



# Federations

## What's new in federalism worldwide

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#### Making Mexican federalism work: a year after the election of Vicente Fox *By Yemile Mizrahi*

*Vicente Fox came to the Mexican Presidency with a background as a state governor and a strong commitment to decentralization. Even before he took power his transition team consulted with the Forum of Federations and others on issues such as mechanisms of intergovernmental relations. But how much has Fox been able to deliver so far on his promise to change the face of Mexican federalism?*

#### Oil wealth, federalism and democracy in Nigeria *By Chika B. Onwuekwe*

*Nigerians fought a civil war over oil in the late sixties. The dictator Sani Abacha killed the activist and poet Ken Saro-Wiwa (and many others who worked with him) because of disputes over oil exploitation in the Niger delta. Now a new civilian government is looking for a way to develop the resource for the benefit of all Nigerians—including those in the oil-producing region itself.*

#### Canada: the cities look for more power *By David Lewis Stein*

*Municipal governments have no constitutional status in Canada. They operate according to the various laws each of the provinces has enacted for this purpose. But in the last ten years, cuts in provincial spending and reorganization of programs have seen towns and cities take on increased responsibilities for social and other services. They now want the status and power to match their new role.*

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*Three million Indians serve as representatives on panchayats, India's most local level of government. Since India's independence, these local bodies have evolved from traditional rural councils to constitutionally empowered orders of government. Will their success and popularity be a catalyst for a further democratization of India?*

#### Gay rights in the USA: the states lead the way *By Jeremy D. Mayer and Louis-Philippe Rochon*

*Marriage comes under the jurisdiction of the states in the USA, and only Vermont has permitted "civil unions" between homosexuals. While some activists hope for national legislation to affirm the rights of gays and lesbians, it is more likely that countrywide change will only occur once they win battles on a state-by-state basis.*

#### The PRACTITIONER'S Page: Peter Marais of South Africa

*In an interview with Sean Jacobs, Peter Marais, Mayor of the new "unicity" of Cape Town, speaks about the challenges of building a new kind of municipal sovereignty for his once racially divided city. And the challenges become even more formidable when one considers the high unemployment, poverty, and homelessness in this third largest city of South Africa.*

#### Contributors to this Issue

**Harihar Bhattacharyya** is a Reader in the Department of Political Science, University of Burdwan, West Bengal, India. His article on India's creation of three new states appeared in the March 2001 issue of *Federations*. **Jeremy Mayer** is Visiting Assistant Professor at the Department of Government at Georgetown University in Washington DC. **Louis-Philippe Rochon** is Professor of Economics and Director of the Center for Macroeconomic and Development Policy at Kalamazoo College, Michigan. **Yemile Mizrahi** is a Public Policy Scholar at the Woodrow Wilson Center in Washington DC. Her interview with Carlos Gadsden appeared in the May 2001 issue of *Federations*. **Chika B. Onwuekwe** was a senior consultant with Arthur Andersen in Lagos, Nigeria. He is now a Robson Scholar and Graduate Fellow in Law at the University of Saskatchewan, Canada. **David Lewis Stein** has an MA in Regional and Urban Planning and recently retired after 30 years as a columnist on urban issues for the *Toronto Star*, Canada's largest circulation newspaper. He is teaching a course at the University of Toronto on the evolution of Toronto as a global city. **Sean Jacobs** was until recently a senior researcher at the Institute for Democracy in South Africa (Idasa). He is currently pursuing advanced studies at the New School for Social Research in New York.

***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.***

## *From the editors*

**As** we prepare this issue of *Federations* the world awaits nervously the next phase of the "War on Terrorism". We don't know at this stage exactly what form the conflict to come will take. We do know that the planet seems a more perilous and uncertain place than it did a few weeks ago.

The current crisis has forced people around the world to change their plans and adjust their schedules. In October of this year the Forum of Federations had been planning to hold a conference on federalism in Abuja, Nigeria, as a joint project with the Nigerian federal government and the International Association of Centres for Federal Studies. The events of September 11th have forced us to postpone this event until sometime in the new year.

In this issue of *Federations* we have an article on Nigeria. It discusses the federal government's efforts to address the grievances of the oil-producing Niger delta region. When we do hold the postponed conference the questions of resource management and control will have a prominent place on the agenda.

The politics of oil in Nigeria have always been confounded by regional and ethnic tensions. The country of over 125 million people has three large ethnic-linguistic groups—the Hausa-Fulani, the Yoruba and the Igbo (or Ibo)—and over two hundred other groups whose populations range from a few thousand to several million. Half of Nigerians are Muslim, about forty per cent Christian and the rest animist.

Nigeria's oil reserves are concentrated in the southeastern corner of the country, populated mostly by a series of small "minority" tribes. There is a long and bitter history of violence and confrontation over oil exploitation and its environmental consequences. The world knows the story of Ken Saro-Wiwa and the Ogoni people, and of the civil war three decades ago precipitated by the Igbo-dominated East—"Biafra"—trying to secede from the federation. After many years of arbitrary and dictatorial military rule there is now a democratic government in Nigeria that is trying to contain and accommodate all the ethnic, religious and regional forces that could pull the country apart. Finding some just balance in the management of the country's main source of revenue is one of Nigerian democracy's biggest challenges.

In November the Forum is collaborating with the Mexican government to hold a conference on federalism in the historic

city of Veracruz. Our article on Mexico in this issue is by Yemile Mizrahi—who wrote a story for *Federations* about prospects for federalism in Mexico on the eve of Vicente's Fox's accession to the presidency. Now, a year later, she looks at how much progress Mr. Fox has made on his federal agenda—and at the challenges he has encountered.

The United States may be engaged in a deadly conflict right now with an enemy that does not openly declare itself or its objectives. That sort of effort can be almost all-consuming and drive everything else off the political agenda. But the work of democracy continues on other fronts. In recent years the American public has had to grapple with the question of gay rights, much as it grappled with the struggle for civil rights for African Americans a generation ago. For gay and lesbian Americans, change has been uneven and has come in fits and starts. In this issue we have an article that shows how the states have become the main battleground for gay rights in the USA.

Finally, municipal and local issues are front and centre in three of our articles.

From Canada, David Lewis Stein writes on the growing role that city governments are playing in Canadians' lives—a role that is not matched by either adequate funds or sufficient powers.

From South Africa we have an interview with Peter Marais, the mayor of Cape Town. Mr. Marais talks about the enormous problems of forging a single 'mega-city' out of the fragmented collection of entities bequeathed by the apartheid regime. He candidly discusses the sometimes awkward three-corner relationship of the provinces, the central government and the cities.

And from India, Harihar Bhattacharyya writes about the central importance of a unique form of local government there: the panchayats. These traditional rural councils have gained great popularity with the average Indian because of their effectiveness in implementing public works projects. It looks as if the panchayats will only grow in political power and importance for India in the coming years.

If you find these reports useful, then we encourage you to subscribe to *Federations*. We need your support if we are to continue to produce this publication—the only one of its kind that shows how people are *doing* federal governance worldwide! 6

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700-325 Dalhousie, Ottawa, Ontario K1N 7G2 Canada  
Tel.: (613) 244-3360 Fax: (613) 244-3372  
forum@forumfed.org www.forumfed.org

*Editor:* Karl Nerenberg *Associate Editors:* John Ihnat, Marie Desjardins *Editorial / Administrative Assistant:* Rita Champagne

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# Making Mexican federalism work: a year after the election of Vicente Fox

BY YEMILE MIZRAHI

**The** revitalization of federalism was without a doubt one of the central promises of Vicente Fox's presidential campaign.

Having been a governor of a state, Fox experienced the pernicious effects of an overly centralized and undemocratic political regime. The commitment to democracy that brought Fox into power included as one of its most important elements the redefinition of inter-governmental relations in Mexico.

Fox vowed not only to continue with the previous administration's efforts to decentralize certain public functions to the states (like education and health), he also promised to devolve economic power and political decision-making capacity to state and local governments. If his plan succeeds, it will become a substantial "reinvention of government" in Mexico.

Of course a change of this magnitude needs a long time to take effect and to be recognized. But a year after Vicente Fox's election and eight months into his administration, what has actually happened to the President's plans for federal reform?

## ***A working relationship with the PRI***

Designing a new pattern of intergovernmental relations was not only a theoretical corollary of Fox's commitment to federalism. Upon taking office, it became a practical necessity.

Fox—running as a candidate of the National Action Party (PAN)—won the presidency by a comfortable margin. But the Institutional Revolutionary Party (PRI) still controlled the majority in the Senate, a large number of seats in the lower Chamber of Deputies (211 out of 500

Federal Deputies), 18 out of 31 state governments, and the majority of local governments in the country. Finding a working relationship with the PRI was critical if the new presidential administration was to govern at all.

Yet the most difficult challenge for the administration was to find a working relationship with several PRI state governors who were hold-overs of the previous PRI regime and who ruled their states in an undemocratic manner. Since the PRI lost control of the presidency, governorships have become one of their most important strongholds. And these governors have fewer incentives to subordinate themselves to the federal authorities, even when they break federal laws.

In the "sea of democracy" brought about by the change of power at the presidential level, the remaining "authoritarian islands" still constitute a major obstacle for establishing a new pattern of intergovernmental relations. Devolving more economic resources and greater decision making capacity to governors who behave like traditional *caciques* (local chiefs), would be tantamount to enhancing local dictatorships at the state and local levels.

One of the preconditions for making federalism work is that it is accompanied by democracy. Without mechanisms to make local and state authorities accountable both to their electorates and to the federal government, federalism is doomed to fail.

## ***Hands-off federalism***

The first test of Fox's authority and his commitment to federalism came in January when a Federal Electoral Tribunal annulled the elections in the state of Tabasco on grounds that the electoral

process had been fraudulent. The PRI had allegedly tampered with the electoral process to ensure that the governor's candidate was elected.

The local PRI, controlled by the governor, defied the Federal Electoral Tribunal's decision which ordered the selection of an interim governor and the organization of new elections. In the end, the PRI manipulated the selection of the interim governor and attempted to delay the date for the extraordinary election.

While formally the local Congress was responsible for selecting the interim governor, there was a dispute about which Congress was responsible for this selection: the outgoing Congress or the newly elected one. The PRI argued that this responsibility belonged to the former (which was entirely controlled by their party), and the non-PRI opposition claimed that this responsibility belonged to the latter (where the opposition had more seats).

The President refused to intervene overtly in this conflict and rather encouraged the local parties to reach a political agreement. In the end, the appointee selected by the PRI remained, the extraordinary elections were held in July, and the PRI won the elections by a comfortable margin.

## ***The Supreme Court's role***

A more provocative and more serious challenge to the federal government came from the state of Yucatán. In August 2000 the governor, an old-time member of the PRI and a typical *cacique*, manipulated the process for selecting the new Electoral Council, the body in charge of organizing and supervising the gubernatorial elections in the state (scheduled for May 2001).

The opposition in Yucatán protested, claiming that the Electoral Council was not impartial and could not guarantee a fair electoral process. The case was taken to the Federal Electoral Tribunal, which ruled in favor of the opposition in October 2000.

The governor and the PRI local deputies, however, defied this ruling, claiming that the Tribunal violated the autonomy of the state. The PRI and the governor defended their case using federalism as their watchword. The federal government refused to use the police to force the governor to comply with the Federal Electoral Tribunal's decision. The President believed that publicly using force would only complicate matters. Instead, the Yucatán opposition resorted to the Supreme Court.

The conflict finally ended in April 2001 when the Supreme Court ruled against the PRI governor, and the Electoral Council he had created was forced to dissolve. This is the first time in the history of modern Mexico that the Supreme Court has resolved a conflict between a state and the federal government. In the May elections, the PRI finally lost the governorship to the PAN.

### ***Federalism & the economy***

Amidst this politically charged landscape, President Fox has attempted to forge new patterns of cooperation between the federal government and the states. He has promoted two projects in particular.

The first is an ambitious economic development plan for the south-eastern region—which includes nine states, seven of them controlled by the PRI. This plan, known as the “Puebla-Panamá” project seeks to create an industrial and commercial corridor that will eventually integrate the countries of Central America in a free market zone.

Proponents see this plan as a long-term solution to the extreme poverty and lack of opportunities that characterize many of these states and that consequently push people to search for a better life in the USA.

So far, the Puebla-Panamá project has been well received by all the governors of the states included in this plan. This past June, the Mexican governors and

the President, including the governor of Yucatán, traveled to El Salvador and Panama to sign this agreement with the presidents of the seven Central American countries.

The administration's second major project involves substantial fiscal reform. Although it has to be passed by Congress, Fox has been lobbying governors of all political parties to gain support for his reform. One of the most controversial elements of this reform is an increase in the Value Added Tax (VAT), a proposal that all political parties, including the PAN, initially rejected. However, the President is trying to convince governors that if Congress approves the VAT increase, a percentage of this revenue will go directly to the states.

In addition, Fox is offering to grant state governments the right to collect and retain part of this tax. (Currently, state governments have no taxing capacity. The federal government collects all taxes and then redistributes the resources to the states).

Beside these two important projects, the federal government is committed to creating a special office in charge of intergovernmental relations. So far this project has been stalled by bureaucratic infighting. At this moment, observers are not at all sure whether it will succeed.

One of Fox's projects that has succeeded is the constitutional reform concerning indigenous people. The law—which

passed in Congress as well as the requisite number of state legislatures—recognizes that Indian communities have the right to rule themselves according to their own traditions. Some critics, however, point out that the law only recognizes this right within the confines of municipal jurisdiction, creating problems for indigenous communities which cross municipal, or even state boundaries. It may be true that the established orders of government in the Mexican federal system (municipal, state, federal) are not sufficient to address the complexities of indigenous autonomy.

As Vicente Fox completes his first year in office, the commitment to federalism remains one of the most important pieces of his political agenda. Although there is a consensus among the Mexican people that a functioning federal system is a desirable goal, federalism in Mexico remains largely an abstract proposition.

Federalism will only become significant for the average citizen when it has an impact on their daily lives—that is, when it enables state and local governments to provide better public services, and when governments respond to and are accountable to their people.

Popular support for and commitment to federalism will only come when state and local governments demonstrate that federalism creates better governments. 6

### ***The end of the PRI era***

A myriad of Constitutional provisions grant the Mexican federal government enormous discretionary power vis à vis state and local governments. During the 60 years of PRI rule, the federal government, and in particular the Mexican president, also enjoyed vast “extra-constitutional” powers.

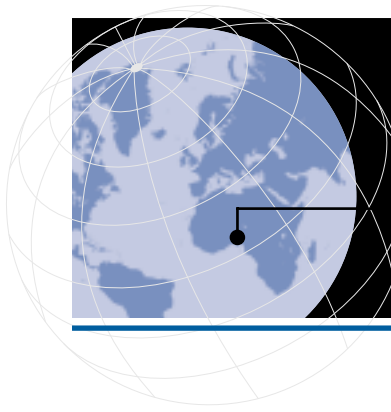
The latter derived from the PRI's virtual monopoly of Mexico's political life. Indeed, until 1989, the PRI controlled all state governments and the overwhelming majority of local governments. The hegemony of the PRI meant that ambitious politicians had to be affiliated with this political party and be willing to play by its rules,

which more than anything else rewarded discipline.

Governors and mayors had an incentive to subordinate themselves to the president as a means of advancing their political careers.

Indeed, rather than representing their own constituencies, governors and mayors represented the federal government in their territories. Now with the defeat of the PRI at the executive level, the rules of discipline and subordination that characterized Mexico's political regime have lost their rationale—and have given the new government some opportunity to reform Mexican federalism.





# Oil wealth, federalism and democracy in Nigeria

BY *CHIKA B. ONWUEKWE*

**Nigeria** returned to democracy on May 29, 1999, after almost sixteen years of uninterrupted military dictatorship. Since then, the civilian regime has worked hard to keep the country together. Topmost on the agenda of the government led by President Olusegun Obasanjo is how to contain the demands of the oil-rich Niger delta. The nine states in the Niger delta (Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ogun, and Rivers) contest the federal government's ownership and control of the oil mineral resources in their communities and they are unhappy with the revenue sharing formula.

Crude oil exports account for over 90% of Nigeria's foreign exchange earnings. The 2001 federal government budget is based on a forecast oil price of \$22 per barrel against the 2000 budget estimate of \$18. The country's proven oil reserves are estimated at 22.5 billion barrels, most of which are found in the Niger delta area.

The Nigerian National Petroleum Corporation, a federal government agency, represents the federal government's interest in the oil and gas industry. It is the majority shareholder in joint venture arrangements with multinational oil companies. The Nigerian federal government's share in the joint venture arrangement with Shell is 55%, with Chevron it is 60%, ExxonMobil 60%, Texaco 60%, TotalFinaElf 60%, and Eni/Agip 60%.

## ***Good deal for multinationals***

In early August 2000 the government signed a new memorandum of understanding with its corporate partners. The agreement, which is valid for three years, raised production cost margins for the corporate partners to \$4.00 per barrel from \$3.50 per barrel. It also increased

the profit margin for corporate partners beyond the 1996 level of a fixed \$1.00 per barrel to between \$2.50 and \$2.70 per barrel on investments of up to \$2.00 per barrel.

Another set of funding arrangements for oil operations in Nigeria is composed of the Production Sharing Contracts (PSCs). Under PSCs, companies fund oil exploration and related operations. Unlike joint ventures, PSC arrangements do not depend on government funding. However, PSC operators share their profits with the federal government after recouping any expenditure.

Overall, the multinationals appear satisfied with the federal government's efforts in protecting their investment.

In contrast, many of the people of the Niger delta are dissatisfied with the manner in which oil exploration is undertaken in their area. They contend that oil wealth from their area is being used to develop other parts of Nigeria while the Niger delta region remains relatively underdeveloped. They also complain that they have to live with the environmental degradation brought about by oil activities. For instance, in most parts of the Niger delta pipelines are not laid on the ground or buried, they are installed on the surface, above ground. A consequence of that practice is that there are frequent leaks of gas and oil that contaminate adjacent farmland.

## ***Federal control of the resource***

The 1999 Constitution is the legal basis for the ownership and control of all mineral resources in Nigeria. "Mines, minerals, including oil fields, oil mining, geological surveys and natural gas" are within the exclusive legislative competence of the federal National Assembly.

The Petroleum Act of 1990 (originally enacted in 1969) further confirms the federal government's ownership of petroleum resources. Its Section 1 vests the "entire ownership and control of all petroleum, under or upon any land" in Nigeria (onshore and offshore) in the federal government.

In addition, a federal agency, the Federal Inland Revenue Service, is responsible for collecting the Petroleum Profits Tax from upstream industry operators. This agency also collects the Value Added Tax on goods and services supplied to oil companies. The companies further pay royalties for oil production licences and oil mining leases to the federal government in addition to other levies and charges paid to various federal government agencies.

The only direct payments to individuals and communities in the oil-producing area relate to compensation for lands acquired by the government for oil exploration and pipeline construction. The Land Use Act of 1990 provides the legal basis for such acquisitions. Under it, land is held "in trust" for the people by each local and state government. However, in practice, multinational corporations pay compensation directly to owners of the land acquired for oil exploration or pipeline construction. The compensation is calculated on the basis of the *economic* use of the land, not its *inherent value*. Since most landowners in the affected communities are subsistence farmers whose cash production is very small, this practice means they are entitled to minimal compensation.

## ***Unrest and the beginnings of a solution***

Dissatisfied with both the government and the multinationals, some people in

the Niger delta have taken direct and violent action. Individuals and militant groups in the Niger delta region have vandalized pipelines, seized oil rigs and taken expatriate workers as hostages. The federal government's reaction has been, at times, to send in massive military force—which sometimes resulted in the killing of innocent civilians.

The federal government hopes to answer dissatisfaction and unrest in the oil producing area through the creation of the Niger Delta Development Commission, a body that is mandated to formulate policies and guidelines for the social and economic development of the area. This body was created in June 2000 as a direct initiative of President Obasanjo. The main functions of the Commission, as outlined in the act that created it, include:

- "To conceive, plan and implement projects and programs for the *sustainable* development of the Niger delta area in the fields of transportation, health, education, employment, industrialization, agriculture and fisheries, housing and urban development, water supply, electricity and telecommunications;
- "To cause the Niger delta area to be surveyed in order to ascertain measures which are necessary to promote its physical and *socio economic* development; and
- "To execute such other works and perform such other functions, which in the opinion of the Commission, are required for the *sustainable* development of the Niger delta area and its peoples".

The Commission is financed through a complicated formula. Some of the monies that the federal government would normally allocate to the states are diverted to it. In addition, the Commission receives: financial contributions from the oil companies (3% of their annual budgets in Nigeria), and half of the money allocated to a special ecological fund set up by the federal government to deal with the environmental consequences of the oil industry.

The Commission has its main office in the coastal city of Port Harcourt, Rivers State, and satellite offices in each of the other Niger delta states. A governing board

named by the President and confirmed by the National Assembly oversees its work. The Board includes representatives from all the oil producing states. It also has members from the non-oil states, the oil industry, and the federal government.

The creation of this Commission is one of the signs that Nigeria's newly restored democratic governments are ready to face the real consequences of oil production. At a ceremony to mark this year's World Environment Day Governor Alamiyeseigha of Bayelsa State said: "The Niger delta is sinking... If something is not done urgently, our children may not have a place." He added, "Whatever we can do to protect our environment, we should do it collectively and with patriotic zeal."

The Commission provides an opportunity for such collective effort.

### ***Some hope, but still a long road to travel***

On the positive side of the ledger, for many in the delta, is the fact that respected individuals from their area sit on the Commission's board and have key positions on the management team. These include Chief Onyema Ugochukwu (Chairman), Engineer Godwin Omene (Managing Director and Chief Executive), Chief Timi Alaibe (Executive Director of Administration and Finance), Mr. Udo Abosoh and Professor Victor Peretemode. The prominent roles played by these well-known Niger delta personalities signals to people in the region that the federal government is sincere about involving them in the decision-making process.

But there remains—at least to many in the region—a negative side.

First, the Commission has been slow to actually get to work. It is just (in September, 2001) getting started. The delay was caused by a dispute between the National Assembly and the President as to how board members should be named. The President wanted complete authority to name the board but the National Assembly insisted that it have the power to confirm appointments. The National Assembly prevailed. It enacted the Niger Delta Development Commission Bill—that included its authority to confirm board appointments—over the President's veto.

People in the Niger delta are also impatient with the slow progress of the Commission in dealing with environmental degradation. In the last few months there have been a number of reports of oil leaks, explosions and fires. These include ruptured pipelines in Gokana, in Ogoniland, and an explosion and oil spill at the Shell Nkpoku/Rumuekpe facility in the Ogbodo area.

On the political and constitutional front, critics argue that the Niger Delta Development Commission detracts from the sovereign authority of the states. They contend that rather than create another federal agency it would have been preferable if more control over natural resources had been given to the states—in the spirit, as Nigerians like to say, of 'true federalism'. They point out that in a few other federations, such as Canada, the constituent units have preponderant control over all aspects of natural resource development on their territory.

But the history and current circumstances of Nigerian federalism are quite different from those of countries such as Canada. The 36-state structure was created by the military regime partly as a deliberate effort to weaken regional power, and there is no history or tradition of state control of natural resources in Nigeria.

People in support of the federal government's initiative in creating the Niger Delta Development Commission argue that if states were granted greater authority over resource control, the multinationals could pursue a "divide-and-conquer" strategy in pursuit of their own objectives. As well, these same people argue such a policy could lead to interstate rivalry and increased conflict between the federal and state governments.

Many believe the Commission is a cautious and prudent initiative to contain a hydra-headed problem. In the end, the people of the Niger delta and Nigerians sympathetic to their cause will judge the Commission on its deeds not words. To a large degree, the viability of Nigeria's renewed democratic federalism—at least in the oil communities—could rest on its success. 6



# Canada: the cities look for more power

BY DAVID LEWIS STEIN

**In** August of this year, a meeting took place that provides an excellent snapshot of the changing status of Canadian cities.

The ministers in charge of municipal affairs in the ten Canadian provinces gathered to discuss mutual concerns and especially the need for more affordable housing. Federal minister of housing Alfonso Gagliano attended to present a federal proposal to spend CDN \$680 million on new housing over the next four years.

In the 70s, the federal government had contributed to the construction of 25,000 new housing units a year, but by the mid 90s it had completely withdrawn from new housing construction. So Gagliano's presence at the meeting with the offer of new federal housing money was a major event.

The ministers met in Ontario, Canada's most populous province. But instead of choosing to meet in Toronto, the dynamic provincial capital and the country's largest city, the ministers gathered in London, a small sedate city in agricultural southwestern Ontario. London is more in tune with Canada's rural past than its industrial and electronic future.

Jack Layton, the president of the Federation of Canadian Municipalities (FCM), which represents over 1,000 Canadian cities containing over 80 per cent of the country's population, went to the meeting and, according to him, made significant headway.

However, Layton concedes he didn't actually sit at the table bargaining with the ministers. What he did do was stay in the same hotel and he and a small FCM delegation were able to do some "vigorous lobbying"—often literally in the hotel lobby.

In the end, Layton and the city contingent delivered an ultimatum to the federal and provincial ministers: expand this new

housing program so that it serves people at the lowest level of the income scale, or the cities will not participate in it. The ministers agreed to reconsider and meet later in the year.

So although the legal status of cities within the Canadian federation has not changed, in the practical world of day-to-day politics, the upper levels of government are giving de facto recognition to the growing importance of city governments.

***"The city of Toronto used to have to get provincial permission to put in a new traffic light."***

"There is new energy in cities," Layton says. "The upper levels of government are realizing they can't take us for granted any more. We are the people who deliver their programs on the ground."

## ***Creatures of the provinces***

Legally, though, Canadian cities remain at the very bottom of the constitutional pecking order. They have no rights of their own. Cities are completely subservient to provincial governments.

The British North America Act of 1867, which formally brought the colonies together to form the Canadian federation, made cities the responsibility of provincial governments. By the middle of the 19th century, colonial cities in British North America had been gaining the right to elect their own councils rather than have councils appointed by colonial governors. But the British North America Act gave

the provinces absolute authority over these elected city councils.

The provinces enacted municipal acts handing down to cities the authority to provide basic municipal services—and to pay for them by levying property taxes and imposing service charges. But these municipal acts tended to be restrictive rather than permissive.

As municipalities grew and citizens demanded a greater variety of services from local governments, municipal councils had to get provinces to amend municipal acts or pass new legislation. This could be a time-consuming and sometimes humiliating process. The city of Toronto used to have to get provincial permission to put in a new traffic light.

Britain retained the formal power to approve amendments to the Canadian constitution until 1982 when it was "repatriated" to Canada. (From 1931 on, the British government accepted all Canadian government requests for amendment).

Since 1982, there have been several federal-provincial conferences to rearrange power sharing, and there were two major attempts at "omnibus amendments" to the constitution: the Meech Lake agreement in 1990 and the Charlottetown accord in 1992.

Both of these attempts failed. Through all this turmoil, the status of cities remained unchanged. *De jure*, they are still the "creatures of the provinces."

However, in the last decade, the cities' *de facto* status has begun to change, at least in relationship to their provincial governments.

## ***Leaner, meaner municipalities***

In the 90s, the federal government began to fight its debt problems by cutting back

on “transfer payments” to provinces. The provinces, in turn cut back on their grants to municipalities.

Professor Harry Kitchen of the University of Waterloo calculates that within a decade, provincial grants as a proportion of municipal revenues fell by a third—and they have continued to fall.

In Montreal, provincial contributions to transportation fell from 33 per cent to 20 per cent. In Ontario where the “downloading”, as it is called, has been most dramatic the government turned all subsidized housing and almost all provincial roads below the expressways over to local municipal and regional governments. The province also withdrew all financial support of local public transit and long distance commuter transportation.

The province removed some of the cost of education from the local property tax and claimed this gave municipal governments “room” to raise enough to meet their new responsibilities. When this downloading began in 1997, Ontario Premier Mike Harris claimed it would be a zero sum game and municipalities would not actually have to increase taxes to pay for all these downloaded responsibilities. But property taxes have begun to creep up in Ontario municipalities—in some cases by more than 10 per cent.

As provincial governments cut back the transfers, they began loosening the legal controls. They have begun rewriting municipal acts to give cities more independence.

In Newfoundland, the act gives municipalities a clear authority to raise money through an array of property and business taxes and user fees; the Nova Scotia act extends the range of user fees; the Alberta act allows municipalities to partake of “natural person powers.”

Urban and constitutional experts have been debating how far “natural person powers” extend.

In the fullest meaning of the term, cities would have all the rights to act that a private individual enjoys. They could borrow money, form partnerships with private companies and get into money raising enterprises—all without being required to get permission from their provincial governments. No province has

gone this far. But natural person powers have become an ideal that cities are reaching for.

In British Columbia, the province has undertaken to work directly with municipal officials in a joint council and agreed to a “Protocol of Recognition” that binds the provincial government not to take any action that would have an impact on cities without first consulting city governments. Of course, British Columbia can still act arbitrarily even after consulting with municipalities, but as Richard Taylor, the executive director of the Union of British Columbia Municipalities put it, “This is symbolic of the growing power and autonomy of cities, even if we are not yet recognized as an order of government.”

***“In Ontario and Quebec, the provincial governments are forcing cities to merge with the suburban communities around them. These shotgun weddings are creating some regional municipalities that contain more people and work with larger budgets than half the Canadian provinces.”***

In Ontario, the new municipal act is still a work in progress. But after considerable pressure from the Association of Municipalities of Ontario, the provincial government has agreed to withdraw a “notwithstanding” clause that would have allowed it to override any municipal actions. However, it remains to be seen whether the new act will entrench some powers for municipalities or still allow the province to overrule them.

Right across the country, Canadian provinces are writing legislation that gives cities greater freedom to act. It is still a

long way from recognizing cities as an order of government with rights written into the Canadian Constitution. But cities are gaining momentum.

Twenty years ago, the Federation of Canadian Municipalities had a staff of seven and a budget of \$280,000. Today, FCM has a staff of over 100 and a budget of over \$20 million. In the last three years, the FCM’s membership has virtually doubled, from 600 to over 1,200.

Moreover, the Federation of Canadian Municipalities has developed a caucus of “big city mayors” that meets regularly to make demands on the federal government. Their meetings have begun attracting media attention, compelling upper levels of government to respond—even if they are so far resisting demands for greater funding.

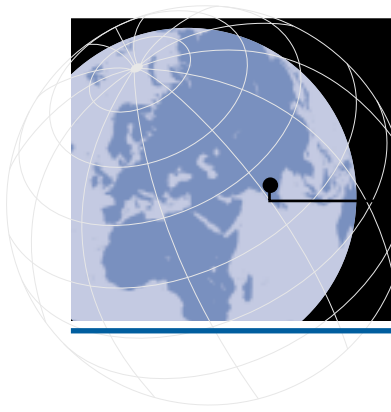
Layton, the FCM president, is an active member of the Toronto City Council. He has been seen as a potential future mayor, although the word around Toronto City Hall is that he has become more interested in the national scene. Layton is also a prominent member of the New Democratic Party—a moderately social democratic party. The NDP has been all but wiped out in recent federal and provincial elections, but its members are re-emerging as active city politicians, particularly in Toronto.

Traditionally, national parties have kept out of city politics. Canadians tend to cling to the idea that city politics are somehow above party politics. They don’t like their local councillors to wear party colours. But now that the NDP is beginning to play a prominent role in the Federation of Canadian Municipalities, it’s hardly likely that the other national parties will cede this newly emerging field of national urban politics to the left wing.

In Ontario and Quebec, the provincial governments are forcing cities to merge with the suburban communities around them. These shotgun weddings are creating some regional municipalities that contain more people and work with larger budgets than half the Canadian provinces.

So it seems that the issue for Canadian cities is not whether they will ever be recognized as a level of government and a partner in the Canadian federation—but how and when this will happen. ☺





# Panchayats in India: where government meets the grassroots

BY *HARIHAR BHATTACHARYYA*

**This** past July, elections to India's most local level of federal governance—the *panchayats*—took place in Andhra Pradesh state.

Panchayats are village councils constitutionally empowered to manage local affairs and the implementation of public works for rural India.

Some 1,000 representatives were elected to the *Zilla Parishad* (District Council, the highest tier of panchayats). Those who were elected in Andhra Pradesh joined the other three million elected panchayat representatives across the country—about one million of whom are women.

Panchayats have become the most significant political institutions for rural Indians. And they have been a key element in the process of decentralization which India began in the late 1950s.

## **What are panchayats?**

This form of local government has a long history in India.

Panchayats (literally, “the assembly of five”) have existed as a traditional village unit of government in the Indian sub-continent for many centuries, and served as the backbone of Indian civilization.

They were hereditary, but were constituted by representatives from various social groups, giving them a certain representative quality. Their style of governance was open and face-to-face.

The key function of the panchayats was to resolve disputes, by consensus, in favour of the status quo. Panchayats were the defenders of social stability in rural India for most of their history.

After Indian independence in 1947, the panchayats continued to have importance in rural India where they managed local affairs according to traditional values.

They did not have any constitutional or formal status.

As the Indian federation evolved over the years (see *box, page 2*), panchayats developed into units of local self-governance within states, specifically mandated to work on matters of rural development and infrastructure.

The 73rd Amendment (1992) to the Indian constitution identifies 29 areas concerning which the panchayats have powers. These include agriculture, irrigation, roads, electricity, cottage industries, forests, rural housing, drinking water, health and education.

The average population under panchayat jurisdiction and the size of panchayats vary enormously across the states. For instance, the average population of a *gram* panchayat in Kerala is 25,000. In West Bengal, the *gram* panchayats cover an average population of around 12,000.

The taxing powers of the panchayats as well as their incomes also vary substantially across the states. The contribution of taxes to the total income of panchayats ranges from 0.9% in Punjab to 63.4% in Kerala. Generally, government grants still form the major source of income for panchayats.

## **A democratic process**

India's development of the panchayats as units of local self-government has been marked by two distinctive features.

First, the process is democratic. Panchayat representatives must be elected by their constituent population on the basis of universal adult suffrage in open, competitive multi-party elections.

Second, there are provisions for reserving seats for women, as well as disadvantaged groups (known in India as Scheduled Castes and Scheduled Tribes).

The demography of the panchayat representatives is indicative of both the democratic nature of the process, and the issues which the panchayats address.

In a sampling of panchayat representatives across the country, you will find a high proportion of wage labourers, peasants, village housewives, and the like. Rooted in their local realities, these representatives often hold posts of chairpersons, and are involved in the myriad of panchayat committees (roads, literacy, forestation, etc.)

When asked about her perception of the panchayats, one representative (a housewife from the district of Burdwan with only primary-level education) stated: “I attend to all the problems of the villagers, from the construction of roads to family problems. I am called for taking part in decisions at the Panchayat office. I am happy to work for the public.”

In a study of 1190 villagers, it was found that 83% of them considered panchayats to be a very useful institution without which they would suffer. Of the same sample, 88% believed that the panchayats were responsible for breaking the domination of the higher castes in the villages.

The high level of popular trust in the panchayats is reflected in the high turn out for panchayat elections—which is always higher than for state and central government elections. In the last panchayat elections in West Bengal in 1998, the voter turn out was 85%.

## **Decentralization within states**

The decentralization India has achieved by empowering panchayats is quite different from the decentralization achieved through state creation (see *Federations*, Vol.1 No.3, March 2001).

When India creates new states it is often to accommodate demands related to ethno-linguistic particularity. The empowerment of panchayats is not bound by any such considerations. Giving panchayats formal status in India gained support due to their effectiveness in implementing rural development projects.

The Indian constitution makes the empowerment of panchayats a state responsibility. Consequently, states have enacted different laws on panchayats according to their different needs and contexts.

Politics has, of course, left its mark on this process, and decentralization has often suffered.

The states have frequently seen any local power as a potential challenge to their own authority. And the traditional dualist paradigm of federalism—that power is balanced on a centre-state axis—does not easily admit a third party. Ethnic considerations have also motivated opposition to any process of decentralization beyond the framework of ethno-linguistic state autonomy.

Nevertheless, the widespread popular support for panchayats has been unavoidable, and the states have had to hand power over to them. In the states where panchayats have not been formed, there are strong movements for instituting them.

Despite some opposition from the states, there is a consensus among scholars and other opinion makers in India that the country's democratic decentralization to panchayats has served to enhance state legitimacy.

### ***The case of West Bengal***

The eastern state of West Bengal has the best record in India in terms of devolving powers to local authorities, and is worth examining for how the project of decentralization to panchayats has turned out so far.

The Communist-party led state government of West Bengal is known for supporting local government. West Bengal was one of the first states to adopt panchayats formally as local units of government. Elections to panchayats have occurred every five years since 1978. The panchayats there implement plans

worth fifty percent of the state budget dedicated to rural areas.

The dramatic social and economic development that rural society in West Bengal has undergone since the late 1970s can be attributed in large degree to the activity of the panchayats.

They were key players in the redistribution of surplus land among landless peasants and agricultural workers, in the improvement of literacy, in establishing provisions for potable water, irrigation, road construction, and the like.


Through the panchayats, the rural population was itself involved in these activities.

\* \* \*

Because of these successes and the direct involvement of the local population,

people are increasingly seeing panchayats as political institutions and not simply agencies for implementing development projects.

The panchayat elections in Andhra Pradesh illustrate this point. If the rural voters in the Telengana regions of Andhra Pradesh vote overwhelmingly for the Telengana Statehood Association in the *gram* panchayat elections in the next phase of voting, it would be a verdict on popular support for the formation of a separate state of Telengana out of Andhra Pradesh.

Panchayats are not just a by-product of Indian federalism; they can as well serve as a factor for further federalising India. Panchayats may indeed be the means by which India will be transformed in the near future. 

## ***Panchayats: Legal and Constitutional History***

The first Indian Constitution (1950) recognized panchayats under Article 40, but this article falls in the non-justiceable Chapter 4 of the Constitution, and places panchayats under the competence of the states.

From the first of the five-year plans, beginning in the 1950s, the Union government made a series of attempts to institute panchayats according to Article 40, beginning with the famous Balwantarai Mehta Committee (1957).

Some state governments also tried to establish these institutions through amendment acts and holding elections to panchayats. West Bengal, for instance, during 1957-62, formed some 19,662 *gram* panchayats, and 2,926 *anchal* (block level) panchayats. In most cases, these panchayats did not survive.

In the 1980s and 1990s, India gradually developed panchayats into a third tier of its federal system.

Prime Minister Rajiv Gandhi's government introduced the 64th Constitution Amendment Act (1989) on panchayats, intended to establish them formally as a third tier of Indian federalism. But it fell through in the Rajya Sabha (Council of States) by a margin of just two votes.

It was the 73rd Amendment Act on panchayats, passed by the Indian

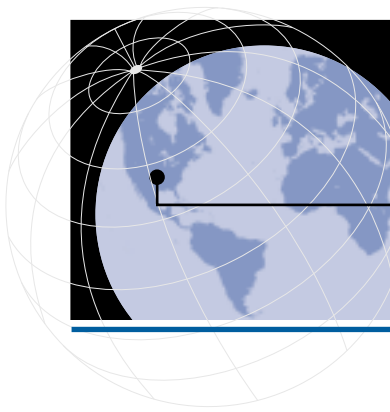
Parliament in 1992, that made the formation of panchayats by the state governments mandatory.

New articles in this Amendment (243-243O) provide for a three-tier system of panchayats: the village level, the district level, and an intermediate level between the two.

Seats are to be reserved for Scheduled Castes and Tribes, and for women. For the castes and tribes, the number of seats reserved shall be according to their demographic proportion in the area concerned. No less than one-third of all seats must be held by women.

Every panchayat government will exist for five years from the date of its first formation, but can be dissolved earlier in accordance with the procedures established by state law.

As far as powers and functions are concerned, the state legislature has the power to confer on the panchayat such powers and authority necessary to enable them to function as institutions of self-government. The 11th Schedule of the Indian Constitution contains 29 items concerning which the panchayats have powers. They deal mainly with economic development and social programs.



# Gay rights in the USA: the states lead the way

BY JEREMY D. MAYER AND LOUIS-PHILIPPE ROCHON

**In** Vermont, two lesbians can be joined in a civil union, receiving nearly all the benefits of marriage. These include the right of adoption, hospital visitation, insurance, and perhaps most important, public recognition of their relationship.

Thanks to America's federal system, if they drive just a few hours to any one of several states, not only will their union become immediately void, but they will be denied the right to engage in sex without fear of government punishment.

To some, American federalism seems to work against the equal rights of gays and lesbians, by creating a patchwork of laws that radically shift the status of homosexuals from state to state. However, advocates of gay equality should rather rejoice that America is not a unitary nation, because states are the battlegrounds where the legal status of gays and lesbians in America could change most dramatically in the next decade.

Why the states, and not the federal level? Couldn't a bold president give a speech similar to Lyndon B. Johnson's 1965 "We Shall Overcome" address that brought about voting rights for blacks in the American South? Or could not the Supreme Court rule as it did in *Loving v. Virginia* (1967), which struck down all state laws forbidding interracial marriage?

## ***New political reality***

The 2000 election ended any such hopes.

The best that can be expected from the Bush presidency is maintaining the status quo on gay progress. Even if Al Gore had won, enthusiastic leadership from the White House would have been unlikely. Gore, while he did endorse ending discrimination on the basis of sexual orientation, also supported the anti-gay Defense of Marriage Act in strong terms.

A full Democratic takeover in 2004 might end discrimination in the military and in the workplace, but it is difficult to foresee the centrists who currently dominate the party permitting such bold moves, particularly when the Republicans are unlikely to offer gays another political home.

The 2000 election also ended the possibility of rapid judicial progress to end discrimination against homosexuals.

In 1986, the Supreme Court came within one vote of ending all sodomy laws on

ruled racial segregation unconstitutional) is highly unlikely.

## ***Marriage: a states' rights issue?***

There simply is no clear national majority supporting equal rights for gays, at least not a solid enough majority to counter impassioned cultural conservatives.

Consider Clinton's highest profile rejection of gay equality, the Defense of Marriage Act signed in early 1997. Clinton, along with overwhelming majorities in Congress, defined marriage as a sacrament applying only to a man and a woman. Moreover, the law released states from their traditional obligation to respect the legal acts of other states.

Clinton's approval of federal intervention in marriage was particularly unusual. States consider marriage one of their last areas of supremacy in the federal system, and have crafted marriage laws that differ in the age of legal marriage, waiting periods, and blood test requirements.

States even differ in their definitions of incest. Nineteen states permit first cousins to marry. The other thirty one either forbid it outright or ban it when the couple is fertile. Yet under the "full faith and credit" constitutional principle, kissing cousins longing to be husband and wife can simply tie the knot in one of the "cousin-friendly" states and that matrimonial contract is legal everywhere in the USA. By contrast, the Defense of Marriage Act allowed states and the national government to avoid recognizing gay marriages contracted anywhere in America.

## ***Changing attitudes and formidable obstacles***

At the state level, only Vermont has moved to permit "civil unions" of gays

***"For the foreseeable future, the legal status of gays and lesbians will advance only at the state level. This is not surprising. Every past movement for equality has followed a similar pattern."***

due process grounds. That case, *Bowers v. Hardwick*, still sets the outer limits of sexual freedom under the constitution. The conservative majority on the Court has grown since then, and will likely increase over the next four years.

The one ray of hope is that Justice Kennedy, a Reagan appointee, has shown a consistently moderate tone on gay rights, emblemized by his opinion in *Romer v. Colorado*, which struck down a state referendum denying localities the right to protect gays. Still, a gay *Brown v. Board of Education* (the 1954 case that

and lesbians. Even there, cultural conservatives in 2000 managed to win a number of key state races as Republicans took control of the legislature, largely on the strength of the anti-gay backlash, and it is unclear whether civil union will survive the Republican counterattack.

Similarly, Hawaii almost legalized gay marriage when a state judge ruled that the denial of the right to marry same sex partners was a violation of the state's constitution. However, a popular revolt led to a rapid constitutional change that prevented legalization.

If gay marriage cannot win in two of the most liberal states of the union then it is highly unlikely that other states will move forward on this issue. Even if civil unions survive in Vermont, the obstacles in other states will remain formidable.

Yet states still offer the best hopes for progress on civil rights for gays. While following the passage of the Defense of Marriage Act more than half the states quickly adopted laws against recognizing gay marriage, state sodomy bans have been falling rapidly, and will continue to do so.

Thanks to recent state court actions, only eighteen states currently ban sodomy, variously defined as oral-genital, anal-genital, or oral-anal contact. Some laws apply equally to heterosexuals and homosexuals, while others single out same-sex contact.

Sodomy laws, like anti-birth control laws at the mid-century, are seldom enforced against consenting adults. Their primary functions are as a symbolic reinforcement of traditional sexual mores, an additional punishment on public gay sex, and a way to deny gays custodial rights of children. If a parent in a divorce, for example, can be shown to be regularly breaking the state's laws, then that parent can be easily defined as "unfit". (Sodomy laws are also occasionally used as lesser charges in difficult rape cases).

Given the increasingly widespread acceptance of heterosexual sodomy (evident in popular culture and indeed, in the public's nonchalant response to the sodomy-laden Starr Report), several more states will probably get rid of their sodomy laws in the next decade.

Workplace discrimination is another area where progress is more likely at the state

than the national level. Several states and a number of localities currently ban firing homosexuals simply because of their sexual orientation. In the rest of the country, it remains perfectly legal to dismiss an employee on the basis of anti-gay prejudice.

While it is unclear how widespread workplace discrimination against gays actually is, the extent of it will remain unknown so long as it is legal. Many gays, particularly in such sensitive areas as public school teaching, remain closeted out of fear of workplace reprisals.

***"When the rest of the nation travels to those states, and sees that widespread legal protection for homosexuality does not result in societal decay, mass pedophilia, and the wrath of a vengeful God, they will be more likely to advocate, or at least tolerate, national rights for gays and lesbians."***

#### ***A question of "liberty"?***

Across the panoply of the American federation, where might gays win protection in the workplace?

While the Northeast states continue to lead on this issue, the most interesting battleground may well be the West, where the underlying libertarianism, a form of "leave me alone" populism, may well contribute to key victories for gay rights.

The last years of Arizona Senator Barry Goldwater, an avatar of states' rights federalism, are illustrative. Goldwater, who campaigned hard against sexual immorality when he ran for President in 1964, ended his career advocating civil rights for gays. Look for the Mountain West region to be roiled by the conflict between its increasing Republican party affiliation and its historic commitment to personal liberty.

Across a whole host of issues, the deciding factor in the struggle may well be public beliefs about the origins of homosexuality.

According to public opinion expert Clyde Wilcox of Georgetown University, many of the most rabid homophobes become willing to tolerate homosexual rights if they are convinced that there are genetic roots to homosexuality. The diversity of the states in terms of religiosity, education levels, income, and ideology will result in radically different interpretations of scientific evidence, and very different legal responses.

For the foreseeable future, the legal status of gays and lesbians will advance only at the state level. This is not surprising. Every past movement for equality has followed a similar pattern.

States abolished slavery one by one long before the 13th Amendment freed slaves nationwide. Women were granted voting rights in several states before they won national suffrage. Even religious minorities were heavily discriminated against in certain states until the Supreme Court stepped in to protect them.

In each case, groups pressing for equality and civil rights had to succeed in at least a few states before they could win national acceptance of their demands. The states under American federalism remain, in the words of Justice Louis Brandeis, "the great laboratories of democracy."

So will it be for gays and lesbians.

Some states will range far ahead of the national consensus, and guarantee workplace protection, sexual freedom, and even marriage rights to homosexuals. When the rest of the nation travels to those states, and sees that widespread legal protection for homosexuality does not result in societal decay, mass pedophilia, and the wrath of a vengeful God, they will be more likely to advocate, or at least tolerate, national rights for gays and lesbians.

Ultimately, as with other social groups, the national government will have to take affirmative steps to fully realize gay equality. But the federal system demands victories in the states to create the national consensus that would make such action possible. ☺





# *the* **Practitioner's** *page*

## **Peter Marais** of South Africa **Municipal governance and the Cape Town unicity**

**Peter** Marais was elected Mayor of the Cape Town unicity in November 2000. Marais, a veteran of local and provincial politics, is a leading figure in the Democratic Alliance, the Western Cape's ruling coalition consisting of the opposition Democratic Party and New National Party (of which Marais is a member). As we go to press Mr. Marais is on "special leave" as a result of an investigation into his plan to rename

two streets after former presidents Nelson Mandela and F. W. de Klerk. He spoke with **Sean Jacobs** about the development of the Cape Town unicity.

**Federations:** How do you intend to unite a divided city like Cape Town—given that in the Apartheid era it was governed by five sub-structures, race-defined local government authorities, and there was unequal access to services?

**Marais:** The city is divided more along economic lines than racial lines. Unfortunately in South Africa poverty means black and rich means white. The Apartheid-era Group Areas Act not only separated the races, it separated ability to pay, it separated banking accounts, and it separated the rich from the poor, the haves from the have-nots. This is the big challenge here: how do you merge these two communities?

### *The Emergence of Cape Town as a "unicity"*

The Cape Town unicity is a recent amalgamation of six "substructures" and more than one hundred local authorities which were previously racially defined. Cape Town now comprises more than three million residents. It has a budget of more than nine billion Rand—which is larger than its Western Cape provincial government—and it produces ten percent of the national GDP.

The city's main challenges are to overcome backlogs and racial disparities in service provision, as well as to create economic growth in this third largest city in South Africa (behind Johannesburg and Durban). The city remains an economic magnet for migrants from the neighbouring Eastern Cape province, putting pressure on its resources.

Poverty is one of its most glaring problems—there is a need for 120,000 houses, over 300,000 people are unemployed, and more than 1 million people do not have access to basic municipal services. In many parts of the city, however, the infrastructure is advanced, comparable to cities in the more developed countries.

Local government in Cape Town has undergone major restructuring over the last decade. Elections in November will complete the process which has seen boundaries of councils redrawn, the number of councils reduced, a new tier (called the "megacity" in Johannesburg, and the "unicity" in Cape Town) introduced, and the role of local government expanded in relation to provincial government.

The transition to democracy in Cape Town has seen three distinct political-institutional phases:

- the Local Government Negotiation Forum was set up to negotiate the interim political leadership for 1994–1996;
- subsequently, an interim body called the Transitional Substructure of Cape Town was established—one-half of its membership consisting of councillors from the previously-elected council, and one-half consisting of representatives from civil-society organizations;

- finally, in March 1996, six new substructures of the Cape Metropolitan Area were established, followed two months later by the first democratic local government elections. The council was renamed and restructured to break with apartheid traditions, and to reflect the new functions allocated to it in correspondence with the new administrative boundaries.

The particular details concerning the unicity were negotiated from 1996 to 1999.

Central and local government strategists claim that the rationale for the unicity is greater efficiency and coordination. However, local activists, trade unions and civic groups in Cape Town (as well as in Johannesburg and Durban) have responded with skepticism and opposition to the plan. They assert that the unicity is designed to favour neo-liberal policy imperatives—that is, to ensure that policy directives of the government's macro-economic strategy are implemented at all levels. Already, the council has privatized water and electricity provision.

**The way that the unicity is going to be governed, administratively—will that deal with the race-related challenges?**

Yes. For the first time the city will have an indigent policy, and it will be covered by my budget. My budget actually has two parts. There is a part that will promote economic growth by keeping taxes low. At the same time, I have an indigent policy, which embodies *abba*, meaning “equality” in Afrikaans. *Abba*, in our language—the coloured language—*abba* means carrying a child on one’s back until he is able to walk by himself.

**Would you want the wealthy to pay for the poor?**

In such a way that I feel it’s still fair, that they’re getting value for their money. If they pay more, they will also get a higher level of service. The objective is for everybody to feel that “I pay more but I get good value for my money”.

**How do you intend to assert some kind of sovereignty, some kind of independence for city government when you have to invent everything from scratch? What are the kinds of things you are doing to invent that sovereignty?**

First of all we must look at local government as an independent sphere of government, and not see it in the sense of a third tier. There isn’t a hierarchy of government in South Africa. The constitution doesn’t talk about a hierarchy. It talks about spheres of government; it talks about cooperative government. Now, I see local government as no different from central or provincial government. I’m guided by the powers given to me in the constitution. And we are concentrating on service delivery far more than the other two spheres of government.

If you look at the provincial government, basically it is like a paymaster. They get money and they pay teachers’ salaries with it. They get money and they pay pensions and welfare grants with it. They’re not generating money. They’re spending money.

Local governments generate their own revenues. They must wrack their brains: “where am I going to get the next two million from?” Tax rates, dog licenses, renting out their buildings, outsourcing, start-up charges. All these things—from abattoirs, fresh produce markets, the sale

of electricity, the sale of water—we generate our own revenue. We’re a taxing authority.

We must be seen as equals with the national government. We are in the service delivery sphere of government because the other two spheres are not really in the business of service delivery. We build the houses; we build the clinics.

**But the national government sets the standards for what kind of housing you can build, don’t they?**

We can set our own standards if we can finance those projects. Now, at the moment, the constitution says housing is a provincial function. If they change the constitution tomorrow and say housing is a local government function, we will find innovative ways of financing housing. But I cannot spend money on unfunded mandates. I can’t take the function if our council will not get the money from that order of government. But I would like—for argument’s sake let’s say—housing to become a function of local government. Then I can directly negotiate with the national government for the funds necessary to build houses. At the moment the standards are set nationally, and they give, say, 17 or 18 thousand Rand per house. And if it becomes a local government function I’ll set my own standards.

**I understand that the budgets of some mega-cities are bigger than the provincial budgets.**

That’s true, but we have a lot of checks and balances in place to make sure that there won’t be an abuse of power. Governments must see themselves as being in partnership and not in competition with one another. It’s like passing the baton. I run my race, and if I can’t continue, I pass the baton to the provincial government, so we don’t fail. I’ve done as much as I could. And then they run their 100 metres and if they tire, or cannot go further, they should be able to pass the baton to the national government.

**What you’re suggesting is that intergovernmental relations should just work better, with clearly delineated functions.**

Yes. We have clearly delineated functions at the moment but...you know when it comes to war, the navy and the army, they

have to work together as a unit. They are all fighting common enemies, but in different ways. They see themselves as part of the same force that, ultimately, seeks victory. The fight against poverty, the fight against AIDS, environmental issues—should all be tackled at all levels.

I think that we often see orders of government in opposition to one other—like how political parties are. But government must see itself as a whole.

**Is there a possibility that the central government might try to play the municipal level of government against the provincial level? Say for example in the Western Cape. If the African National Congress (ANC) did get a majority and they did end up governing the province, and you govern the city as a member of the Democratic Alliance—how do you think this would affect local government and service delivery?**

It would put pressure on the efficiency of government. Just judging from previous experience, there wasn’t any cooperation between the city of Cape Town and the province up to now, because the city, governed by the ANC, didn’t want to cooperate with the province and the New National Party and Democratic Party. But now, in virtually everything we tackle, the province and the city have joint ventures. Municipal policing, for example: we have agreements on controlling squatters on land that belongs to the province. We have the right to remove them.

**How does being mayor compare with your time in provincial government as a provincial cabinet minister? Where do you think you can be more effective?**

I am about 20 times more effective as mayor of a unicity than I ever was as minister, and during my career I had virtually all the portfolios. I was minister for health, social services, local government, public works and transport—but I could never do what I’m doing here. Here, I have a bird’s eye view of all the needs of the people—everything—and it must be 200 or more things, from roads to water provision, housing, environmental issues, traffic, municipal police, municipal courts, beaches, parks, forestry, abattoirs, street lighting, sewage—all these things that people take for granted are delivered by the city—nothing by the province. 6