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PARTNERSHIP-BASED INSTRUMENTS FOR URBAN POLICY IN  
BRAZIL

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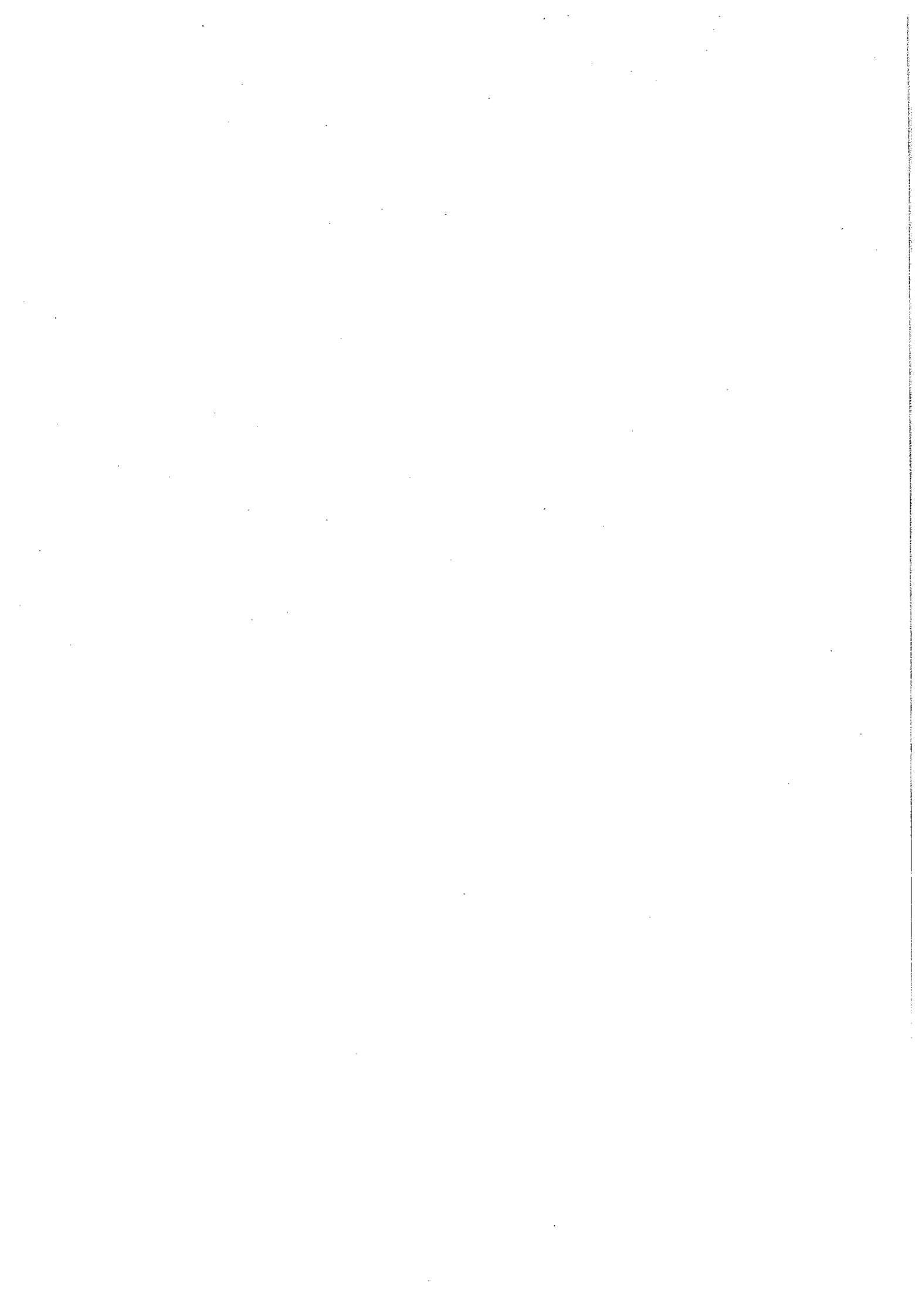
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# INTRODUCTION

Much of the current debate on economic and social development is related to the idea of partnerships - between countries, between public and private sectors, between competitive companies, between local residents, between employers and employees. Cooperation seems to be a key element for the development of mankind and a challenge to be won, the more so given the complexity, diversity and uncertainty of the economies of globalization, where mutual dependency requires effective responses to issues such as regional discrepancies and protection of the environment. As Wald (1996) remarks, the idea of partnerships is at the same time old and new. Old in its conception and new in its density and dimensions.

At the local level, the term partnership has also been incorporated in the political rhetoric as an element of the agenda for redefining the role of the public sector in Brazil. It is however a recent element under scrutiny which has not as yet been sufficiently studied in terms of its very concept, neither has it been applied in practice in sufficient situations to show the range and conditions of its possible application.

To introduce the context of the partnership-based instruments which will be presented in this paper, it is important to make clear what is meant by the term partnership. Frequently the term is used to comprise a wide range of different meanings, either to describe intentions, specific projects or wide government programs. More specifically, with regard to public-private partnerships, two different meanings for the phrase can be identified. They define two different contexts: that of an instrument and of a principle. According to the first one, the term partnership is used to identify an *instrument* and presupposes a specific pattern of behaviour of the partners involved (such as complementarity, synergy, sharing of risks and benefits, mutual investment and commitment, etc.) and a particular application (usually related to a confined project). According to the second context, public-private partnership is a *principle* upon which many different instruments are or may be based. The *principle* of partnership relates to the general idea of public and private sectors working together to achieve a specific goal through a process of negotiation. The latter is the meaning of partnership used here.

A number of new instruments applied to urban management have recently emerged based on a more cooperative relationship between the public and the private sectors, making use of the *principle* of public-private partnership, as a consequence of the widespread idea that the scale of problems in large cities is far beyond the capacity of the public sector alone. This paper analyses two such instruments, currently used in Brazil, namely **participative budgeting** and **inter-linked operation**. After a few descriptive cases, some issues are raised which aim to shed some light on the discussion about the requirements for achieving success in partnership-based experiences and also about the key-criteria which seem to be relevant for their evaluation.



# 1 Municipal Autonomy in Brazil

Brazil is a federal country composed of 26 states, the Federal District (which comprises the capital - Brasília) and 4,486 municipalities. The municipality is the only unit of local government and is mentioned explicitly in the Federal Constitution as a constituent of the Federation<sup>1</sup>. The Constitution of 1988 granted more power to the municipalities which became an integral part of the Federation (a political entity) and not a merely an administrative or decentralised agency.

The Brazilian municipalities are among the most autonomous local governments in the world, both in political and administrative terms, as they have constitutional powers to directly elect their own governments, to levy, collect and use their own taxes and revenues (fees, special assessment, capital revenues and several charges), to organise and administer their services and other matters of their own interest and to pass legislation on matters under their jurisdiction (Mello and Reston, p.p. 7-8, 1991).

The municipal government is organised according to the principle of separation of powers (legislative and executive), under the strong mayor system. The legislative power is composed by the municipal council, made up of elected councillors and is responsible for legislative and controlling functions. The executive power is represented by the mayor, who is responsible for all departments and services of the executive branch, being the highest administrative official of the municipality.

After the Constitution of 1988, the Brazilian municipalities were granted new responsibilities with respect to urban matters, such as to formulate and implement urban and housing policies and were entitled to elaborate and approve their own Organic Laws within the principles set forth by the Federal and State Constitutions. With the constitutional resolution that municipalities with more than 20 thousand inhabitants ought to elaborate a master plan, this planning instrument started to have a new role. It is nowadays considered the main instrument through which the principles established by the Chapter on Urban Policy of the Federal Constitution will be achieved. In this regard, a fundamental principle in this constitution is the objective of urban development, which is to guide the development of the city's functions, and to ensure the well-being of the city's inhabitants. The master plan abandons, therefore, its more limited traditional physical and territorial characteristic (common during the 60's and 70's) to become an important element for the implementation of another constitutional principle - the social function of the city, - the basis for any general urban policy and, particularly, for any land and housing policies. It is in this context that instruments such as participative

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<sup>1</sup> See "The municipality in Brazil" by Mello and Reston (1991).

budgeting (strongly based on popular participation) and inter-linked operation (based on a more entrepreneurial public-private relationship) emerge.



## 2 Participative Budgeting

The instrument of participative budgeting was first introduced in Brazil, in the city of Porto Alegre as an initiative of the local government, during the tenure of Mayor Olivio Dutra (1989-1992), being later applied by other Brazilian municipalities<sup>2</sup>. The core-idea is to rethink municipal expenditure through direct popular participation. The rationale behind it is the recognition of the need to alter priorities in public spending to better address major interests of the population rather than of a few powerful pressure groups or vested interests. This change in priorities is achieved by involving society in the process of municipal budgeting, establishing a permanent control over the use of public resources. According to Bretas (1995), participative budgeting achieves two objectives: the citizen's determination of municipal priorities and the involvement of civil society in decision-making and control of the state.

Although the operationalization of participative budgeting differs from city to city, in general terms, the municipal government reserves a percentage of the city's budget to be invested according to priorities established by the community. The city is then divided into regions (and sub-regions) and a series of meetings are organised by the government. First, a large public meeting is usually held to explain the idea of participative budgeting, to report the previous year's expenditure, the following year's budget and the budget's allocation for the city's region. Then, regional and local meetings are held to discuss with the community what their priorities of investment are. As the main characteristics of this process, it is possible to identify:

1. A new relationship between the community and the municipal government; both the public sector and the general community have to undergo cultural changes. From the government viewpoint it means recognising the citizen's right to have information and to express demands upon the state. From the community standpoint, it means becoming more aware of its own rights and obligations, but it also means learning how to negotiate with the public sector, upsetting traditional clientelistic and paternalistic models of governance.
2. A decentralised form of governance. To better enable local communities to decide their priorities of investments, the city is divided into regions and sub-

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<sup>2</sup> Besides Porto Alegre, Belo Horizonte, Betim and Santo André are among the cities administered by a mayor linked to the PT (Partido dos Trabalhadores or Workers Party) which applied the instrument of participative budgeting (some still do). The approach related to this instrument is a national guideline of the PT, included in *Modo Petista de Governar* (1992). Notwithstanding the fact that the Party facilitated the exchange of experiences among the various cities, each one developed its own instrument application methodology.

regions, creating a direct relationship between key government staff and the concerned community.

3. An accountable technical apparatus. The direct dialogue between staff members and the community requires a quick response from the government side with respect to the requests made. This means developing the ability to listen, respect and analyse the demands, and what is more important, giving a conclusive opinion as to whether they are feasible or not, based on technical and financial reasons.

## 2.1 THE CASE OF PORTO ALEGRE<sup>3</sup>

The pioneer experience of the participative budgeting in Porto Alegre, which will be described here, covered the period of 1989-1995 and allocated more than US\$ 700 million, mainly in public works addressed to urban infrastructure and improvement of the quality of life of the local population (Utzig and Guimaraens, 1996)<sup>4</sup>. The application of this instrument implies that not only will technicians and politicians decide on expenditure issues but the population will also have a say on municipal revenue policy and on municipal allocation of expenditures, according to a complex process of public debate and consultations. The participative budgeting exercise applies to the entire municipal budget. During the first two years of the application of the participative budgeting instrument in Porto Alegre, the participation of the population was rather restricted, given the novelty of the experience and the fact that the municipal government was facing a difficult administrative and financial situation. At that time, revenues had not been increased and adjusted and were therefore insufficient to finance even the minimal required works for the city. Popular participation increased from 1991 onwards, when the municipal government started to obtain more resources to address public demands. In 1994 around 11 thousand people participated directly in the meetings organised by the municipality and in 1995 this figure jumped to more than 14 thousand.

According to Utzig and Guimaraens (1996), the process went through substantial changes over the years, trying to cope with a diversity of problems which arose. The first problem was the acknowledgement that popular demands differed substantially depending on the economic level of the region. Even within poor regions, there was variety in terms of the level of organisation that local populations presented, which had an impact on the process of identification of their needs. Another problem was the traditional clientelistic relationship between citizen and government. Such practices, strongly imbedded in the Brazilian political culture, lead the population to become passive, non participant and subject to co-option.

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<sup>3</sup> Porto Alegre is the capital of the state of Rio Grande do Sul and has a population of around 1.3 million inhabitants. It is located in the Brazilian Southern region, situated 1,553 km Southwest from Rio de Janeiro and 1,109 km Southwest from São Paulo. It is the centre of an important industrial region with a strong influence from European immigrants, who came to Brazil at the beginning of the century.

<sup>4</sup> The instrument of participative budgeting is still being implemented in Porto Alegre, during the present municipal administration mandate which covers the period of 1996-1999.

The solution found in Porto Alegre to deal with such issues was to create two participation structures. One was based on the division of the city into 16 regions, according to geographical and social criteria, through which the participation of the local population was organised. A second structure was based on the participation of the city's population according to five different themes: city organisation and urban development; transport; health; education, culture and leisure; and economic development and taxation - aiming to incorporate sectoral social movements in the debate.

At least two rounds of large discussion meetings are promoted annually by the local government with the regional and the thematic structures. In the first one, the previous year's investment plan is discussed, emphasising cases of success and failure. It is a critical period in which the government's actions are checked. Before the second large meeting occurs, a series of small gatherings are promoted within the structures, when the needs and demands are discussed in detail by the participants, enabling a hierarchical establishment of required actions. This is an important part of the process because it is the time of dissemination of community participation and citizen's awareness. In the second round the region's local population and the participants of the thematic groups discuss their priorities and choose their representatives for the Municipal Committee for the Budget and the Government Plan and for the Regional and Thematic Forum. The role of the Committee is to organise and coordinate the elaboration of the participative budgeting and the investment plan, and later on, to monitor its implementation. The committee members meet once a week and constitute a permanent debating arena and communication channel with the executive agencies. The role of the Forum is to supply the councillors with information and to spread the news about the issues discussed, bridging them and the community, through monthly meetings.

The final elaboration of the budgeting and the investment plan starts with the priorities elected by the two structures being discussed, analysed and assessed by the municipal agencies. With this information, the Forum representatives and councillors start a new series of debates with the communities. It is then time for the executive branch of the government to present a detailed budgeting proposal which includes all items revenue and expenditure. With this general information, the investment plan is elaborated following three criteria: a) the region's priorities (as discussed in regional meetings); b) the region's population (more populated regions receive more) and c) level of services and infrastructure available in the region (less serviced areas receive more). The final investment plan will be based on the analysis of the criteria above, which will be discussed with the community and added to sectoral demands and city-wide demands proposed by the thematic structure and the government itself. The investment plan is then the outcome of regional demands, sectoral demands and more general requests linked to the strategic planning of the city - a product that is an outcome of an intensive dialogue between local communities, civil institutions and the local government. The final plan is submitted for approval at the Municipal Committee for the Budget and the Government Plan.

The last step of the municipal budgeting elaboration is sending it to the Municipal Council for approval. This is the time when the direct and participative democracy joins representative democracy. Utzig and Guimaraens (1996) remark that although it is a naturally tense and difficult relationship, it has proved to be a positive experience since councillors know that the plan is a product of unquestionable political and social representativeness. Therefore the Council has historically

amended parts of the budgeting through a strong process of negotiation, but without changing the global structure of the plan.

## 2.2 THE CASE OF BELO HORIZONTE<sup>5</sup>

The application of participative budgeting in Belo Horizonte started in 1993, involving an initiative of the city Mayor's cabinet and involves the participation of 15,000 citizens<sup>6</sup>. The instrument's application follows a slightly different approach than the one adopted in Porto Alegre.

The whole annual process of participative budgeting takes about five months to be concluded, covering the period of May until September of the year previous to the budgeting application. During this time, three rounds of discussions are held at the regional level. In the first one, the discussion is focused on disseminating the idea of the instrument and on showing its application by visiting the public works accomplished or under implementation according to the process of participative budgeting of the previous year. The second round comprises discussions in the city's sub-regions. Citizens debate the government recommendations for local investment and elaborate their own list of main requests. The third round is when the sub-region's popular demands are established and agreed on to be taken for discussion at the regional forum for budget priorities. Before the regional forum takes place, the regional demands discussed after the third round are studied by the municipal departments who elaborate the cost of the works. In the forum, the plans are discussed in relation to the quotas allocated to each sub-region and the delegates chosen to represent the region at the city-wide meeting, according to specific criteria (the number of delegates accords to the relative size of the region; and the number of persons present at the forum; and each resident's association in the region is represented; as well as local voluntary associations). Another committee is also elected which will be responsible for inspecting and following up the year's budget, representing 20% of each category of the previous delegates. The process of setting the priorities ends when the city forum takes place and the delegates and members of the follow-up committee deliver the list of works to be implemented for each region to the Mayor.

As a result of the first year's experience of participative budgeting in Belo Horizonte, US\$ 15.6 million were invested among the nine regions of the city, representing 40% of the municipal budget for investments. Also as a result of this first year's experience, difficulties and mistakes were sorted out and the methodology improved, increasing the population's participation by 80% during 1994. According to Bretas (1996), there were three factors involved in such growth in participation: intensive action by the regional administrations (the levels of districts of the city); better adaptation of municipal agencies to the process; and

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<sup>5</sup> Belo Horizonte is the 3rd largest city in Brazil, capital of the state of Minas Gerais and comprising a population around 2 million inhabitants. It is located in the Brazilian Southeast region, situated 434 km North from Rio de Janeiro and 586 km Northeast from São Paulo. It is the centre of an important industrial concentration.

<sup>6</sup> The present municipal administration is carrying on the application of the instrument of participative budgeting in Belo Horizonte, even though there was a change of parties in power. The present municipal mandate covers the period of 1997-2000.

greater responsibility being delegated to citizens. In 1995, the government kept on identifying bottlenecks in the process, aiming at continuously improving it. Delays due to excessive bureaucracy in public administration and to difficulties in managing a large number of relatively small projects were identified, leading to a decentralised maintenance plan approach, allowing the participative budget to be allocated to larger and more relevant works. Moreover, efforts were made to improve the instrument's application with respect to the identification of investment opportunities identification and the relationship between the government and the community on the one hand, and the government and the municipal council, on the other.

Based on the three-year experience of the participative budgeting application in Belo Horizonte (1993-1995), Bretas (1996) points out 5 factors critical to its success<sup>7</sup>:

- political will - it has to be a political priority for the administration, with the direct involvement of the Mayor and key members of the city government.
- segmentation of the city - the city is split into regions and sub-regions in order to decentralise the process of participative budgeting.
- clear technical criteria for a fair distribution of resources - the criteria for resource allocation as well as the amount allocated have to be clearly shown to the population. In Belo Horizonte an urban quality of life index has been calculated for each region, based on the population, income levels and existing infrastructure. This index is used to distribute investment funds between regions.
- adaptation of the administration - not only do the political leaders of the government have to be committed to the process of participative budgeting but the technical municipal staff also have to cooperate. Bretas (1996) points out that "staff have to learn how to work in a reality in which local citizens define their work and activities and have the power to supervise an agreed agenda".
- legislative involvement - municipal councillors must be part of the process since they are the ones who set and amend the scale of resources allocated to the participative budgeting.

It is possible to identify changes in the distribution of municipal expenditure as a result of participative budgeting in Belo Horizonte. Bretas (1996) points out that the amount allocated to improvements in *favelas*<sup>8</sup> has increased significantly (from US\$ 2 million in 1992 to approximately US\$ 14 million in 1995). More work has also been carried out in the outskirts of the city where most of the low-income settlements are located and less in the city centre. Moreover, public works are better channelled to local needs and traditional infrastructure programmes such as

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<sup>7</sup> Although Bretas (1996) identifies the 5 critical factors for successfully applying the instrument of participative budgeting based on the experience of Belo Horizonte, we may consider that they are also valid for the application of the same instrument in other cities as well, including Porto Alegre.

<sup>8</sup> *Favelas* are the Brazilian denomination for slum areas, where housing units (ranging from precarious wooden huts to consolidated brick houses) are unauthorizedly built in public or private land. The occupants have no legal deeds over the land they occupy and the site usually lacks basic infrastructure.

road improvement programmes in *favelas* have been replaced by one of sanitation, drainage and basic infrastructure.

#### ISSUES FOR DISCUSSION

The experience of the participative budgeting both in Porto Alegre and Belo Horizonte seems to be an innovative solution of shared urban management. It represents an important open decision-making process which potentially has a great impact in better distributing resources in the city.

One positive aspect is that, communities may really intervene in the distribution of resources for urban investment and are invited to negotiate with other urban actors both at local and regional levels, but also at the city level. Conflicts gain a stronger visibility due to the participation of local communities.

Another positive aspect is that, budgets are usually non tangible matters and hard for the general public to understand, but the participative budgeting process helps to overcome this difficulty and facilitates, through its several stages, the ordinary citizen's understanding of how investments are planned, how much infrastructure and public works cost for the city and what the relationship is between revenues and expenditures. Understanding such aspects means an important step ahead in better assessing the performance of local governments, which is an important element in building and consolidating democracy.

In both cities, the instrument seems to have been an effective mechanism of changing the traditional practices of investment. Low income populations seem to have succeeded in getting a larger share of investment funds.

There are, however, risky aspects. The implementation of the instrument is difficult, complex and lengthy. It has, therefore, costs to be taken into account. Moreover, it requires a significant level of community organisation and a strong commitment by local politicians (mayors and councillors)<sup>9</sup>. One might ask whether there is another way to reach the same results by incorporating some of the practices developed by the participative budgeting (such as the use of urban quality of life indexes to regionally distribute resources and allow the communities to participate in the process through public audiences) without having to pay the extra cost of managing a cumbersome process. The results presented in both cases and the historical performance of local governments in setting budgets seems to indicate, however, that the popular participation has resulted in a more efficient allocation of resources which possibly compensates for the extra cost involved in organising the participative budgeting. However, more quantified analyses are still needed on this matter.

Information is a key issue for the whole process of participative budgeting. Therefore, local agencies have to be equipped to offer a quick and effective response to community requests. This means investing in information systems and human resources so that the right sort of information is made available for public

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<sup>9</sup> As to the level of community organisation, there is always the chance of improving it through investing in capacity building. The experience of the city of Betim described in Prefeitura Municipal de Betim (1996) relates that participation is stimulated through several actions, such as courses for community leaders, as part of the implementation programme of the instrument of participative budgeting.

scrutiny. If the information offered to citizens is adequate, accurate and relevant, the outcome will more likely be legitimate. Although both cities emphasise the key role performed by local administration staff members, no reference to capacity building programme is made. The approach adopted seems to be more of the type learning by doing.

Another risk is losing the general and strategic perception of urban development requirements for the city as a whole through the local fragmentation of the city's investments. Porto Alegre is trying to tackle this issue through the creation of sectoral investment categories across local areas, next to the existing territorially based participation. In the city of Belo Horizonte the local government establishes the regional investment quotas beforehand.





## 3 Inter-linked Operation

Inter-linked operation is an instrument of negotiation between the public and private sectors on development rights. It has been applied in many Brazilian cities, such as Rio de Janeiro, São Paulo and Campinas, among others. The instrument's application methodology differs significantly from city to city, but in general terms it means a negotiation and trade-off of more beneficial urban parameters (extra to what is offered by the established legislation, for example extra floor space index) for resources addressed to tackling specific issues of the city (usually related to housing or infrastructural problems).

### 3.1 THE CASE OF RIO DE JANEIRO

This inter-linked operation instrument is involved in the Master Plan of Rio, approved by the municipal council in 1992. It is defined as the trade off of established urban parameters by the municipal government within limits defined by municipal legislation, for compensations provided by interested people. The compensations are calculated as a proportion of the extra value which was added to the planned undertaking by the alteration of the parameters. Compensations may be:

- financial resources addressed to the Municipal Urban Development Fund;
- urban infrastructure works;
- plots and housing units addressed to low income people, and
- recovery of cultural or environmental patrimony.

According to the Rio Master Plan, the accomplishment of inter-linked operations depends on a favourable opinion from the Municipal Committee for Urban Policy and, in cases of cultural heritage and environment recovery, the Municipal Committee for Environment and the Municipal Committee for Protection of Cultural Heritage also have to be consulted.

According to a municipal bill passed on 18 April 1994, the local government of Rio defines the specific situations when the use of the inter-linked operation instrument should be acceptable and establishes the procedures for operationalization. The Municipal Council (formed by directly elected councillors) has 60 days (after the approval of an inter-linked-operation) to reject it. The urban parameters which can be altered are:

- the plot use rate;
- the total building area;
- the maximum height of the building;

- the building typology;
- the building use; and
- the lateral, front and back yard spacing.

If compared to the master plan, the law adds two additional categories of compensations: the construction or renewal of public buildings and the construction of urban facilities addressed to the low income population.

The law also classifies the inter-linked operations in three categories:

1. Those considered of public interest - understood as cases in which the proposed alterations do not harm the global and sectoral planning guidelines of the city and adapt themselves in an acceptable and satisfactory way to local requirements for land use or address a public interest which was not previously defined.
2. Those considered as being of private interest which do not cause inconvenience to the general public interest. It may cause some sectoral or individual damage provided that this damage is compensated by the solution, which should therefore bring benefit to the community as a whole.
3. Those considered as being of private interest which will solve an existing inconvenience to the public interest. The proposals may contain inconveniences to public interests but the solutions proposed solve the existing inconvenience thereby compensating, in an acceptable way, the interest of the community.

The classification is important because the law states that in the first case, the inter-linked operation may be approved by law (voted by the Municipal Council) or decree (a simple mayor's act), whereas in the other two cases it may only be authorised by an approved law. For cases 2 and 3, the law also guarantees public participation in the process of approval of the inter-linked operations through the practice of public audiences.

The rate of added value which will be "charged" as compensation from the private sector ranges from 10 to 50% for constructions yet to start and from 20 to 80% for constructions already being built or which have already been finished. This means that the instrument of inter-linked operation is also used for the regularisation of buildings which were not built in accordance with municipal building or zoning codes.

### **3.2 ANALYSIS OF CASES**

From April 1995 to November 1996, the municipal government of Rio approved 9 inter-linked operations, all of them located in rather traditional up-market areas of the city (see Table 1). In all cases the compensation was given in cash, directed to the Municipal Fund for Urban Development, amounting to a total of R\$ 9,505,514.30 (approximately the equivalent in American dollars). The nine cases were approved through mayor's decree and were not rejected by the Municipal Council. Although the law classifies inter-linked operations in three different categories, in none of the studied cases does the decree explicitly mention the category in which the case in discussion would fit. It has therefore to be assumed that in all the cases the municipal government considers them to be included in case 1 (the proposed alterations do not harm the global and sectoral planning

guidelines of the city and adapt in an acceptable and satisfactory way to land use local requirements or address a public interest not previously defined) since they were all approved through decree and not through law, a possibility only foreseen for case 1.

It is remarkable, however, that some inter-linked operation approved significantly alter urban parameters with no apparent justification based on public interest. In two different situations, the maximum building height allowed was altered from 5 floors to 10 /15 floors, and 11/15 floors, both in very valuable areas of the city. Except for the money received in exchange for the allowance for extra floors the public interest involved is not clear. Moreover, since all situations were "classified" (or informally considered) as case 1, there was no need to consult the community. Given the circumstances, the opportunities for the community to participate are very limited. It could express itself against the specific operation during the administrative procedure (assuming that the community is constantly attentive to internal administrative procedures, which is not normally the case), press the Municipal Council to reject the instrument's approval during the 60-day period after the approval of the operation, or later on, discuss the municipal decision in court, via a popular lawsuit. The Municipal Committee for Urban Policy has merely been informed about the inter-linked operations performed so far, but it has not been formally consulted about them.

**Table 1 - Inter-linked Operations approved in Rio de Janeiro**

decree - date	alteration	% added value	value	neighbourhood
13812 - 06 04 95	land use & number of units	50	R\$ 741,993.21	Barra da Tijuca
14708 - 10 04 96	land use & building height	80	R\$ 67,486.20	Botafogo
14708 - 10 04 96	land use, building area, height & parking place	80	R\$ 480,618.40	Ipanema
14340 - 09 11 95	building height	50	R\$ 2,795,941.90	Barra da Tijuca
15061 - 23 08 96	building height	30	R\$ 257,092.08	Tijuca
15062 - 23 08 96	land use and building height	30	R\$ 380,234.43	Urca
15256 - 14 11 96	building height	50	R\$ 137,000.00	Botafogo
15357 - 14 11 96	land use	10	R\$ 34,848.14	Ipanema
15255 -14 11 96	land use and building height	80	R\$ 92,800.00	Botafogo
15207 - 18 10 96	building height and number of buildings	50	R\$ 4,517,500.00	Barra da Tijuca

Source: Diário Oficial do Município do Rio de Janeiro (Rio de Janeiro Official Press)

### 3.3 ISSUES FOR DISCUSSION

The inter-linked operations put in practice into Rio reveal some fragility. In the first phase the inter-linked operations are, in principle, denying the existing zoning code. One could argue that any special concession (such as the inter-linked operation) constitutes a denial of the existing zoning law. This is true, although it is also true that zoning laws have proved to be historically too rigid an element in urban planning and do not allow for appropriate responses to the dynamics of real estate and land markets. In Rio, however, the denial of the existing zoning law is exaggerated by the lack of limits with respect to urban standards within which the government would be allowed to negotiate. In fact the law defines a list of standards which are negotiable, but for each of the standards it does not define the leeway for the negotiation. The law states for instance that building height is prone to alteration, but what is the maximum height limit which the government is allowed to negotiate? Ten floors, fifteen, twenty? Should it be dependent on the available local infrastructure or any other local condition?

One possibility for avoiding the present open-ended situation would be the establishment of two different categories of standards for the zoning: an allowed standard (by normal building procedures) and a tolerated standard (to be traded off compensations which would be negotiated through inter-linked operations). The difference between the two standards could be based on the study of positive and negative aspects of local conditions, particularly the level of infrastructure available and the physical capacity of absorbing extra traffic resulting from the additional building area or land use alteration.

The municipal law 2128 (which regulates the matter) does not conform to the principles established by the Master plan approved for the city of Rio (complementary law number 16/92) in two aspects. Firstly, it bypasses the requirement that every zoning alteration has to be done through an approved municipal law and not through municipal decree. Secondly, it also "simplifies" the process by not requiring that the inter-linked operations are submitted to the Municipal Committee for Urban Policy in order that it could examine its conditions and suitability. Moreover, in practical terms, the approval of all the inter-linked operations also escapes any formal consultation with local communities by being classified under a category which releases the government from the need to institute public audiences.

Although the analysed inter-linked operations have fragile aspects mainly because of the way they have been operationalised in Rio, in principle the instrument itself has a number of positive aspects.

It represents a way for local governments to deal with unpredictable situations in the city. This brings a certain level of flexibility for local governments to better respond to the dynamics of urban development, allowing them to better manage the rigidity of zoning laws. However, zoning laws have an important role in defining clear criteria for the city's development and are usually approved after a fierce negotiation process between the various interested urban actors. Therefore, it seems plausible that any change of these criteria should be approved by municipal laws and be submitted to public scrutiny.

The inter-linked operation instrument also seems to represent a step ahead in the better sharing of costs and benefits derived from urban development by admitting that the public sector has the right, given the limits established by law and provided that the public interest is preserved, of granting exceptional zoning and building conditions against appropriate compensations (e.g. for the municipal urban development fund).



## 4 Good governance and partnership-based instruments

The application of partnership-based instruments requires first and foremost a legitimate government. McAuslan (1994) remarks that legitimacy is far beyond the concept of a government elected by popular vote. The idea behind good governance is that legitimacy embraces accountability, transparency, probity, equity and efficiency, attributes of difficult measurement. According to Coelho (1996), a specific definition of "urban governance" has yet to be elaborated in Brazil. The author proposes a starting point from which to approach the subject: "a governing process characterised by: (a) popular participation in the public sphere based on the rights of citizenship; (b) a modern and democratic relationship between government and civil society; and (c) administrative efficiency capable of positively associating technical and political concerns (Fedozzi 1994)".

To better frame the two experiences analysed here (mainly in terms of their operationalization) - participative budgeting and inter-linked operations- the following criteria can be used to assess the cases: accountability, transparency (capacity to be an open, visible and public process), community participation (citizen's involvement in the decision making process), effectiveness (capacity to reach the planned goal), applicability (the level of difficulty in applying the instrument) and sustainability. Issues such as efficiency and equity were deliberately excluded here because they would require a more detailed analysis of hard data, which would be beyond the scope of the present work. Although of unquestionable importance, probity was also left out as a criterion because it is somehow addressed by transparency and accountability which are easier for an outsider researcher to observe.

Both experiences of participative budgeting (Porto Alegre and Belo Horizonte) seem to meet the criteria of accountability, transparency, community participation and effectiveness. The applicability of the instrument is complex and sustainability is dependent on political will, since it is not an institutionalised instrument, running the risk of being discontinued with changes in the local political scenery.

The experience of the inter-linked operation in Rio shows that accountability is partially achieved due to the fact that being approved by a Mayor's decree, the responsibility is clearly defined, but the instrument's operationalization has no in-built mechanism for citizens to question this decision. Transparency is weak since the criteria used internally by the local government to judge public interest is not explicitly shown. Community participation has not been an integral element of the instrument's implementation. Effectiveness is partially achieved since the compensation (usually in cash) is obtained and channelled to the municipal fund for urban development but alterations are not approved according to limits defined

by municipal legislation (through municipal laws). So part of the original goal has not been achieved. Applicability is relatively simple because it has not conformed to the requirement of being approved by law and has not undergone any community consultation. The sustainability of the instrument is also dependent on political will and on the level of public resistance against some aspects of its operationalization (so far low) which may constitute a threat to the future application of the instrument. Table 2 summarises the results of relating the experiences analysed to the criteria identified above.

**Table 2 - Cases versus criteria**

	inter-linked operation	participative budgeting
accountability	▲	■
transparency	▲	■
community participation	●	■
effectiveness	▲	■
applicability	simple	complex
sustainability	dependent on political will and on public reaction	dependent on political will

■ - criterion met; ▲ - criterion partially met; ● - criterion not met



## 5 Concluding remarks

It is very difficult to define public interest, especially when what is at stake is the conflict of differing public interests: interests of specific groups against the interests of the general public. One way to escape the fuzziness and complexity of such situations is to ensure that the process of implementing instruments for urban development is as transparent as possible. In that regard, it is important to institutionalise channels for the community participation (formally or informally). Involving society in the decision making process seems to be an important means of facing the issue of diffuse public interests and, at the same time, benefiting from the discretionary power of the public sector who may analyse situations on a case-by-case basis and deal with unpredictable problems and innovative solutions, as shown in the case of the inter-linked operations (despite the criticisms of its operationalization). If more flexibility is needed and if the achievement of more flexibility is to rely on the use of instruments that are based on the public sector's discretionary power, such instruments should always be closely followed up by social control (unfortunately lacking in the case of the inter-linked operations analysed).

A relevant aspect in this debate appears to be the need to emphasise (in local management practices) not only problems and the usual resource scarcity but also, potentialities and resource availability wherever they are. In this context, the private sector, the local community and NGOs can play important roles as partners of the public sector in the duty of local management. The experience of the participative budgeting shows that local communities are willing to take part in decision-making processes if there is an open channel for their participation. As remarked by Giacomoni (1996), social participation in problem identification better qualifies the choices and constitutes an opportunity for other communitarian strategies to emerge.

The final conclusion is that, despite the incipient stage of the application of many of the aforementioned instruments, there is some empirical evidence which appears to indicate that momentum is mounting towards a change in traditional practices. The trend seems to point to a situation where new strategies are being created which stimulate the direct participation of citizens and the private sector in public matters, constantly checking and legitimising governmental decisions. As pointed out by Utzig and Guimaraens (1996), such strategies would comprise a new public sphere which would stretch the bureaucratic frontiers of the State, submitting it to a strict social control. A non-governmental public sphere, located outside the State, but unquestionably public in its nature.



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