

Federations

What's new in federalism worldwide

Vol. 3, No. 4 / November 2003

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The Forum of Federations, an international network, seeks to strengthen democratic governance by promoting dialogue on and understanding of the values, practices, principles and possibilities of federalism.

The **Forum of Federations**, created in 1998, is a non-profit, international organization based in Ottawa, Canada. The Forum conducts a wide range of programs of mutual cooperation designed to help develop best practices in countries with federal systems of government.

The Forum's activities focus mainly on "practitioners" – people who work in the field. Practitioners include elected officials, civil servants, consultants, academics and others with a practical interest in the challenges of governing in federal systems. The Forum also works in countries that wish to explore the *possibilities* of federal models. And we have a number of programs specifically aimed at youth – in particular, young practitioners of federalism.

The Forum's first significant event was a major international conference on federalism in an age of globalization, held at Mont-Tremblant, Québec, Canada, in 1999. Since that time the Forum has developed a series of projects working with practitioners in a wide variety of countries, including Nigeria, Brazil, Mexico, Russia, India, Sri Lanka and Canada. The Forum also looks to establish ongoing processes whereby newly acquired knowledge can be put into practice.

The Forum has an interactive web site: **www.forumfed.org**

On our web site you'll find our publications, plus documentary information on the theory and practice of federalism. The web site has regularly updated information on all Forum projects.

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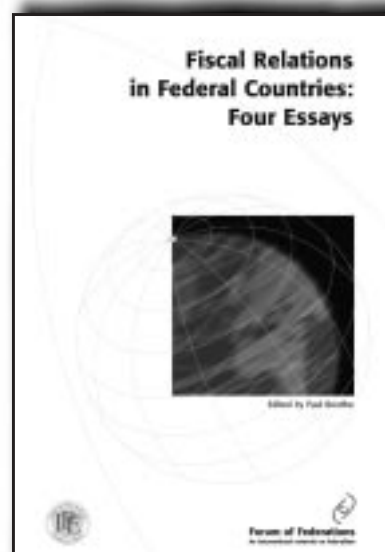
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From the Editors

Federalism may not exactly be the flavour of the month but a lot of people in many parts of the world are thinking and talking about it.

Iraq is often the first place mentioned in conversations on federalism. Iraqis, Americans and others have been freely invoking federalism when discussing the elements of a new democratic constitution for that country. In previous issues of this publication we reported on the Sri Lanka peace process and the importance both sides place on a federal political solution. And in the Philippines many advocate a federal structure both to solve the problem of unrest in certain regions and as a means of nourishing basic democratic principles and institutions.

In all these and many other cases the experience of established federations provides the closest thing there is to a blueprint for federalism. IKEA has yet to come out with a federal assemble-it-yourself kit. Early in 2004 we will have a special issue of *Federations* devoted to the relevance of federal models and the "federal idea" to situations of conflict and transformation.

For now, we continue to report on the established, functioning federations. And, as is our wont, most of our reports seem to deal with friction and conflict within federal systems:

- states at loggerheads with the federal government in the USA over air quality regulations.
- Nigeria's federal government threatening to significantly diminish local governments.
- Canadian provincial governments squabbling with the federal government over labour market training.

All these tales of discord and disagreement don't condemn federalism. In a way, they commend it.

The mechanisms and practices of federalism provide the means to work out differences in a civil, peaceful way. It may sometimes be a messy way of doing the business of government – complex and frustrating too. But it does, somehow, get the job done.

The Forum of Federations is dedicated to the notion that there is some value in learning about each other's difficulties and challenges, as well as successes. This magazine tries to make a small contribution to that. We also have a web site that could be of some use to you.

www.forumfed.org

We invite you to have a look at the online library that now has more than 800 documents, reports and articles on the practice of federalism worldwide, all classified geographically as well as by topic and language. In addition to English and French there are papers in Spanish, Portuguese, German and Russian. We are very interested in your feedback and suggestions as to how we can offer a service that is genuinely of use to you. ☎

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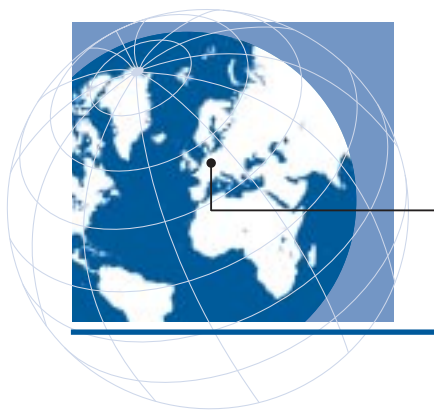
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Swiss cantons give foreigners the right to vote

Foreign residents have gained political rights in five Swiss cantons — but only at the cantonal and municipal levels.

BY *GEORGES ASSIMA*

On May 18, 2003, the canton of Grisons gave its municipalities the right to allow foreigners to vote in local elections. It was the fifth canton to go this route – the other 21 cantons do not now allow foreigners these rights. While the current trend of cantons granting voting rights dates from 1978, Neuchâtel gave foreigners political rights 150 years ago. Thus, the civic rights of foreigners in Switzerland are basically as old as the Swiss federation itself. Their piecemeal introduction was possible only in a federal system.

Neuchâtel – first to allow foreigners to vote

After 1848, the year the first modern Swiss constitution was adopted, the canton of Neuchâtel granted the right to vote and to run for office in municipal elections to foreigners. The lack of resistance to this show of liberalism may be attributed to the fact that, at the time, the word “foreigner” generally referred to residents of other cantons rather than citizens of other countries. In 1887, Neuchâtel took a step backward by refusing foreigners the right to run in municipal elections.

In spite of – or perhaps on account of – the high percentage of foreigners in the canton (23 per cent at the end of 2002), a strong consensus was gradually reached among parties of both the left and the right in this sensitive area for a long-established immigrant population. Although in a 1990 referendum foreign nationals were again refused the right to run for office in the municipal legislature, Neuchâtel granted them cantonal voting rights in 2000 as part of an overall amendment of the constitution. It was following the example of the new Swiss canton of Jura.

Jura: more liberal than Neuchâtel

After a pause of 130 years, a second canton granted political rights to foreigners. This event happened in 1978, when the Swiss created the canton of Jura from the northern French-speaking part of the former canton of Bern.

In the same year, the Jura Constituent Assembly proposed granting political rights to foreign nationals. The inhabitants of Jura chose a different course from their predecessors: the right to vote at both the municipal and cantonal levels. This proposal was accepted by the people along with the first constitution of Jura. By adding the right to run for municipal office to the legislation in 2000, Jura became the most progressive canton in such matters and continues to be so to the present.

Georges Assima has served as a scientific expert in Bern for the Federal Commission for Foreigners, which is in charge of advising the Swiss government and administration on social integration policy for foreign nationals. He holds a Ph.D. in political science.



Counting ballots in the October 1999 Swiss Federal election.

Foreigners got franchise before women

Between 1887 and 1959, Switzerland had a reputation for holding back the extension of the franchise. Federalism played a role in the delayed recognition of women's civic rights in Switzerland, as well as the process leading up to it. These rights were at first refused to women in a popular vote in 1959 and were finally accepted only in a referendum in 1971. Foreign nationals thus enjoyed civic rights in the canton of Neuchâtel almost a century before Swiss women did.

However, following the example of the canton of Vaud, several cantons (especially French-speaking ones) were able, thanks to the federal system, to grant full political rights to women at both the cantonal and municipal levels between 1959 and 1971. These rights were granted through local ballots on the 1959 proposal to amend the federal constitution. Conversely, some German cantons, obliged after 1971 to recognize women's civic rights at the federal level, applied the same strategy to refuse them at the local level, claiming they wanted to preserve their cantonal sovereignty in the matter. The last canton to give up this form of passive resistance did so in 1991, under an order of the Federal Supreme Court.

Federal caution and hesitation

The Swiss constitution reserves the exercise of political rights to nationals at the federal level. However, nothing prevents cantons and municipalities from giving foreign nationals the right to vote and to run for office in municipal elections in areas within their territorial jurisdiction, for instance the right to participate in popular initiatives and referendums or even in electing members to the State Council, which represents the cantons in the federal parliament. Foreigners everywhere enjoy the right of petition and can join Swiss political parties — provided their status allows them to, which it does in the vast majority of cases.

The right of foreign nationals to vote and to run for office concerns all non-citizens of all nationalities. The situation differs from that of most European Union (EU) countries, which reserve these rights for nationals from other member

countries only. Concretely, this means that Switzerland's potential foreign electorate is made up of the entire permanent resident population, or 20 per cent of the country's population at the end of 2002 — triple the European average.

Whether a foreign resident can exercise these civic rights depends on the type of residence permit that person has - a condition that reduces the number of beneficiaries.

However, the number of potential ballots is still significantly higher than in most EU countries, with the exception of Luxembourg. That is probably one of the main reasons there has so far been little urgency to recognize immigrants' civic rights across the board. This hesitation persists in spite of research demonstrating that immigrant votes at the local level are more or less evenly spread among the different political parties.

The Federal Assembly has studied various proposals on the issue, but none has gained full acceptance to date. In addition, the political rights of foreign nationals are not on the agenda of the current gradual amendment of the federal constitution. In fact, neither the first part of this document, covering basic rights and citizenship, nor the section addressing the extension of popular rights — both of which have already taken effect — makes reference to foreigners' rights. There seems to be strong support for the argument that political rights require a period of residence (the conditions of which should be eased) and, if appropriate, training at the local level.

Small steps at the local level

Efforts to introduce political rights for foreign nationals have multiplied since the 90s at the national and especially the regional levels. No less than 15 cantons out of 26 (Switzerland has 20 cantons and six half-cantons) have dealt with proposals addressing the issue. Since most of these proposals have been constitutional in nature, referendums have been required. One type of approach has turned out to be more promising than others: the granting of political rights as part of a total amendment of the cantonal constitution. Specific cantonal initiatives launched by political parties and progressive groups have all failed to gain widespread public approval.

The record of the past 13 years is not, however, entirely negative. On April 30, 1995, the half-canton of Appenzell Outer-Rhodes became the third Swiss cantonal state to grant civic rights to foreign nationals. The new constitution adopted by the people grants municipalities the power to grant foreigners the right to vote and to run for office in municipal elections. Many among them took advantage of this authority and at least two granted the rights. It is this "homeopathic" model that the canton of Grisons decided to follow by adopting its new constitution through a popular vote on May 18, 2003.

Vaud: a large canton sets an example

On September 22, 2002, the people of Vaud approved the text of their new constitution, which set out the introduction of political rights for foreign nationals. As accepted by 56 per cent of the native electorate, the new constitution stipulates, in Article 142, that:

"Foreigners of both sexes over the age of 18, who have not been prohibited from voting on grounds of mental illness or mental debility, and who are residing in the commune (municipality) and have been legally living in Switzerland for at least 10 years, and who have been living in the canton for at least three years, are part of the communal (municipal) electorate."

Like all other voters, foreign nationals now enjoy the right to participate in elections and voting activities at the municipal level, and are entitled to sign popular-initiative and referendum petitions. It is a lot less than what was promised in the draft proposal adopted through an overwhelming majority vote in March 2001: granting the right to vote and to run for office at the municipal and cantonal levels to all foreign nationals residing in Switzerland for at least six years, and in the canton for at least three months. But the marriage of semi-direct democracy and federalism has also its Achilles heel: right-wing parties have threatened to launch a constitutional initiative to withdraw these new political rights from foreigners before they can exercise them the first time.

The rest of the country

Neuchâtel, Jura, Appenzell Outer-Rhodes and Grisons accounted for 5.4 per cent of Switzerland's non-Swiss electorate at the end of 2002. The Vaud constitution boosted the proportion of those eligible for civic rights to 16.5 per cent, moving the political participation of foreigners from the symbolic to the "politically correct" stage. Now, half of the French-speaking or mainly French-speaking cantons accord this right to foreigners.

On March 4, 2001, a slim majority of 52 per cent of Genevans refused a constitutional amendment, supported by the authorities, that granted foreigners the right to vote and to run for office in municipal elections. In 1993, the percentage against such a move had been 71 per cent in two popular votes on similar matters. Two new constitutional initiatives from progressive circles in favour of foreigners' political rights at the municipal level were submitted in the spring of 2003 in Geneva.

Fribourg, which like other cantons is currently amending its constitution, has not yet decided on anything but is also studying the possibility of introducing political rights at the municipal level. Bern, one of the largest cantons and one with a German-speaking majority, seems to be moving in the same direction and could decisively tip the scales in favour of foreigners gaining political rights.

A trend?

To date, no political rights have been given to foreigners in federal politics. Will the actions of the cantons be reflected in the granting of rights in federal elections to foreign residents? ☺

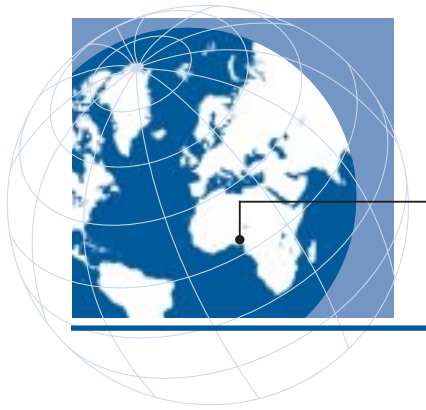
Foreigners' political rights in Switzerland

Jura: Cantonal right to vote + municipal right to vote and to run for public office for foreigners

Neuchâtel: Cantonal + municipal voting rights

Vaud: Municipal right to vote and to run for public office

Appenzell Outer-Rhodes and Grisons: Municipalities may grant political rights at the local level



An end to local elections in Nigeria?

President Obasanjo accuses municipal councils of “underperforming”

BY KINGSLEY KUBEYINJE

What happens in a country when you increase the price of gas by 54 per cent and propose changing or eliminating the third tier of government, the municipal councils?

In Nigeria, the gas price increase triggered a fierce and bloody reaction in the form of an eight-day labour-led nationwide strike, a development that forced the government to back down and accept a negotiated price of 34 naira (US 27 cents) per litre, down from the previously announced 40 naira (US 32 cents). And the debate on municipal restructuring is still raging like a bush fire.

The controversial proposals were presidential initiatives approved by Nigeria's National Council of States in Abuja, the federal capital, on June 18. The council, made up of the president, his deputy, the nation's 36 state governors and all former presidents, met at the instance of President Olusegun Obasanjo.

Obasanjo announced the creation of a high-powered eleven-member technical committee to review the restructuring of governance at the local government level in a nationwide broadcast hours after the council's meeting. It was made up of experts on local government affairs drawn from the country's six geopolitical zones. The committee was already sitting and receiving representations and memoranda from stakeholders in August.

Fate of municipalities hangs in balance

In its terms of reference, the committee is to examine the problem of inefficiency and high cost of governance in the country, with a view to reducing costs and wastes at the three tiers of government. It will also review performance of local governments within the last four years and consider whether to retain the local government as the third tier of government. The committee is required to examine the high cost of election campaigns in the country and consider, among other options, the desirability of political parties, rather than individual office seekers, canvassing for votes in elections.

Obasanjo lamented that instead of acting as a catalyst and aiding development at the grass roots, the 774 constitutionally-recognized local government councils in the country had performed poorly and were sources of massive wastes. “It is on record that at no time in the history of the country has there

been the current level of funding accruing to the local governments from the Federation Account. Yet the hope for rapid and sustained development has been a mirage, as successive councils had grossly underperformed in almost all the areas of their mandate”, the president said.

He also accused state governments of indiscriminately creating new local councils in addition to the 774 listed in the constitution. He decried the fragmentation, especially the division of towns and cities, into mini-local councils.

The immediate fallout from the presidential initiative was the postponement of council elections for three months. The polls, in which more than 8,000 candidates for chairman and councillor were to participate, were originally scheduled to be held on Saturday, June 20, 2003. No one is now sure when or if the elections will ever be held again.

Two sides form for municipal battle

Predictably, the debate on the planned restructuring has garnered as many critics as it has supporters and this had further polarized the country, creating palpable tension within the already badly heated polity. Among the skeptics are the umbrella union of the nation's three million local government workers, opposition parties under the aegis of the Conference of Nigerian Political Parties or CNPP, non-governmental organizations, lawyers and scholars. Some state governors, who are also members of the National Council of States, have equally risen against the proposed reforms on the grounds that they were bamboozled into accepting the proposed reforms. Already, eleven opposition parties have instituted a suit at the Federal High Court in Abuja, claiming that the decision of the ruling People's Democratic Party (the PDP) led the federal government to “tamper” with the councils, as well as postpone elections to them.

One vociferous critic is Attahiru Bafarawa, governor of the Muslim-dominated north-west state of Sokoto, an opposition stronghold. Bafarawa was quick to read an ethnic agenda into the proposed exercise, accusing the president - a Christian from southwest Nigeria - of playing an ethnic card and dancing to the tune of his Yoruba tribal group. The Yorubas had been championing the demand for the restructuring of the



A carpenter in Ameka, Nigeria. Local governments regulate the location of shops and other businesses.

No one is now sure when or if the (municipal) elections will ever be held again.

Kingsley Kubeyinje is an editor with the federal-government-owned News Agency of Nigeria (NAN), a wire service. He also served as the agency's East and Southern Africa correspondent.

entire federal set-up and polity, with a view to having what they called a “true” federation, similar to Canada’s, Switzerland’s and Germany’s.

The Nigeria Union of Local Government Employees (NULGE) had called on the federal government to dialogue with all stakeholders before embarking on any reforms or risk a mass uprising, as well as the wrath of its members. NULGE’s General-Secretary, Abubakar Salam, said that while the union was not “totally” against reforms, such restructuring must be done with a view to preserving the autonomy of the local councils and not with the intention of scrapping them.

Two of the country’s leading opposition parties, the All Nigeria Peoples Party (ANPP) and the All Progressives Grand Alliance (APGA), have described the move as unconstitutional. The ANPP, whose candidate was Obasanjo’s main challenger in the April 19 presidential election, said the planned restructuring was suspect and akin to a coup against Nigerians.

Is local government sacrosanct?

One NGO, the Constitutional Rights Project or CRP, said that the nation’s constitution guaranteed the system of local government to be run by democratically elected local government councils. “This constitutional provision thus makes the issue sacrosanct and not subject to the whims and caprices of the federal government. In other words, the federal government is not at liberty to toy with the issue of local government and it is clearly unconstitutional to do so”, the CRP said.

Speaking on behalf of some concerned members of the ruling PDP in Ondo State, southwest Nigeria, Leye Akinyosotu defended the government, citing a need to have a fundamental restructuring of the local government system. “A situation where a few people share statutory allocations of local governments, while those at the grass roots wallow in poverty will no longer be condoned,” he said, in an apparent reference to the corruption and mismanagement at the local councils.

Reforms before a coup

Ironically, the present local government structure came into being in 1976, in the aftermath of landmark reforms carried out by the same Obasanjo, who was then a military head of state, at a time he was preparing to return the country to democracy. Although Obasanjo handed over to a democratically elected President, Shahu Shagari, on Oct. 1, 1979, the democratic experiment, which gave birth to Nigeria’s Second Republic only lasted until Dec. 31 1983. On that date it was sacked in a dawn military coup led by Gen. Muhammadu Buhari, who became Obasanjo’s main challenger in the last presidential election.

The objective of the 1976 reforms was to free the councils of excessive interference from other tiers of government and to put in place a vibrant and effective grassroots administration. As a result of the reform, local governments became recognized in law as the third tier of government with a share of national revenues, powers and functions.

The Fourth Schedule of the constitution listed the functions of local governments to include collection of rates (property

taxes), radio and television licences, establishment of cemeteries, markets, abattoirs, motor parks and homes for the destitute, licensing of bicycles, canoes, wheelbarrows and carts, as well as naming of roads and streets and numbering of houses. It is also the constitutional responsibilities of local councils to provide and maintain sewage and refuse disposal facilities, levy and collect tenement rates, regulate outdoor advertisements, movement and keeping of pets, as well as regulate the location of shops, kiosks, restaurants and bakeries.

The relevance of the local councils as an important tier of government is highlighted by the fact that the constitution provides for their direct funding. The creation of new councils is also a constitutional matter, which must be approved by the bicameral federal parliament.

As a result of the (1976) reform, local governments became recognized in law as the third tier of government with a share of national revenues, powers and functions.

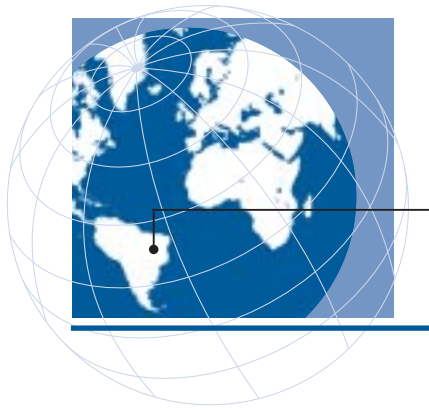
Plan to give states more revenue

Under the soon-to-be discarded revenue sharing formula, local councils get 21 per cent of all federally collected revenue, against the federal government’s 55 per cent and the states’ 25 per cent. In the new sharing formula - being debated by parliament - 20 per cent of the revenue will go to the local councils, 47 per cent to the federal government and 33 per cent to the 36 state governments and Abuja, the federal capital territory.

Have the local governments really failed? The general feeling is that they have not lived up to the people’s expectations. Indeed, local government employees admitted some shortcomings, but insisted that the circumstances the councils found themselves in were responsible for their non-performance. In a memorandum presented to the restructuring committee, NULGE admitted that about 750 billion naira (US \$6 billion) was disbursed to the 774 local governments between May 1999 and May 2003. NULGE, however, insisted that the councils were hamstrung as they were forced to pick up a whole lot of bills for projects that were not initiated by them. Worse still, they were projects outside the ambit of their constitutional responsibilities. They said that these added responsibilities made service delivery to the grass roots practically impossible.

They point to the 463.2 billion naira (US \$3.7 billion) that was deducted in the last four years for the payment of primary school teachers, which ought to be paid for by the federal government, the 37.5 billion naira (US \$300 million) which the state governments paid out to traditional rulers from the local government accounts, the 176.9 billion naira (US \$1.4 billion) paid out as emoluments to local government political office holders. The emolument package, they stressed, was forced on the councils by the Revenue Mobilisation Allocation and Fiscal Commission, a body set up by the federal government. They also point to the 4.4 billion naira (US \$35.2 million) that was deducted by the federal government and used in buying 1,000 jeeps for the police, a federal organ, as well as the compulsory funding of the April general elections. NULGE said each of the 774 local councils was “levied” 10 million naira (US \$80,000) for the elections and was also compulsorily made to fund state-owned tertiary institutions and other projects initiated by state governments.

Given the array of “extra” responsibilities they were made to bear, the local councils said they could not have performed optimally. ⑥



Brazil's parties switch sides on fiscal federalism

How President Lula da Silva's party changed from advocate to opponent of fiscal decentralization

BY **MATIAS VERNENGO**

In Brazil, President Lula da Silva's party has always defended fiscal federalism — the decentralization of responsibilities and revenues — until now. The Workers' Party — *Partido dos Trabalhadores* or PT — was until recently on the side of decentralization while the conservatives in Brazil opposed it. In fact, not only did the PT fight for the federal government to share the burdens of administration with the states and municipalities, but internally the party always rejected the "democratic centralism" common to orthodox leftist parties. For the PT, democracy and decentralization of power went hand in hand.

The PT party platform during Lula's successful bid for the presidency last year promised that "together with a tax reform, our administration will recommend to states and municipalities a redefinition of the federal pact, with the intent of promoting decentralization of social policies and supporting local action." Therefore, it would only be logical to expect, as the tax reform starts to be discussed in congress, to see the administration firmly behind fiscal federalist principles. Alas, that is not the case.

Long shadow of the IMF

The reasons for this sudden and perplexing about-face on fiscal federalism are far from simple and are to a great extent related to the legacies of the previous administration. More importantly, perhaps, the administration is trying to stay within the fiscal parameters set by the stand-by agreement with the International Monetary Fund (IMF). It is important in understanding the reasons behind Lula's change of heart to analyze both the fiscal situation at the end of Fernando Henrique Cardoso's administration and the logic of the agreement with the IMF.

For more than a decade Brazil has been pushing for a serious adjustment of its fiscal accounts. From 1991 to 2002 the Federal government maintained on average a primary surplus of 2.3 per cent of GDP excluding interest payments on

...the administration is trying to stay within the fiscal parameters set by the stand-by agreement with the International Monetary Fund

the accumulated debt. The primary surplus in 2002 was 3.9 per cent of GDP. In roughly the same period, transfers to states and local governments fell from around 25 per cent of total federal government outlays to slightly more than 15 per cent. Also, spending on public sector salaries was cut from 32 per cent to 22 per cent of government expenses as part of a difficult reform of the public sector administration. In addition, one should note that during the previous administration the

federal government refinanced the debts of states and local governments. These efforts were crowned with a new fiscal responsibility law that imposed limits on expenses related to workers' salaries and a limit to indebtedness.

Taxes higher than OECD countries

Revenues to federal, state and municipal governments increased all through the 1990s, reaching around 36 per cent of GDP in 2002, a level more in accordance with standards of the OECD countries where public services are broader and the quality is better. For taxes however, countries with OECD-level standards of living usually have a much lower tax burden, around 20 per cent of GDP. Part of the increase in federal government revenues was at the expense of state and local governments. Municipalities, in particular, increasingly depend on transfers from the federal government. In 1995 less than 30 per cent of local government revenues were transfers, whereas by 2001 the level had risen to more than 40 per cent of all its resources.



Lula(l.) speaks to the governor of Minas Gerais.

Matias Vernengo, Assistant Professor of Economics, University of Utah, Salt Lake City (Vernengo@economics.utah.edu).

However, despite all the efforts in fiscal adjustment, the public debt for the federal, state, and municipal governments soared

from less than 30 per cent of GDP to almost 60 per cent last year. The explanation lies in the heavy burden of debt servicing caused by incredibly high rates of interest. Nominal deficits (including the interest payments on outstanding debt) are on the order of 5 per cent of GDP. In other words, the reason why the public debt soared is related to debt servicing, which is high as a result of the high interest rates maintained to avoid the flight of capital.

Revenues and regressive taxes

Arguably, this mounting public debt is the reason why the IMF and the newly-elected PT government agreed to hike the primary surplus target from 3.75 per cent to 4.25 per cent of GDP at the beginning of the year. Hence, the combination of a long decade of fiscal adjustment — which greatly reduced the ability of states and local authorities to spend — and the IMF agreement meant that there was not much hope for increasing transfers to states and municipalities.

The problems of the Brazilian tax structure are not limited to disputes between the local and federal administrations. The Brazilian tax system is neither efficient nor just in terms of distribution. Hence, there is a lot of room for improvement. For example, indirect taxes are well known to be regressive. In the Brazilian case indirect taxes are particularly troublesome, since the poorest 10 per cent spend 25 per cent of their income on indirect taxes, while for the richest 10 per cent the equivalent share is only 12.5 per cent. Further, a problem emphasized by exporters and by all producers is that several social contributions are cumulative and overtax both exports and production for domestic consumption, making local goods less competitive than imports. Therefore, the government needs to make the tax system more just and efficient, without reducing tax revenues, and without sharing resources with the lower levels of administration.

Municipalities cut spending

On the local level, in the last few years of the previous administration the states and cities were forced to make severe cuts on their expenses during a period in which inner city problems were increasing as a result of higher unemployment. Some relief was expected from the new administration. As the year progressed and the actual primary surplus was kept above the level agreed with the IMF, at around 6 per cent of GDP; municipalities in Bahia, Minas Gerais, Paraná, Piauí, Rio Grande do Sul, São Paulo and other states announced a two day work stoppage to protest the reduction in the Municipalities Participation Fund (*Fundo de Participação dos Municípios* or FPM).

It became clear that the current crisis of municipal administration could only be resolved by increasing the transfers from the federal government. However, the IMF agreement and the ballooning debt meant that the only possible way to raise transfers would be in turn to increase taxes. Increasing taxes in the midst of a recession would spell

disaster for a government that promised to fight unemployment and hunger.

Negotiations on the tax reform in congress got tangled up with the discussion of the federal pact. The PT wants to maintain current levels of revenues, in order to be able to comply with the IMF. For that reason they wanted to transform the temporary tax on financial transactions into a permanent feature of the tax code. The conservative Party of the Liberal Front (*Partido da Frente Liberal* or PFL) insisted that this could only happen if the administration decided to share these revenues with the lower levels of administration. As a result the government decided to extend the temporary tax until 2007 and to share part of the revenues with the states.

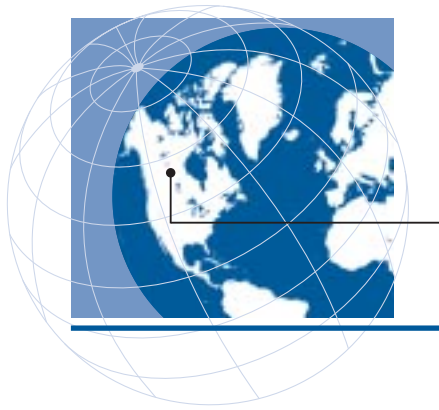
A tax break on food and medicine

The tax reform proposal sent to congress also sets a four per cent limit on the sales tax that can be charged on food and medicine. Other goods can be taxed at a higher rate. The tax in this case is Brazil's version of a Value Added Tax — the *Imposto sobre Circulação de Mercadorias e Serviços* or ICMS. There are now more than 40 different rates charged for this tax in different parts of the country. According to the text of the reform only five rates will survive, and the 27 different pieces of state legislation that regulate the ICMS will be unified. This should lead to greater fairness, since the poor spend proportionally more of their income on food and medicine. It will also increase efficiency by reducing bureaucracy. However, there is no guarantee that the maximum ICMS rate of 25 per cent that can be charged on goods other than food and medicine will not lead to an increase in the tax burden.

Given these small concessions, the administration was able to approve the first round of votes on reform in the lower chamber. Another vote in the lower chamber is due before the end of the year and it must also be approved in the Senate. However, the deal with states and municipalities does not necessarily imply sharing resources. The most likely result is that the deal with the lower levels of administration will lead to an increase of taxes. Not only could the ICMS revenues increase, but also new municipal taxes on garbage collection and public lighting have been introduced in the text of the reform. The National Confederation of Industry has already complained that the current reform will not solve the problems of overtaxation and inefficiency. Dissidents within the PT have complained that the reforms are not enough to redress the problems of inequality.

The administration has signaled that given the current situation this is the only possible reform. The solution for the federal pact crisis is to increase the burden of taxation while maintaining the greater degree of fiscal centralism that was implemented by the previous administration. The tables have been turned and the PFL, a party that was behind the fiscal centralization of the 1990s, is now for federalism, while the PT will have to fight for maintaining the present level of centralization, and in the process perhaps lose its identity. It's time for a rewrite of the old dictum of 19th century Brazilian politics: "Nothing resembles a conservative more than a liberal in power." As it is, nothing resembles a fiscal centralist more than a fiscal federalist in power. 6

... transfers to States and local governments fell from around 25 per cent of total federal government outlays to slightly more than 15 per cent (from circa 1991 to 2002).



VIEWPOINT

Who should train the Canadian labour force?

BY GORDON DI GIACOMO

The Canadian federal government has recently handed over much responsibility for training workers to the provinces. Is that the wisest course in the context of a global marketplace?

Did the Canadian federal government make a mistake in transferring responsibility for labour market training to the provincial governments? Officials are not likely to say so publicly, but some recent reports on the Canadian labour force must surely be giving them pause.

Early in 2003, Statistics Canada reported on Canada's aging work force. While Canada is not alone in this, the country is distinguished by the relatively large size of its baby boom generation. The rapid exit from the labour force of large numbers of experienced workers can mean serious labour shortages. And labour shortages undermine economic growth.

Similarly, in a 2002 report on skills shortages, the Canadian Labour and Business Centre warned that the decline in labour force growth could lead to skills and labour shortages "of broader magnitude" than what has been experienced in our recent past. It noted that workplace training will take on added importance and, with an obvious sense of urgency, it stated: "If we are to sustain economic growth and quality of life, we must make skills and learning a national priority."

Yet another report, issued in 1999 by Industry Canada, pointed out that the global competition for skilled people, the aging work force and technological change "will soon strain our skills development system to the limit."

Reports of potential skill shortages started to emerge just after the federal government negotiated Labour Market Development Agreements with the provinces and territories. Under these agreements the federal government transfers funds to the provinces to deliver certain types of employment measures. Each province is free to design the measures as it sees fit, provided they are similar to the five types, called Employment Benefits and Support Measures (EBSMs), specified in Part 2 of the federal Employment Insurance Act of 1996. Only Ontario, the country's most populous province and its economic powerhouse, has yet to sign an agreement.

Long a contentious issue

That the federal government would work with the provinces in this manner was not surprising. After all, federal-provincial agreements have been the *modus operandi* in the occupational

training field since 1919, when the federal government passed its Technical Education Act. In other words, and this is a key point, the provinces had always been deeply involved in the planning, formation and delivery of occupational training policy.

What is different about the new arrangement is the clause in the preamble to each Agreement that reads: "Whereas Canada acknowledges that labour market training is an area of provincial responsibility..."

In accepting the insertion of this clause, the federal government appears to have agreed to much more than it needed to.

The question of which level of government ought to have responsibility for worker training (known also as labour market training, adult training and occupational training) has been a contentious one for many years in Canada. The constitution assigns responsibility for education to the provinces. It is silent, however, on which level has jurisdiction over worker training. For

decades, the federal government has insisted that it must be involved in worker training because of its responsibility for the national economy. For just as long, the larger provinces have chafed at federal involvement.

Since the signing of the Labour Market Development Agreements, a number of organizations have attempted to evaluate the effects of the devolution and the changes to Employment Insurance. They identified several problem areas, one of the most serious of which is the negative impact on women. Some problems are a consequence of devolution itself.

The labour and management co-chairs of the Canadian Steel Trade and Employment Congress, one of the country's leading sector councils, told a 2001 panel discussion that devolution had produced a negative impact on the Congress' ability to respond successfully to the challenges facing the industry and its workers. Devolution has made it much more difficult to access government programs and to develop and deliver sectoral services in an efficient way. The sectoral approach that worked so well for the steel industry over the past fifteen years is at risk because only a few provinces have promoted sectoral policies. This makes it more difficult to develop and implement efficient and effective pan-Canadian sectoral policies.

No role for unions and industry

Another problem brought about by devolution is the reduced opportunity for stakeholder involvement in the setting of labour market policy. Prior to devolution a labour-management organization, called the Canadian Labour



Federal support aids computer training at the Baddock IT Centre in Nova Scotia.

Force Development Board, provided policy advice to the federal government, undertook research on training issues, sought public input and represented societal interests to the federal government. The organization's *raison d'être* vanished when the federal government withdrew from training.

The major structure now is the Forum of Labour Market Ministers, which is comprised solely of ministers from the provincial and federal governments and which has shown little desire to engage civil society interests. As a result, there is considerably less public involvement in labour market policy-making. In addition, stakeholder groups wanting to change public policy have to deal not with one government but several. This is a major hurdle for groups with limited resources.

New federal initiatives

Some recent developments suggest that the federal government "wants back in," that it now realizes it cannot and should not withdraw completely from the skills development field, despite that clause in each Agreement's preamble. For instance, in its February 2003 budget, Ottawa announced a \$100 million contribution towards the establishment of a Canadian Learning Institute. Details on this new entity are scarce but its basic objective will be "to broaden and deepen data and information on education and learning."

One of the papers setting out the federal government's innovation strategy acknowledges that, "Skilled tradespeople are in great demand, and Canada is not training sufficient numbers of people to meet this demand. This shortage could significantly limit our economic growth in the future."

The paper indicated that the federal government will work with Canada's many labour-management sector councils to increase the number of sectors covered by councils, as well as to expand human resources planning and skills development within sectors and small- and medium-sized businesses.

The federal government will also examine possible financial incentives for employers who support essential skills development for their employees, and will work with provinces and territories to develop targeted skills development initiatives to help persons with disabilities, Aboriginal people, visible minorities, and individuals with particular barriers to participation in the labour market.

An "odd position"?

In fairness, it should be noted that, in negotiating its withdrawal from labour market training, the federal government retained the right to develop and deliver employment measures for non-employment insurance clients including youth, persons with disabilities, aboriginal people, older workers, and recent immigrants. And, in fact, the February 2003 budget announced measures to attract and retain skilled immigrants and to support the skills development of aboriginal citizens. The federal government also reserved the right to undertake pan-Canadian activities, either in response to special labour market problems or in situations that affect the country as a whole or a significant area of the country.

The reader will be forgiven for thinking that the federal government has adopted an odd position on labour market training. On the one hand, it announces its withdrawal from

the field and agrees in writing that worker training comes under provincial jurisdiction, but on the other, it retains the right, and then acts on the right, to involve itself in several skills development areas.

What explains this contradiction? One explanation is that, because of its responsibility for national economic development, the federal government really cannot withdraw totally from worker training. The skills and knowledge of the work force are so important to competitiveness and productivity that the federal government must concern itself actively with training issues, even though, for the sake of federal-provincial harmony, it may want to abandon the field.

It is almost inconceivable that the federal governments in some of the other economically advanced federal countries, such as the U.S. and Germany, would abandon the leadership role they play in occupational training policy.

Another possible explanation for the federal government's ambivalent attitude toward labour market training has to do with conflicting values. Arrangements between a national government and sub-national governments are not built in a vacuum. They are a reflection of a people's values and ideals. For instance, Cheryl Saunders, the eminent Australian federalism scholar, observed that a "national preoccupation with equity or equality" tends to be reflected in the allocation of power to the federal government.


The question of equality

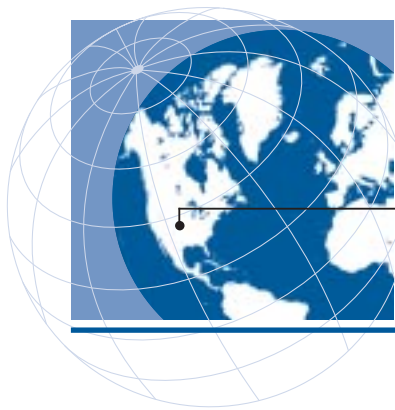
In Canada, one of the important tasks of the federal government has always been to ensure that individuals receive relatively equal treatment, regardless of where they live. This is the point of Canada's equalization program, a program considered so important it is entrenched in the constitution, and a major reason why the federal government is involved in health care.

In recent years, however, the salience of the equality value has receded, while the desire to accommodate diversity has heightened. This conflict in values is reflected in the contradictory attitude of the federal government toward worker training.

The federal government may be ambivalent about labour market training, but on post-secondary education it shows no such ambivalence. At the same time that it was negotiating its way out of labour market training, or at least establishing a diminished role for itself, it was deepening its involvement in post-secondary education, particularly university education, so much so that some informed observers wonder if a national post-secondary education act is not far off.

Among the initiatives the federal government has recently undertaken are the creation of the Canada Foundation for Innovation to modernize the infrastructure of universities, the establishment of Canada Research Chairs to help universities attract highly qualified faculty and the creation of the Canada Graduate Scholarships to support thousands of master's and doctoral students annually. Other federal programs support both university and community college education.

Could a Liberal government with a centrist if not leftist orientation abandon the field of worker training while increasing assistance for university education? Thankfully, it appears not. 



USA: States sue the federal environment agency

The Bush administration angers states and environmentalists by softening rules that encourage power plants to adopt new pollution controls.

BY SCOTT RICHARDS AND YVETTE HURT

A major battle has emerged in the United States during the past year between the U.S. Environmental Protection Agency (EPA) and the states. The issue is changes to the Clean Air Act's New Source Review program which issues permits to powerplants to control their air pollution.

In late 2002, with strong backing from the White House, the EPA issued new rules for the New Source Review permitting program which included, among other changes, significantly altered requirements for installing new pollution control technology at aging power plants, refineries and other industrial facilities. A group of states, led by New York Attorney General Eliot Spitzer, responded with a series of legal actions aimed at getting the EPA to reconsider the new rules. They also sought to delay the implementation of the new rules and to obtain review by the Federal Court of Appeals for the District of Columbia.

This clash over basic environmental goals, values and priorities helps illustrate the complex and dynamic relationship between states and the U.S. federal government.

Federal law gave measure of state control

Since the 1970s, the federal Clean Air Act program has required pollution sources such as power plants to install state-of-the-art pollution control equipment whenever changes were made by the plant's owners that increase air emissions under the act's New Source Review program. When originally enacted in 1977, the New Source Review provision struck a compromise: strict pollution control standards were imposed for the construction of new power plants, but existing plants were to delay adding newer, more expensive pollution control devices until the plants were renovated or expanded. Facility operators were allowed to do "routine maintenance" without installing expensive new pollution control equipment.

While this regulatory scheme ensured that older plants were given sufficient time to absorb the cost of meeting the new standards, it also gave state regulators a mechanism for

ensuring the program standards were being followed. Any plant that wanted to undertake a renovation had to appear before regulators for a permit, giving state officials an opportunity to review plans and specifications, as well as operational records.

The new Bush administration rules remove this mechanism of state control. Under the new rules, industrial facilities that decide internally that they are exempt from the law won't need to seek a permit or present plans or records to state regulators proving they are exempt.

Changes seen as "roll-back" of regulation

The Bush administration first formally proposed changes to the New Source Review program in February 2002 as part of its "Clear Skies" initiative, which also included a proposed

cap-and-trade system for power plant emissions such as sulfur dioxide and mercury. Environmentalists were immediately concerned about the changes, which apply to much of the nation's industrial base, arguing that it amounted to a significant rollback of the Clean Air Act.

The Bush changes to New Source Review re-defines which "routine maintenance and repair" activities will be exempt from the program's stringent air pollution control requirements. The new definition establishes, for the first time, a capital spending threshold at power plants and other industrial facilities that must be met

before the Clean Air Act pollution control requirements are triggered. The new rules would exempt construction activities, even those that modify or expand any power plant, if they cost 20 per cent or less of the plant's replacement cost.

The proposed rules would allow old coal-burning power plants, refineries, and other industrial facilities not only to continue operating, but even to expand, without installing the best available pollution control technology.

In addition, state regulators wouldn't have to be notified of planned renovations or construction unless plant operators determined *internally* that the projected cost of the work exceeds 20 per cent of the plant's replacement cost.

The utility industry has lobbied for the changes for years, arguing that the current rules are too expensive and confusing. The Bush administration goes further, arguing that the existing New Source Review rules hurt the environment by actually discouraging companies from doing anything to modernize their older facilities. The administration argues that the Clean Air Act requirements gave companies an incentive to maintain the status quo at their deteriorating plants rather than incur significant costs by renovating and upgrading.

The new rules would exempt construction activities, even those that modify or expand any power plant, if they cost 20 percent or less of the plant's replacement cost.

Scott Richards is the Chief Environmental Policy Analyst at the Council of State Governments. **Yvette Hurt** is a former Environmental Analyst at the Council of State Governments who currently works on state and local public policy issues. Founded in 1933, the Council of State Governments serves the executive, judicial and legislative branches of U.S. state government through leadership education, research and information services. The Council of State Governments was founded on the premise that the states are the best sources of insight and innovation.

But some state officials and environmentalists condemn the new rules.

They argue that the changes violate the basic intent of the Clean Air Act, which required older plants to modernize their pollution control technology in conjunction with renovation or expansion activity that likely will increase air pollution emissions. And, they say, the new rules take control away from state and local regulators to monitor activity that may increase air pollution emissions. Not only will companies have an incentive to restrict their spending to 20 per cent or less of a facility's replacement cost to avoid state review, they may be tempted to engage in creative accounting to ensure the capital spending threshold is never triggered.

The end result, state officials argue, will likely be greater air pollution emissions in their states that put at risk their capability of meeting federal reduction requirements for pollutants such as smog and soot.

Procedural sparring

The current New York-led coalition of states challenging the Bush administration changes to the New Source Review program includes 14 states, the District of Columbia and 6 local California pollution control boards. States in the coalition are New York, California, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Rhode Island, Vermont, Connecticut, Delaware, Illinois, Pennsylvania and Wisconsin.

In addition, during its last state legislative session (before the recall vote that elected Arnold Schwarzenegger), California became the first state to enact legislation in opposition to the new federal new source review standards. On September 11, 2003, the state assembly approved a bill that would allow California environmental officials to retain the environmental protection standards as they were before the Bush administration changes. The Clean Air Act allows states to choose stricter standards, although the EPA must review and approve the stronger standards. California's plan puts the Agency in the position of having to approve the stronger current version of the new source review program for California, or engage in yet another legal battle with a state.

In response to the New York-led opposition to the Bush administration reforms, eight other states—Indiana, Kansas, Nebraska, North and South Dakota, South Carolina, Utah and Virginia—countered with a legal motion *supporting* the rule change. Leaders of these states say they like the increased flexibility in enforcing the Clean Air Act and argue the revisions will be beneficial to their part of the country.

Shared regulatory responsibility: a long story

Historically, state and local governments were responsible for the regulation of pollution, preceding significant federal regulations by decades. In the mid-1950s, federal regulatory oversight became more dominant with the passage of the Water Pollution Control Act. The evolution toward more federal government control continued throughout the 60s and early 70s by increasing water and air pollution enforcement authority.

The two most significant acts to change the corresponding roles of states and the federal government in environmental

protection, however, came with the enactment of the Clean Air Act in 1970 and the Clean Water Act in 1972. These acts placed the federal government fully in the dominant position of setting pollution standards and increased the federal enforcement role. While the two acts moved more regulatory power into federal hands, the federal Environmental Protection Agency increasingly looked to the states to implement the pollution programs.

In recent years, there has been an increasing push to decentralize environmental regulation and send more power and control back to state and local agencies. National associations that represent states and policy organizations such as the Environmental Council of the States, the American Enterprise Institute and the Multi-State Working Group on Environmental Management Systems all advocate a greater shift toward state control and autonomy in setting standards for, and implementing, environmental protection programs.

As states seek to lay claim to more power over environmental enforcement, a significant number of them have enacted laws limiting the stringency of state environmental regulations. In one-third of the states, according to the EPA, regulators are restricted by "no-more-stringent-than" state laws that limit the ability of their regulatory agencies to adopt environmental regulations that are more stringent than applicable federal ones. The range of environmental programs to which such state laws apply vary from state to state, but, overall, the laws alter the balance of

power between the states and the federal government on environmental issues. States limited by "no-more-stringent-than" clauses have essentially handed a significant amount of power to establish environmental standards for their own states to the federal government.

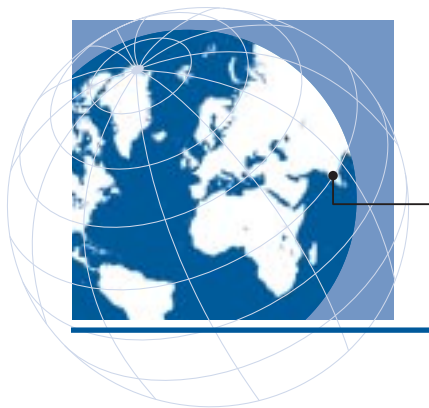
Environment highlights complex relationship

Many conflicts inherent in shared responsibility have arisen since the 1970s. States initially appreciated the presence of the federal government in helping enforce environmental laws. By the mid-90s, however, many states became increasingly frustrated with federal oversight. By then, states had developed the professional skills needed to administer pollution programs and were favoring decentralized solutions as a result of political changes on the state level. Many states began resisting what they saw as "unfunded mandates," new federal requirements for which the federal government did not provide adequate funding.

Another interesting component of the debate over the changes to the Clean Air Act is the fracturing of otherwise loyal party affiliations. Six of the states participating in the New York-led coalition have Republican governors: New York, Massachusetts, Connecticut, New Hampshire, Rhode Island and Maryland. These governors appear willing to break party ranks over what they see as a threat to environmental quality in their state and, perhaps just as importantly, the perceived threat to state control over industrial activities that are major sources of pollution.

Final Environmental Protection Agency consideration of the New Source Review program changes is expected before the end of this year and the battle between states and the federal government on this issue is sure to continue. 6

The utility industry has lobbied for the changes for years, arguing the current rules are too expensive and confusing. The Bush administration goes further ...



When hunger asks a question: Food and federal politics in India

BY *PRASENJIT MAITI*

There are more consultations on important issues between the central government and state governments [in India] and within the broad spectrum of political parties signaling an era of co-operative federalism and coalition politics. The central government is exploring options for decentralising anti-poverty and rural development programmes.

- Translating growth into human development, United Nations Development Program.

The UNDP's optimistic forecast for federalism in India is being proved wrong on one contentious issue – mid-day meals for elementary school children. Under the scheme, the Government of India supplies and transports food grains free of cost to the states so meals can be provided to school children who live below the poverty line.

Certain state governments have decided to lock horns with the central government over this emotionally-charged issue. The tension built to the point of a no-confidence motion brought against the central government by the opposition in Parliament in August. The motion failed, but the crisis remains.

Recalcitrant states cite financial reasons for not being able to provide cooked meals to hungry children who would otherwise drop out of school to work. Instead of hot meals, these states have been distributing uncooked food grains to primary school students – even though it costs only 1 rupee per child per day to cook meals for the requisite 200 days a year.

Despite the Supreme Court's interim order in November 2001 directing states to introduce cooked mid-day meals in government and government-aided primary schools, many states have not yet done so. West Bengal is one of the main offenders according to the *Times of India*. This is rather surprising as the Left Front Government of West Bengal habitually projects itself as a government of, by and for the poor since it came to power in 1977.

Dr. Prasenjit Maiti is a writer and political consultant living in Calcutta.

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West Bengal

NGOs in Calcutta and elsewhere in West Bengal organized demonstrations led by primary school children on Children's Day, November 14, 2002, to protest against the state government's intransigence in providing mid-day meals. Among the organizers were NGOs like the Right to Food and Work Network, the Campaign against Child Labor, West Bengal Education Network and the Calcutta NGO Forum of Street and Working Children.



Girl pupils at the Lakshmi Ashram school in Kausani, Uttaranchal, India.

The Supreme Court of India directed unwilling state governments to comply immediately with the central government's regulations or else face having their funding from Delhi diverted to carry out this project in primary schools. The West Bengal government, in response to a Supreme Court ruling that states should not compromise on the issue of child nutrition, had earlier petitioned that it was unable to implement the project due to severe financial crisis. West Bengal, true to the rhetoric of competitive federalism, blamed the central government for its sorry state of financial affairs that has brought developmental work in the state almost to a standstill. The Supreme Court, however, summarily dismissed this petition.

In an article in the *Times of India*, social worker Siddhartha Mukherjee of Pushti said West Bengal could ill-afford to neglect this critical issue, given the Supreme Court's order. The Calcutta High Court even issued a direct order to West Bengal's principal secretary of the food and supply department to remedy the irregular distribution of its mid-day meals to primary school children.

The District Magistrate of Purulia in West Bengal condemned the quality of rice supplied by the Food Corporation of India for mid-day meals as "unfit for human consumption" on August 20. As of mid-September, the Government of West

Bengal had yet to announce when it will provide cooked mid-day meals to all the schools in the districts.

Rajasthan

The People's Union for Civil Liberties of Rajasthan filed a petition in May 2001 with the Supreme Court demanding that the country's food grains stock be immediately released to feed its citizens. The court subsequently converted the benefits of eight nutrition-related federal schemes into legal entitlements and directed state governments to provide mid-day meals in government and government-aided schools.

In December 2001 the court ordered the state governments to provide every child in government and government-assisted primary schools with a prepared mid-day meal with a minimum of

- 300 calories
- 8 to 12 grams of protein

The court gave the states three months to convert their dry-rations distributions to cooked-meal programs, and a further three months to extend the cooked meals to schools that had nothing before. It also directed the Union of India and the Food Corporation of India "to ensure provision of fair average quality grain for the Scheme on time."

Federal war of attrition

States like Bihar, Uttar Pradesh and Jharkhand violated this order by not implementing the project. Manipur also plans to follow suit and has submitted an application to the Supreme Court to this effect. State governments refusing to implement the scheme have been claiming that they cannot afford to do so. They also allege that the central government does not help them in any conceivable manner to successfully run this scheme. They confronted Prime Minister Atal Behari Vajpayee and the Union Ministry of Human Resource Development over this issue in September 2002.

This is one of the most resisted central schemes in federal India. The states perceive that while they bear the costs of implementing it, the central government will use the issue to bolster its image and to make the state governments look derelict. Jean Drèze of the Delhi School of Economics, however, argues that one might have expected state governments to welcome the school meal program as an opportunity to win votes at a relatively low cost. Indeed the scheme is likely to be quite popular and it is not very expensive for the state governments given that the Central Government is supplying the grain for free. In most states, however, there is no sign of such enthusiasm. Many in India are saying that there is something deeply defective about a democracy where people's basic needs count for so little in electoral politics.

The Statesman reported earlier this year that to make matters worse, food grains released by the central government for federal relief schemes like Food for Work, Mid-day Meals and *Gramin Rojgar Yojana* (the rural employment plan) are not always collected on schedule from the Food Corporation of India by the states.

Governments of drought- and famine-prone states like Rajasthan and Orissa have not identified their respective

below-poverty-line populations who are without ration cards. These cards help vulnerable sections of the community purchase food grains at subsidised rates from the public distribution system. A government committee found that ration shops are open only once or twice a month in villages of the calamity-prone region of Kalhandi-Bolangir-Keonjhar in Orissa. Ration card holders who fail to collect their quota of rice and wheat when "fair price shops" open are denied a supply of food grains for the rest of that particular month.

Even the central government's decision in April 2002 to raise the rice and wheat quota for each needy family from 20 kg to 35 kg per month under the public distribution system failed to increase the amount of food grains collected by state governments from the Food Corporation of India.

Food as incentive

A survey conducted in 10 states by the Operations Research Group in collaboration with UNICEF found that the mid-day meal scheme had given a boost to student enrolment, school attendance and retention, especially among girls in rural areas, as reported in the *Indian Express* in November 2000. In January 2003, *The Tribune* found that this scheme also helped increase attendance at government primary schools by 30 percent in the Ludhiana district of Punjab where it was begun in October 2002. Jean Drèze, working with Geeta Gandhi Kingdon from the University of Oxford, found that provision of school meals was a significant incentive to attendance in Himachal Pradesh. Girl pupils who get lunch are 30 percent more likely to finish primary school.

Mid-day meal programs have been implemented by CARE in states like Andhra Pradesh, Gujarat, Haryana, Karnataka, Kerala, Madhya Pradesh, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal. CARE has asked that the program concentrate more on attracting first generation learners to school and keeping them there.

Voice of the people?

On January 11, 2003, the Right to Food Campaign, an informal network of NGOs led by Jean Drèze, Colin Gonsalves, Kavita Srivastava and bureaucrat-turned-social-activist Harsh Mander, found that benefits from the Supreme Court directives were limited and only grassroots-level protests and demands would be effective, *Humanscape* magazine reported in February. When the requisite political will and vision are lacking, disseminating information and empowering local grassroots groups are the methods needed to put food in the bellies of hungry children.

Former Union finance minister P. Chidambaram is convinced, however, that not many states are really interested in the co-operative federalism model of politics and that state capitals continue to resist decentralization of power and resources. This is especially true in cases like West Bengal where the ruling Left Front Government monopolized by the Communist Party of India [Marxist] is ideologically at loggerheads with the National Democratic Alliance government at New Delhi led by the Hindu nationalist party, Bharatiya Janata. If co-operative federalism won't provide hot meals for poor elementary students, grassroots groups are likely to use other methods to force the governments to deliver. 6

Girl pupils who get lunch are 30 percent more likely to finish primary school.



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Anne Twomey of Australia Amending a constitution in Australia requires careful navigation.

Anne Twomey, a constitutional lawyer from Australia, worked for the High Court of Australia as a senior research officer and for the federal parliament as the Secretary of the Senate Legal and Constitutional Committee. She worked with the New South Wales Government running the legal branch at the cabinet office and providing advice on constitutional and legal matters to the Premier of New South Wales. In March 2003, she spoke at the Global Dialogue conference on constitutions held by the Forum of Federations and the International Association of Centers for Federal Studies in Philadelphia. Forum staff member Carl Stieren interviewed her there.

Forum:

Tell us about elections to the state parliaments in Australia. Do you have single member constituencies or proportional representation?

Twomey:

There are differences between the various state parliaments so it depends on which jurisdiction you're speaking of. Generally though in the lower house it's representation of electorates – each member represents a single constituency on the basis of population. There's a bit more diversity in upper houses. All the states' parliaments are bicameral except for Queensland. The upper houses in state parliaments tend to be elected by a form of proportional representation. So in New South Wales the entire state is the electorate. That can be contrasted with Victoria where there are larger electorates that elect a number of members.

Forum:

What was the so-called "tablecloth ballot" in New South Wales?

Twomey:

In New South Wales, the upper house was in fact a nominated house for a very long period of time. It wasn't until the 1970s that we started to directly elect the upper house. And at that time the electoral system introduced was one of proportional representation that required a very low quota to be elected. It was also done in such a way that voters could vote for a particular party, and the party chose how preferences were to be distributed. This meant that preference deals between minor parties could result in representatives from minor parties being elected. There's some value in being elected for an eight-year

term: after one such term you qualify for a pension for life. This has led to great attraction in getting a position in the upper house and led to a proliferation of small parties nominating for the election. The number of parties that nominated for the 1999 election was so large that the ballot paper became the size of a tablecloth. It was about 2 feet wide and 2 feet high, almost impossible to actually mark in a polling booth. After that election there was a great movement towards reform to try and eliminate the tablecloth ballot paper in the future and I was involved in doing the legislation to allow for that.

Forum:

How was that legislation worded? Did they raise the percentage of the vote that a party had to get in order to elect a member?

Twomey:

A number of different measures were proposed. One was that there had to be a fee paid for a party to nominate so as to discourage parties that weren't serious, that didn't have a serious membership base. There was also a requirement that in order for a party to be in the list, a party had to have a certain number of members. ... There also were measures that changed the method of election. It's now an optional preferential system using proportional representation. It's a bit complicated, but it means that you can give your first preference for Party A, and your vote transfers through all that Party's candidates. However, if you wish to distribute further preferences, you have to mark a second vote for Party B (or C or D etc), and the vote then transfers through all its candidates. Previously, if you voted for one party, your preferences were determined by that party

Forum:

So it was a list system in other words?

Twomey:

It was a list system, but now the list system is such that you can just vote for a particular party, but your subsequent preferences are no longer determined by that party. ... So that cut off the party deals that led to the proliferation of small parties attempting to be elected on the basis of preferential deals. We also proposed a more significant reform of the constitution that involved dealing with deadlocks between the

houses. But that would have required a referendum because some parts of the state constitution are entrenched ... Some parts can be changed by ordinary legislation and some require a referendum. Unfortunately, we were looking for bipartisan support for the referendum because that was the most likely way it would succeed. But the opposition parties later reneged on their support so the referendum was abandoned.

Forum:

When did the referendum proposal fall through?

Twomey:

1999 I think, just after the tablecloth ballot election. So we had to do a more limited form of reform. It also led to a strange and somewhat distorted system because there were some small provisions in the constitution we couldn't change and we had to accommodate into the voting system, so it led to a system of election that no one would ever conceive of if they were starting from scratch. But because of the fact that some parts of the constitution are entrenched, if you're not prepared to hold a referendum you have to work around them and that's how you get odd distortions in your voting system.

Forum:

So the end result was a ballot the size of a placemat?

Twomey:

That's about right. We've just yesterday (March 22) held the most recent state election and the ballot paper was far more manageable. There were still a reasonable number of parties – the problem in doing this is you don't want to discourage democracy. You don't want to discourage people from exercising their rights to (stand for) election.

Forum:

Were there more than just the two largest parties in Australia on the ballot?

Twomey:

Yes there were still about 10 or 15 parties. There were a number of parties represented in the upper house at the moment because of the system of proportional representation under which neither major party gets the majority. There's a "cross bench", as it's described, with a number of independent small parties. So at the moment we have a major party and a coalition of two parties who form the main opposition. And then on the cross bench there are a few minor parties and then micro parties, which were the people elected in the 1999 election. For example, there was a man from the Outdoor Recreation Party whose main policy was that one should be able to drive 4-wheel drive through national parks. He was elected at the 1999 election to an eight-year term.

Forum:

Tell us about how constitutions – the state constitutions and the federal constitution – are amended in Australia. Do you have to have a referendum in some cases?

Twomey:

Yes, the federal constitution is fully entrenched, it can only be amended by referendum. It also has a special majority requirement. You have to have a majority of the voters across

the nation, but you also have to have majorities in a majority of states. That means you have to have majorities in four out of the six states in order for a federal referendum to be passed, for a change to be made to the federal constitution. State constitutions are more flexible. In most cases, most provisions of the state constitution can be amended by ordinary legislation.

Forum:

Tell us a bit about the most famous Australian referendum that people elsewhere know about, the one on the republic. I understand that there were three options put forward. Is a referendum on changing to a republican form of government likely to come up again?

Twomey:

The republic referendum was held in 1999. There was some controversy about the choices on offer. The main links between Australia and the United Kingdom had already been cut. It was largely a symbolic change, but the Constitution still makes a number of important references to the Queen. The Queen appoints the governor general for example. And so to actually remove references to the Queen a republic was proposed, and a referendum was required. Opinion polls showed that a majority of Australians did support the idea of a republic in removing the Queen from the system. The difficulty was how to replace the Queen. How would the governor general — who was going to be renamed president — be chosen? The current system of course is that the Queen in appointing the governor general acts on the advice of the prime minister. Effectively, therefore the prime minister chooses the governor general and the prime minister also has the right to remove the governor general by advising the Queen to do so. Of course when people actually have to vote on such a proposal, people are not enthusiastic about the idea of giving this power to the prime minister solely. If you had a president who was elected by the nation as a whole, that president may consider that they have a mandate to act in a manner contrary to the advice of the prime minister, which would upset all the conventions that underpin the constitutional system. So on the one hand, you had the constitutional lawyers and the people who were concerned about maintaining the current system of government saying a directly elected president would be inappropriate. On the other hand you had the population saying, 'Well, we would like a say in how the president is chosen.' The consequence of all this was that the referendum failed because there wasn't agreement across Australia (on any one alternative).

Postscript:

After the March 22 elections in New South Wales, among the 42 members of the upper house, five parties each elected one member: the Australian Democrats, the Shooters Party, the Unity Party, the One Nation Party, and the Reform the Legal System Party. The representative elected from the Outdoor Recreation Party resigned after being found to have engaged in corrupt conduct and is likely to be replaced by a member of the same party soon. In addition, the Greens had three members and the Christian Democratic Party had two members. In the lower house, with 93 single-member electorates, the only parties represented were the Australian Labor Party, the Liberal Party, the National Party — plus six independents. ☺



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Sir Fred Phillips of St. Kitts and Nevis Could the Eastern Caribbean states benefit from a federal government?

Sir Fred Phillips is a former Governor of St. Kitts and Nevis and the head of the St. Kitts and Nevis Constitution Task Force as well as the Chairman of the Constitutional Reform Commission of Antigua and Barbuda. He was interviewed in Ottawa by Federations Editor Karl Nerenberg.

Forum:

What is your own interest in the question of federalism in the eastern Caribbean?

Phillips:

I'm a former governor of St. Kitts and Nevis. When I was governor it was called St. Kitts-Nevis-Anguilla. But in 1967 Anguilla seceded from this unitary state. And in 1983 when independence came, the two constituent units who formed an independent state were St. Kitts and Nevis. They are described in the constitution as the federation but in fact it is not a true federation. And one of the problems that has arisen in connection with the state is that because they are not a true federation – only one of the two states has a legislature and an administration. The other state, St. Kitts, does not have a local legislature and an administration. And the feeling is that in a true federation all states should have a legislature and an administration.

I have been involved in the last six years or so in a commission appointed in 1997 to recommend changes in the constitution. And in 1998 the commission, of which I was chairman, made specific recommendations in which we suggested that there should be two (Nevis) separate island administrations: the Nevis administration and the St. Kitts administration.

Forum:

What is the interest in federalism in the entire Caribbean region? How would you characterize the interest in federalism, or is there none?

Phillips:

You ask some very interesting questions because I was the cabinet secretary of what was then known as the Federation of the West Indies. This federation was formed in 1958 and was dissolved in 1962. It comprised Jamaica, Trinidad, Barbados, Grenada, St. Vincent, St. Lucia, Dominica, St. Kitts, Antigua and Montserrat. So that there was an interest in federalism way back. And indeed there are many people who still feel

that the problems that are coming to the Caribbean at the present time are coming because of the breakup of the federation. You understand what I mean? When there was a federation we had one government, one federal government and all these other governments or island governments. In other words, when dealing for instance with diplomatic representation in capitals abroad there'd be one federal ambassador, or high commissioner. Now there are high commissioners and ambassadors for every independent country. So the cost of that is phenomenal. And so there has been an increase and I think there are several people who still feel that we should once again federate.

Forum:

If this federation were to occur, what could they build on? What might exist now that could be a basis for a subsequent federation?

Phillips:

For one thing, we have what is known as the Organization of Eastern Caribbean States, which is the smaller islands that were once associated states, such as Grenada, St. Vincent, St. Lucia, Dominica, Antigua and St. Kitts. And that is a sub-region which could form the nucleus of this new federation. That organization, together with Barbados, Trinidad and maybe the British Virgin Islands in due course, and Montserrat, could become a new federation.

Forum:

Talking about the Organization of Eastern Caribbean States, what functions does it now carry out that resemble those of a federal government?

Phillips:

Well, in terms of economics it has several. There's an Eastern Caribbean Central Bank, which is a very important organization. It controls monetary policies and that sort of thing and we have one currency in those islands and that currency is administered by the Eastern Caribbean Central Bank, which is located in St. Kitts. And it carries out a number of other economic functions. There are a number of grants administered from the Organization of Eastern Caribbean States headquartered in St. Lucia. So it does have the makings of a federal organization.

Forum:

What is the level of understanding in the population in general of a federation or the concept of federating? How is that viewed by people the people at the grass roots level?

Phillips:

That's a very interesting question. At the grass roots level many people at the time of federation did not grasp or fully understand what federation was all about. I think there was a breakdown in communication in the sense that sufficient was not done, in my judgment, to make the man in the street in all the territories aware of the values and the full objective of federation.

Forum:

And what sort of things could be done now to avoid repeating the errors of the 1958 federation?

Phillips:

Well, a great deal is being done. Many of the prime ministers and governments are actively informing people of the values of coming together, and people understand that the world is changing. I mean of course federation was in 1958, that's almost 50 years ago. People are more tending to come together, whether it's the European Union or whether it's NAFTA. And so the whole idea of union is becoming something that people can understand. Politicians are trying to get people to understand this. But it's difficult for people not to be insular if they don't travel. Air travel has made a difference for many, but we hope that as time goes on everyone gets a greater understanding of what the ideas of federalism are.

Forum:

Now as you're talking about bringing together the countries of the Caribbean in one quasi-federation, one country that has some federal characteristics. Yet in Saint Kitts and Nevis we see the threat of separation. What can be done about that at this point?

Phillips:

I don't know the answer to your question. Unfortunately, there is provision for separation in the St. Kitts and Nevis constitution. Section 1.13 provides that the island of Nevis has a right to secede. And so all that can be done is to try to persuade the authorities in Nevis that it is not in their interest to secede. But these are times when people are coming together rather than tearing themselves apart. So short of trying to persuade them that this is not in the interest of the Caribbean or the wider community, I don't think there's anything else to be done.

Forum:

What do you hope to accomplish by coming to a federal country such as Canada and a country friendly with the Caribbean in terms of developing the notion of federalism in your region?

Phillips:

Well, you ask a very difficult question. I have been a federalist from the beginning and I continue to be a federalist, and always will be a federalist. I don't believe that in the Caribbean



we will get anywhere with continuing these separate states. In a book that I published a year or so ago on constitutional law I wrote: "... the forces of division are today more actively at work than at any other period in our history and that the shortest route to persistent poverty and economic deterioration and catastrophe is by way of the continued insistence in trying to populate the present multiplicity of jurisdictions as separate independent states on the world scene. Surely our politicians are wise enough to take a hard look at the United States and Canada, from both of which they so often request aid and technical assistance, and to observe how each of these two vast countries have come together as one nation to further the interests of its citizens. The leaders in the Caribbean have deemed it fit in the space of 38 years since 1962 to install three presidents, nine governors general, six governors, as well as 12 prime ministers, one premier, four chief ministers and between 150 and 200 ministers of government as the top administrative machinery for a population of about five million. That is less than one half of the population of the city of Shanghai in China. This administrative machine is what the writer was prepared to observe on visits in 1983, 1986 and 1988. The duplication of ambassadorial establishments in such capitals as London, Brussels, Ottawa, New York and Washington boggles the mind, and can only result in further depriving these pauperized states of the already scarce financial resources at their disposal." ☺



Briefs & Updates

G3 formed after G8 failed to respond

Three newly industrialized (and federal) countries have formed a trade bloc that leaders hope will also increase their political influence. South Africa, Brazil and India have formed the a group dubbed the "G3" after a G8 meeting failed to grant subsidy cuts to help Africa and did not endorse a Brazilian plan to end hunger, the South African Broadcasting Corporation reported on June 7. "When countries like India, South Africa and Brazil speak with one voice, that voice will be heard," said Yashwant Sinha, Indian Foreign Minister, flanked by his Brazilian and South African counterparts after their first trilateral meeting. Their first political goal is to create permanent seats on the UN Security Council for developing nations.

US states face deficit again next year – program cuts or fee increases predicted

The governments of the U.S. states are expecting a deficit of US \$32 billion next year. While this amount is about half of the deficit from last year, the Center on Budget and Policy Priorities, a Washington, D.C. non-profit organization, expects this figure to grow, and noted that it will be the "fourth consecutive year of program cuts, tax and fee increases, and other budget-balancing maneuvers." A prime example of this is California, where Governor-elect Arnold Schwarzenegger, a Republican, will have to deal with an \$8 billion deficit next year, about 11 percent of the state's budget.

Haider's party loses in Austrian votes

The Freedom Party of far-right politician Jörg Haider was the big loser in two provincial elections in Austria on September 28. In the province of Upper Austria, the Freedom Party vote fell from 20 per cent in the 1997 elections to just over eight per cent. The big winners were the socialists, who increased their share of the vote by 11 per cent to 38 per cent, coming second to the Austrian People's Party (the conservatives) who garnered 43 per cent. In the province of Tyrol, the Freedom Party also dropped from 20 per cent of the vote to 8 per cent, with the socialists picking up four points and the conservatives two.

Somalia moves slowly toward peace

Despite an agreement in July at the Nairobi talks of the Somali National Reconciliation and Peace Conference, several key Somali leaders have refused to co-operate. Notable in opposing the Nairobi agreements are the President of the Transitional National Government (TNG) Abdiqassim Salad Hassan, and a Mogadishu-based faction leader Muse Sudi Yalahow. Hassan, who as leader of the TNG controls only parts of Mogadishu and two small areas in the south, accused delegates of approving the "dismemberment" of Somalia. The delegates in Nairobi endorsed a transitional federal charter and agreed that a transitional federal government would govern for the first four years, but have not agreed how to resolve such issues as the status of existing regional administrations, the role of religion and the country's official languages.

Electoral reform begins in Canada's provinces

A Citizens' Assembly in the Province of British Columbia will recommend a new method of selecting members of the provincial parliament in late 2004, in time for the next provincial election, which has been set for May 17, 2005. Two members of the assembly are being chosen at random from each representative district in the province. In Prince Edward Island, Canada's smallest province, an electoral reform commission held hearings and issued an interim report in September, putting forth for consideration four different systems, each incorporating some proportional representation. In the province of Québec, the three main parties – Liberals, Parti Québécois and Action Démocratique du Québec – have all agreed in principle to adopt some form of proportional representation. New Brunswick Premier Bernard Lord has ordered the creation of a commission on legislative democracy to study the concept of proportional representation and fixed election dates for his province. In Ontario, the Liberal Party as recently as May called for a binding referendum on a new voting system, but there has not been mention of this pledge after October 2, when the Liberals won a landslide vote with 72 seats in the 103-seat Ontario Legislature.

Pakistani lawyers march to bring back constitution

On October 13, Pakistani lawyers opposed to the constitutional amendments pushed through by President Musharraf's Legal Framework Order started what the press in Pakistan is calling "a long march". They are marching the 275 kilometres from Lahore to Rawalpindi to make their point. According to the Lahore newspaper *Dawn* on October 13, Hamid Khan, President of the Supreme Court Bar Association, said the lawyers of the country had rejected all the "so-called amendments to the Constitution" made through the Legal Framework Order.

Comoros constitutional crisis continues

Despite an agreement signed by the conflicting parties in Pretoria, South Africa, on August 16, the mediation by the African Union over competences of the constituent units and the federal government in Comoros had made no progress by mid-September. Adding to the crisis, popular discontent erupted over an increase in prices in September, most notably in the price of rice, due to a tax earmarked for the creation of a university.

Canada to get a "Council of the Federation"?

On October 24, the premiers of Canadian provinces were scheduled to gather to finalize the mandate and structure for a new "Council of the Federation". The proposed council, which has been endorsed by all 10 provinces and all 3 territories, would be a new permanent institution of the provinces "to improve intergovernmental relations in Canada." ☺



Coming Events

The events listed below are organized by the Forum of Federations, often in co-operation with one or more partner organizations.

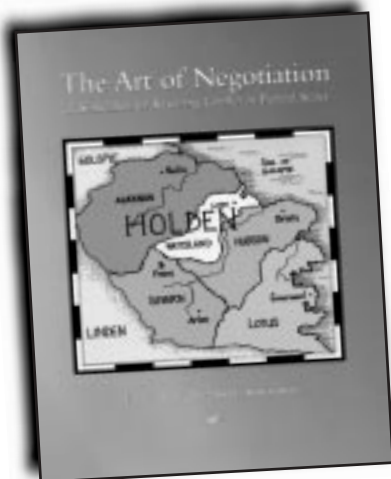
2003 and 2004	Public education activities in Sri Lanka with an emphasis on federalism and fiscal arrangements within federal systems, organized by the Forum of Federations and the Centre for Policy Alternatives, the Forum's partner organization in Colombo, Sri Lanka. In addition, Forum experts are providing direct advice to the peace negotiation teams on questions of federalism and multi-level governance.	Nov. 19, 2003	Decentralization of Health Care Delivery - Ahmedabad, India The Forum is holding an international workshop to share international experiences with decentralization of health care delivery in the context of globalization with participants from the national and state governments in India.
Sep. 2003-Feb. 2004	Youth International Internship Program 2003-2004: The Forum of Federations is coordinating internships for Canadian citizens and landed immigrants to go to Sri Lanka, South Africa, Nigeria and the Philippines through the Forum's partner organizations in those countries.	Jan.-Mar. 2004	A Global Dialogue: Country Roundtables in 11 countries on the theme: Legislative and Executive Governance in Federal Democracies.
Nov. 5, 2003	Federalism Day, at Collège Edouard Montpetit, Canada. Briefing and introduction to intergovernmental negotiations simulation. Presentation and discussion on federalism with professors from the Université de Montréal.	Jan. 2004	Workshop on Health Care. Morelos, Mexico.
Nov. 15-16, 2003	A Global Dialogue: International Theme Development Conference: Distribution of Responsibilities. New Delhi, India. The conference, hosted by the Centre for Federal Studies of Hamdard University (Delhi) will examine the distribution of powers and responsibilities in federal political systems. Scholars and government officials from each country will present on issues ranging from fiscal arrangements to cultural affairs. The countries participating are the United States, Nigeria, Australia, India, Canada, Brazil, Germany, Mexico, Belgium, Switzerland, and Spain.	Feb. 4-5, 2004	Workshop on Health Care in Federal Countries. New Delhi, India.
Nov. 19, 2003	The Art of Negotiation: simulation of intergovernmental relations situation for resolving conflicts in federal states to be held with students from Collège Edouard Montpetit, Canada.	March 2004	Federalism and Fiscal Policies in Brazil: The Forum is planning a workshop in co-operation between the Forum and Brazil's National Council for Fiscal Policy (CONFAZ) in the area of fiscal federalism, in particular, tax reform in Brazil.
		Mar. 16-17, 2004	The Challenges of Metropolitan Management - Brazil. The Forum will organize this event in co-operation with the Secretariat for Federative Affairs of the Brazilian Presidency; Ministry of Cities of Brazil; Institute of Applied Economic Research; and Congress Commission on Urban Development.
		May 2004	A Global Dialogue: International Theme Conference in Melbourne, Australia on Legislative and Executive Governance in Federal Democracies.
		Nov. 2004	A Global Dialogue: International Theme Conference in Saskatoon, Canada on Foreign Relations in Federal Systems.

WHO CAN ATTEND?

Forum events are designed to reach practitioners of federalism, people whose daily work is directly involved with a federal system. Some Forum events are limited in number of participants. Contact the appropriate Forum staff member for more information.

The Art of Negotiation: A Simulation for Resolving Conflict in Federal States

by Jonathan Rose, Alexis Conrad and John McLean



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