



Brazil: Diversity and Unity beyond Territories

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Although there are no secession claims by internal groups, and in spite of the fact that it has a single national official and *de facto* language, the Brazilian federation still faces regional socioeconomic inequalities and has continually failed to effectively promote broad implementation of minority rights.

The 1988 Constitution was adopted after two decades of military dictatorship. The 20 years of authoritarian rule were characterized by the deployment of economic policies that propelled economic growth but did not address concerns about equality. Economic development during these years benefited the few and not the many. Moreover the decision makers of the so-called “Brazilian Economic Miracle” during the 1970s and 1980s acted on the premise that minorities, and above all indigenous peoples, should be assimilated on the pretext of “unity.” One of the main intentions of the drafters of the 1988 Constitution was that it should stand as a new symbol of the prevalence of inalienable rights and as an instrument that would recast Brazilian institutions in a fresh new democratic mould, thus leaving behind all institutional structures of the authoritarian past.

As part of the effort of such institution-building, the 1988 Constitution adopted a “three-tiered model” of federation, under which the central government, states, and municipalities were each granted the constitutional status of federal entities endowed with roughly symmetric powers. This innovative reform of the federal system included devolution of powers to the states, and especially to municipalities, in conjunction with redistribution schemes under fiscal federalism. In addition, the new emphasis on federal decentralization offered, together with other conditions, specific incentives for the addition of new municipalities, which in now number 5,562.

Yet, despite the new stress on federal decentralization, mainly by means of imparting federal status to municipalities, the new three-tiered federation has continued to suffer from difficulties inherited from the country’s political past. The ongoing nature of such difficulties has to do with how national unity relates to sub-national diversity (and potentially to empowerment) through the federal institutional system. In its concrete practice and implications, the federal system becomes a means to keep significant minorities hostage to socioeconomic marginalization and political disempowerment. These minorities include Afro-Brazilians, indigenous peoples, *quilombolas* (communities of descendants of black slaves who escaped their plantations before slavery was abolished in 1888), and Roma, better known as gypsies.

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One key issue to understanding the limitations of the Brazilian federation in promoting diversity rights is that devolution of powers has characteristically been territorial – states and municipalities were empowered but groups were not. Diversity rights refer to claims through which the assertion of one’s social and economic rights and expression of one’s identity are combined to promote self-worth. It is striking, though not unheard of, that territorially circumscribed local authority in Brazil has given rise to multiple forms of oppression that pre-empt the full enjoyment of diversity rights.

But why is it that the reform of the federal system, implying greater devolution to municipalities, did not bring about a deeper transformation of policy making in Brazil? The answers seem to point to the inability of local authorities in many regions, including the police, judicial courts, and prosecutors, to prevent widespread violation of basic human rights, such as torture in prisons and violent suppression of dissent in rural areas. Local authorities have also failed to come up with the appropriate institutional means of governing and carrying out programs in ways other than simple territorial devolution. In many instances territorially-based devolution has

only aided the spread of basic human rights violations. This has brought about an urgent need for the central government to establish a federal witness protection program in an attempt to curb the power of oppressive local elites.

Although the 1988 Constitution has formally recognized diversity rights in its structures of governance, it has failed to incorporate trans-territorial institutional arrangements that would foster substantive recognition and implementation of such rights. The 1988 Constitution sets out the existence of concurrent powers, which are shared by the central government, the states, and the municipalities; however, it does not adequately address the need to promote multi-level, trans-sectoral coordination of policies. One striking example can be found in the inadequate federal policies coordinated by the central government that are provided to indigenous populations. In practice such policies do not address the cultural and identity needs of such peoples. As a consequence, important content is lacking in policies that target indigenous communities, such as dietary requirements in right-to-food policies, bilingual education, culturally-sensitive health care approaches, and so on.

Brazil needs to effectively promote diversity rights without posing a threat to national unity. It could do so by implementing international treaties and human rights codes that Brazil had signed, especially if it implemented them in a way that was non-territorial or trans-territorial. Such a move would replace territorial devolution with alternative, trans-territorial arrangements. In this sense it is remarkable that, having signed many international treaties that could have generated internationally and federally articulated policies, Brazil did not take advantage of such opportunities – and in some cases actual legal mandates – to develop international, diversity rights enhancing programs in areas related to international legislation. These include: normative instruments of Mercosur (South American common market); Convention no. 169 of the International Labor Organization (Convention Concerning Indigenous and Tribal Peoples in Independent Countries); and Convention on Biological Diversity (traditional dependence on biological resources and protection of traditional knowledge).

Finally, one important innovation must be singled out that provides new possibilities of developing multilevel, trans-territorial federal cooperation. This is the creation of the so-called “public consortia,” introduced in 2005. Such public consortia seem to be a promising instrument of diversity-enhancing governance, since they create legal entities that congregate multilevel government representatives in more *ad hoc*, asymmetrical, and flexible efforts of trans-territorial cooperation for policy making, such as in the field of infrastructure services in metropolitan areas. The results of this form of cooperation may prove to be an important step forward in the promotion of diversity rights.