

Series 3 Senegal's new corporate governance code assessment: The Governance of State-Owned Enterprises in Senegal

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Abstract

Our purpose is to present the characteristics of Senegalese state-owned enterprises in terms of legal regulations, control and management, as well as Senegalese governance systems. After a brief description of the nature of the relations existing between the State of Senegal and its public enterprises, we have detailed the main features of the governance system of these structures. Then, it was apparent to reserve a section for the presentation of the governance code of the state-owned enterprises, given the different suggestions of structures like the World Bank and the laws of international organizations like the OECD.

The legal system allows companies to opt either for a monist structure with a board of directors with functional cumulation or not, or for a dual system with a supervisory board and management board. This is also the case for Senegalese private companies.

On the other hand, the constitution has allowed for continuous improvement in the adoption of laws that only reinforce good governance practices.

Keywords: corporate governance, Senegal, public enterprises, state-owned enterprise

1. Introduction

Senegal is among the least studied countries in the field of governance if not in extensive studies of the West African region or the WAMU or ECOWAS regions, without taking into account the specific characteristics of this country.

Institutions and Public Enterprises are the spearheads for the implementation of government policy in the various sectors of activity where they show a greater dynamism contributing to the achievement of the objectives of the sectoral strategies and the concretization of structuring projects in Senegal.

2. Governance Systems of Senegalese State-Owned Enterprises

It is necessary to present some key (and measurable) indicators on these Senegalese companies to understand all this interest given to these structures.

State-owned enterprises are, as the Law No. 90-07 of 26th June 1990 states, are composed of:

- Public establishments of an industrial and commercial nature;
- National companies and;
- Companies with majority public participation.

The financial situation described above concerns all companies in the portfolio, i.e., those constituted in the form of a commercial company and in which the State holds a share of the capital. This situation does not take into account, therefore, the public institutions of an industrial and commercial nature, but integrates some information relating to the companies with public minority participation. The State portfolio consists of sixty (60) entities, distributed as follows:

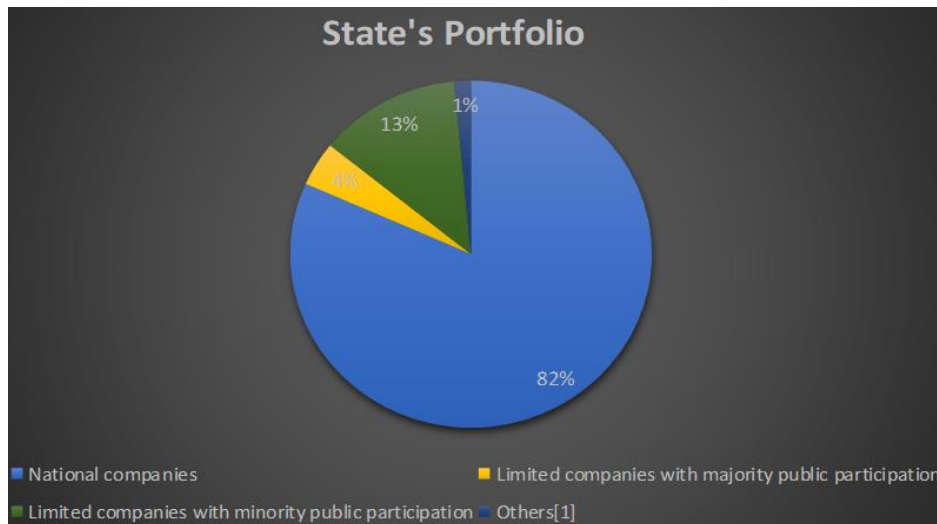
- Thirty-three (33) limited companies with minority public participation;
- Eleven (11) public limited companies with majority public participation;
- Three (3) companies governed by specific laws distinct from the law n ° 90-07 of June 26th, 1990 relative to the organization and the control of the companies of the state-owned enterprises' sector and the control of the legal persons of private law profiting from the financial support of the public power.

The state shareholding situation at the national level, measured at their nominal value, is summarized in the table below:

Table 1

Categories	Number	Subscribed Capital (in XOF)	Percent share
National companies	13	399 758 029 667	81.65%
Limited companies with majority public participation	11	20 311 355 154	4.15%
Limited companies with minority public participation	33	62 208 377 712	12.71%
Others ^[1]	3	7 343 159 590	1.50%
Total	60	489 620 922 123	100%

Source: State-owned enterprise sector report – ANSD 2015



Source: State-owned enterprises sector report – ANSD 2015

Fig 1: Distribution of the portfolio

The state portfolio is thus 81.65% constituted by national companies with a capitalization of 399.758 billion XOF. The State is present in 11 public limited companies with a majority stake of 20.311 billion XOF, representing 4.15% of the portfolio. The companies with minority public holdings, for the number of 33, total state participation of 62,208 billion XOF in absolute value, i.e., 12.71% of the portfolio. On the basis of the exploitation of the financial statements, the analysis of the activity of the companies of the BPS sector object of this report, reveals a net recovery of the cumulated net result which stands out beneficiary for an amount of 833.261 million XOF in 2014 against losses of 9,343 billion XOF in 2013. Over the same period, cumulative turnover increased by 3.92% in 2014, from 492,661 billion XOF to 511.98 billion XOF. The total balance sheet stands at 1735.541 billion XOF in 2014, down 2.48% compared to 2013. Finally, the capitalization of these companies amounted to 428.472 billion XOF for equity of 579.838 billion XOF.

It is the subject of a comprehensive report on the state-owned sector generally established in the third quarter of the year, after receipt of the financial statements for which adoption by the Board (administrative or supervisory) must take place at the latest June 30th of the year following the year in question.

The capitalization of the companies monitored in the report on the state-owned sector amounted to XOF 431,589 billion in 2016, up by XOF 7,908 billion compared to the previous year due to the capital increase operated by LONASE. Equity stands at XOF 879, 981 billion, an increase of XOF 95.812 billion in absolute value, or 12.22% in relative value compared to 2015. The total balance sheet is also part of this upward trend standing at XOF 2,089.664 billion, up 5.45% over the year.

In terms of operating performance, the cumulative net profit is XOF 33.727 billion, up XOF 17.263 billion in absolute

value and 104.85% in relative value compared to 2015. This performance is notably driven by SENELEC, whose net profit rose from XOF 12.106 billion in 2015 to XOF 30.506 billion in 2016. Over the same period, cumulative revenue rose by 6.6%, from XOF 468.2 billion in 2015 to XOF 499,083 billion in 2016.

The added value, gross wealth created by companies, amounted to XOF 160.311 billion in 2016 against XOF 142.847 billion in 2015, representing a performance of XOF 17.463 billion in absolute value and 12.23% in relative value.

In the end, the dividends received by the State of Senegal, in respect of its financial holdings amounted to XOF 44.984 billion as of December 30th, 2016.

Part of the performance approach, mention should be made of mission letters and performance contracts signed between the State and public companies. The Sixth Letter of Mission (LM6) of SODAGRI and the Twelfth Letter of Mission of SAED (LM12) which are contracts of objectives and means falling within the framework of the achievement of self-sufficiency in rice are quite remarkable. The performance contracts of public companies generally concern those in difficulty, to manage the restructuring.

The prospects are in line with the objectives of the portfolio management strategy of the State built around the vision “a portfolio of the dynamic and efficient state, net contributor to the budget” which aims among others, to put set up a robust monitoring system, make public companies competitive, ensure dynamic management of the portfolio and put it at the service of the promotion of the national private sector.

This is an important tool that should significantly improve the strategic and operational governance of companies to anticipate their difficulties in providing the necessary corrective measures.

Table 2: Portfolio of State-owned enterprises report

Enterprise	Share Capital			State Share		
	Amount	Nominal value of the share	Number of shares	State owned shares	in value	in %
State Owned enterprises						
LONASE	1,090,000,000	10,000	109,000	109,000	1,090,000,000	100%
RTS	7,000,000,000	10,000	700,000	700,000	7,000,000,000	100%
LA POSTE	2,900,000,000	10,000	290,000	290,000	2,900,000,000	100%
SN PAD	52,000,000,000	10,000	5,200,000	5,200,000	52,000,000,000	100%
SONES	104,525,769,483	10,000	10,452,577	10,452,577	104,525,769,483	100%
SENELEC	238,293,752,687	10,000	23,829,375	23,829,375	215,846,481,184	90.58%
SAED	2,500,000,000	10,000	250,000	250,000	2,500,000,000	100%
SN HLM	6,000,000,000	10,000	600,000	600,000	6,000,000,000	100%
SNR	25,000,000	10,000	2,500	2,500	25,000,000	100%
SODAGRI	120,000,000	10,000	12,000	12,000	94,800,000	79%
PETROSEN	5,021,000,000	10,000	502,100	502,100	5,015,979,000	99.9%
AHS	760,000,000	10,000	76,000	76,000	760,000,000	100%
SOGIP SA	2,000,000,000	10,000	200,000	200,000	2,000,000,000	100%
TOTAL	417,094,522,170				399,758,029,667	

Source: State-owned enterprises sector report – ANSD 2015

3. The relationship between State-owned enterprises and the state

3.1 Legal and Institution framework

3.1.1 Legal and Institution framework

Internally, the management of Senegal's public finances is based on a body of law that has its source in the provisions laid down in the Constitution, which refers in preamble to the principles of:

- 1) Transparency in the conduct of public affairs,
- 2) Good governance and
- 3) Access of all citizens to the exercise of power.

The Constitution, revised in 2001, entrusts the Government with responsibility for the management of the public finances that it assumes by executing the annual law of finance prepared by its services. The National Assembly constitutionally has the burden of voting the finance law; his right of the amendment is recognized. This House must vote within sixty (60) days of the tabling of the bill; in the absence of such a vote before January 1, beginning of the fiscal year, the President of the Republic is authorized to renew by decree the A-base. The Constitution also established a Court of Accounts to assist the executive and legislative bodies in the control of the execution of finance laws.

At the external level, as a member state of the West African Economic and Monetary Union (UEMOA), Senegal must ensure the management of its public finances by the WAEMU Directives which enact the regulations-framework in the matter. These Directives are themselves based on the principles contained in the French Order of 1959.

3.1.2 The specific legal framework of the finance law

Senegalese fiscal law is based on the Organic Law 2001-09 of October 15, 2001, on the finance laws, recent transposition of the provisions of the Directive 05/97 / CM / UEMOA of December 16, 1997. This law determines the resources and charges of the State and specifies that the budgetary appropriations opened by the finance laws are assigned to a service and specialized by chapter grouping the expenses according to their nature or their destination.

Fiscal revenue is classified by nature.

This organic law also lays down the general terms and conditions for recording cash on a cash basis for revenue and, based on an order for expenditure, prohibits their contraction and limits the allocation of income to certain expenses. This legislation has been supplemented by several implementing regulations, in particular, Decree 2001-857 of 7 November 2001 on the budgetary nomenclature of the State which transposes the Directive 04/98 / CM / UEMOA into Senegalese domestic law; this new nomenclature entered the first application in the state budget for the year 2002.

The Senegalese Government has recently completed its legal procedure by adopting the regulations transposing into domestic law the three other WAEMU Directives relating to the implementation of the Finance Act: three decrees signed on 13 and 28 March 2003 have enabled Adopt the General Regulations of Public Accounting, the State Accounting Plan and the Table of Financial Operations of the State.

Organic Law 2001-09 designates the Minister of Finance as the sole authorizing officer of the budget and institutes with him a Financial Controller (COF). In return, this new legislation (i) instructs the Minister to provide parliamentarians with all the information intended to exercise their control mission, (ii) asks the Government to report on its management by the tabling of the bill of settlement before the end of the year following the budget implementation year and (iii) simplifies the system of voting the budget by the institution of a single vote for general budget revenue, a vote for each ministry, the new measures being voted on by title within each department. This same organic law also provides that during the management period, the annual budget law may be rectified by the vote of amending finance law.

3.1.3 Evaluation of the legal framework of the finance law

The UEMOA system does not seem today fully adapted to modern public finance management, which calls for more elaborate financial management methods, such as a medium-term budgetary framework or results-based budgeting. Although the analysis of the WAEMU Financial

Guidelines is outside the scope of this study, the mission noted in annex some structural weaknesses of these Directives, which currently constrain Senegalese public financial management.

The Senegalese legal system relating to the preparation and execution of the finance laws is now complete. It is only recently, four years after the adoption of the UEMOA Directives, that Senegal has just transposed into national law the three General Regulations on Public Accounting:

General Figure of Accounts for the State and Table of Financial Operations. of State. This delay is partly due to the lack of a mechanism to monitor the implementation of the Directives. The sectoral assessment and monitoring committee for WAEMU texts, which has just been set up by the Ministry of Economy and Finance (MEF), is expected to speed up its activities to adopt the many subsequent implementing legislation.

Table 3: Transposition of UEMOA Budget and Accounting Guidelines by Senegal

Instructions	Senegalese Texts
05/97 of 12/16/97 relative to finance laws	Organic Law n° 2001-09 Octobre 15 th 2001
06/97 of 12/16/97 relative to the general regulation on public accounting	Decree n° 2002-101 of March 13 th 2003
04/98 du 12/22/98 relative to the budget nomenclature of the state	Decree n° 2001-857 of November 7 th 2001
05/98 of 12/22/98 on the state accounting plan	Decree n° 2002-162 of March 28 th 2003
06/98 of 22 nd December 1998 relating to the Table of Financial Transactions of the State	Decree n° 2002-163 of March 28 th 2003

Source: Documentation de programmation budgétaire et économique pluriannuelle (DPBEP) 2019-2021

3.1.4 The institutional framework of public financial management

The framework established by the organic law concerns the Parliament, the Court of Auditors and the executive power. About the legislature, the Parliament has two specialized committees: the Law Commission which examines the legal aspects of the financial texts and the Finance Committee charged with the examination of the Government's economic proposals and the reports on the implementation of the finance law. The Court of Auditors represents the judiciary and is responsible for monitoring budget execution and producing a report for parliamentarians.

Concerning the executive branch, as the MEF is the sole authorizing officer of the budget, this CFAA focuses primarily on this institution. The institutional structure of the MEF is in line with the decree establishing its organization in force since 1995. This ministry has for main missions the preparation and the execution of the laws of finance and the coverage of the financing of the operations of the State. To ensure these missions, the MEF has at the central level four (4) directorates-general, twenty - one (21) directorates, forty - five (45) offices, twenty divisions and ten cells/services/ agencies. The diagram of the structure of the MEF is presented in the appendix.

3.1.5 Evaluation of the institutional framework

The institutional framework of public finance management is weakened mainly by the inadequacy of the human and material resources that weigh on its performance. Although, in recent years, the MEF has conducted specific reforms to strengthen its financial performance (Directorate General of Customs, DGD), the inconsistencies of organization of public action, noted below, represent real handicaps for effective and transparent management of state finances.

The attributions of certain MEF entities operate in a legal vacuum, with the notable exception of the General Directorate of Customs (DGD), the General Directorate of Public Accounting and Treasury (DGCPT) and the General Directorate of Taxes and Domains (DGID); these attributions have also suffered in recent years the instability of the governmental organization. The decree on the organization of the MEF of 1995 has never been the subject of implementing decrees and has never been reviewed despite the different divisions of ministerial powers that have occurred since then. As a result, the draft orders for the

organization of directorates and services were not produced. The MEF entities, therefore, refer in parallel to the implementing decrees drawn up in 1980 and 1992, while gradually adjusting their organization Figure according to the powers provided for in the 1995 order and regulatory or technological changes.

Except for financial governance, jurisdictional conflicts, the fragmentation of functions and tasks, the multiplication of structures and the heterogeneity of their titles are numerous and harm the objectives of good governance. By way of a reference, the repetition of “cells” constitutes de facto “substitution” entities, often created to respond to particular economic climate problems. Their creation often results from a finding regarding the insufficient capacities of the existing bodies compared to the expected performances. They present, whatever their form and the justifications for their creation, the risk of duplication of powers already assumed by the formal entities and demoralize existing structures. They are very often conceived without being foreseen for their durability or anticipated their possible transfer to a permanent entity previously identified and prepared.

The organization of the DGID responds to the concerns of the MEF in terms of tax revenue mobilization, organization and land and cadastral management and state domains. But it does not solve the imbalance between these concerns and the means mobilized to achieve the objectives; it also reveals a fragmentation of activities that the deficit inefficient information and communication systems accentuate.

The performance of the General Directorate of the Treasury and Public Accounting (DGTCP) is permanently handicapped by a strong centralization of decisions without efficient external controls and the absence of procedures manuals and insufficient operational documentation.

Lastly, the administrative inspection and control structures of public finances are still characterized by relatively complex functions, sometimes duplicated areas of competence, a multiplication of actors, mutations of hierarchical connection, insufficient autonomy and a deficit of human resources and materials.

The legal and regulatory framework of public institutions and companies with federal capital is governed by Law 90-07 of 26th January 1990 providing for the organization, Government operation and control of BPS enterprises.

BPS companies are placed under the financial supervision of the MEF and the technical supervision of a specialized ministry appointed by decree. They are subject to the permanent control of the CF, but exempted from prior control. A State Management and Control Cell (CGCPE) has been set up within the MEF, whose mission is to follow the management policies of the public and state-owned enterprises' sector entities.

3.2 Financial Relations

The 2017 financial year is marked by the continued improvement of the governance of public bodies, notably through:

- The support of thirty (30) entities for the development of strategic development plans (DSPs) and their performance contracts (CDP);
- Developing and disseminating the Directors' Guide and monitoring the application of the Code of Corporate Governance.

At the budgetary level, the eighty-nine (89) autonomous public bodies monitored cumulated, at the end of the 2017 financial year, a budget of XOF1,492.384 billion. They consist of:

- 57 similar or similar administrative agencies and structures and public establishments;
- 21 public health establishments and;

- 11 public institutions of higher education and centers of academic works.

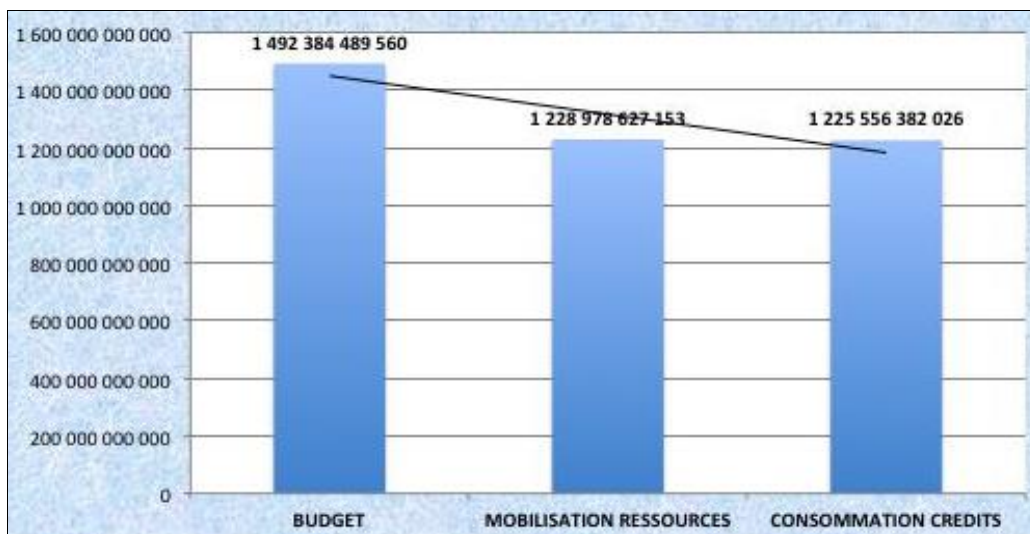
The cumulative budget for the year 2017, of all these structures, is topped up to XOF480,248 billion, or 32.18% of the budget by transfers from the State.

Of this amount, operating grants represent XOF156,749 billion, (32.64%) and capital transfers amount to XOF323.5 billion, representing 67.36% of the amount expected from the State.

An analysis of budget allocations by section shows that the appropriations available for operation amount to XOF 579.769 billion, i.e. 38.85% of the forecast (including Billion XOF156.749 of ordinary transfers expected from the State) while investment credits were planned, for an amount of XOF912.615 billion representing 61.15% of the overall budget.

Provisions for the assumption of personnel costs, the control of which is strengthened, are estimated at XOF 146,748 billion, i.e. 24.79% of operating appropriations and 9.83% of the total budget.

At the end of the 2017 management, the budgetary resources of the public organizations are mobilized to the tune of XOF1 228.978 billion, that is to say, 82.35% and the executed expenses to XOF1 225,556 billion, that is to say, 75,42% of the credits opened.



Source: DGPT

Fig 2: Execution of the budget of autonomous public bodies

4. Governance aspects of Senegalese state-owned enterprises

4.1 Controlling public expenditures

State budget execution operations are subject to a triple administrative, jurisdictional and parliamentary control. Managerial control is exercised within the Administration either before payment of the expense or after payment. External power of public expenditure, independent of the Administration, is used by the Court of Auditors (administrative control) and by the Parliament (administrative control).

4.2 Administrative control

Internal controls in the administration are exercised before the payment of the expenditure by the COF, the authorizing

officer and the public accountant; their functions have been analyzed in point 1.3 above. These internal controls are also exercised after the payment of the expenditure by the Financial Control (CF), the General State Inspectorate, and the Internal Inspectorates of the Ministries, particularly the General Inspectorate of Finance (IGF).

4.3 Judicial review

Judicial review is exercised by the Court of Accounts, which was created in 1999. It is organized in three permanent chambers, a non-permanent chamber of financial discipline and a Commission of Auditing and Auditing of Public Enterprises (CVCCEP).

The Court of Audit exercises administrative control over the accounts of the State, local authorities and public

institutions. Specifically, it is in charge of examining 470 public accounts every year: 12 reports of the principal accountants of the State (TG, GTA, PGT and nine provincial treasuries), ten accounts of regions, 424 statements of communes or groups of municipalities and 24 reports of public establishments. Public procurement is not the subject of special audit missions by the Court.

The Constitution entrusts to the Court of Auditors a mission of assistance of the National Assembly in financial matters. Parliament or the executive branch may also ask it to carry out investigations which the Court is free to accept or refuse. An institutional particularity of the Court is to transform the recommendations of the CVCCEP into "presidential directives".

As an institution of the Republic, the Court of Auditors has an individualized budget in the state budget. In 2000, it represented a total of CFAF 239.6 million, divided into CFAF 115.8 millions of staff costs and \$ 123.8 million of operating expenses.

The magistrates of the Court of Auditors are governed by a special statute which provides, in particular, sanctions for breaches of the ethical provisions applicable to them. For reference, the Court's 1999-2000 annual report states that "every magistrate has the obligation, before his swearing-in, to declare in writing and on the honor the movable or immovable property forming part of his heritage as well as that of his spouse and his minor children".

The recruitment of judges is ensured by tough competition. The theoretical number of magistrates has been set at 60, and the real strength is currently 32, including nine advisers, nine referendum advisers and one sole adviser. The Court also relies on audit staff consisting of auditors, special rapporteurs on subjects requiring specific expertise and audit assistants. Their level of remuneration is in the upper average of the incomes of civil servants.

As regards the fight against corruption, the links of the Court of Auditors with the Ministry of Justice are stronger than with the judicial institutions. The Court may, in fact, report to the Ministry unlawful conduct and, if necessary, provoke its reaction. While considering that it has the competence to participate in the fight against corruption, the Court's authorities believe that they do not have sufficient means to do so. The Court is therefore not very present in this area.

4.4 Parliamentary control

The Constitution entrusted to the National Assembly the mission of the power of the government in financial matters using the vote of the annual law of the finances and the requirements of the regulation. The Finance Committee of the National Assembly, with the support of the Law Commission, is responsible for examining bills of a financial nature and for questioning members of the government and administrative authorities.

Deputies have a period of sixty (60) days for the examination of the draft budget law which must be preceded by the vote of the previous management regulation law. In Senegal, the last election of a settlement law, which took place in the year 2000, concerned the 1987/1988 to 1996 budget management. The budget management regulation bills of the years 1997 and 1998 are currently being prepared examined by the Court of Auditors (see Table 15 above).

4.5 Public and State-owned companies

The legal and regulatory framework of public institutions and companies with federal capital is governed by Law 90-07 of 26 January 1990 providing for the organization, operation and control of BPS enterprises.

BPS companies are placed under the financial supervision of the MEF and the technical supervision of a professional ministry appointed by decree. They are subject to the permanent control of the CF, but exempted from prior control. A State Management and Control Cell (CGCPE) has been set up within the MEF, whose mission is to follow the management policies of the public and state-owned enterprises' sector entities.

4.6 Evaluation of the public and state-owned enterprises' sector

The CFAA team was unable to obtain information on the number of transfers and subsidies paid by the State budget to public institutions and companies in the public and para-public sector. As a result, it has not been able to assess the share of these transfers and subsidies in budgetary expenditures, nor know the recipients of these expenditures, nor finally to appreciate the effort made by Senegalese taxpayers to support national public and parastatal enterprises.

The coordination between the State representatives in the deliberative bodies, the DGCPT and the CGCPE is not formalized or defined; as such, the CGCPE must be made the amplifier of any communication between the directors and the companies. This lack of coordination undermines the quality of monitoring and surveillance of public and para-public sector enterprises. There is no database for information on the timing of meetings and councils, their actual dress, the operation of deliberations, and. The weakness or absence of formalized procedures does not allow the CGCPE and the supervisory authorities to exercise their legal responsibilities. The CFAA team recommends that these monitoring procedures for the public and para-public sector be re-defined and formalized in an operational manual.

The relevant provisions of the OHADA provide for the appointment of one or more auditors to publicly-owned companies and joint-stock companies with public participation. The systematic monitoring of the activities of the audit offices does not seem to be ensured, as is the follow-up of their recommendations.

Some agents responsible for the financial monitoring of public institutions and public companies within specialized control structures do not seem to have the necessary training to carry out the mission entrusted to them appropriately.

5. Conclusion

The Senegalese public finance management system has its source in French commercial law in place before the independence of Senegal in 1960. The primary texts were adopted at that time and underwent many revisions until the 1990s; this mechanism is undergoing significant changes resulting, on the one hand, from the new institutional organization set up following the adoption of the Constitution in 2001 and, on the other hand, from the Financial Guidelines of the Economic Union and West African Monetary Union (UEMOA).

Efforts have been made by the Senegalese Government to adopt financial laws and regulations to this new institutional organization. Significant reforms have been implemented, such as customs and tax reforms (modernization of customs services, creation of a Center for Large Enterprises) and the creation of a supreme audit institution (Court of Accounts). Other reforms are currently underway and concern, in particular, the control of the execution of public expenditure (introduction of a new form of financial power) and the modernization of the information system.

Today, necessary improvements and adjustments seem required not only to preserve the achievements but also to overcome the obstacles encountered in the Government's efforts to improve the management of public finances and to accelerate the implementation of the reforms. The significant improvement in the control of federal funds can be seen when these improvements and adjustments are implemented.

6. References

1. Apix SA. Revue indépendante de la passation des marchés au titre de la gestion 2016, Rapport Final, published in, 2018.
2. Evaluation de la gestion des finances publiques et des pratiques comptables du secteur privé, produit de la Banque Modiale, 2003.
3. Ministre de l'Economie, des Finances et du Plan. Document de Programmation budgétaire et économique pluriannuelle (BPBEP), 2019-2021.
4. Projet de suivi de la gouvernance en Afrique de l'ouest. Etat de la gouvernance en Afrique de l'Ouest: Senegal, 1991, 101-112.
5. The World Bank. Steering Senegal towards Greater Transparency in Governance and Public Finance Management, December 9th, 2014.
6. <http://www.worldbank.org/en/news/feature/2014/12/09/steering-senegal-towards-greater-transparency-in-governance-and-public-finance-management>, retrieved on May 20th, 2019.