LJD Week 2013

Public-Private Partnership, Urban. Mobility and Social organizations: Brazil

Alfredo Attié Jr

Thank you for the opportunity to participate in this event, to share the desk with so distinguished experts, and for the very kind reception from Ms. Lange.

I intend to explain the Brazilian legal framework of public private partnership, making a distinction between two models of partnership - the PPP, stricto sensu, and the Social Organizations model.

Discuss the adequacy of both to the purpose of our panel.

Then, in describing the context of urban regulation, the City Statute and the evolution of urban conflicts, argue that the two models of partnership not only differ in concept and scope, but mainly dramatically compete.

They correspond to two conceptions of use and distribution of urban and public space, and common goods, and the adoption of one of them instead of the other may present serious consequences, increasing problems of poverty, inequality and socioeconomic mobility, or helping to solve these problems.

I think the decision about adopting one or another must be taken based upon a complex process of political negotiation, with the necessary participation of the communities involved, which will suffer the consequences of the decision. The decision cannot only be taken on the basis of economic sectorial interests.

1. During the recent years, due to the new engagement of Brazil in the international arena, and its interest in organizing international events, need for investments in infrastructure, building of ports, harbors, reconstruction of urban areas, that competition of models has brought a tremendous impact, unfortunately a bad impact, on the conditions of living in the problematic urban areas.

As anyone can experience, Brazil is a country of sharp disparities, the gap between the poorest and the richest is one of the largest in the world. Despite changes in public policy, the inequality of income distribution, resources and wealth, access to public services, like education, health, transportation, remains difficult to deal with.

The dissimilarities caused by the problem of social exclusion, can be, of course, observed geographically , but they can be better envisioned as a combination of sociodemographic characteristics (gender, age), cultural elements (ethnicity, race, norms, values, definitions of what is acceptable), economic factors, and politico-institutional elements (representation, organizational structure) and so forth.

The development process, as we could experience, during the recent years, can bring social inclusion and alleviation of poverty, but it must be sustainable.

As inequality is a consequence of a complex causation process, the solution to it, the building of equality must also be based upon the adoption of a combination of measures, in order to overcome the complex combination of causes.

The demonstrations we experienced last June, were a result of a turning point in Brazilian history, a moment when the remaining inequalities meet the gains of the public policies, and allow a relevant part of the population to occupy, even in a disorganized but vehement manner, the public space.

2. Let's talk about the two models.

They correspond to a two moments of initiatives of Brazilian federal government to engage the participation of the private sector in the execution of public policies, in providing public services, by means of a partnership.

The first in time initiative occurred during the government of Fernando Henrique Cardoso, and corresponded to a process of state administration reform.

It was the Social organizations model.

Two kinds of Social organizations were created: the so called Social Organization and Social organization of public interest.

The second model was adopted by the presidency Lula da Silva, and it was, in 2004, the regulation of the P3, stricto sensu, based upon the international experience.

It can be considered as an irony of history, that a model of engagement of people in the governance was thought during a regime classified as central right by its opposition. And a model of partnership with the big corporations could be adopted during the leftist government of the workers’ party. But it is more correct to say that both systems were thought and conceived during the Fernando Henrique's era.

3. The federal statute of 2004, designed the P3 model, thinking about huge projects of infrastructure, with high costs and risks of high level involved, during the execution of long term contracts, anticipating the possibility of high profits.

The P3 stricto sensu, as conceived by the Brazilian rule, would be difficultly useful for the implementatiion of partnerships with the local governments. The legislator had envisioned a partnership that could induce the investment of large amount of capital.

4. The social organization model is an evolution and even an important change in the way of participation of the civil society in the administration of social services,

Indeed, Brazil had experienced in the past two ways of social engagement. At first, the societal welfarism, mainly in health, care of aged people, orphans, some kind of educational concerns. Then, during the 20th century, since the Vargas' era, the corporatism, the services provided by the labors and employers' unions, aiming the technical instruction and education of workers (the so called S System).

Both traditional practices remain pari a passu with the new Social organizations and SO of public interest, and they, have played an important role as well.

Meanwhile, the new forms of social organizations were created during the re-democratization era in Brazil.

Since the Constitution of 1988, we have experienced an increasing of associative movements, of voluntary association.

Ini trying to joining the societal initiatives with the needs of implementation of public services, new contract forms were designed. The most important is the management contract, by means of which the public sphere can monitor the execution of the compromised public policy by the social organization, evaluate methods and procedures, use of means, and so forth.

5. When we talk about urban regulation in Brazil, we have to mention the important mark the City Statute of 2006 represents. It, in fact, won the Uni Habitat's Scroll of Honor.

The statute defines main principles of land, urban and housing policy, creates process, mechanisms, instruments of norms to render urban management viable, with emphasis on the capture for the community of some surplus value granted by the state action, proposes a large descentralised and democratic urban governance, and emphasize the use of partnerships with the private, community, and voluntary sectors, with popular participation in the decision making process.

6. But, just like any legislation initiative, it was a product of its time, and we can regret, today, the lack of concern with the participation of the people in the process of enforcement of the decisions and new rules. We can criticize something that we can define as its concern only with an static conception of public space, conveying only the idea of property, and less the

implications of mobility within the public and socioeconomic space.

7. The best way to implement the public policy of urban mobility, with the participation of the society could be of course, the use of the instruments of the social organization model and the regulation and principles provided by the city statute.

Although the federal statutes only conveys certain areas of activity, the state level and municipal level statutes have permitted an amplification of the scope of social organizations.

It is important to mention that some of our states statutes enact the possibility of the use of partnership in with the very wired scope of development.

Let me talk about the numbers of SO and SOPI. First the puzzle of statutes:

For the SO, there are 1 Federal Statute, 15 at the States Level, and 42 at the local level (municipalities)ç

For the SOPI, there are 1 Federal Statute, 9 States Statutes, and 15 Municipal Statutes.

Ad now the societal initiatives:

We have got 6 SO created under the rules of Federal level, 112, at State level, and 52, at the Municipal one.

5050 SOPI were created, 4856 at the Federal level, 167, at the States level, and 27 at the Municipal level.

There are investments in alternative means of transportation, school buses for poor communities and public transportation for persons with disabilities.