



# Brazil votes: Change crucial to its cities and states

Whoever goes on to win the presidency will have to deal with the need to modernize the practice of federalism.

BY GILBERTO RODRIGUES

**The** general elections in Brazil will produce not only a new President and Vice-President, but 26 state Governors and Deputy Governors, one Governor and Deputy Governor for the Federal District, and two Senators per state - equivalent to two-thirds of the Senate. As a result, the House of Deputies and the Legislative Assemblies of the states will be completely revamped. The extent of the change in the political framework will generate momentum for institutional and administrative changes in the country.

After two successive terms in power, from 1995-1998 and 1999-2002, President Fernando Henrique Cardoso will close the doors on his administration in January 2003, leaving behind as his main legacy democratic consolidation and the creation and maintenance of an environment of economic stability.

Still, Brazil lives with the dilemma of how to improve its great productive potential, develop its economy to levels allowing it to battle the growing public debt, and urgently deal with deep regional disparities and the socio-economic exclusion of a large sector of the population.

The UNDP's 2002 Human Development Report gave Brazil a rating of 0.757 on a scale of 0 to 1 - equivalent to 73rd place on a list of 173 countries examined. Brazil placed it below the Latin American and Caribbean average of 0.767. Even more crushing is the Brazilian classification by the Gini Index: the country has the fourth largest concentration of income on the planet!

Given this scenario, among the various challenges that the new President, governors and legislators will have to face is the need to redefine and update Brazilian federalism.

## **The "Federal Pact"**

Tensions over centralization and decentralization of power have existed in Brazil since the time of the First and Second Empires, between 1822 and 1889. Historically, the Portuguese legacy favoured centralization, and it was only in the First Republic (1889-1930), with the adoption of federalism, that the states achieved a higher level of autonomy.

During most of the Twentieth Century, Brazilian federalism was marked by either centralizing authoritarian regimes, or by liberal regimes preferring decentralization. A significant increase in subnational autonomy in relation to the Union only occurred during the democratization process and the approval of the 1988 Constitution.

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The new Constitution granted federal autonomy to municipalities, formally making them equal to the Union and the states. As a result, Brazil became the first country in Latin America to include local power in the federal entity, making it one of the three levels of government. (Mexico followed a similar path after its last constitutional reform.)

It is based on this new constitutional federal pact, its practice and progressive implementation, that the debate over the shape of Brazilian federalism is taking shape.

Yet most small and medium-sized municipalities still do not have staff with the minimum qualifications to meet their new constitutional demands - doing something about that will be one of the challenges for new leadership after the election.

## **Debt, taxes and equalization**

The debate on fiscal federalism gained impetus when the Fiscal Responsibility Act of May 4, 2000 (*see Federations Vol. 2 No. 3*). It takes on one of the most serious issues facing the entire country: the boundless indebtedness of the constituent units, generating difficult-to-manage public debts. The Act is intended to ensure proper governance and alters the habits of a culture with a vice for endless spending. But the fiscal adjustment required by this Act is causing serious difficulties for the sustainability of a number of states and municipalities.

In this environment, reform must be fiscal and tax-related in order to globally and completely encompass the problem of funds for guaranteeing the functioning and autonomy of the federal entities.

Fiscal equalization must be redefined in order to resolve the grave regional socio-economic imbalances. In such an environment, the existing systems for vertical transfers, such as in the fields of health and education, must be improved and better protected from possible attempts at political meddling and manipulation. As for fiscal competition, effective regulations would reduce regional asymmetries and end the fiscal "war" between and among the states.

For more than a decade Brazilians have discussed reforming the tax system. But all proposals have run up against the fact that the federal government would lose as a result of moving tax jurisdiction to the states and municipalities.

The legislative proposals and discussions put forward to date have succeeded in eliminating taxes on production with the creation of a value-added tax (VAT). This tax is only charged on the end product and has a more encompassing profile than the two already in existence (the "tax on services and circulation of goods" and the "manufactured goods tax").

Both the fiscal and tax reforms must take place without forgetting about the participation of Brazil in MERCOSUR

(the “Southern Common Market”) and its possible membership in the Free Trade Area of the Americas (currently in the negotiating phase), entities which foster policies of fiscal harmonization.

### **Basic services and combating crime**

The themes of federalism are interconnected like the genes on a strand of DNA. In the federal structure, the redefinition of jurisdictions only makes sense if tax reform permits the creation or channelling of sufficient funds to be allotted to the budget in order to cover the anticipated or assumed responsibilities.

This second priority touches upon issues quite close to the population, and has become the touchstone of efficiency when formulating and executing essential public policies in the areas of health, education, the environment, and housing and basic sanitation.

Brazilians are very concerned about an alarming level of urban violence and organized crime. This is feeding demands for changes to state and federal jurisdiction over public security.

The greatest manifestations of violence and crime are concentrated in the cities, and yet the municipalities do not have the constitutional authority to undertake policing, except for looking after municipal property. The states, on the other hand, have two police forces, the civil and military police, whose levels of cooperation are precarious, if not non-existent, and create wasted financial and human resources.

There will likely be a serious debate on how municipalities can take on new responsibilities in this area, following the example of transit administration. The verbs “to federalize” and “to statize” exist in the Portuguese language, and mean to make the management or execution of a policy or public service federal or state-run. There is no entry in any dictionary for the verb “to municipalize” with the same meaning. However, this is one of the most challenging items on the Brazilian federalism agenda, supported by the global movement to strengthen local power in the management of areas usually run by central or state entities.

On the other hand, many argue that the investigation and sentencing of organized crime suspects should be federalized, i.e. assumed by the federal government, in order to guarantee the integrity and independence of police commissioners, prosecutors and judges, and to ensure the due legal process.

### **A lack of cooperation**

In a country with three levels of government (federal, state and, unlike many federations, *municipal*) the lack of effective institutional mechanisms to facilitate intergovernmental relations is shocking. The “fiscal wars” among states (*see Federations Vol.1,#1*), which in Brazil are destructive to regional economies, would probably be easily resolved with intergovernmental cooperation. The Brazilian reality dictates that it develop its own model in this area. The federal system is quite complex, with the Union, the 26 states plus the federal district, and 5,561 municipalities, among which there are profound degrees of socio-economic difference.

When the Union agrees to a treaty, the states and municipalities are also bound, and there are no examples in

Brazil of past resistance to this rule. Due to the growing complexity of international themes and the greater involvement of subnational players in implementing multi-lateral agreements, dialogue and intergovernmental action in this field is becoming increasingly important.

For instance, Brazil ratified the Climate Change Convention (1992) and the Kyoto Protocol (1997). But there is still no plan as to how they are to be implemented on the subnational levels. Given the non-existence of intergovernmental channels of communication, the federal government has acted randomly, in accordance with what it perceives to be its own interests.

### **States, municipalities and foreign relations**

Finally, the international relations of the states and municipalities, a phenomenon that intensified especially in the 90s in the wake of globalization and the process of regional integration, deserve to be treated with zeal. The international cities movement, driven by the Habitat Conference (UN/1996) and its developments, and the MERCOCITIES NETWORK, which encompasses hundreds of municipalities of MERCOSUR member countries, are two areas in which there might a place for increased cooperation between and among all orders of government.

There is also a potential for conflict here. An example of that is the crisis of the moratorium on the Eurobond in the State of Minas Gerais in 1999, when the federal government had to intervene to prevent the flight of capital.

In this area, there already exists an institution designed to foster cooperation. The Ministry of Foreign Affairs created the Federative Relations Council in 1997 and its role is to work closely with the states, municipalities and civil society.

But that body is not sufficient to deal with the growing international engagement of states and municipalities. In this sense, the creation of a consultative forum and ongoing interaction of federal diplomacy could promote subnational discussion and open up people’s minds to the responsibilities that implementing an external federal policy entails.

### **A “federal culture” in Brazil?**

Confronting all of these challenges in the short and mid terms requires taking initiatives aimed at preparing future generations to better deal with and benefit from federalism. Educational institutions, especially universities and research centres, should expand to include learning about the Brazilian reality from a federal point of view. Similarly, understanding other federal systems is a valuable resource to have.

The curricula and educational programs of the Faculties of Law and Law Courses do not include the law and legislation of the states and municipalities. Yet these are the institutions that educate the majority of the executives for the three levels of government, many who work at interpreting and applying the law.

The debate on federalism reforms must stimulate and be supported by the spread of a federal culture in Brazil, using new educational resources that accurately reflect the perspectives of each of the three levels of the federation. (6)