

## **POLITICAL REFORMS IN BRAZIL. AN ENDLESS DISCUSSION ABOUT DEMOCRACY AND THE ABILITY TO GOVERN**

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Talking about political reform has been dominating the agenda of the Brazilian parliament since the days when democracy was reintroduced in 1946. Essentially, all the innumerable debates and failed initiatives revolved around the ambivalence of democracy and the ability to govern. In this context, the electoral procedure plays a crucial part: Brazil has a personalized system of proportional representation under which political forces are represented in parliament in proportion to their share in the vote, a system which accords to citizens the greatest possible influence on the election of their representatives. While this certainly is a democratic system, it raises problems in practice: there are a large number of parties in parliament, and these parties are weak. It is this factor which makes it difficult to form workable majorities and impairs the government's capacity to take action.

Consequently, Brazil is confronted by a dilemma between democracy and the ability to govern which surfaced in politics in the very year in which democracy was reintroduced: the calls for 'political reform' that began to be heard then are still heard today. In the era of military government (1964 to 1985), congress made several attempts to change the political rules. Parties and/or coalitions were banned, the 'chained vote' (voto vinculado) was introduced, and changing parties became more difficult. All these moves mainly aimed at weakening the opposition and safeguarding the parliamentary majority of the regime.

After 1985, other changes were made. New parties were registered, including the Communist Party, electoral lists were revised, and the voting age was lowered from 18 to 16 years. At the same time, four tricky issues were left untouched: the electoral system, the coalition problem, 'party loyalty', and campaign funding. Dedicated parliamentary commissions created to deal with these issues remained unsuccessful. Under president Henrique Cardoso (1992 to 2002), the reform debate continued, but all proposals were confounded by the resolute No of the workers' party. In his first term of office, president Lula da Silva made no major effort to initiate a reform of the political system but announced that he was ready to take this step in the second.

On the electoral system: Since 1946, a personalized system of proportional representation under which both the federal states and the Federal District double as constituencies has been in force in Brazil in both national and local elections. When votes are counted, the number of mandates accorded to a party depends on the number of votes it has won in a given constituency.

Candidates who personally won the highest number of votes will be given a seat in parliament, regardless of their position on the party list. This rule marginalizes the political parties, while each candidate is forced to fight against competitors from his own as well as from other parties. The consequence is that campaigns tend to be extraordinarily intense and expensive.

The electoral system is being criticized not only because of these expenses but also because it weakens the political parties. As a result, reforming the electoral law has moved into the focus of the debate about political reforms. Late in 2003, a select committee established to deal with these reforms proposed introducing a closed-list system under which mandates were to be awarded according to the position of a candidate on the party list, a major initiative which unfortunately was not implemented. Among other things, it was proposed that MPs who change parties should hand their mandate back to their original party to be re-awarded to the next candidate on the list. Another provision designed to strengthen the political parties suggested that elections should be fought not between candidates but between parties from now on. Lastly, the influence of stakeholder groups on the election of specific candidates was to be restricted.

On election coalitions: The existing option for political parties to form election coalitions that present a common list of candidates has long been criticized as one of the weak points in Brazil's electoral system. One of the potential consequences of the current practice is that two or even more parties may hold a single seat in parliament. If minor parties were to conduct their own campaigns, many of them would hardly stand a chance, the immediate consequence being that MPs frequently change sides. Several proposals have been made to restrict the formation of election coalitions. In 1995, a toned-down minimum percentage rule was introduced under which a party or a coalition of parties had to win two percent of the vote and five seats in the parliaments of no less than one third of all federal states in order to obtain a mandate in the house of representatives. However, this rule was declared unconstitutional by the Federal Supreme Court (STF) late in 2006. In order to keep MPs from changing sides too frequently, another initiative suggested forming party federations that would appear in parliament as a kind of party group. However, this initiative also got bogged down in an early stage of the debate.

On 'party loyalty': party affiliation changes are a problem for all parties affected and – naturally – most of all for those in opposition. Often, the allocation of federal funds to MPs is predicated on their political 'good conduct', with government members standing a better chance than opposition MPs. After the elections of 2006, the supreme electoral court (TSE) and the federal supreme court (STF) attempted to strengthen 'party loyalty'. In the future, a mandate was to belong to a party, and any MP who changed sides in

a federal, state, or local parliament would thereby lose his mandate. When the draft submitted by the TSE was endorsed by the STF in October 2007, the event marked a major step forward in the fight against 'party disloyalty'.

On campaign funding: as mentioned above, campaigns are extraordinarily expensive in Brazil. Many candidates have been forced to invest as much as 1 million Euros in their own campaign. As a result, it is the wealthier candidates that are elected, and those that are elected are forced to refinance their expenditures, which fuels corruption and nepotism. Discussions about how to reduce the excessive cost of campaigning and come to grips with the resultant ills have been going on for a long time. The reform proposal of 2003 suggested financing campaigns exclusively from state funds in the future – a regulation which, however, was never adopted, as we know.

In recent years, parliament has not made a single decision to implement political reforms. All attempts mounted so far were confounded by the divergent interests of the political parties. One reform project that was shot down in plenary was championed by Mr Caiado MP and endorsed by the constitutional committee. Submitted to congress early in 2007, the bill was beset by more than 350 amendments and was finally caught up in the parliamentary slings and arrows.

At the same time, both the parties and the executive cannot but be interested in substantial political reforms. The fragmentation of the party landscape severely hampers not only parliament but also the government itself. As the basic problem continues to exist, thus confronting the system of government as such, the call for political reforms is as meaningful now as it ever was.

And indeed, new initiatives have been mounted. President Lula has made good on his promise to use his second term in office to tackle the reform issue. In the middle of 2008, he informed the public that he had instructed his minister for institutional relations to develop a new political reform bill on the basis of former suggestions, and to forward it to congress. The government did indeed present a comprehensive draft which focused on six issues: to safeguard the principle of proportional representation in the future, members of federal, state, and local parliaments will be elected on the basis of closed lists, and only parties, not candidates, will stand for election. Campaign funding will be regulated by the state, and there will be no contributions from private donors. The strict rules laid down by the TSE and the STF to ensure 'party loyalty' will be handled flexibly – changing sides will be admissible within a time window of one month before and after an election. On the subject of ineligibility, the draft suggests not to permit any politicians to stand again who had been sentenced in a criminal court of the first instance. Election coalitions will be banned. Lastly, parties having won less than one per-

cent of the vote at the federal level and less than 0.5 percent in no fewer than one third of all federal states will not receive a seat in the house of representatives.

It appears that the current president really has made it his concern to implement political reforms that are worthy of the name. Whether or not the bill tabled by the government will actually stand up in parliament is still a question. The smaller parties especially will resolutely defend their vested interests. The bigger ones will similarly oppose any regulation that might put individual MPs at a disadvantage. In view of all this, we had better not expect this ambitious project to be implemented before the end of Lula's current term of office, desirable though 'political reforms' in Brazil would be.

IN: *Auslandsinformationen* 1/2009, ISSN 0177-7521, Konrad-Adenauer-Stiftung e.V., Berlin, p.139-142