

# PPP Resources

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## PPP, Infrastructure, and Decentralization: Perspectives for Senegal

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### About the Author



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### Abstract

This article examines the progress of Public-Private Partnerships in Senegal with regard to legal, institutional and regulatory settings, and demonstrates how decentralization could help promote PPP and boost local infrastructure development. Years of efforts to transfer power to local governments led to the enactment in March 1996 of Senegal's Decentralization Law. Eight years later, in February 2004, the Build-Operate-and-Transfer Law ("Loi CET – Construction-Exploitation-Transfert") was enacted to set up an appropriate environment for private sector involvement in public infrastructure development. The National Infrastructure Council (CNI) was created to execute the law. Although these two laws were not intended to resolve the same problem, they constitute ingredients that could serve the infrastructure development purpose in Senegal. What has been the evolution of the environment of both laws since their enactment? Did they mesh up to serve local government's plans for infrastructure development? What lessons and recommendations can be drawn from the case?

### Introduction

Since the 1990s, African countries have adopted PPPs to mobilize private sector resources for public projects. According to the World Bank, the private sector contributed \$969 billion to public infrastructure financing from 1990 to 2005. The investment in sub-Saharan Africa reached \$36 billion i.e. 3.7% of the total private contribution. The most successful countries in attracting the private sector funds through PPPs were South Africa, Nigeria and Mozambique. South Africa, the leader of this group, has a unique model built upon the decentralized administration of its regions.

During that same period, Senegal has attracted \$905 million in private sector investment in PPPs. Three successful PPP initiatives were undertaken in the mid 1990s, mainly in urban water supply, independent power production and railroads. These initiatives were responses to acute infrastructure problems. The enactment of the CET law in 2004 established the commitment of the Government of Senegal to set up a favorable environment for successful PPPs. This strong commitment resulted from increasing needs for quality infrastructure, continuous degradation of existing infrastructure and insufficient government financial resources. In addition, existing private resources in-country and within the West Africa Economic and Monetary Union

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(UEMOA)<sup>1</sup> were favorable enabling conditions for successful PPPs. The Senegal CET Law may as well be a powerful local economic development instrument for rural, city and regional councils, given the powers transferred to them by the 1996 Decentralization Law.

### **The Senegal CET law**

Three successful PPPs helped craft the CET law:

- The Sénégalaise des Eaux (SDE) 10-year project for urban water supply in Senegal which is worth \$30 million in investment;
- The Transrail Regional Railroad System, a 25-year, \$58 million Concession to CANAC Inc. involving two countries, Senegal and Mali;
- The Independent Power Supply project with General Electric under a power purchase agreement aiming at providing an additional 50 MW power to the government owned power company, SENELEC.

Lessons learned from these successes and the failed attempt to privatize SENELEC were keys to shaping the environment for successful PPPs. They helped demonstrate how privately owned enterprises can partner with the Government of Senegal for public infrastructure provision. The structural setting is similar in all three cases: a government-owned company holds the assets and can receive concessionary multilateral financing, and an operating company produces the services needed. These structures are still running without major problems to jeopardize their operations. They are providing affordable quality services to the populations while making profit for the private investors.

The CET Law “applies to all the Construction-Exploitation-Transfer contracts through which the state, a sub-national government, a public enterprise, or a majority publicly-owned firm referred to as the Conceding Authority, entrusts to a third party, called ‘Project Operator’, all or part of the following tasks: financing, design, construction, operation or maintenance of a public infrastructure. These contracts may also plan for the transfer of the operator executed infrastructures to the Conceding Authority during the course or at end of the contract.” (Article 1: domain of application).

The broad definition of the CET contract covers BOTs and all other types of public-private partnerships and financing arrangements. It also provides room for sub-national governments to use PPPs for local infrastructure provision.

### ***Institutional, Regulatory and Legal framework***

Enacting the CET Law is a major step towards a legal, institutional and regulatory framework for PPP transactions. But still the framework lacks the coherence with existing laws and the reliability expected by private investors and populations. Examining the CET Law in light of the existing laws will help establish the principles of financial stability, contracting, performance monitoring and make the outcomes of the processes predictable. The National Council for Infrastructure (“Conseil National des Infrastructures” - CNI) was created in 2004 to make sure

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<sup>1</sup> In a report to USAID in 2004, Chemonics International reported that \$8.6 billion were available in the UEMOA money market (The Potential of Public-Private Partnerships in Senegal, CHEMONICS/USAID, 2004)

these conditions are met. Article 1 of the law creating the CNI provides that: “The CNI is a consultative body which will provide independent monitoring and mediation support in developing infrastructure projects subject to the CET law. The CNI also evaluates PPPs legal environment and submits to the public authorities appropriate reform proposals”. The CNI began operation in 2005.

### ***The challenges facing the development of PPPs***

One of the major challenges facing the development of PPPs in Senegal is public perception. The majority of the public perceives that the CET Law was enacted to provide private resources for infrastructure investments (mostly roads and water) only in the capital city of Dakar. This perception calls for an information campaign to raise the populations’ awareness and understanding regarding PPP benefits and impact on the sub-national governments’ ability to mobilize resources for local economic development, employment creation and ultimately the population’s well being.

Other challenges facing PPPs as an instrument to provide reliable, efficient and affordable infrastructure include the following:

- The institutional capacity of Senegal regarding planning and developing PPPs is weak and therefore requires that the country rely on foreign technical assistance;
- The legal framework is to undergo an in-depth revision for consistency and harmonization with existing laws in order to reduce confusion resulting from interpretation of the various laws that can affect PPP transactions;
- The regulatory framework needs to be clearly set so that stakeholders know and understand the conditions and procedures for development of successful PPPs.

## **The Decentralization Law**

### ***The Decentralization progress***

The Decentralization Law aims at promoting the development of the 10 regions of Senegal. Regions have the authority to plan, together with the 103 cities and 320 rural communities, their local economic development.

The central government approach was to transfer competencies to sub-national governments so that they can be responsible for planning and management. They anticipate that the transfer of responsibilities helps improve efficiency in infrastructure delivery, more accountability to the stakeholders and less demand on the central government’s scarce financial resources. The law provides that the authority of the local governments is extended to nine competencies formally under the central government including economic planning. Locally designed planning instruments used for that purpose are: the Regional Plan for Integrated Development (PRDI), the Communal Investment Plans (PIC) and the Local Development Plan (PLD). Capital-intensive activities, except those related to health and education infrastructure, remained the central government’s responsibility. Water supply, wastewater, roads, and power supply, for instance, are provided by the central government. The sub-national governments are provided with planning and development expertise through the Regional Development Agencies (ARD), Municipal

Development Agencies (ADM) and the autonomous government owned Public Works Agency (AGETIP).

The government of Senegal is currently developing a decentralization and local development program aimed at further advancing the decentralization policy and enhancing local economic development through a link with poverty reduction strategies.

### ***The Challenges of Decentralization***

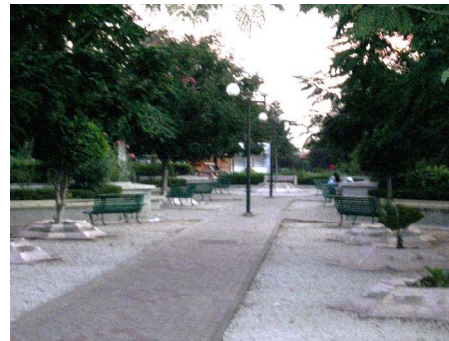
Although decentralization has substantially advanced, sub-national governments are facing critical challenges in undertaking their new responsibilities: weak institutional capacity, an insufficient and under skilled staff, limited fiscal authority and insufficient financial resources<sup>2</sup>. There is a need for more budgetary support and stronger fiscal responsibilities for sub-national governments to be able to raise more resources and face local services and infrastructure needs.

### **Combining CET and Decentralization Laws for Infrastructure Development**

Although the CET and Decentralization laws were developed to resolve discrete problems, they are complementary instruments for infrastructure development. The decentralization law seeks to bring empowerment to locally elected leaders, transparency in public affairs management, good governance and accountability. These elements are keys to developing an environment favorable to PPPs. PPPs, in turn are intended to bring private capital to provide better services to the local population, and create or rehabilitate new infrastructure. The CET Law provides an additional instrument for mobilizing resources for quality services provision and fosters local economic development. Some sub-national governments served as role models and experimented with the



A Belle Viande shopping booth in SICAP Park  
(Photo: Waly Diallo)



A well maintained park in SICAP  
(Photo: Waly Diallo)

use of PPPs to satisfy community infrastructure needs. The municipality of SICAP, for instance entered into a partnership with Belle Viande, a meat distribution network, to maintain and upgrade the public parks. In exchange SICAP provided space within the parks and authorized Belle Viande to construct shopping booths to expand its network. Although this SICAP transaction was developed in the absence of clear vision or development guidance from the central government, it evidenced the use of sub-national government PPPs as a valid alternative to direct government financing for local infrastructure development.

In addition, international development agencies, such as USAID and the World Bank have resources and experience to help Senegal consolidate these two laws. USAID for instance promotes “pooled financing” in support of sub-national governments whose resources could be

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<sup>2</sup> In 2003, decentralization support and local government equipment funds transferred by central government to local governments were about 2% of the budget.

pooled to attract private investment. Also the World Bank has many years of experience in Output-Based Aid (OBA), which aims at supporting infrastructure provision through well-structured and performance-based subsidies.

## Conclusion

Notwithstanding the little progress made in improving the legal, institutional and regulatory environment for PPPs, some sub-national governments have successfully developed small scale PPPs. To that end these local governments made use of the political and administrative powers granted to them by the decentralization law. In order to have the sub-national governments take even more advantage of the CET law and better involve the private sector in local public project development, the following actions need to be taken:

- Define a vision and develop strategies to promote PPPs as a local economic development tool under Senegal's decentralized public administration;
- Provide greater fiscal authority to sub-national governments and seek support from donors such as USAID and the World Bank to develop effective and bankable small scale PPPs;
- Create a study fund to support local governments in undertaking feasibility studies and maintaining a data bank of PPP project initiatives;
- Create a fully operational and staffed PPP support unit at the central government level to further assist local governments in developing bankable PPP projects,
- Undertake an information campaign to raise understanding and knowledge of stakeholders concerning PPPs and their impact on local economic development;
- Undertake training to build capacities of the central government, sub-national governments and the private sector in PPP planning and development;
- Involve local banks in PPP development through sovereign guaranty, multi-donor guaranty or other incentive mechanisms
- Set up clear and transparent legal, institutional and regulatory frameworks for PPPs and make sure that frameworks and processes are properly designed for sub-national government use.

## References

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**Web Pages:**

- Global Partnership for Output-Based Aid: [www.gpoba.org](http://www.gpoba.org)
- Municipal Finance Task Force: [www.mftf.org](http://www.mftf.org)
- Private Participation in Infrastructure: [www.worldbank/privatesector/ppi](http://www.worldbank/privatesector/ppi)
- Municipal Investment Unit: [www.miu.org.za](http://www.miu.org.za)

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