specialized national and international institutions.

In the current institutional architecture, Senegal does not yet have an operational mechanism to draw up the country's governance profile and guide the development of public policies, based on regular production of useful and relevant information.

The Senegalese government has published a report to fill

this hole. The first edition of the report did not claim to be exhaustive. Indeed, some aspects of democratic governance, such as electoral processes and constitutional reforms, were not addressed.

Nor was it an assessment of the different dimensions of governance in Senegal.

Its essence was to trace with as much objectivity and fidelity as possible, citizen perception, institutional initiatives, new mechanisms and procedures introduced, flagship achievements, strengths, and challenges in governance.

From this point of view, the report was necessarily informative in that it will facilitate access to consolidated and analytical information on governance.

Besides, it aimed to establish the baseline situation of critical indicators to have a basis for monitoring progress in this area.

Finally, the orientations or measures proposed based on the analysis of the different components of the NPGG are intended to structure the ongoing reflection in the field of governance better. They constitute the first step towards the elaboration of a new program of action of the State to consolidate and strengthen achievements in good governance. Corporate governance in Senegal has various strengths and weaknesses that are addresses, and a hot topic would be corruption, which is a real problem in Africa along with bad governance.

## **4. Corporate governance in Senegal, strengths and weaknesses**

### **4.1 Promoting sound management of public finances and implementation of sound and predictable economic policies**

#### **4.1.1 Strengths**

The legal framework of public financial management in Senegal is defined by the law n ° 2001-09 of October 15<sup>th</sup>, 2001 relating to the laws of finances.

The main strengths for sound public finance promotion lie in:

- i) The practical introduction of new legislation and regulations on the procurement system;
- ii) The budget chain, spreading scheduling and internal control's gradual implementation of results-based management;
- iii) The modernization and coherence of budget information systems, including the computerization of the public expenditure chain;
- iv) Strengthening the accountability process; and
- v) The reorganization and strengthening of the control and decentralization of the consolidated investment budget.

#### **4.1.2 Weaknesses**

In spite of the above strengths, it should be noted that efforts are still to be made, notably in:

- i) The renovation of the computerized pay and pension management system and the establishment of computerized monitoring systems State heritage;
- ii) Improvement of data production and reporting;
- iii) External control in terms of monitoring and verification, in particular on production delays and transmission of settlement bills;
- iv) Improving the quality and performance of the performance system at the decentralized level; and
- v) Consolidation and strengthening of the new public procurement system.

Besides, several difficulties were identified in the implementation of the action plans, including:

- i) The complexity of some of the measures, the application of which requires a long process and a consequent budget;
- ii) The risks linked to the setting up of specific financing for carrying out certain activities;
- iii) The numerous structures or institutions involved outside the Ministry of Economy and Finance; and
- iv) The difficulty some structures might have to accept change.

## 4.2 The fight against corruption and bad governance

### 4.2.1 Strengths

As some of Senegal’s strengths in the fight against corruption and bad governance, it is worth mentioning several laws and institutions that have been put in place to achieve this goal. However, in this article, we will focus on institutions.

#### The institutions

For illustration purposes, we will cite one institution which is the Public Procurement Regulatory Authority or ARMP [1].

**Table 1:** Public Regulatory Authority

Date created	Mission	Operation
<p>Independent administrative structure created by the law n ° 06-16 of June 30<sup>th</sup>, 2006 modifying the Code of the obligations of the administration.</p> <p>Its organization and its operation are governed by Decree No. 2007-546 of 25<sup>th</sup> April 2007.</p>	<p>Its mission is to regulate the public procurement system and the civil service delegation agreements.</p>	<p>At the end of Article 2.13 of the decree governing its operation, the ARMP must transmit to the President of the Republic, the Prime Minister, the President of the National Assembly and the President of the Court of Auditors, an annual report on the efficiency and reliability of the system for awarding, executing and controlling public contracts and public service delegations, together with any recommendations for improvement.</p>

### 4.2.2 Weaknesses

The legal and institutional arrangements must not obscure the main constraints facing Senegal in the fight against corruption. These constraints stem from:

- i) The inefficiency of some laws despite the presence of a generally adequate official legal framework for corruption;
- ii) Institutional instability and state bureaucracy;
- iii) Weak accountability mechanisms; and
- iv) Uneven transparency.

## 5. Governance and anti-corruption measures

The anti-corruption mechanism in Senegal is mainly based on Articles 159-1, and 160 of the Penal Code promulgated on 21<sup>st</sup> July 1965 and on Law 81-53 of 10<sup>th</sup> July 1981 on the suppression of illicit enrichment. Even though this mechanism has been around for more than 20 years, it became non-operational, and the legislation had practically fallen into disuse since 1983.

On 29<sup>th</sup> of June 2000, the UEMOA Council of Ministers adopted Directive 02/200 / CM / UEMOA establishing a “Code of Transparency in Public Financial Management”. This Code has not been transposed into Senegalese law. UNDP, however, has implemented in Senegal a program on good governance aimed at establishing, in collaboration with the Government, administrative management practices in line with this objective.

Concerned by potentially corrupt practices, the Ministry of Economy and Finance has not put in place any particular anti-corruption mechanism. No directorate within this ministry has adopted specific ethical rules designed to eliminate this phenomenon except for customs and excise duties directorate. Financial administrations rely on personal ethics and their basic text (General Tax Code for the National taxation administration and the department of lands Regulation), on which they rely on to perform their duties, does not contain any particular device fight against corruption. The Ministry of Economy and Finance would find it advantageous to undertake a communication

campaign at regular intervals to remind the principles of good governance for both financial services and users.

Only the customs and excise duties directorate has published a “Code of Ethics and Good Conduct” for its agents and has examined at the national level the twelve recommendations of the Arusha Declaration on Customs Ethics. The customs and excise duties directorate has also taken the initiative to implement specific measures to limit corrupt practices, including:

- the automatic change of employment every three years of its staff;
- automated customs taxation;
- the introduction of an internal audit responsible for management control;
- the introduction of a toll-free number for customs service users who are victims of corrupt practices.

## 6. Conclusion

A cursory glance at corporate governance, which has emanated from the developed economies suggests that there will be a need to create relevant databases to enable inquiry on corporate governance in Senegal. Accordingly, at the onset, we cannot overemphasize the fact that the provision of data lies at the heart of meaningful empirical inquiry on corporate governance in Senegal. It will be necessary to develop and collect useful data to research corporate governance in Senegal. This development will entail establishing the type of data requirement and information required to conduct studies in several areas which will influence the quality of corporate governance in the country. Political interference in enterprise decision-making being sometimes present in Senegal calls for a detrimental issue to organizational performance. Hence, this will be an essential area of research which examines how political interference affects corporate governance as a whole.

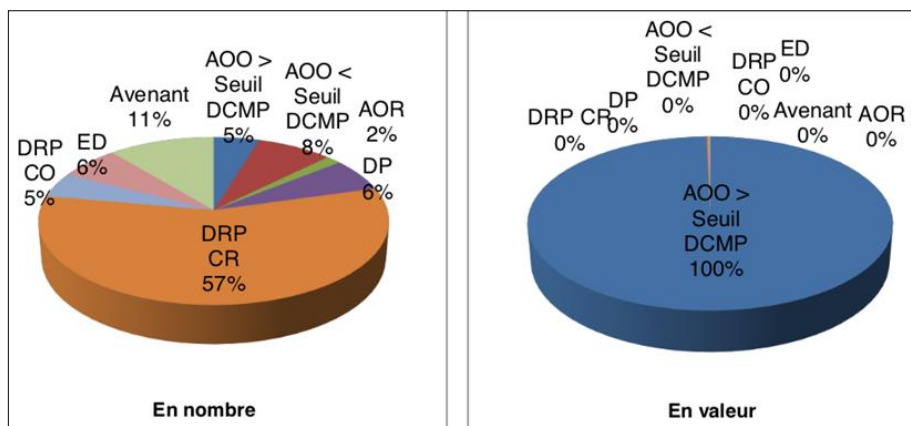
Limited published research on corporate governance in Africa exists. In Senegal, there is even less rigorous academic or empirical research compared to Western

countries. Thus, an urgent need to dwell on meaningful analysis of corporate governance in Senegal does exist.

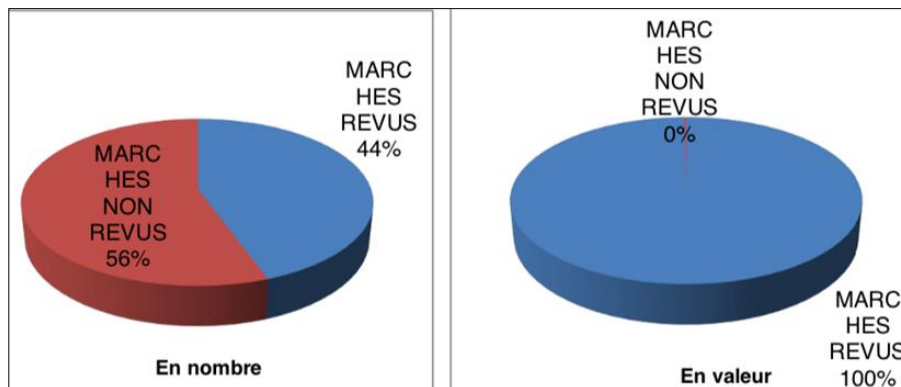
Knowing that, could we transpose the realities of the West to Africa when it comes to corporate governance?

**Table 2:** Summary table of tender awarding models

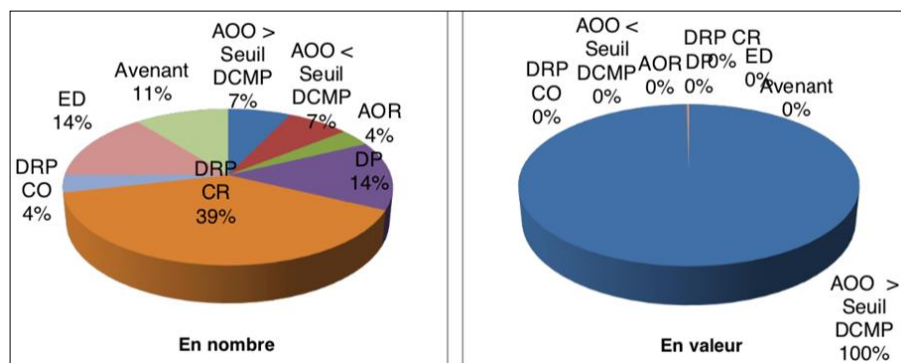
Procurement models	Typologies of rendered tenders		Typologies of reviewed tenders		Coverage Rate	
	Number	Amount	Number	Amount	Number	Amount
Open invitation for tender (AOO) > threshold DCMP	3	719 411 912 596	2	718 494 296 793	66.7%	99.87%
Open invitation to tender (AOO) < threshold DCMP	5	206 523 148	2	127 267 998	40.00%	61.62%
Restricted request for proposal (AOR)	1	367 050 537	1	367 050 537	100.00%	100.00%
Request for proposal (simple DP)	4	348 303 465	4	294 961 565	100.00%	84.69%
Requested for information and price (simple DRP)						
Requested for information and price (restricted DRP)	36	570 868 337	11	149 588 373	30.56%	25.80%
Requested for information and price (open DRP)	3	114 180 924	1	59 537 304	33.33%	52.14%
Direct agreement (ED)	4	1 144 741 848	4	1 144 741 848	100.00%	100.00%
Amendment	7	438 251 437	3	268 866 145	42.86%	61.35%
Total	63	722 610 832 292	28	730 906 310 563	44%	99.76%



**Fig 1:** Mapping of markets (number and amount)



**Fig 2:** Mapping of covered markets (number and amount)



Source: Rapport Final Apix Gestion 2016 ~ Revue independante de la passation des marches au titre de la gestion 2016

**Fig 3:** Distribution of markets (number and value)

Legend: “En nombre” = Number

“En valeur” = Amount

Seuil = threshold

Avenant = Amendment

Marchés revus = Checked tenders

Marchés non-revus = Unchecked tenders

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