



The Paradoxes of Territorialising Public-Private Partnerships in Senegal

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Abstract. The aim of the study is to help to understand the notable paradoxes between the existence of a legal framework designed to facilitate the development of PPPs and the lack of an organisational basis for PPPs in Senegal's local authorities. For the purposes of this study, we have adopted a qualitative approach. Twenty-three (23) interviews were held with PPP and decentralisation stakeholders in Senegal: two (02) executives from the Ministry in charge of partnerships, two (02) executives from the Ministry in charge of sports, one (1) from the Ministry in charge of decentralisation, three (03) PPP experts, three (03) decentralisation experts, six (06) municipal councilors and six (06) municipal secretaries. After analysis, it is possible to note, in one hand, the contradictions in territorialisation of PPPs, and on the other hand, the limits they pose if we want to aim for organisational performance. Beyond the paradoxes, the analysis shows pitfalls at four levels. These pitfalls relate to values in local authorities that are not oriented towards those of the Public Management, an organisational structure that is not adapted to PPPs, formal frameworks for action that are far removed from the targets, and management tools that need to be defined.

Keywords: Decentralisation, Paradoxes, Public Management, Public Private Partnerships.

1. INTRODUCTION

Public-Private Partnerships (PPPs) are a manifestation of alliance between public and private sectors in management of public services. They are corollaries of transformation of Weberian Public Administration (WPA) into an administration more open to techniques borrowed from private sector (McLean, 1987). This is in line with theory of New Public Management (NPM) (Hood, 1991; March, 1992; Osborne & Gaebler, 1993). The NPM encourages reengineering of government, privatisation and contractualisation, among others. It is seen as a fundamental challenge to the way state operates (Bartoli, 2005).

However, questions are increasingly being raised as to whether it should be superseded. Matyjasik & Guenoun (2019) foresee its end in favour of other models such as the Whole of Government Approach (WGA) or Digital Era Governance (DEG), to name but a few.

In Africa, focus is not so much on moving beyond NPM, but on receptiveness and reticences of Public Management (PM) (Mazouz et al. 2022). In such a context, values and tools conveyed in NPM are still in orbit and Senegal, ignoring international developments, has, with Law 2021-23 of 02 March 2021 on public-private partnership contracts, anchored PPPs in its legislation (Diouf, 2023). However, PPPs have not managed to go beyond their legal framework and take on organisational contours of local authorities in Senegal. And yet, as Mazouz reminds us (p.2), PPPs are a response to:

- 1) The continuing fragility of public finances;
- 2) growing public frustration with the quality of public services of public services;
- 3) neo-liberal rhetoric, which advocates recourse to the market in all economic matters;
- 4) The tendency of governments to imitate and adapt foreign experiences judged to be positive in the management of public services and projects.

Thus, creation of a highly structured legal framework for PPPs in face of non-existence of PPP projects in local authorities (Diouf, 2019) remains a paradox; it is therefore important to learn about this opposition between Senegalese public authorities' desire to carry out PPP projects at both central government and decentralised levels and reality of PPP projects, especially in Senegalese local authorities.

Consequently, while it is true that authors at international level are advocating or noting a move away from PPP alliances (Matyjasik & Guenoun, 2019), at African level, particularly in Senegal, these alliances are experiencing a resurgence of interest (Mazouz et al. 2022; Diouf, 2023). However, these alliances have not managed to go beyond legal framework that creates them in local authorities to take on organisational contours in practical terms. Indeed, reforms undertaken since 2004 with CET law, which led to 2021 law on PPPs, and reforms in local authorities have not resulted in organisational development of PPPs in these authorities.

So, question is this: How can we explain paradox of existence of a structured legal framework and absence of organisational elements to underpin PPP projects in local authorities?

The aim of the study is to help understand the notable paradoxes between existence of a legal framework designed to facilitate development of PPPs and lack of an organisational basis for PPPs in Senegal's local authorities.

To achieve this, we used a qualitative approach based, on one hand, on an analysis of texts and documentation on PPPs and decentralisation in Senegal and, on other hand, on interviews. In addition, cursor was also placed on field of sport, which is a competence transferred to local authorities and which requires investment in terms of

infrastructures and programmes, as stated in Law No. 2013-10 of 28 December 2013 on General Code of Local Authorities.

Based on responses obtained, paradox theory (Smith & Lewis, 2011) was used to explain contrast between propensity of public authorities to put in place well-established legal frameworks and lack of implementation due to real organisational weaknesses. In order to gain a better understanding of these paradoxes, theory of National Systems of Public Governance (NSPG) (Hudon & Mazouz, 2014) was used in Senegalese context to gain a better understanding of level of receptiveness or reluctance of local authority actors involved in appropriation of values and tools of PM, and therefore of PPPs (Mazouz et al., 2022).

2. LITERATURE REVIEW

Mastering meaning of PPPs enables us to understand legal and organisational framework. These are linked to New Public Management (NMP), which is a fertile breeding ground for development of such collaborations at regional level.

2.1. Public-Private Partnerships to Territories

Broadly conceived, PPPs include a variety of partnership contracts and public service delegations; whatever their structure, they remain frameworks for collaboration between public and private sectors. Brinkerhoff (2002, p. 21) defines them as follows:

"Partnership is a dynamic relationship among diverse actors, based on mutually agreed objectives, pursued through a shared understanding of the most rational division of labor based on the respective comparative advantages of each partner. Partnership encompasses mutual influence, with careful balance between synergy and respective autonomy, which incorporates mutual respect, equal participation in decision making, mutual accountability and transparency".

In fact, these are long-term contracts, which may exceed thirty (30) years, linking public sector institutions and private sector institutions including voluntary sector, with aim of sharing risks. The aim of these contracts is to share risks, responsibilities and benefits relating to construction of public infrastructure or provision of public services, in a way that reconciles State's objective of providing public and social services with private partners' objective of making a profit.

The Senegalese legislator considers that:

"A public-private partnership contract is a contract concluded for pecuniary interest for a fixed term between a contracting authority and an economic operator, which, depending on its purpose, the terms of remuneration of the holder and the risks transferred, is described as a public-private partnership contract with public payment or a public-private partnership contract with user payment;

Public-private partnership contract with public payment: a public-private partnership contract under which a contracting authority entrusts an economic operator, whose remuneration comes essentially from payments made by the contracting authority throughout the term of the contract, with all or part of the tasks of designing, building or converting, maintaining, operating or managing works, services, equipment or intangible assets required in the public interest and for which the contracting authority is responsible, as well as all or part of their financing.

User-pay public-private partnership contract: partnership contract by which a contracting authority entrusts the management of a service of general interest for which it is responsible, or the design, financing, rehabilitation, operation, upkeep and maintenance of works, equipment or intangible assets to an economic operator whose remuneration comes essentially from user payments. "Concession", "affermage" and "régie intéressée" are user-pay partnership contracts". (Law 2021-23 of 02 March 2021 on public-private partnership contracts in Senegal, p.3-4).

According to Sy (2022, p.196), this approach has the merit of involving all public bodies with an interest in management of public services, in particular territories that have been decentralised:

"Decentralisation is seen as a means of achieving local autonomy. Indeed, decentralisation makes it possible to grant a degree of autonomy to the structures concerned. Decentralisation is a system of administrative organisation that recognises the legal existence of secondary authorities that have legal personality and are called upon to manage their own affairs through self-governing bodies".

In this context, it is a question of territorial decentralisation or territorialisation, since it involves "individualising a human collectivity limited to a part of the territory and entrusting it with the management of all its own affairs". As part of this process, territorial structure is given a number of powers. One of these responsibilities was sport. Based on Pierre Parlebas (1981, 237), it is possible to define sport as a "set of motor situations codified in the form of competitions and institutionalised". This makes it possible to distinguish sport on the basis of three classic criteria: the motor element, the competition dimension and the institutional dimension through organisations. Sport is to be distinguished from Physical and Sports Education and can be defined, according to Lafon (1979, 341) as:

"The part of general education which uses physical exercise as a means. It is a set of methodical means designed to develop, improve and maintain the physical, intellectual and moral qualities that enable the individual

to adapt better to his physical and social environment, to develop fully and to strengthen his health".

PE is managed by school education structures whereas sport "stricto sensu" is the responsibility of sports organisations within sports movement, i.e. federations and similar structures (provisional management committees) and sports clubs. Both PE and sport are among competences of territories. Managing them within the framework of PPPs requires a legal and organisational framework.

2.2. The Legal and Organisational Framework for PPPs

The legal and contractual framework of PPPs has been a major preoccupation of researchers. Marty et al (2006) reviewed the legal framework governing partnership contracts in France, emphasising the similarities and differences between these types of contract and delegations of public service. public service delegations. Earlier, Braconnier (2002) compared these delegations of services to Public Finance Initiative (PFI) contracts in Great Britain. He showed that French legal framework was not adapted to PFIs. The order of 17 June 2004 on partnership contracts in France (J.O. n°141, 2004), amended in 2008, filled this gap. This desire for reform stems from needs to adapt legal framework to partnerships. It is easy to understand why Senegal, like other countries, adopted reforms to adapt its legal framework in 2004 (J.O.R.S n°6155, 2004).

Referring to France's experience in this field, Braconnier (2002), analysing PPP contracts, points out that despite this country's experience in delegating public services to private sector French public law is ill-suited to public-private partnerships. The 2004 ordinance on partnership contracts, amended in 2008, has nevertheless corrected the shortcomings of French system. In his article, "*Les contrats de Private Finance Initiative (PFI), réflexions sur la dynamique contractuelle dans les partenariats public-privés*" (Private Finance Initiative (PFI) contracts: reflections on the contractual dynamics of public-private partnerships), he shows that, beyond variants of PPP, Private Finance Initiative policy is marked by two major features that constitute points of reference for development of relations between public and private sectors in France and private sector. On one hand, PFI is a partnership policy based on an optimal distribution of costs; on the other hand, its implementation is a stimulating example of contractual risk management.

Perhaps, in order to avoid difficulties encountered in the experiences mentioned above, but above all because of traditions strongly marked by supervision of management of public services, in Quebec, beyond the creation of a body entirely dedicated to development of PPPs, adoption of a specific legal framework should be decided by Quebec authorities, as in France (Bernier, 2005). Otherwise, Quebec would be moving closer to British system or to several common law countries where partners, both public and private, would act on basis of simple common law contracts. This is not in itself a problem, since Braconnier (2002) points out that common law systems are better suited to partnership contracts because of their pragmatism. However, in a civil code context, regulation at least has the merit of adapting legal context to allow partners, especially private partners, to enter into contracts with public partners. Contracts relating to these agreements must also take account of a number of clauses. Leclerc (2008) reviews these. They may concern public or private partner, or both. In this context, it is worth highlighting a number of important clauses in partnership contracts.

The form of the project company is an important aspect of the partnership. It may be a joint stock company, a trust, a limited partnership or any other form of commercial company. Each partnership contract is unique. As a result, objectives pursued or tax and regulatory considerations will dictate form of SP.

In addition to the form of SP, private partner or financial institution the private partner or the financial institution that has participated in financing the project may request that the obligations of the Project Company be guaranteed by a third party. This person is generally the private partner, especially if it has invested a minimal sum in the capital invested in the project. The public partner may also be asked to guarantee the obligations of the project company.

As regards responsibility for financing the project, the question is whether public or private partner is responsible for financing and repaying the borrowed funds or the private partner, is responsible for financing and repaying the borrowed funds. This responsibility may be joint or assigned to one party. In all cases, it conditions the private partner's recourse to types of financing from public bodies. Since 2008-2009 crisis, this issue has become even more acute (Hall, 2009). The difficulties in financing PPPs, following the general drying up of credit, calls for a return to traditional method of financing public infrastructure. Raising funds through public borrowing is increasingly being advocated.

If credit markets dry up, this can have a negative impact on the long-term financing of infrastructure projects. Secondly, recession and credit crunch are also sources of problems for existing PPPs. On one hand, recession reduces income from concession-type PPPs, such as toll roads, so revenues will be lower and it may be difficult to repay interest and loans. On other hand, PPPs that have taken on short-term debt to launch the project, hoping to refinance it, once it is operational, with debt at a more advantageous rate. For this reason, Hall, noting difficulties PPPs have had in finding finance following general drying up of credit in the wake of 2008-2009 economic and financial crisis, has advocated a return to traditional method of financing public infrastructure. This would involve raising funds through government borrowing, issuing construction contracts, then operating the infrastructure or having it operated using either direct labour or contractors.

Before PPP projects can be financed, public and private partners have to carry out a number of preliminary

tasks (Leclerc, 2008). These may include conducting environmental studies, obtaining permits, conducting traffic volume studies, carrying out geotechnical inspections, acquiring land or easements, and carrying out engineering work. The financing of costs incurred prior to the construction of infrastructure must also be resolved. To this end, financial resources of parties, cash available and objectives pursued in terms of financing must be taken into account. Parties must establish how costs of designing and developing project are to be remunerated. If the private partner has incurred preliminary costs, it should receive compensation. The private partner's compensation for the investments made should also be specified in partnership contract. These investments are made on the basis of equity and debt. For example, if a motorway is being built, the clauses on the nature of the private partner's compensation will set out the toll to be charged. The same clauses indicate that public partner may pay an annual fee to enable certain people to use infrastructure built. It is also necessary to identify other agreements that need to be signed and that are linked to the main agreement. The main agreement often takes the form of a framework agreement specifying that subsequent contracts will be signed. The nature of such contracts is to be determined in the framework agreement. The transfer of private partner's rights to a third to a third party, this is always an important clause to discuss. Is it appropriate for private partner to assign its rights? In some cases, it is preferable to prohibit it, or at least to make it subject to public partner's agreement.

The legal framework is important. But thought should also be given to setting up a task force whose mission is essentially to help reduce transaction costs, encourage the necessary legislative changes, provide advice or promote transparency and accountability in PPPs (Fischer & al., 2006). Based on a survey conducted in several countries, these authors were able to demonstrate in Germany that the existence of PPP task forces had a positive effect on the development of PPPs. By analysing the functions of the task force, the survey showed that these could be divided into four categories: providing support for the project, knowledge of the management system, the policy to be pursued and conduct of the development framework. While the first two functions are designed to ensure accountability and transparency in the allocation of partnership project, the last two are intended to put in place appropriate governance structures. In terms of institutional organisation, task forces are organised as competence (resource) centers or specialised units within government bodies. They can be formed by public bodies or created by them as PPP units. Analyses have shown that governments prefer to create small, lightweight entities, made up of a group of experts, rather than setting up large public structures. The members of the task force also had to commit to defending the partnership policy. However, human resources (management staff) as well as financial resources are often difficult to find and can be blocking factors. The same applies to the fact that the task force is attached to a ministry or public body. This has an influence on the task force's freedom of action. Despite these limitations, Fischer & al, based on the existence of a task force and its influence on the PPP market and the development of transactions, the successful conduct of PPP projects, the acceptance of the PPP policy, the reduction in transaction costs and the duration of the processes for awarding PPP projects, concluded that it had a positive effect on the number of partnerships set up and developed in Germany.

Finally, given the novelty of PPPs in Senegal, their emergence and implementation at local level are closely linked to the existence of appropriate reforms. Bernier (2005) and Marty & al (2006), addressing the issue of reforms, in particular the legal framework have shown its importance in the success of PPPs. The absence of a suitable legal framework, or gaps in it, could limit the development of PPPs.

It is also necessary to take account of diversity, but also specific nature, of sectors managed under PPP to avoid paradoxical situations.

2.3. The Paradox, a Tool for Understanding the Slow Progress in the Territorialisation of PPPs

A strong legal and organisational framework must produce the desired results at local level. Otherwise, players involved run the risk of encountering paradoxes. A paradox is "a statement that is surprising in its content and/or form, that contradicts received ideas, common opinion and prejudice [and] that, stating its own opposite, appears to be both true and false" (9th dictionary of the Académie française).

Perret & Josserand distinguish three types of paradox: logical, semantic and pragmatic. The first and two, which are very similar, refer to "reasoning which, by applying reliable inference techniques to premises which at first sight seem obvious, leads to an absurd or contradictory conclusion" (Perret & Josserand, 2003, p.7). The pragmatic paradox does not locate the paradox in what is announced but, in the effect, produced by the announcement.

Smith & Lewis (2011, p.382) situate paradox in "the simultaneous and enduring existence of contradictory and related elements". They position it in relation to the dilemma and the dialectic. For them:

- Paradox refers to two contradictory elements linked together to create a unified whole. Considered in isolation, these elements seem logical, but juxtaposed, they seem irrational;
- The dilemma refers to a situation of choice between different options, each with its advantages and limitations. The situation is paradoxical when the options are opposite and related; the choice between the options cannot last and the tension persists;
- Dialectics brings together opposing elements, but puts forward a thesis and an antithesis that leads to a synthesis. The paradox lies in the existence of opposing and related elements. Synthesis, by creating areas

of convergence, overlooks particularities and inevitably favours one option over another, resulting in temporary solutions.

For Smith & Lewis, paradoxical tensions are inevitable and contribute to the performance of organisations if they are exploited.

- In their view, major changes in the organisational environment encourage the emergence of paradoxical tensions that were previously latent;
- The latent tensions become apparent to the players, who develop a paradoxical approach;
- Actors with a complex cognitive and behavioural approach, as well as equanimity, are more likely to accept paradoxical tensions than to develop defensive strategies;
- Agile organisations are more likely to integrate paradoxical tensions than to develop defensive strategies;
- Managing paradoxical tensions through dynamic and continuous acceptance strategies promotes sustainable performance.

In order to gain a better understanding of paradoxes noted, theory of National Systems of Public Governance (NSPG) (Hudon & Mazouz, 2014) was used in Senegalese context to gain a better understanding of the level of receptiveness or reluctance of local authority stakeholders involved in the appropriation of the values and tools of Public Management (PM), and therefore of PPPs (Mazouz et al., 2022). In this respect, Mazouz et al. believe that four Public Governance Tensions (PGTs) will have to be overcome:

- That linked to institutional reluctance to emphasise the centrality of values and to grasp the logic of the structures, practices, tools and behaviours of organisations and the representations of players who operate within them;
- That linked to organisational structures, in particular the new forms of the State, which is hampered by a general belief that public service delivery structures cannot be efficient, that the results of public action are not easy to measure and that public programmes should not be evaluated;
- The one linked to formal administrative frameworks which are supposed to introduce effectiveness and efficiency into public administration, but which are perceived as contributing to the reinforcement of the legitimacy of the legal-administrative basis of public action. This contradicts the simplification of regulations advocated by the PM;
- Lastly, there is the issue of managerial tools, where the interest of stakeholders in management tools is noted, but the effectiveness and complexity of managerial tools for their administration is questioned.

3. RESEARCH METHODS

For the purposes of this study, we have adopted a qualitative approach. This is in line with our epistemological stance, as well as the practical arrangements for collecting, processing and interpreting the data.

In an interpretivist epistemological posture, qualitative methods were used. Thietart et al. (2019, p. 29) recall that in interpretivism:

"Social reality is constructed above all through the interplay of the intentions and interactions of players who construct the meaning of this reality by comparing and sharing their representations. This reality is therefore modified as the actors' projects are updated in their interactions".

The choice of interpretivism is primarily linked to the context of the research. It allows us to grasp the discourse of decentralisation actors interacting at both central and local level. From this point of view, it facilitates an analysis of the discourse of some and others in contexts and situations of construction of social reality.

As the research was qualitative and exploratory in nature, it was possible to find data on the research question, which generally concerned PPPs in sectors other than territories or sports infrastructure (Diouf, 2019). They have made it possible to grasp the PPP development process in Senegal with a view to grasping the organisational limits in local authorities.

The research criteria relate mainly to the paradoxes noted in the introduction of PPPs in Senegal, on one hand, and those linked to the organisational framework, on other.

Significant cases of PPPs have involved energy production, urban water management and motorways. In sport, experiments are being developed at central level. However, at local level, despite the existence of a legal framework that confers powers on local authorities and a law on PPPs that confers a role on them, organisational obstacles have been noted.

For the specific methods of data collection, we used documentary research and interviews.

In addition to scientific writings in the field of research, literature review may include:

"The usefulness of these documents does not necessarily lie in their accuracy or absence of bias, but rather in their ability to corroborate information from other data sources. (Gagnon, 2005, p.68).

The literature review may also include archival documents. Gagnon (2005, p. 68) continues:

"This source of data can include administrative notes, personal notes, maps and lists of names. Unlike with documentation, the researcher must check the accuracy and conditions of production of each of these documents in order to interpret them and retain only those that he or she considers relevant to the study".

The aim was therefore to review the legal documents relating to the development of PPPs in general, before tackling the issue from the point of view of Senegal's territories. These are the laws and decrees on PPPs and Senegal's General Code of Local Authorities. Finally, there are reports and additional documents that corroborate information obtained. The documentary review has the merit of dealing with reports on PPPs in Senegal and the decentralisation of sport in Senegal. The documents used make it possible not only to establish the starting points for the research, but also to corroborate information from other data sources (Yin, 2003).

Turning to interview, Gagnon (2005, p.67) points out that "it is one of the most important sources of information". He adds: "It can take three forms depending on two criteria, namely the degree of freedom left to the respondent and the depth and detail of the information sought".

Thus, there is the free or non-directive interview, where "the central theme is proposed for discussion and simply broken down into a few main sub-themes determined in advance"; the semi-structured interview, with a limited degree of freedom for the informant; and the semi-directive interview, which is even closer to an orally administered questionnaire. In our case, the free interview made it possible to have free interviews with the respondents in order to obtain as much information as possible about the paradoxes noted.

Twenty-three (23) interviews were held with PPP and decentralisation stakeholders in Senegal: two (02) executives from Ministry in charge of partnerships, two (02) executives from Ministry in charge of sports, one (1) from Ministry in charge of decentralisation, three (03) PPP experts, three (03) decentralisation experts, six (06) municipal councilors and six (06) municipal secretaries. The choice of interviewing executives from ministries in charge of partnerships, sport and decentralisation is explained by their position in the application of public policies and laws. They are upstream and often downstream of the application of legislation and regulations. PPP and decentralisation experts are involved in drafting legislation in their fields and most of the time participate in its application. As for councilors and municipal secretaries, they are at the heart of territorial action. For the purposes of this study, they come from local authorities in the Dakar region. This choice is justified by their relative level of development compared with other communes in Senegal. As for the councilors, those on the committees responsible for sport were given priority.

Interviews focused on process of legal reform that led to involvement of local authorities in PPPs. The various reforms in this area were also reviewed in order to grasp the role of these authorities and assess how they are anchored. Next, the organisational limits were analysed through the proposed frameworks, the powers transferred to local authorities and the existing structures. This work was carried out under the prism of understanding the place of physical activities and sport in local authorities.

Interviews were used as a method of investigation, and data was collected using voice recording software on a Tecno CAMON 19. The interviews focused on the contradictions and paradoxes noted in the process of introducing PPPs in the territories and the organisational challenges. The interviews lasted between 60 minutes and 2 hours. They were then transcribed in full.

To process data collected, we drew on Quivy & Van Campenhoudt's (1995) method of thematic content analysis, which consists of highlighting subjects' opinions on the basis of an analysis of their discourse. For reasons of confidentiality, respondents were given numbers. They ranged from 1 to 23. Finally, the results obtained were discussed on the basis of the paradox theories of Smith & Lewis (2011) and the theory of National Systems of Public Governance (NSPG) (Hudon & Mazouz, 2014).

4. RESULTS

The framework for development of physical and sporting activities, through PPPs, depends on the progressive development of a favourable environment and an appropriate organisational framework at the level of the central State and its territories.

4.1. A Legal Framework for PPPs that Does Little to Promote Physical Activity and Sport in the Regions

PPPs were introduced in Senegal by Act no. 2004-13 of 1er March 2004 on construction-operations-transfer (CET) infrastructure contracts (J.O.R.S no. 6155, 2004). This law defines the scope of partnership contracts at the material, financial, organic and land levels. With regard to land, paragraph 3 of article 2 of the 2004-13 law stipulates that law applies only to infrastructure that is part of the artificial public domain or is intended to be part of such a domain. This meant that partnerships were limited to infrastructures in the artificial public domain. Even if these infrastructures could be sports facilities, it should be noted that this law covered other types of infrastructure such as roads and airports.

Respondent 8 notes in this regard:

"Initially, the main purpose of the PPP law was to build road infrastructure. However, I don't see any obstacles to the construction of stadiums or other sports infrastructure.

Respondent 12 adds:

"The CET Act of 2004 allowed local authorities to use public-private partnerships from the outset; what is surprising is their inability to develop this useful tool for building infrastructure of all kinds.

It should be noted that from 2004 to 2009, it was generally difficult for all of the contracting authorities provided for by the CET Act. This led to the adoption of law no. 2009-21 of 4 May 2009 amending certain

provisions of law no. 2004-13 of 1 March 2004. These include

- Greater involvement of the Ministry of the Economy and Finance at all levels of planning and evaluation of public investment;
- A simplification of the procedure for setting up the Tender Committee;
- Strengthening the arbitration role of the Infrastructure Council by relieving it of its function as a member of the Tender Board;
- Bringing the law into line with international standards as regards recourse to arbitration in the event of disputes between the concession-granting authority and the private operator (J.O.R.S n°6481, 2009).

Respondent 12 justifies the changes to the CET Act by:

"Local authorities do not have the human and technical resources to undertake PPP projects. At central government level, it has been necessary to strengthen the expertise and powers of the Ministry of Finance.

Respondent 15 adds:

"Generally speaking, a number of preconditions have prevented the CET Act from delivering the expected results. For example, the issue of settling disputes through arbitration has always been raised by private investors. This has certainly blocked the use of PPPs.

Act no. 2011-11 of 28 April 2011 amending and supplementing Act no. 2004-13 of

1 March 2004 on contracts for the construction, operation and transfer of infrastructure introduced the concept of a supplementary contract. According to article 1er of this law, a complementary contract may also be entered into by direct agreement by a concession-granting authority, after obtaining the opinion of the Infrastructure Council and the Minister of the Economy and Finance, and after authorisation by presidential decree, when an infrastructure project has already been the subject of a CET contract and when, for reasons of economic, social or cultural necessity, or for requirements of consistency in the technical and financial management of the infrastructure, the concession-granting authority decides to extend the contract during its execution.

Prior approval and authorisation must be sought on presentation of a report justifying the appropriateness of the works, supplies or services to be extended and their link with the initial project. (J.O.R.S n° 6611, 2011)

In this regard, respondent 1 notes:

"The 2011 amendments are not aimed specifically at local authorities. They were intended to bring greater coherence to PPP projects with administrative or technical links. Above all, they have enabled the State to finalise its motorway projects."

Otherwise, we had to wait for Act No. 2014-09 of 20 February 2014 (J.O.R.S No. 6781, 2014), amended by Act No. 2015-03 of 12 February 2015 on partnership contracts in Senegal to note an affirmed commitment by the Senegalese public authorities to expand to other areas. It stresses that the law on partnership contracts applies to all sectors of economic and social life, with the exception of sectors subject to special regulation, in particular the energy, mining and telecommunications sectors. There is therefore no doubt that physical and sporting activities are taken into account in the new approach of public authorities. It also reinforces possibilities offered to local authorities to turn to private sector to finance their activities. This is taken up by Law 2021-23 on public-private partnership contracts, which unifies the institutional regime and reinforces the role of PPPs.

Respondent 7:

"The various laws adopted have not specifically targeted local authorities. Perhaps because of the scale of the projects, they have been aimed at central government. This justifies their inaction.

Respondent 23:

"In reality, law on partnership contracts was aimed at the creation of large-scale public infrastructures, sporting or otherwise, by the central government. Often these cannot be built by local authorities.

This is why it is necessary to look back at the organisational framework of local authorities to see the obstacles to the development of PPPs.

4.2. An Organisational Framework for PPPs that is Not Very Specific to Territories

The traditional organisational framework for the management of physical and sports activities is the "régie" system. A service is managed directly when it is provided directly by the administration with its own staff, budget and domain. The service has no individuality. It has no legal personality. However, if it has an industrial and commercial character, it may have a certain accounting individuality that makes it possible to know whether it is in deficit or profit (Sy, 2022).

Generally speaking, construction and management of public infrastructure remains the responsibility of the central government. Most, if not all, infrastructure has been built with public funding and management entrusted either to the Senegalese National Army or to local authorities. From this point of view, while efforts are being made towards PPPs in physical and sports activities, there is an urgent need to find organisational models that are better suited to the partnership management of such activities. In this respect, the respondent n° 6 notes:

"There are no specific organisational models for local authorities. The existing frameworks are applicable to all public bodies. How can the same frameworks be applied to the State and other public bodies when the concerns and modes of action are different?"

Respondent 22 adds:

"Changes have not been made to really allow local authorities to initiate PPP projects, especially when it comes to building sports infrastructure. For example, at central government level, the parties involved have sometimes disagreed on the choice of structural models for building sports infrastructure, which some have deemed unsuitable. It is then obvious that local authorities will find it more difficult to adopt them for a variety of reasons.

These models, while not PPPs in the strict sense of the term, are public service delegations. These delegations may be concessions or leasing (Sy, 2022). A concession is a contract under which a public entity (the grantor) entrusts co-contractor (the concessionaire) with the task of operating a public service or public work, after making the necessary investments, and allows the concessionaire to earn a fee from users of the service or work. Under a leasing agreement, as with a concession, the co-contractor (the farmer) assumes financial responsibility for managing the service by collecting fees from users. However, unlike a concession, under a leasing arrangement, the works and investments required to operate the service are carried out by the authorities before being made available to the lessee in return for a fee. In other words, partnership contracts exist alongside leasing and concessions. Partnership contracts and public service delegations should:

"To apply to distinct projects, as partnership contracts were first created to implement "public payment concessions", i.e. concessions in sectors where the private sector's remuneration does not come from users." (Lignières, 2005 p.117-118)

In practice, it has been observed that players are increasingly requesting partnership contracts for projects previously implemented in the form of public service delegation in various sectors. However, the distinction between partnership contracts and public service delegation is based on two points:

- Partnership contracts require public payment, which is not the case for delegated contracts, which are based on user fees;
- ownership of a public facility built by a concessionaire is always public; whereas the facility built under a PPP is owned by public authority's co-contractor for the duration of the contract. (Sestier & al., 2008).

This is why Law 2021-23 on public-private partnership contracts has simplified the system for public-private partnership contracts involving public payment and those involving payment by users.

Respondent 10 explains:

"Law 2021-53 simplifies the contracts regime and allows for broad categories of PPP contracts by unifying the regime, but does not provide practical solutions capable of developing PPP contracts in the territories".

Respondent 18 continues,

"A failure to take account of the specific nature of physical and sporting activities, which require heavy investment that local authorities generally do not have.

The creation of a Support Unit for Public-Private Partnerships and a support fund for them by Law 2021-53 seems salutary. However, it does not seem to be congruent with the arrangements for local authorities, since it is the central government that continues to fund sports infrastructure. Respondent 13 states:

"The state continues to build sports facilities. However, there is a system in place at departmental and local level. Because of the lack of resources in the regions, the State builds sports facilities and entrusts them to the local authorities. This explains why the various tools provided for in the texts are never used as far as local authorities are concerned.

Respondent 19 adds:

"A sort of ostrich policy has been applied since the adoption of the CET law in 2004. Even though the texts of decentralisation have given powers in the field of physical and sporting activities, the State does not seem to want to take the complementary measures to make PPPs a reality in local authorities."

In other words, from an organisational point of view, there are a variety of possible options for taking charge of public service of physical and sports activities. In the context of territories, the various PPPs identified remain appreciable in the context of Act III of decentralisation with Law no. 2013-10 of 28 December 2013 on the General Code of Local Authorities. Indeed, Article 14 of the said law states:

"The acts of local authorities are subject to legality control by representatives of the State. Delegations of public services, public contracts and public-private partnership agreements by local authorities are concluded in accordance with the legislative and regulatory provisions in force. Contracts entered into by the local executive body are authorised by the council of the local authority, which may set the terms and conditions thereof, in accordance with the procedures and limits set out in Title IV of Book One of this Code..."

With regard to partnership contracts in particular, Article 2 of Law 2014-09, as amended by Law 2015-03 of 12 February 2015, states that such contracts may be signed by the State, an agency, a public establishment, a company with a majority public holding, a national company, associations formed by legal entities, any body or legal entity under public law, but also and above all a local authority. Article 3 of Law 2021-23 reinforces the same logic by considering local authorities as contracting authorities for PPPs (Law 2021-23 of 02 March 2021 on public-private partnership contracts in Senegal). In all cases, these partnership contracts, according to the aforementioned law, concern all sectors of economic and social life, with the exception of sectors subject to special

regulations, in particular the mining, telecommunications and energy sectors. This supports respondent no. 20, which states:

"Partnership contracts do fall within the remit of local authorities. There is nothing to prevent them from using them at local level. The powers transferred by the 2013 law are well in line with the 2021 law on partnership contracts, which excludes only the mining, telecommunications and energy sectors. Sport is one of the areas covered.

It should also be pointed out that the partnership contracts signed by local authorities cover all their areas of responsibility, in particular youth, sports and leisure activities. Thus, the local structures that are the department, the commune and the city established by law no. 2013-10 of 28 December 2013 on Act III of decentralisation in Senegal have the opportunity to sign partnership contracts. For the department, article 308 specifies, among other things, that it is responsible for building, managing and maintaining sports and socio-educational infrastructure with departmental or regional status; article 309 adds that commune remains responsible for:

- Building local sports facilities;
- Construction, management and maintenance of municipal stadiums;
- Development and management of play areas and sports trails.

As for the city, like the two existing orders of local authorities, it can participate in the organisation of sports competitions, according to article 170 of the code, but is not involved in the construction or development of sports infrastructure. Respondent 2 emphasised:

"The legal framework is clear. With the exception of cities, local authorities have powers in terms of construction and management. However, because of its resources, the State is the only body involved in construction. Few local authorities can initiate sports infrastructure projects. In general, they confine themselves to managing them".

Respondent 21 states:

"It's clear that it's the state that builds sports infrastructure, whether on a PPP basis or not. The State builds them and entrusts their management to local authorities, unless they are national in character. As proof of this, the State had to intervene when the Parcelles Assainies Town Hall in Dakar had difficulty completing work on a local stadium.

Local authorities have always been involved in the management of sports facilities. Indeed, long before the 1996 Local Authorities Code was drawn up (JORS No 5689 of 25 May 1996), municipalities could be entrusted with the management of public sports facilities, particularly stadiums. Since the 1996 reform, sport has been a transferred responsibility, so in addition to management, they can now be responsible for building local sports facilities in the regions. However, in the absence of substantial resources, they have remained confined to their mission of managing infrastructures transferred by the central authorities. The transfer of powers has not been accompanied by a transfer of resources. In this respect, respondent 23 emphasised:

"Decentralisation has come up against a major problem. Responsibilities have been transferred to local authorities in sport and other areas. However, they do not have the human, material or financial resources to exercise their powers, including in sport.

The challenge of using PPPs by local authorities is above all linked to the absence of a local structure entirely dedicated to PPPs. The creation of a Public-Private Partnership Support Unit and a PPP support fund would seem to be an appropriate response. In the opinion of Fischer et al (2006), a task force is always needed to support PPP programmes, especially in Senegal, where there is often a lack of expertise compared with the central authorities. Respondent 9 states:

"It was as if everything had been organised so that the PPPs would be signed by the central government. The PPP Support Unit cannot play its role in all of Senegal's departments and communes. Units at regional or departmental level are useful if PPPs are to become a reality at territorial level.

5. DISCUSSIONS

From the point of view of the pragmatic paradox, it is possible to note with Smith & Lewis (2011), on one hand, contradictions noted in territorialisation of PPPs in relation to physical activities and sport, and on the other hand, the limits they pose if we want to aim for organisational performance.

As far as contradictions are concerned, reforms formulated since 2004 to develop PPPs have come up against inaction of local authorities in this area. They have been unable to play their part in developing PPPs. The main argument is the lack of powers at local level. Decentralisation involves the transfer of powers from central to local level. However, this transfer of powers has not been accompanied by the transfer of technical means and quality human resources. This leaves local authorities with powers they cannot use. This is a major contradiction that has held them back, not only in the development of PPPs in sports activities, but also in other areas of transferred powers. In addition, the texts on PPPs were produced in a particular context where physical and sports activities and decentralisation issues were not targeted. Moreover, reforms formulated, by opening up PPPs to more sectors, did not take into account the specific characteristics of local authorities, which do not have the same resources as central government. This is a contradiction in terms, since general texts cannot govern the specific situations of local authorities. Perhaps the dialectic between the general texts of PPPs and specific texts

of decentralisation makes it possible to find dynamics of synthesis. This does not always lead to definitive solutions. Finally, another contradiction is the creation of a Public-Private Partnership Support Unit at national level. If it is not supported by local PPP support units, its effectiveness may be limited at local level.

When exploited, these paradoxical tensions can, according to Smith and Lewis, lead to better performance. However, in the case in point, the paradoxical tensions are not latent, but salient, as we have just explained, at the level of deficient local skills, at the level of texts relating to PPPs, which are out of step with the logic of territorialisation, and at the structural level. As a result, the cognitive and behavioural skills of the players are inert. This is not conducive to creating an organisational dynamic for progress. As a result, local authorities, in their current state of operation, are not agile organisations and cannot bring about the changes expected from the territorialisation of PPPs.

The paradoxes noted can be better understood through the four levels constituted by the new values, new forms of organisation, new formal frameworks and managerial instrumentation posited by the theory of National Systems of Public Governance (NSPG) (Hudon & Mazouz, 2014). Generally speaking, Mazouz et al (2022) note a lack of appropriation of the values and tools of Public Management (PM) in the African context. This seems to be verified in the case of the present study since the introduction of PPPs in local authorities in Senegal suffers at the four levels mentioned above.

With regard to the centrality of the values of accountability, the rhetoric on the quality of performance services, the evaluation of public projects and programmes or the exercise of democracy, there is nothing in this study to indicate that these values have been appropriated. However, the opposite cannot be said. In fact, PPPs reflect a form of openness on the part of the public administration, and it is not certain that the players at local level have adopted them, especially in physical activities and sport.

In terms of new organisational forms such as agencies and PPPs, which are all the rage, it does not appear that the models proposed to local authorities are appropriate. It is the existing structures at central government level that seem to be present at local level. Worse still, there is no structure dedicated to PPPs at local level.

With regard to the formal administrative frameworks that are supposed to introduce effectiveness and efficiency into public administration, these are laws that do not specifically target local authorities with regard to PPPs in physical activities and sport. This is not congruent with simplification and pragmatism in procedures.

Finally, in terms of managerial tools, management tools are not evolving, since the transfer of competencies in sport to local authorities has not been accompanied by a transfer of resources, including these tools.

6. CONCLUSIONS

Through this study, it was necessary to find explanations for the paradox of existence of a structured legal framework and the absence of organisational elements to underpin PPP projects in local authorities.

After analysis, it is possible to note with Smith & Lewis (2011) at a scientific level, using a pragmatic approach, on one hand, the contradictions noted in the territorialisation of PPPs in relation to physical and sports activities, and on the other hand, the limits they pose if we want to aim for organisational performance. Beyond paradoxes, analysis shows pitfalls at four levels, if we rely on Hudon & Mazouz (2012). These pitfalls relate to values in local authorities that are not oriented towards those of the PM, an organisational structure that is not adapted to PPPs, formal frameworks for action that are far removed from the targets, and management tools that need to be defined.

This is why it is important, from a managerial point of view, to:

- Bring PPP players in local authorities up to speed on the values of MP, and therefore of PPPs;
- Develop local skills to support development of PPPs;
- Establish a formal and organisational framework that takes into account the specific characteristics of local authorities;
- Define PPP management tools in line with the objectives;
- Create local PPP support units at regional level, in line with the national Public-Private Partnership Support Unit;
- Exploiting the paradoxical tensions linked to the territorialisation of PPPs by relying on the cognitive and behavioural skills of the players and a more agile organisation.

Beyond the paradoxes of the territorialisation of PPPs in physical and sports activities, a global analysis of the governance of local authorities is needed to understand their receptiveness to the tools of PM.

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