



Public consortiums in Brazil

New law stimulates federal cooperation

BY *GILBERTO MARCOS ANTONIO RODRIGUES*

They began as experiments in co-operation among Brazilian cities, to pool resources and build a hospital, or to provide drinking water and prevent floods in municipalities along the same river. By the time they were established in federal law in 2005, these bodies, called *consórcios públicos* or public consortiums, were the talk of the country. Some even won public management and citizenship awards from the influential Getulio Vargas Foundation in São Paulo.

Brazil's new law on the *consórcios públicos* took the concept far beyond co-operation among a few cities. The law has been trumpeted as an important instrument of intergovernmental relations between the union or central government, the states, the municipalities and the Federal District for the formulation and execution of public policy in Brazil.

Indeed, it is expected that the law on public consortiums, passed on April 6, 2005, will enable the saving of substantial sums of money, enhance the state of cooperative federalism and contribute to the improved governance of the country. The law on public consortiums is a form of intergovernmental agreement, which aims to promote the common interest of various jurisdictions in Brazil.

Some say that the most successful experiences of consorcios were begun by municipalities in the area of public health:

- 12 municipalities (pop.150,000) in the State of Goiás combined in 1998 to train health managers;
- 11 municipalities (pop. 163,000) in the State of Mato Grosso began offering a common service of lab testing in 1996;
- 29 municipalities (pop. 254,000) in the State of Paraná began offering lab testing, emergency assistance and basic medicines in 1993;
- 7 municipalities (pop. 82,000) in the State of São Paulo began offering mental health assistance and prescription medicine in 1986.

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Since the approval of the law on consortiums, a number of innovative proposals have emerged for inter-municipal public consortiums. For instance, in June 2005 Niteroi and other cities from the Fluminense region of Rio de Janeiro signed a letter of intent for the formation of a public consortium for environmental administration.



Brazilian President Luis Ignacio Lula da Silva and his chief of staff Dilma Rousseff in Brasília.

Another example of a promising inter-municipal consortium is one between the cities of Cubatao, Guaruja and Santos in the coastal region of São Paulo. The cities signed a letter of intent in August 2005, for the economic and environmental development of the Port of Santos – the largest in South America and main route for foreign trade in Brazil.

Under the first Federal Constitution of the Republic of 1891, there were provisions for consortiums between municipalities and between states, but at that time they were considered private contracts. This provision was maintained under subsequent constitutions without any evolution. However, since the enactment of the Federal Constitution of 1988, federal status was conferred upon municipalities and the federal district, inaugurating three-way federalism in Brazil.

The framework for this new legislation came in 1990 with a law that created the Universal Health System. It authorized municipalities to build consortiums in order to jointly develop actions and provide health services. In fact, following the enactment of the law, public consortiums between municipalities in the area of health care have been more numerous and have contributed towards intensifying the growing culture of federal cooperation in the country.

Indeed, during this period, a group of seven municipalities from the South-East region of São Paulo, one of the most urbanized and densely populated of the country, became a virtual laboratory of public policy consortiums.

The increase in the practice of use of consortiums in the 1990s followed a wave of decentralization during that period. This resulted in a Constitutional Amendment to

the 1988 Constitution, establishing the possibility for public consortiums involving all entities at the federal level and the administration associated with public services between them.

The Brazilian Institute of Geography and Statistics, in a 2003 report on the profile of Brazilian municipalities, stated that there were 1,969 health-related public consortiums, 669 for the purchase or use of equipment, 241 in the field of education, 64 housing-related consortiums; 161 relating to sewer systems, 87 water treatment systems, 216 for the disposal of solid waste and 88 involved in data processing.

The way the law on public consortiums works, the union, the 26 states, plus the Federal District and the 5,561 municipalities can be part of a consortium under horizontal or vertical arrangements, under the following possible combinations: municipalities with municipalities; states with states; states with a Federal District; municipalities with a Federal District; states with municipalities; states with Federal District with municipalities; union with states; union with a Federal District; union with states and a Municipality; and union with states with the Federal District and with municipalities.

Only municipalities within the same State can join in a consortium. In other words, consortiums between municipalities of different states are not allowed, except if located on the border between states. President Lula explained that this is to avoid any disruption in the “federal peace,” preventing the interference of a state in the municipal affairs of another state. Thus, public consortiums have been designed as instruments of neighbourly cooperation, but not instruments of trans-

territorial cooperation – and this in order to avoid conflict and internal fragmentation.

The negotiation process for the formation of a public consortium usually entails the signing of a letter of intent that records the political will of the parties to constitute the consortium. What it boils down to is creating a synergy between the federal entities at different government levels, to rationalize and economize resources.

The government of President Lula stated that public consortiums is an essential instrument within the framework of “Federative Rearrangement,” which is composed of a joint set of initiatives aimed at developing new concepts of occupation and development of the Brazilian territory.

However, although the public consortiums can be useful and efficient instruments to resolve specific problems, care need be taken that they not become a fourth level of government. Peter Spink, titular professor at the Getulio Vargas Foundation in São Paulo, called them “very competent inter-organizational political and technical arrangements for co-ordination,” but added that public consortiums have “very little added opportunities of deliberative democracy.” Not every consortium lacks citizen and civil society involvement, but there is no institutionalized or built-in place for them.

It is too early to assess the full impact of the public consortiums, but they are expected to bring about significant outcomes in public administration, the economy, environment, and health care services and may well generate practices of interest to the international community. (6)

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Sri Lankan negotiations stalled

ceasefire agreement. The government wanted to amend the agreement but the LTTE said no.

One of the difficult issues that surfaced at the talks was that of Colonel Karuna (the *nom de guerre* of Vinayagamoorthi Muralitharan), the LTTE renegade who, with his followers, have challenged the LTTE particularly in the east, thereby weakening the LTTE’s military strength in the area. Karuna is a former member of the LTTE negotiation team and one of its most renowned military leaders. The government argued that the ceasefire agreement contemplated disarming paramilitary groups in existence at the time the agreement was adopted, and therefore did not apply to the Karuna breakaway group. The LTTE insisted that it did. The statement issued by the Norwegian facilitators at the end of the Geneva talks said that only members of the government security forces would be allowed to carry weapons and engage in security operations in government controlled areas. This does not resolve the issue of the Karuna forces, whose members do carry arms.

The ambiguities in the Geneva statement have raised disagreements between the parties on the subject of the disarmament of the Karuna rebels. The second round of talks, originally scheduled in April, has been postponed indefinitely. The increase in violent incidents by both the LTTE and government security forces is troubling — the BBC reported on April 25 that since April 1, more than 100 people had died in clashes and ceasefire violations in the country. In troubled Sri Lanka, a prolonged flawed ceasefire is better than outright hostilities with massive civilian casualties. (6)

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