Senegal

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QUICK FACTS

Legal forms of philanthropic organizations included in the law: Associations, Nongovernmental Organizations (NGOs), and Foundations.

Five main social issues addressed by these organizations: Primary and High School Education, Health and Medical Research, Basic Needs, Religion, Human Rights.

Average time established by law to register a philanthropic organization: 31-60 days

Average cost for registering a philanthropic organization: US $350

The cost varies depending on the type of philanthropic organization. The average nominal cost to register an association is US $100, and US $600 to register a foundation.

Government levels primarily regulating the incorporation of philanthropic organizations: State Government, Local Government

If the philanthropic organization is nationwide, it is incorporated by the state government. Otherwise, it is incorporated by the local government. This is only valid for philanthropic organizations such as associations. All foundations are incorporated at the state level.

Philanthropic Environment Scores:

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<th>Year</th>
<th>Ease of Operating</th>
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<tr>
<td>2018</td>
<td>4.7</td>
<td>3.0</td>
<td>3.3</td>
<td>3.5</td>
<td>4.0</td>
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I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.

Question 1: To what extent can individuals form and incorporate the organizations defined?

Score: 4.0

Individually formed organizations. Government restrictions are very limited. The registration process is also clear and requires a limited amount of time and resources. However, the registration process is not well-known by the majority of people and requires some paperwork. The registration and regulation of POs is overseen by the Ministry of Interior (Associations and NGOs); Ministry of Finance (Foundations); Ministry of Foreign Affairs (international NGOs). The registration of an organization is not mandatory; therefore, many associations operate as unregistered groups (ICNL 2017). According to ICNL (2017), associations can be formed more easily than NGOs, which requires prior existence for two years as an association.

In Senegal, a PO is referred to as nonprofit organization defined as an organization that does not engage in commercial activities. In general, the PO has a sole purpose of providing services to society. Like any philanthropic organizations, NGO are registered by the Directorate of General Affairs (DAGAT) of the Ministry of Interior.

- Associations and NGOs: the registration of national associations is overseen by the DAGAT of the Ministry of Interior with guidelines of Civil and Commercial Obligations (COCC).

As far as the registration process is concerned, the procedure and information are obtained from regional authorities or from the Ministry of the Interior. The required documents are submitted to local authorities of the area where the organization is situated for registration. If approved, the regional authorities forward the application to the DAGAT, where documents are assessed again. The required information includes name of the organization; vision, mission and objectives; address; board members’ information (name, age, nationality, profession, and address); details of proposed activities and details of sources of funds.

After 2 years of operations, the association can file an application with all the necessary documents for registration as an NGO with the Ministry of Interior. Also, associations that have been regularly declared to have been authorized for at least two years may obtain recognition of the public utility status according to Article 2 of Decree No 76-193 of 17 February 1976.

Finally, PO umbrella organizations can be easily created with limited restriction. The most important umbrella PO is called the Development NGOs Council (CONGAD), with a membership of 178 Senegalese, African and international organizations. CONGAD’s missions include capacity building interventions for civil society organizations, information dissemination, lobbying, advocacy and policy influence. It a platform for the protection of the material and moral interests of its member organizations in their relationships with the Government and other partners.
Senegalese civil society is governed by common law. Organizations carry out their activities freely so long as they respect the laws and regulations in force. This favourable framework has allowed for a large number of associations to gain the recognition of the Ministry of the Interior, but many unregistered organizations are also active.

- International associations/NGOs

Specific rules exist for the constitution and registration of foreign associations. Associations with headquarters established outside Senegal are considered to be foreign. Foreign associations must seek representatives locally. The application for registration of those associations are subject to further investigation by the Directorate of State Security.

Of these, about 100 organizations have a headquarters’ agreement which would place them under the supervision of the Ministry of Foreign Affairs. The existence of such a headquarters’ agreement gives the NGO diplomatic status and places it de facto outside the scope of the obligations assigned to other NGOs by Decree No. 96 -103, mainly the approval of the administration on its investment program.

- Foundations

A foundation is constituted by the irrevocable assignment of property, rights or resources by one or more legal persons called founders to a nonprofit-making community service. The public utility foundation is not an association. It is established by Law No. 95-11 of 7 April 1995 and its implementing Decree No. 95-415 of 15 May 1995.

At any time, any legal person or private entity having the legal capacity to make donations can apply. The founders shall not be the object of any collective proceedings for judicial settlement or liquidation of property or penalties arising from such proceedings. Required documents include application for authorization to set up a foundation addressed to the Minister for Finance; statutes of the foundation; list of founding members; an explanatory note presenting the objectives of the foundation, its program of activities in the short, medium or long term and its means of action; the act by which the founding person (s) contributes to the foundation the initial allocation fixed by the articles of association, specifying the nature, amount and periodicity of payment; evaluation report if the initial endowment is in kind; and bank certificate stating the funds released by the founders.

The amount of the initial allocation may not be less than 30 percent of the conditions required to finance the activities of the foundation and can be in cash or in kind. The sums paid must be deposited in banks in Senegal until the foundation has legal capacity. A decree authorizes the foundation and grants it the recognition of the public utility status.
Question 2: To what extent are POs free to operate without excessive government interference?

Score: 5.0

In general, organizations are free to operate; however, groups whose goals and activities are contrary to penal laws or directed against “public order” are prohibited (ICNL, 2017). The law gives public authorities the right to exercise careful oversight over associations and especially NGOs.

In general, the legal framework for the operation of NGOs is favorable, and constraints on advocacy are clearly defined (CIVICUS, 2014). The Constitution recognizes freedom of association and NGOs are minimally inhibited and are free to communicate through various media channels. The reporting requirements are clear, reasonable and not onerous.

The Senegalese legal framework does not prejudice the right to communication and cooperation. Indeed, the representatives of the civil society, individually or in their quality, have the right to communicate and cooperate with other elements of civil society. Article 28 of Decree No. 96-103 states, "Each NGO, authorized under the conditions laid down in Article 8, may associate itself with other NGOs, with a view to coordinating their activities in one or more similar legal bodies ".

Question 3: To what extent is there government discretion in shutting down POs?

Score: 5.0

The organization’s governing body is able to voluntarily terminate its activities. No prior governmental approval is needed. Clear and fair legal regulations exist to guide the dissolution of an organization. Even though the government has the authority to enforce constitutional provisions and has the discretion to shut down a NGO or association that is deemed to be in violation of the provision of the national Constitution, no NGO has been dissolved since 2000 (Kagoro, 2015).

But any international NGO conducting activities in Senegal must refrain from any form of political involvement (or activities that may instigate local unrest or national instability), and profit-making or commercial activity.

II. Domestic Tax and Fiscal Issues

The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.

Question 4: To what extent is the tax system favorable to making charitable donations?

Score: 3.0

There is no Senegalese tax law, except in the context of the special status of development organizations, with arrangements for preferential tax treatment of PO resources. Traditional PO resources such as membership fees, donations or grants are not subject to commercial taxes.
(corporation tax or VAT) but they are mainly not-for-profit activities. On the other hand, any economic or commercial activity work by a PO enters the field of commercial taxes.

Individuals and corporations have access to tax deductions/credits when making charitable contributions. The process for receiving tax benefits is not very clear. A minority of individuals and corporations are familiar with the process to get tax deductions. The Government's communication on tax deductions is poor. According to the report published by PricewaterhouseCoopers (2017), “only payments made [by corporations] to specific chartered organizations are deductible.”

Even though it not strongly related to the tax system, some new government policies and bodies discourage the development of philanthropy. Those are mainly the Court Repression of Unlawful Enrichment (CREI), the National Office for the Fight against Fraud and Corruption (OFNAC) and the National Financial Information Processing Unit (CENTIF).

Payments from individuals to these same works or organizations give rise to a limited deduction to 0.5 percent of total income. It should be noted that there is a list of works or organizations for which donations from individuals or companies are tax-deductible, in application of the law no.2012-31 of 31 December 2012 establishing the General Tax Code.

Regarding corporate philanthropy, payments made by undertakings for the benefit of works or bodies of general interest, philanthropic, educational, scientific, social or family character, designated by decree are considered as deductible expenses within the limit of 0.2 percent of the company's turnover (Article 7 of the General Tax Code).

**Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?**

When implementing their programs, NGO may solicit and receive contributions, gifts and legacies in kind or cash from national as well as from international organizations (but they are subject to authorization by the Ministry of the Interior for gifts and legacies of immovable property).

Some organizations such as NGOs are eligible to receive tax exemptions. The exemptions are restricted for some products such as fuel and lubricants. However, the process to receive the tax-exempt status is not very clear for the other types of organizations such as associations. For example, an association needs to be recognized as a “public utility” or NGO. Indeed, in the Senegalese context, NGOs differ from associations. NGOs are supposed to operate at a higher level from a financial and institutional viewpoint.
III. Cross-Border Philanthropic Flows

The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.

Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?

Score: 3.0

Cross-border donations are sent with minimal costs. There are some limitations due to regional and national legislation. Senegal is a member of the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA), an institution of the Economic Community of West African States (ECOWAS) responsible for facilitating the adoption and implementation of Anti-Money Laundering (AML) and Counter-Financing of Terrorism (CFT) in West Africa.

In fact, there also is the Directive N°02/2015 / CM / UEMOA on the fight against money laundering and financing of terrorism adopted by the Council of Ministers of the UEMOA, on 02 July 2015. The Central Bank of the States of West African States (BCEAO) also exercises strict control of cross-border donations.

Another key player is the National Cell of Financial Information Processing (CENTIF) of Senegal. CENTIF was created By Act No. 2004-09 of 6 February 2004 on the fight against money laundering, adopted in application of the Directive n ° 07/2002 / CM / UEMOA of 19 September 2002 of the Council of Ministers of the West African Economic and Monetary Union (UEMOA). The CENTIF is the central structure responsible for facilitating and coordinating national implementation of the State's policy on the fight against money laundering and the financing of terrorism (AML / CFT).

All these various control bodies make it hard to send cross-border donations.

Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?

Score: 3.5

Cross-border donations can be received with minimal additional costs. The process to receive donations from abroad is clear but sometimes it is restricted. There are some limitations on the type of activities that can be supported through cross-border contributions.

Associations and NGOs can benefit from foreign donations. There are no legal barriers to domestic or foreign funding, but NGOs are subject to the verification of their funding sources by the Ministry of Finance and Plan (Decree n° 2015-145)” (ICNL 2017). In practice, various institutional actors such as the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) are involved in activities related to sending and receiving cross-borders donations. GIABA was established by the Economic Community of West African States (ECOWAS) in 2000. The creation
of GIABA is a major response and contribution of the ECOWAS to the fight against money laundering.

GIABA is a specialized institution of ECOWAS that is responsible for strengthening the capacity of member states towards the prevention and control of money laundering and terrorist financing in the region. Apart from member states, GIABA grants observer status to African and non-African States, as well as Inter-Governmental Organizations that support its objectives and actions and which have applied for observer status.

The work of the CENTIF indicates that there are 470 NGOs, of which 295 are national and 175 are international. NGOs are particularly under controls. The reasons given relate to the requirements of the fight against money laundering and terrorist financing. Civic Freedom Monitor (2017) reports figures provided by the Directorate of Community Development of the Ministry of the Family: 487 registered NGOs, including 303 national organizations and 184 foreign organizations.

IV. Political and Governance Environment

The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.

Question 8: To what extent is the political and governance environment favorable for philanthropy?

Score: 4.0

To some extent, there is collaboration between the government and the philanthropic sector. The government recognizes the role of philanthropic organizations but those organizations are not well supported by the state.

While multilateral actors such as the World Bank, IMF, UNDP, are involved in the financing and capacity building of civil society, at the state level, there is no specific program to advance philanthropy.

Question 9: To what extent are public policies and practices favorable for philanthropy?

Score: 3.0

Government promotes philanthropic values and generally facilitates equal access to national opportunities to NGOs and public utility organizations. Donors are generally free to support any philanthropic cause without government pressure. However, the capacity of government agencies to support and oversee POs is limited.

Relationships between the State and POs, in particular NGOs in Senegal, are sometimes marked by tensions due to the lack of communication and collaboration.
POs denounce administrative delays, the absence of subsidies and state support and non-compliance with undertakings concerning the participation of the State in the implementation of their projects.

In return, the administration often criticizes national POs for not having programs of activities harmonized with economic development. Some POs known as “briefcase POs” are also criticized for capturing external resources while not providing information on the use of funds.

V. Socio-Cultural Environment

Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?

Score: 4.0

Due to the country's history and sociology, there are philanthropic traditions and societal values that usually encourage giving. Solidarity is a must.

Several cultural, political and economic factors account for the growth of POs in Senegal:

- **Cultural factors**: the tradition of association and philanthropy (individual and collective giving as well) is deeply rooted in Senegalese culture. At an early age, boys and girls come together in informal associations and are taught the values of solidarity and mutual help. Therefore, in one way or another people are prepared to be members of POs. POs play key roles in the socio-cultural education of individual and groups; they develop the sense of identity and social inclusion;

- **Political factors**: unlike the majority of African countries, Senegal enjoys a tradition of democracy. Even in colonial times, trade unions did exist and played a key role in the country’s independence. Back in colonial times, Senegal elected its own representatives at the French Parliament. The creation of organizations is facilitated by the democratization process in the country, the development of a vibrant civil society movement and the adoption of the law on Gender Parity in 2010.

- **Economic factors**: POs are more than social inclusion bodies as they can contribute to local economic development in various ways. The Senegalese law allows poor people to join their efforts to put in place popular economic organizations (known as GIE). The history of the majority of development organizations began in the 1970s in times of severe drought. The 1980s witnessed the growth of development organizations as the country faced economic adjustment programs.

In general, people believe in POs. The 2014 community survey conducted by CIVICUS to study civil society in Senegal, reports that more than 70 percent of the surveyed population have confidence in civil organizations. People recognize that POs play an important role in society at the level of grassroots organizations. Yet, some POs are still informal but they work effectively. According to the ICNL (2017), there are approximately 11,600 associations currently operating in Senegal and 487 registered NGOs. Many grassroots organizations are not registered and do not have a specific governing legal framework.
“Like in many countries, philanthropy for religious purposes is very developed in Africa. Religion is traditionally a powerful and driving force for generosity; it serves as a generous booster of philanthropic causes. For example, for religious purposes, Islamic believers are encouraged to make donations that are called « zakat » used to buy food and clothes for the poor or the building of hospitals and orphanages. It may be argued that « zakat » contributions do not build self-reliance or fight poverty but they are still valid mechanisms of solidarity; Christian generosity is also another expression of philanthropic concern, in particular in the fields of education, health care and water. African churches are examples of religious philanthropic institutions as they perform daily voluntary work to support financially and morally the poor” (Ibrahima Hathie and Mohamadou SY, Institutional Forms of Philanthropy in West Africa, IDRC, 2008).

VI. Future of Philanthropy

These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.

Current state of the philanthropic sector

The philanthropic sector plays a key role in the development of the country. Formal philanthropic organizations are still young. Major POs are informal but they work effectively towards achieving the common good.

Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- The creation of new bodies such as the National Office for the Fight against Corruption (OFNAC), and the restauration of the Court of Repression of Illicit Enrichment (CREI): The CREI faces a lot of criticism since there is no possibility of appeal with the CREI law and the law does not guarantee a fair trial in accordance with the African Charter on Human and Peoples' Rights (ACHPR) and the International Covenant on Civil and Political Rights (ICCPR). If a person is presumed guilty it is up to him or her to prove his or her innocence. This may discourage wealthy people who are interested in creating POs. There is a saying that “to live happily, you have to live hidden.” Showing one’s wealth may lead to trouble, in the particular context of the CREI;

- Corporate philanthropy: Over the past years, the notion of Corporate Social Responsibility (CSR) has been identified as being able to significantly contribute to poverty alleviation and development. As a result, some big companies have started to focus more and more on CSR in the particular context of Sustainable Development Goals (SDGs). The commitment of some big companies is contributing to building prosperous, sustainable societies in the places where they operate around the world is deeply embedded into their corporate culture with the aim of bettering global society; and

- The development of Islamic philanthropy: Islam is the predominant religion in Senegal. About 95 percent of the country's population is estimated to be Muslim. Islam has had a presence in Senegal since the 11th century. Islamic philanthropy plays a major role in determining
people’s giving patterns. Religious giving is often the main source of philanthropy in the country and often channel philanthropic giving through a range of formal and informal POs but it is not always easy to track. Even though philanthropy is often motivated by religious belief, the proceeds do not always go to the religious institutions themselves.

**Future development trends in the philanthropic landscape**

Community foundations can play a pivotal role in the charitable section. Philanthropic initiatives involving the diaspora - as well as individual and corporate philanthropy - represent a major opportunity.

“There is diversity and dynamism of traditional forms of philanthropy. In fact, like the great majority of donors, Africans give for various and sometimes for complex reasons. In general, people want to give to noble causes, if they are asked to give, if they know where to give and if they think their donation is useful or can make the difference. Some people may give from the head, others from the heart and sometimes from both. (...) The African type of philanthropy is not tied to times of boom or prosperity. It is daily. In hard times, people will probably give less in other societies, for example. In Africa, hard times are also moments of sharing and togetherness” (Ibrahima Hathie and Mohamadou SY, the Institutional Forms of Philanthropy in West Africa, IDRC, 2008).

Community giving may play also a major role in the development of the country. Poor people in rural and urban areas innovate to find better ways of fighting poverty. They should also be in a position to lobby towards a better regulatory framework. According to Trust Africa, an African foundation based in Senegal, “cultivating indigenous philanthropic resources can play a catalytic role in enabling Africans to reclaim ownership of their own agendas, bring forward African voices and help offset the power imbalances that accompany external aid.” The continent has a strong culture of family and community-based giving and support systems.

**Three key recommendations to improve the environment for philanthropy**

- Improve the institutional framework to encourage philanthropists to create POs. In other words, improve domestic tax and fiscal environment;

- Build the capacity of potential philanthropic actors in matters of managing philanthropic initiatives. Philanthropy should be taught in universities and business schools; and

- Sensitize the public on the necessity to engage in formal philanthropic activities. In this regard religious philanthropy is very promising.