



Brazil

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In Brazil, local government matters. Of its 5568 municipalities, 45 had more than 500,000 inhabitants each in 2018, corresponding to about 30 per cent of the population and 38 per cent of gross domestic product (GDP). In 2019, municipalities spent an amount equivalent to 7 per cent of GDP on service delivery, exceeding the 6.2 per cent spent by the 26 states and the Federal District.¹

After a period of authoritarian government (1964–1985) that ended with deep fiscal crisis, primarily at the federal level, a wave of democratisation encouraged Brazilians to address popular demands in local arenas. Decentralisation of service delivery came to be associated with democratisation, given that the new Constitution of 1988 recognised municipalities

¹ In this article, unless otherwise stated, the term ‘states’ includes the Federal District.

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as members of the federation with powers of self-organisation. Political autonomy, however, does not necessarily mean financial autonomy: municipalities generally rely on federal transfers for financial support. Furthermore, in contrast to most federations, Brazil's municipalities tend to have weak ties with their home states, consequently finding it difficult to cooperate with them on problems that extend beyond local jurisdictions; at the same time, municipalities maintain direct relations with the federal government in the implementation of public policy in matters such as health care.

With the aim of understanding the place and role of municipalities in the Brazilian federation, this chapter² begins with an overview of the country's key political and economic features, after which it explores the historical development of local government under a federal system that alternates between periods of power centralisation and decentralisation. Municipalities' legislative and operational responsibilities are defined in the Constitution, which as such circumscribes their governance role in the federation. However, increased responsibilities for service delivery have required increased revenue, not only from federal and state transfers but from improved exploitation of municipal tax bases. Despite their progress in expanding funding sources, municipalities still rely heavily on federal and state support, a situation that highlights tensions between financial dependence and political autonomy. A discussion of relations with other orders of government reveals the possibilities for, and difficulties of, cooperation, as well as showing the importance of local political dynamics and instruments of popular participation. The final section draws attention to the importance of the metropolitan regions and identifies emerging issues relating to municipalities in Brazil.

² This chapter draws on elements of Luiz César de Queiroz Ribeiro and Sol Garson Braule Pintol, 'Brazil', in Nico Steytler (ed) *Local Government and Metropolitan Regions in Federal Systems* (McGill-Queen's University Press, 2009) 75–105.

1 COUNTRY OVERVIEW

Brazil became a federal republic in 1889, one encompassing, in 2020, a federal government (the Union), 26 states, a federal district (Brasília), and 5568 municipalities.³ As the fifth-largest national territory in the world, Brazil extends across 8.5 million km² and accounts for nearly half (47 per cent) of South America's land area. Similarly, ranked as the world's sixth-most populated country in 2020, it has 212 million inhabitants. Its population growth rate has fallen, however, from an average of 2.8 per cent per year between 1950 and 1980 to 1.6 per cent between 1991 and 2000; for 2019/2020, the growth rate was estimated at 0.8 per cent per year.

Brazil's population originated largely from indigenous peoples who mixed with early European settlers (mainly Portuguese) and black African slave-labourers imported during the colonial era. At the end of that era in 1822, a period of intense immigration, lasting for more than 100 years, saw an influx of arrivals—generally poor people in search of labour—from Italy, Portugal, Germany, Spain, Poland, Lebanon, Syria, and Japan. Today, the descendants of European immigrants are concentrated in the south of the country and in the country's major city, São Paulo (Southwest Region). Although there are no marked ethnic struggles, social differences clearly exist, with black people by and large making up the country's lower socioeconomic classes. Portuguese is the official language, and, according to a census in 2010, 74 per cent of the population subscribe to the dominant Roman Catholic faith. Protestants account for a further 15 per cent of the population and show a steady increase in numbers.

A highly urbanised country, Brazil is divided into five administrative regions: the North, Northeast, Centre-West, Southeast, and South. By 1970, 55.9 per cent of the total population then of 93 million were

³ For general background, see Celina Souza, 'Federal Republic of Brazil', in John Kincaid and G Alan Tarr (eds) *Constitutional Origins, Structure, and Change in Federal Countries* (McGill-Queen's University Press, 2005) 76–102; Marcelo Piancastelli, 'Federal Republic of Brazil', in Akhtar Majeed, Ronald L Watts and Douglas M Brown *Distribution of Powers and Responsibilities in Federal Countries* (McGill-Queen's University Press, 2005) 66–90; and Fernando Rezende, 'Federal Republic of Brazil', in Anwar Shah *The Practice of Fiscal Federalism: Comparative Perspectives* (McGill-Queen's University Press, 2007) 74–97. See also Fernando Rezende and José Roberto Afonso, 'The Brazilian Federation: Facts, Challenges and Perspectives', in Jessica S Walack and TN Srinivasan (eds) *Federalism and Economic Reform: International Perspectives* (Cambridge University Press, 2006) 143–188.

already living in urban areas. The Southeast had the highest urbanisation rate, with 72.7 per cent of the population classified as urban. It was estimated that, by the end of 2020, almost 90 per cent of the population were living in urban areas.

In 2020, gross domestic product (GDP) amounted to USD 3154 trillion PPP (current international \$),⁴ a per capita GDP of USD 14,893. Brazil ranks among the countries with the highest degree of inequality in income distribution, but aside from differences in household income, it also has huge regional economic imbalances. In 2018, 42 per cent of the population lived in the four states of the Southeast, which produced 53 per cent of the total GDP; by contrast, the Northeast comprised 27 per cent of the population but accounted for only 14 per cent of GDP.

To turn to the country's governance, Brazil has a presidential system of government. The President serves as the head of state and head of government; he or she and the vice president are directly elected for a four-year term, are chosen by an absolute majority of popular votes, and may be re-elected only once for a consecutive term. Ministers of state are in turn appointed by the President. As for the federal legislature, it is bicameral, and all bills must be submitted to both chambers. The upper house, the Senate, has three seats per state, totalling 81 members; the lower house, the Chamber of Deputies, has 513. Senators are elected for eight-year terms⁵; deputies, for four-year terms.

Neither a state's population size nor its economic importance is proportional to its political representation in these houses. For example, São Paulo, both the richest and most populous state, representing 22 per cent of the population and 32 per cent of GDP in 2018, has 70 representatives in the lower house, or 13.6 per cent of 513 seats, whereas the minimum number of deputies for the smallest state is eight—this is the case with Amapá, a North region state, which accounted in 2018 for 0.4 per cent of the total population and 0.2 per cent of GDP yet, but had 1.5 per cent of the seats. The system results in the poorer states of the North and Northeast having more representatives in the federal arena.

⁴ GDP expressed in current international dollars, converted by purchasing power parity (PPP). See World Bank, 'GDP, PPP (Current International \$)', factor https://data.worldbank.org/indicator/NY.GDP.MKTP.PP.CD?end=2020&locations=BR&name_desc=false&start=2017 (accessed 20 June 2021).

⁵ Due to the fact that the term of the senators is eight years, there are rounds of elections for two-thirds of the Senate every four years and for one-third of it four years later.

States are represented equally in the Senate, which, besides voting on all bills, has competence in many areas, including the exclusive competence to set limits on the public debt of the three orders of government—an extremely sensitive issue for intergovernmental relations. In the states and the Federal District, the chief executive and the head of the government is the governor, who appoints the state secretaries. The legislative structure is unicameral, with members elected to serve a four-year term. Every state has its own constitution. Both the Union and the states are provided with judicial branches. The Federal Supreme Court, which adjudicates on all constitutional matters, is composed of 11 judges, appointed for life by the President with the Senate’s approval.

After two decades of military rule, Brazil regained democracy in 1985. Since then, its party-political system has been one of the most fragmented in the world. Currently, no less than 30 parties share the 513 seats of the Chamber of Deputies, with the number of representatives per party ranging from 54 in the case of the Workers’ Party (*Partido dos Trabalhadores*, PT) to less than five, in that of seven other parties. The fragmentary party system demands that the President invests considerable effort into forging alliances to support executive proposals, which increases the cost of coalition management.

In this regard, the relationship between the executive and legislature is the subject of much controversy among scholars. On the one hand, some argue that the Constitution restored powers of the Congress that had been weakened during the dictatorship (1964–1985)⁶; on the other, the view is that the executive branch retained its legislative powers, thereby ensuring that the President’s legislative agenda is always favourably received. Indeed, most bills have been presented by the executive, which has counted on the support of a disciplined governmental party coalition and in so doing achieved a great degree of success. During the period 1989–1994, 1259 federal laws were enacted, 79 per cent of which originated from the executive and only 14 per cent from the legislature; the remaining 7 per cent came from the judicial branch, in accordance with its prerogatives. Nevertheless, some scholars take the view that the power of state governors over their state representatives

⁶ Argelina Cheibub Figueiredo and Fernando Limongi, ‘Constitutional Change, Legislative Performance and Institutional Consolidation’, (October 1995) 29 *Revista Brasileira de Ciências Sociais* 175–200, www.scielo.br/j/rbcsoc/a/TRzMhQMVDX7S7TKjSgrC5x/?lang=en (accessed 12 March 2021).

in the Congress can constitute an obstacle, and hence a countervailing force, to initiatives by the federal executive.⁷

2 HISTORY, STRUCTURES, AND INSTITUTIONS OF LOCAL GOVERNMENT

Although municipal autonomy has been debated in Brazil since imperial times, municipalities—the country’s only political and administrative units of local government—have been recognised as constituent members of the federation only since the Constitution of 1988.

Further back in history, administrative and political decentralisation were at the heart of what came to be known as the ‘municipalism’ ideology that gained importance following the Constitution of 1946, which restored federalism and elections for state executives and legislators, as well as for mayors and councillors.⁸ Nearly 20 years later, a military government took power in 1964 and enacted the Constitution of 1967, which centralised public revenue. To compensate states and municipalities for the loss of revenue, special funds were created to redistribute part of the federal revenues, mainly to poorer units. Towards the end of the 1970s, the authoritarian regime came under crisis and, in the beginning of the 1980s, suffered significant defeats in state and federal legislatures. The state and municipal elections of 1982, the first to be held through direct vote since 1965, allowed governors to recover some of their sources of power, through either alliances with local political leaders or strong support from the urban masses.

This wave of democratisation encouraged citizens to address their demands to the subnational governments closest to them.⁹ The theory that associated re-democratisation with decentralisation reached its pinnacle in discussions held at the Constituent Assembly in 1988. Faced with a weakened central power, governors and mayors united to fight

⁷ David Samuels and Fernando Luiz Abrucio, ‘Federalism and Democratic Transitions: The “New” Politics of the Governors in Brazil’, *Publius: The Journal of Federalism* 30 (Spring 2000) 43–62; Barry Ames, *The Deadlock of Democracy in Brazil: Interests, Identities, and Institutions in Comparative Politics* (University of Michigan Press, 2000).

⁸ President Getúlio Vargas ruled as dictator from 1930 to 1934 and again from 1937 to 1945.

⁹ See generally Frances Hagopian, *Traditional Politics and Regime Change in Brazil* (Cambridge University Press, 1996).

for a larger share of public revenue. Functional responsibilities and role distribution, however, did not receive the same attention. Local governments provide a large range of public services, such as health, education, and refuse removal. In the absence of institutions to facilitate intergovernmental cooperation, decentralisation thus proceeded in a disorganised way. Institutional difficulties such as lack of coordination and mechanisms of cooperation remain in effect to this day,¹⁰ although there has been progress in certain areas such as health services.

These difficulties have a wider context. States are entirely divided into municipalities: in 2020, the country's 5568 municipalities were spread across its 26 states, with the number of municipalities per state varying from 15 in the northern state of Roraima to 853 in the south-eastern one of Minas Gerais. Furthermore, municipalities vary greatly in population size, with the smallest—that of Serra da Saudade—standing at 776 people and the largest—that of São Paulo (a municipality with the same name as its home state)—at 12.3 million. Analysis of how municipalities are distributed according to size reveals a high concentration of small units: 22.4 per cent of them have up to 5000 people, and another 21.6 per cent range have populations ranging from 5000 to 10,000. Even together, however, these two groups account for only 6.1 per cent of the population.

Comprising yet a third group are 16 municipalities, mostly state capitals, with more than 1 million people each and together accommodating up to 43.3 million. Brasília, the Federal District and capital of the country is located in the Centre-West region. With a population of three million in 2020, it has a state status: the Federal District has a governor and performs the tasks of both a state and a municipality. Metropolitan regions, which are created by federal and state law, are not dependent on any special institution of territorial management, as discussed in more detail in the final section.

Notably, in 2018, 48 per cent of Brazil's GDP was generated in the 70 richest cities, where about one-third of the country's population resides. Irrespective of this high diversity among the cities, though, a symmetrical—or one-size-fits-all—approach is generally adopted in dealing with municipal issues. As a result, solutions to municipal problems are prone to ignoring particular factors that could be salient, such as population size,

¹⁰ Sergio Prado, *Cinco ensaios sobre federalismo e a federação brasileira* (Unicamp, IE, Campinas, Coleção Teses, 2017).

specifically urban activities, and the metropolitan characteristics of many of the major cities.

Municipalities may be created by dismemberment from larger ones, invariably so at the initiative of local politicians aiming to gain control of votes and, not unrelatedly, the financial resources that are transferred to the municipality by its home state and the federal government. Often, however, the newborn municipality not only has a small population but poor political, institutional, and financial capabilities.

Under article 18 of the 1988 Constitution, as originally promulgated, the establishment, merger, fusion, and dismemberment of municipalities were to be effected by means of a state law, following consultation—via plebiscite—with the population of the municipalities ‘directly interested’ in the dismemberment. This meant that only the district (an administrative division of municipalities) interested in the separation would vote. The creation of a multitude of new municipalities is attributable to this rule, as demonstrated by the fact that the number of municipalities increased from 4189 in 1988 to 5437 in 1995 and, thereafter, to the current 5568.

However, since 1996, following Constitutional Amendment No. 15, the position has changed. The establishment, merger, fusion, and subdivision of municipalities are now mandated by a state law, within a framework set forth in a supplementary federal law. In terms of this state law, municipal feasibility studies must be conducted; likewise, the publication of these studies, as well as subsequent consultation—again via plebiscite—with the population of the municipalities concerned, must take place as a prerequisite of the state law.

These constitutional directives aimed at deterring the creation of new municipalities, most of which are entirely dependent on the federal government, have been successful, despite the fact that the federal complementary law—which is anticipated to define both the necessary period for the change and the content of the feasibility studies—has not yet been approved by the Congress. However, for municipalities that had initiated the process of subdivision before the enactment of Constitutional Amendment No. 15, a local plebiscite suffices—with the result that, as mentioned, the number of municipalities increased from 5437 at the end of 1995 to the present 5568. The opposite movement, the merger or fusion of municipalities, is not considered a politically viable alternative even though it may well be shown to make sense in terms of management efficiency.

3 CONSTITUTIONAL RECOGNITION OF LOCAL GOVERNMENT

Local government autonomy stands out as a characteristic of Brazilian federalism. As mentioned, the 1988 Constitution entrenches municipal autonomy in articles 1, 29, and 30, prohibiting its suppression or subjection to any kind of restriction, not even by means of constitutional amendment.¹¹

Article 1 asserts that municipalities, states, and the Federal District are indissolubly united, forming the Federative Republic of Brazil. Article 29 provides that municipal autonomy is based on the right of municipalities to govern according to their own organic laws, a provision that thus prevents federal and state rulers from interfering in their internal affairs. The organic law must be voted for and approved by two-thirds of the municipal councillors. Article 29 further defines the political organisation of municipalities, sets out rules for the election of the mayor, deputy mayor, and councillors, and outlines the parameters for their remuneration, subject to constitutional limits.

As for article 30, it grants municipalities the power to enact laws on matters of local interest and to supplement federal and state legislation. The same article states that municipalities are entitled to organise and render, directly or by concession or permission, public services of local interest, as well as to promote, wherever fitting, adequate land use, by means of planning and control of urban land use, apportionment, and occupation.

The Constitution of 1988 introduced deep-seated changes to the structure of Brazilian federalism. Souza describes this as the creation of a new institutional environment involving an increase both in the political and taxing powers of subnational governments and in the empowerment of local communities in decision-making on public policy.¹²

Most municipalities, however, are highly dependent on other orders of government. Despite their economic and social differences, symmetrical treatment is almost absolute. Articles 29 to 31 (and some others in the Constitution) prescribe in a detailed way the legal regime of the

¹¹ Constitution of 1988, article 60.

¹² Celina Souza, 'Sistema Brasileño de Gobierno Local: Innovaciones Institucionales y Sustentabilidad', <http://bibliotecavirtual.clacso.org.ar/ar/libros/edicion/disenso/souza.pdf> (accessed 14 July 2006).

municipalities, with no distinction being made between the size of the population or any other special feature of individual municipalities.

This notwithstanding, it is acknowledged that strong economies and the size of a population may translate into political power and, in some cases, into the better technical capability of public servants. Although they do not have a seat within the federal government, some municipalities feel entitled to negotiate directly with it, not only on issues concerning public policy but also with respect to their capacity to borrow from national public institutions as well as from foreign banks and multilateral institutions. Smaller municipalities depend mostly on their state congressmen, who play the role of ‘federal councillors’ in trying to resolve municipal problems with the help of the national government.

According to Ferrari, the right to self-organisation is the most important legal feature of municipal status,¹³ one that prohibits states from interfering in the direct affairs of municipalities: the political autonomy of municipalities is legally asserted. Among other principles, the Constitution includes the right of residents to elect their local officials—the mayor, the deputy mayor, and the councillors—without interference from the federal or state governments. In addition, municipal autonomy entails legislating on matters of local interest (for example land use) and deciding how to provide public services, organise territory, and use municipal financial resources (or, in other words, determining the municipal budget).

This no doubt serves the purpose of enhancing the accountability of municipalities as the order of government closest to the people, and after 20 years of constitutional recognition of municipal autonomy, positive results are certainly observable. Cities, mainly the larger ones, have been trying to modernise tax administration to increase the collection of municipal tax revenues and thereby enhance the main services delivered to the population, such as health and education. However, other consequences of municipal autonomy require attention. In particular, the weakening of the power of the home state may lead to greater difficulty in cooperating on public policies the scope of which cannot be restricted to municipal borders, as it frequently happens in metropolitan regions.

¹³ Sergio Ferrari, *Constituição Estadual e Federação* (Lumen Juris, 2003) 283.

4 GOVERNANCE ROLE OF LOCAL GOVERNMENT

The division of competences among Brazil's three levels of government encompasses the legislative mandate and the administrative responsibilities assigned to each one by law. The rigid division of legislative competences in the Constitution favours the federal government, to which most legislative competences are allocated.¹⁴ Among the latter are civil and commercial law, credit policy, transport and traffic, mineral resources, immigration, and social security. When concurrent competences are assigned, as in the case of tax, budgetary, financial, economic, and urban legislation, the role of the Union is limited to setting general directives; even so, federal legislation frequently goes into much detail, leaving almost no room for supplementary state or local legislation.

Administrative responsibilities for service provision are shared more flexibly, following the historical trend of decentralisation. Social areas, such as education, health, and social assistance (excepting social security),¹⁵ fall in the category of concurrent competences of the three orders of government. Federal laws, such as the 1990 Health Organic Law and the 1993 Social Assistance Organic Law, have established mechanisms and instruments for cooperative federalism. These legal instruments, mainly regulating the social areas, partially fill the gap created by the lack of a complementary law, which is anticipated to set out the rules for cooperation between the three orders of government with respect to concurrent competences.¹⁶

Despite their creation by state law, municipalities are considered autonomous, being entitled, under article 29 of the Constitution, to the right of self-organisation. As a result, their administrative structures—secretariats and public enterprises, among others—follow municipal organic laws.

Exclusive municipal competences, as per article 30 of the Constitution, include the collection of local taxes, the provision of local services directly or by concession or permission (such as public transport), and setting directives for, and inspection of, land use. Concurrent competences, as per article 23, include health and social assistance; protection

¹⁴ Constitution of 1988, article 22.

¹⁵ The federal government manages the general social security system. States and municipalities may have their own public-servant pension schemes.

¹⁶ Constitution of 1988, article 23.

of the environment and historical, artistic, and cultural assets; guarantees of access to culture, education, and science; incentives for agriculture and cattle-breeding and the organisation of food distribution; development of housing programmes, including house improvements and sanitation utilities; combating poverty and social marginalisation; inspection of concessions for research and exploitation of hydro and mineral resources; traffic safety; and the promotion of tourism and sports.

According to article 211, municipalities prioritise basic education (learners aged seven to 14), pre-school education (those aged four to six), and day-care centres (ages one to three); states prioritise high school (ages 15 to 17), but concurrently basic education (ages seven to 14).¹⁷ In 2020, there were 47.3 million enrolments in basic education, with the municipal school network taking the lion's share of 48.4 per cent of them. By contrast, the state network was responsible for 32.1 per cent of enrolments and the private network, 18.6 per cent. The federal government had a share of less than 1 per cent of all enrolments.¹⁸

The Constitution empowers local governments to grant concessions (that is, contracts) for the provision of services of local interest, such as public transportation and waste collection and disposal. Inter-municipal transportation is a competence of the states, as such requiring that state and municipal agencies in high-density regions work together to implement joint plans for the transportation network.¹⁹

Similarly, municipalities increasingly have joined forces through participation in consortia established for the provision of public services.²⁰ According to the Brazilian Institute of Geography and Statistics (IBGE)—the federal bureau of statistics—public consortia are widespread. Here,

¹⁷ In addition, states develop technical education units and most of the youth and adult education units.

¹⁸ INEP, *Censo da Educação Básica: 2020 Resumo Técnico*, https://download.inep.gov.br/publicacoes/institucionais/estatisticas_e_indicadores/resumo_tecnico_censo_escolar_2020.pdf (February, 2022).

¹⁹ Fernando Rezende and Sol Garson Braule Pinto, 'Financing Metropolitan Areas in Brazil: Political, Institutional, Legal Obstacles and Emergence of New Proposals for Improving Coordination' (2006) 10(1) *Revista de Economia Contemporânea* 5–34.

²⁰ According to Law 11.107 of 6 April 2005, the Union, the states, the Federal District, and the municipalities may participate in public consortia, which are associations of governments formed with the objective of developing a common activity or pooling their resources for achieving a common goal. Public consortia must be established by contract.

the Union, states, and municipalities collaborate in managing specific activities to serve common interests in the provision of public services. Such consortia are especially important in metropolitan spaces, but also enable small municipalities to increase efficiency and reduce costs in the delivery of public services.

According to the IBGE,²¹ 69.2 per cent of municipalities are part of at least one public consortium. Of these consortia, 95.1 per cent are associations of municipalities—13.8 per cent of these involve home states and only 0.8 per cent, the federal government. Most are engaged in service delivery in the fields of health, the environment, and solid waste management.

Private-sector participation in the provision of public services continues to face political obstacles. There is a widespread perception that the transfer of essential public services by means of concession or privatisation may hinder low-income families from accessing them. It has been argued that these families would be unable to pay the service charges necessary to fairly remunerate the invested capital. Politicians have thus been cautious not to advocate for an expanded role for private investment in essential services such as sanitation.

In 2000 the federal Fiscal Responsibility Law (LRF) was passed to improve planning, control, transparency, and accountability in the public sector. Although certain provisions of the LRF could be seen as creating short-term constraints on spending, it is anticipated that they will contribute to public savings over the medium and long term. This framework may also yield new possibilities for increased private-sector participation in financing and supplying urban services, while facilitating partnerships essential to the provision of key urban services.²²

In Brazil, the political institutions of a municipality are similar to those of the Union. The mayor, directly elected through a two-round system, is the chief executive of a municipality and entitled to appoint the municipal executive; the legislative structure is also unicameral, with members of the municipal chamber—the councillors—elected to four-year terms.

Mayors traditionally rule in a fashion similar to that of the President of the country. They are the spokespersons for local demands and interests before the municipal chamber and other orders of government, as well as

²¹ IBGE, ‘Perfil dos Municípios Brasileiros 2019’, www.ibge.gov.br/ (accessed 1 June 2021).

²² Ibid.

before different interest groups in the community. As heads of the executive, mayors perform political, executive, and administrative functions. They can initiate or propose bills for approval by the municipal chamber. As leaders, they also deal with community organisations and other groups, as well as with grassroots leaders, soliciting their support when necessary and consulting with them to better understand their needs in an effort to enhance local governance.

The number of councillors, which is proportional to the municipality's population, ranges from nine to 55.²³ The municipal chamber is assigned three basic functions: the legislative function of adopting laws on matters of exclusive municipal competence; a supervisory function of controlling local administration; and an administrative function in relation to the domestic organisation of the chamber itself. A Court of Accounts is responsible for the external supervision of the chamber, including the management of its financial resources.

Mayors and councillors are full-time officials. Although they receive salaries, they are not entitled to pension benefits. Their salary levels are regulated by the municipal chamber in terms of the limits set by the Constitution.²⁴

5 FINANCING LOCAL GOVERNMENT

Since the mid-1980s, municipalities have become increasingly important role-players in Brazilian federalism, especially given their involvement in implementing universal public policies like education and health—a trend reflected in fiscal indicators such as revenues and expenses. In other words, an increase in municipal usage of the public sector's available revenues has been accompanied by a significant expansion in the competences of these local governments.

²³ The composition of a municipal chamber follows the provisions of the municipality's organic law, within the limits set by the federal Constitution. Maintenance of the chambers, including monthly payments to councillors (within the limits set by federal law), is guaranteed by transfers from the municipal budget.

²⁴ Article 29 of the Constitution limits councillors' salaries according to the population of the municipality. Amounts may vary within a range of 20 to 75% of the salary of the members of the state legislative assembly. The limit of the mayors' salaries follows article 37 of the Constitution. This article sets the amount received by the ministers of the federal Supreme Court as the ceiling for the direct or indirect public administration of any of the powers of the Union, the states, the federal district, and the municipalities.

Municipal tax revenue jumped from 3 per cent of GDP in 1988 to 6.7 per cent of GDP in 2017.²⁵ Municipal participation in total tax collection—by federal, state, and municipal governments—rose from 13 to 20 per cent over these nearly 30 years during which the total tax burden leapt from 22.4 to 33.6 per cent of GDP. This statistic takes into account taxes collected by the municipalities and the participation in taxes collected by federal and state governments. Most of the increase in available municipal revenue comes from efforts at own tax collection and not from intergovernmental transfers, albeit this relationship varies considerably between municipalities. In 2017, about 37 per cent of tax revenues available to municipalities stemmed from their own resources; in 1988—the year of the federal Constitution—this indicator was little more than 20 per cent of the total.

Local governments have the competence to impose and collect taxes on urban property and land (IPTU), on real estate transfers (ITBI), and on service activities (ISS), as well as to charge fees for services, such as refuse collection and issuing business licence, and exact contributions for public lighting.²⁶ However, the autonomy of local governments in developing legislative material on their taxes is limited. Much of the regulation of the taxes on ISS and IPTU—the main local taxes—is provided by the Constitution, its complementary laws, and the National Tax Code.

Generally, own tax revenues have greater relevance for the municipal budgets of populous municipalities than for those of smaller ones. This is due to the fact that large and economically developed urban centres benefit from a significant concentration both of services with added value and of high-value real estate assets.²⁷ In recent years, municipal tax collection in such cities has proven quite satisfactory, thanks not only to their large tax bases but their greater investment in modernising tax administration and inspection.

²⁵ José Roberto R Afonso and Kleber Pacheco de Castro, 'Carga Tributaria Brasileira en perspectiva histórica: Estadísticas revisadas' (2019) 45 *Revista de Administración Tributaria* 139–154.

²⁶ City halls can create new fees to fund the services provided, but may not create new taxes. They are limited to those already mentioned: the IPTU, ITBI and ISS.

²⁷ Angela Penalva dos Santos and Kleber Pacheco de Castro, 'Local Governments' Tax Burden in Brazil: Evolution and Characteristics', in Jolanta Iwin-Garzyńska (ed) *Taxes and Taxation Trends* (IntechOpen, 2018) 245–262.

Notwithstanding the ISS's good performance, though, territorial conflicts arise when some city halls form tax havens by reducing tax rates or the tax base to attract companies. This has become especially common in the case of activities that can be carried out at a distance, such as financial and insurance services, and which require specific regulation. The IPTU, on the other hand, suffers from problems related to the updating of the real estate registry and to official estimates of property values. Although many cities have recently been making efforts to address these issues, the revenue potential of this tax remains to be explored in full.²⁸

Despite the growing importance of own revenues, most local governments' resources—particularly those of smaller municipalities—derive from transfers from the federal and state governments.²⁹ The main intergovernmental transfers to municipalities come from a share of federal and state taxes channelled through the federal Fund for Participation of Municipalities (FPM) and the State Value Added Tax (ICMS). Even in large cities, intergovernmental transfers are a crucial revenue stream: for instance, in Brazil's largest city, São Paulo, about one-third of its current revenue comes from transfers. The FPM and ICMS transfers have important distributional problems, however, and fail to mitigate the strong budgetary heterogeneity between municipalities. While the ICMS tends to be favourable to the locations that host large industrial enterprises, the FPM tends to concentrate (relatively) in the smaller municipalities.

Generally, municipal tax revenues and intergovernmental transfers represent more than 80 per cent of current revenues. In 2019, about 27.9 per cent of total municipal revenues came from own taxes (taxes and fees) and 63.1 per cent from transfers (current and capital), mostly intergovernmental.³⁰ Other resources stemmed from, inter alia, concessions and credit operations. The main item of municipal revenue in 2019 was the ICMS state transfer, representing about 17 per cent of total revenue.

²⁸ Kleber Pacheco de Castro e José Roberto R Afonso, 'IPTU: Avaliação de potencial e utilização sob a ótica da teoria dos conjuntos fuzzy' (2017) 51(5) *Revista de Administração Pública*, [s.l.] 828–853.

²⁹ José Roberto R Afonso and Erika Amorim Arajo, 'Local Government Organisation and Finance: Brazil', in Anwar Shah (ed) *Local Governance in Developing Countries* (The World Bank, 2006) 318–418.

³⁰ Secretaria do Tesouro Nacional, *Balanço do Setor Público Nacional: Ano base 2019* (STN, 2020) 86.

This was followed by the FPM, at 14 per cent of the total. There were also transfers from the Education Fund (FUNDEB) and federal transfers to finance health services under the Unified Health System (SUS), which accounted for 12 and 7.4 per cent of the total, respectively. Among own revenues, the ISS and IPTU accounted for 10 and 7 per cent, respectively.

This composition varies significantly with the population size of the municipalities, however.³¹ Large cities, with at least one million inhabitants, obtain, on average, about 53 per cent of their current revenue from own tax revenue. At the opposite extreme, in cities with up to 10,000 inhabitants, only 8 per cent of current revenue comes from own taxes and fees, making these cities highly dependent on other spheres of government. Almost 50 per cent of their revenue is obtained from the FPM and ICMS, whereas large cities exhibit a percentage of 17 per cent.

The constitutional revenue-sharing system results in a very favourable picture for small municipalities when one looks at per capita revenue. Transfers to municipalities with up to 10,000 inhabitants are 10 times greater than own tax collection, while in municipalities with more than one million inhabitants, tax collection rarely exceeds transfers. All in all, per capita revenue distribution is biased towards small municipalities and unfavourable to those in the middle bands (see Table 1).

Over and above transfers distributed according to the revenue-sharing system set out in the Constitution, another category of transfers has grown in importance: those ‘oriented’ by the Union and linked to the provision of specific services. Such transfers have increased in tandem with the decentralisation of competences that has been under way since 1988 and are focused on the implementation of national policies in areas such as health, education, and social assistance. According to some political scientists, their strict earmarking rules limit decision-making by municipalities even though they increase the latter’s available resources.³² Nevertheless, the increase in transfers to health, by the Union, and to education, by the states, has been essential for decentralising and expanding these services in recent years.

Since the provision of health and education services requires extensive human and material resources, municipal personnel expenses and other current expenses also show a growth rate above that seen in other

³¹ Dos Santos and de Castro (n 27).

³² Marta Arretche, *Democracia, Federalismo e Centralização no Brasil* (Editora FGV, 2012) 232.

Table 1 Composition of municipal per capita revenue by population range (2019)

<i>Population range</i>	<i>Number of municipalities</i>	<i>Average per capita current revenue (in R\$)</i>	<i>Composition %</i>		
			<i>Taxes, fees and contributions</i>	<i>Current transfers</i>	<i>Other current revenue</i>
Up to 10,000	2423	3963.26	8.3%	88.1%	3.6%
10,000 to 20,000	1318	2987.25	10.2%	86.0%	3.7%
20,000 to 50,000	1082	2907.82	14.3%	80.3%	5.4%
50,000 to 100,000	348	2902.71	21.1%	71.6%	7.4%
100,000 to 250,000	202	3204.22	25.7%	64.7%	9.7%
250,000 to 500,000	66	3106.81	35.0%	56.3%	8.7%
500,000 to 1 million	29	3172.21	36.0%	54.5%	9.5%
Above 1 million	16	3549.73	53.1%	39.5%	7.4%
Total	5484	3206.22	29.2%	63.6%	7.2%

Source Prepared by authors. 2019 R\$ per USD purchasing power parities (PPPs) = 2281 [STN – Ministry of Economy and Federal Bureau of Statistics (IBGE)]

Note Sample of 5485 municipalities, which represents 93% of all municipalities and approximately 97% of Brazil's population in 2019

spheres of government. In 1995, 18.3 per cent of public sector personnel expenses were the responsibility of the municipalities,³³ while in 2019 this percentage had increased to 26.8 per cent, according to National Treasury data. At the same time, the participation of municipalities in total public employment increased from 40.6 to 57.9 per cent.³⁴

On the expenditure side, personnel expenses (payroll and social contributions) and other current expenses represented, respectively, about 52 and 40 per cent of the municipalities' budget in 2019, with little significant variation according to population size. Although the burden of social security benefits for retired employees is much lower for muni-

³³ De Queiroz Ribeiro and Braule Pinto (n 2) 76–105.

³⁴ Felix Lopez and Erivelton Guedes, 'Três décadas de evolução do funcionalismo público no Brasil (1986-2017)', *Texto para Discussão n. 2579* (Ipea) 56.

cialities than for states and the federal government, it becomes more significant in larger cities. This situation may get worse since local governments, in keeping with their constitutional mandate, take over the area of primary education without having built sound social security systems. This is demonstrated by the growth in the proportion of municipal civil servants relative to the total number of civil servants in the Brazilian public sector, a figure which, according to recent estimates, already stands at 60 per cent.³⁵

Expenditure on debt service, in turn, accounted for just under 1 per cent of the municipal budget, much of which was concentrated in large municipalities. Investment expenses consumed, on average, 5.6 per cent of the local budget. In this case, there is also little variation between municipalities in different population ranges.

The expenses by functions of government show that a large part of the municipal budget is dedicated to social areas: 27 per cent for education, 25 per cent for health, and 3 per cent for social assistance. These functions, especially health, have become ever more prominent in the municipal budget. According to the Federal Constitution (article 212) municipalities must spend at least 25 per cent of their main revenue from taxes and transfers on education and 15 per cent on health. In the latter case, the average real municipal expenditure is already approaching 25 per cent of revenue, according to data from the *Sistema de Informações sobre Orçamentos Públicos em Saúde* (SIOPS).³⁶

This increase in health and education expenditure reduces the scope for spending in other areas, including those related to basic responsibilities of cities such as urban services. The latter represented 8.8 per cent of municipal expenditures in 2019, whereas in 2005 it accounted for 10.8 per cent of the total.³⁷ Expenditure on municipal legislation accounts, on average, for 2.5 per cent of the budget of city halls, but has a clear inverse relationship with population size, being more relevant in small municipalities. Finally, public security spending has increased in municipalities in the wake of the fiscal crisis in states (which are responsible for this area). In 2019, 1 per cent of the local budget was allocated to this area.

The composition of municipal budgets reveals a deep contrast between municipalities' financial status and their political autonomy. The smaller

³⁵ Ibid.

³⁶ Available at <http://siops-asp.datasus.gov.br/cgi/siops/serhist/MUNICIPIO/indicadores.HTM> (accessed 1 June 2021).

³⁷ De Queiroz Ribeiro and Braule Pinto (n 2).

the municipality, the larger the gap is between political and financial autonomy. Even major cities (where own revenue is more significant) cannot be considered financially autonomous, due to extensive revenue-earmarking by the Union and states. The result is a lack of efficiency and accountability, as service delivery varies according to available resources and not to the needs of the population.

There is widespread recognition that Brazil's high tax burden, about 35 per cent of GDP, is not translated into corresponding services for the people: notwithstanding the large amount of public expenditure, the quality of these services is considered poor. The uneven distribution of institutional capacity among subnational governments is at odds with the continuing process of decentralisation. Among the reasons for inefficiency are the rigidity of the budget composition, the lack of consistent programmes to improve management, and the difficulties that the different orders of government face when attempting to cooperate with each in the provision of public services.

6 SUPERVISING LOCAL GOVERNMENT

Supervision of local government is a task shared by the federal executive, the states, the municipal chambers, and the courts of accounts. The federal Ministry of Economy developed a system of control to ensure transparency and compliance with legal requirements in regard to, inter alia, limits on indebtedness, personnel expenditure, and the assignment of own resources to education and health. In terms of the Fiscal Responsibility Law, compliance with those requirements is necessary for receiving discretionary transfers from the federal government. Other ministries, such as those of health and education, monitor the use of funds that are transferred to municipalities to implement particular federal policies and programmes. Furthermore, the federal Court of Accounts, which is in charge of monitoring the federal government, may audit the use of federal funds transferred to states and municipalities.

According to article 31 of the Constitution, supervision of a municipality shall be exercised by the Municipal Council (*Câmara dos Vereadores*) but through outside control. Article 71 appoints the courts of accounts as ancillary bodies of the Council to monitor budget execution and fiscal accounts, as well as enforce other specific legal requirements. The Constitution expanded the competence of these courts, granting them the power to impose fines on both elected and non-elected

public officials. Although not technically part of the judicial system, the courts operate as quasi-independent judicial authorities. They have several features typical of judicial bodies, such as strict procedural rules, collegial decision-making, security of tenure for their board members, civil-service status for their employees, and applying the right of reply.³⁸

There is a Court of Accounts in each state to supervise and monitor both the state and the municipalities. In some of these states, however, there is one court to supervise the state and another to deal with all the municipalities. The major municipalities of São Paulo and Rio de Janeiro have courts of accounts dedicated only to them.

States do not exercise any kind of regular supervision of municipalities. However, they may monitor the use of discretionary transfers following agreements between municipalities and their states.

Despite broad municipal administrative and political autonomy, there is room for the state or Union to intervene in a municipality. According to article 35 of the Constitution, the four instances where intervention is permissible are (1) a funded debt is not paid for two consecutive years, without reasons of *force majeure*; (2) failure to render proper accounts; (3) failure to assign a minimum amount of revenue to health and education, as required by the Constitution; and (4) the Court of Justice grants a petition to ensure observance of the principles indicated in the state constitution or to enforce the law or judicial orders and decisions.

7 INTERGOVERNMENTAL RELATIONS

Local governments are major partners in the implementation of national public policies, especially those policies aimed at guaranteeing key social rights. The proximity of local governments to citizens may improve efficiency in assigning scarce public resources, particularly those related to social welfare.

Relations between the federal government and municipalities should be based on close cooperation. Sharing tax revenue, for example, is aimed at compensating for huge regional economic imbalances. Cooperation

³⁸ Carlos Mauricio Figueiredo, Marcus André Melo and Carlos Pereira, 'Political and Electoral Uncertainty Enhances Accountability: A Comparative Analysis of the Independent Courts of Accounts in Brazil', paper presented at the 9th Annual Conference of the International Society for New Institutional Economics (ISNIE), Barcelona, Spain, 22–24 September 2005.

between the Union and subnational governments on specific public policies, such as health and education, seeks to ensure that basic social welfare is accessible to all citizens and complies with national standards, irrespective of the region in which citizens live. Cooperation in certain areas, such as the National Health System (SUS), may be governed by federal legislation. Other joint initiatives may be developed through voluntary agreements (for example, in regard to environmental protection).

Since 1994, when the fiscal stability Real Plan was launched, inter-governmental relations were restructured to such an extent that the type of federalism that emerged in the wake of the 1988 Constitution was reshaped. By controlling subnational debt, the federal government was able to impose fiscal supervision. Treating highly indebted municipalities in the same way as those with low or non-existent debt harmed municipal autonomy. In addition, faced with the increased earmarking of resources (such as the minimum investment thresholds in health in 2000), local governments have lost their leeway to seek creative solutions and prioritise the needs of their citizens.

However, restrictions and the co-responsibility of municipalities for maintaining sound fiscal regimes may force local governments to seek greater rationality and efficiency in managing public resources. The procedures and limits set by the Fiscal Responsibility Law (for instance in regard to indebtedness and personnel expenditure) stimulate the diffusion of good bureaucratic practices and compliance with the law. This notwithstanding, restrictions may have the adverse effect of discouraging innovation in public policy. Furthermore, strict limits on the use of resources may harm efficiency because governments, instead of providing the services required by their populations, will offer those legally prescribed.

Cooperation of state governments with municipalities is generally restricted to the revenue-sharing system, as mandated in the Constitution. Although part of the state value-added tax is shared according to a state law, this law is not used by the states as an instrument to enforce cooperative policies. As discussed above, states lack the institutional capacity to coordinate municipalities. States, therefore, must resort to, and rely on, the political alliances of governors with mayors, which are clearly inadequate mechanisms to sustain long-term project development.

In attempting to push a shared agenda, municipalities have formed representative institutions through which their concerns are voiced collectively. These institutions have enabled municipalities to exert political influence on various orders of government, but more so on the federal

government. At present, mayors convene in national associations, two of which are particularly important. A national front of mayors—*Frente Nacional de Prefeitos* (FNP)—represents mainly the mayors of major cities, while the *Confederação Nacional de Municípios* (CNM) represents those of small municipalities. These associations have direct access to the President, the Congress, and state governors in order to address problems in the areas of finance, health, and education, among other things.

In addition to national associations, state and micro-regional organisations meet regularly to exchange management experiences and to fight for common municipal interests. It is worth noting that these initiatives to organise local government have proved more successful in the southern states, where the European heritage is stronger.

8 POLITICAL CULTURE OF LOCAL GOVERNANCE

The federal Constitution guarantees the political autonomy of municipalities. Mayors, deputy mayors, and councillors are elected directly in municipal elections held simultaneously throughout the country. These elections for a four-year term fall in the middle of the four-year term of the President, state governors, the Congress (senators and federal deputies), and state deputies. This means that, every two years, Brazil elects political representatives at either the local or national and state level.

Municipal elections, even in small municipalities, are contested by the same political parties that contest the national and state elections. These parties are organised nationally. Nevertheless, campaigning for votes locally may be the starting-point for a political career in the national arena. Often the mayors of large cities and important capital cities pursue nomination as candidates for state governments and even the presidency.³⁹ Similarly, the mayors and city councillors of inner cities may be elected for the state or even the federal chamber.

In 2020, these positions were filled by municipal elections, with 5565 mayors, 5565 vice mayors, and 56,810 councillors occupying these positions in municipal politics. Although voting has been obligatory since 1932,⁴⁰ Brazil is experiencing increasing abstention in the electoral process. From 1996 to 2012, the rate was about 18.1 per cent. In 2016,

³⁹ Marco Antônio Carvalho Teixeira, 'O Jogo Político nos Municípios e as Eleições', in *Os Municípios e as Eleições de 2000* (Fundação Konrad Adenauer, 2000) 99.

⁴⁰ Voting is mandatory, but optional for people over 16 and under 18, over 70, and illiterates.

abstention in the first-round elections was at 17.6 per cent, lower than second-round's 21.6 per cent, but in 2020, second-round elections registered abstention of almost 30 per cent. Political scientists agree that the Covid-19 pandemic may explain most of the difference. The economic crisis and the reduction, or even lack, of income due to rising unemployment affected voters' behaviour. Besides that, the pandemic drastically curtailed face-to-face political events.

As far as gender representation is concerned, 34 per cent of the candidates in the 2020 election (mayors and councillors) were women. There was a slight increase in the number of women elected as mayors: in the 2016 election, 11.7 per cent of elected mayors were women, and in 2020, 12 per cent. Yet in the capital cities, just one woman was elected in 2016 and another in 2020. The number of women councillors increased from 13.5 to 16 per cent in the same period.

In regard to racial representation, in the 2020 municipal elections, blacks and browns increased their participation as candidates. About 50 per cent of candidates described themselves as blacks and browns.⁴¹ They comprised more than 30 per cent of the elected mayors as well as 45 per cent of municipal councillors,⁴² although far less than the participation of browns and blacks in Brazilian population at that time—56 per cent of total population.

9 COVID-19'S IMPACT ON THE ROLE OF LOCAL GOVERNMENT

Covid-19 is arguably the biggest health crisis Brazil has ever faced, but its management during the period from 2020 until the beginning of 2021 was questionable, with the President worsening the situation by down-playing or denying the pandemic's impact on society. Against that backdrop, this section examines federative relations and the role of local governments in the context of Covid-19.

Due to Brazil's strong decentralisation of public health services, subnational governments have played a fundamental role in combating the pandemic. In 2019, municipalities were responsible for 50 per cent of

⁴¹ The Superior Electoral Court discloses statistics by racial condition following the classification adopted by the Instituto Brasileiro de Geografia e Estatística—IBGE, the Brazilian federal bureau of statistics; White, brown, black, non-informed, indigenous and yellow people. <https://www.tse.jus.br/eleicoes/estatisticas/estatisticas-eleitorais>.

⁴² See www.tse.jus.br/eleicoes/estatisticas/estatisticas-eleitorais (accessed February 2021).

expenditure in health care, 60 per cent of which was financed from their own purse.⁴³ Ten years earlier, municipalities already accounted for 46 per cent of that expenditure. Considering state governments' presence, federal government participation is residual—it is limited, basically, to hospitals at federal universities. As a result, subnational governments were at the frontline of the high growth in demand for services associated with the treatment of Covid-19, services which required a large number of additional resources.

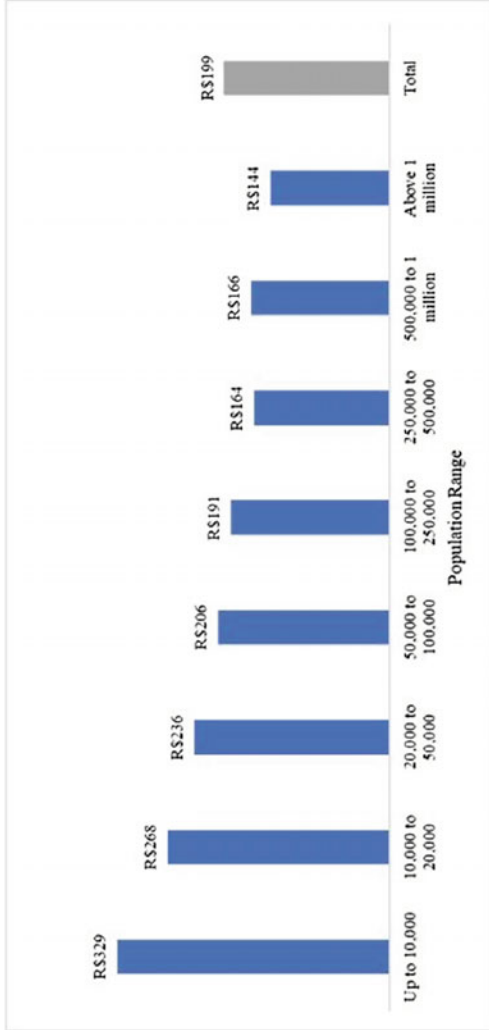
At the same time, however, the control measures of social isolation and restriction on movement resulted (notably in the first months of the pandemic) in a reduction of economic activity, along with a drop in tax collection at the three levels of government and a consequent decrease in constitutional transfers from the Union and the states to the municipalities. Moreover, city governments have restrictive rules for carrying out credit operations and are prohibited by the golden rule from financing current expenses out of capital revenue. Under those circumstances, the federal government had to grant extraordinary transfers.

In 2020, the federal government adopted three major measures⁴⁴ amounting to approximately 1.2 per cent of the GDP. Resources were earmarked in part for health expenditures and the remainder for discretionary use. Some analysts believed that the volume of resources assigned to municipalities was more than adequate to compensate them for their loss of revenue and increase in expenses due to the pandemic.⁴⁵ However, given that federal criteria for assigning resources did not consider factors such as the diversity of municipalities' fiscal structures and their responsibilities for health-care delivery, the result was that some municipalities were overcompensated while others were left under-financed and unable to honour their additional commitments. As a rule, medium and large municipalities were passed over in the distribution of federal resources within the scope of Covid-19 in 2020. An initial analysis, based on per capita distribution, shows that there is an inverse relationship between federal extraordinary transfers and population size (see Fig. 1).

⁴³ Statistics available at SIGA Brasil, 'an information system on the federal public budget', www.12.senado.leg.br/orcamento/sigabrasil (accessed 1 February 2021). See also Secretaria Do Tesouro Nacional (n 30).

⁴⁴ The measures: Act 14.041/2020; Complementary Act 173/2020; and Ordinance 1.666 of the Ministry of Health.

⁴⁵ Marcos Mendes, *As Finanças Municipais em 2020* (Insper, 2020) 21.



Prepared by the authors; 2020 RS per US\$ Purchasing power parities (PPPs)=2,362 Sources: Ministry of Economy and Federal Bureau of Statistics - IBGE Federal Legislation Law 14.041/2020, Complementary Law 173/2020, Ordinance MS 1.666/2020, available at: http://www.planalto.gov.br/ccivil_03/leis

Fig. 1 Extraordinary federal transfers to municipalities (2020—R\$ per capita)

Furthermore, it is important to consider that the effects of Covid-19 tend to be more acute in large urban centres, owing not only to the greater circulation of people, but also to the concentration of hospital beds—among them the intensive care units (ICUs) specifically set aside for Covid-19. In Brazil, given its territorial distribution of health care, small municipalities send their patients for treatment in nearby medium and large cities. It is an effect of the regionalisation of medium- and high-complexity medical procedures—something consistent with efficiency of public spending on health. Factors like these, however, were not considered when allocating federal transfers, resulting in a poor distribution of resources.

More important than direct transfers to city halls was emergency assistance to families, an intervention which wound up fulfilling the dual role of averting a deeper economic crisis and, consequently, of enabling tax collection to recover more quickly than otherwise. A study⁴⁶ points out that in the absence of emergency aid, Brazil's GDP in 2020 could have shrunk by between 8.4 and 14.8 per cent—officially, however, the drop was 4.1 per cent, according to the IBGE.⁴⁷

In addition to the impact of Covid-19 on the budget of the municipalities, what should be noted is the relevance that mayors and governors assumed, and the role they played, in not denying the pandemic but confronting the federal government and adopting measures recommended by international organisations and health experts.

Use of personal protection equipment (masks and sanitisers) and restrictions on the movement of people to reduce the rate of infection came about thanks only to the efforts of state and municipal governments. When faced with dramatic pictures of the use of hospital beds in public hospitals, mayors adopted a stance aligned with science—a stance diametrically opposed to the federal government's. Indeed, the Union attempted to restrict the autonomy of subnational governments with regard to measures to combat Covid-19. The Supreme Court, however,

⁴⁶ Marina Sanches and Matias Cardomingo e Laura Carvalho, 'Quão mais fundo poderia ter sido esse poço? Analisando o efeito estabilizador do Auxílio Emergencial em 2020', in *Nota de Política Económica n° 007* (MADE/USP, 2021) 8.

⁴⁷ Available at <https://agenciadenoticias.ibge.gov.br/agencia-noticias/2012-agencia-de-noticias/noticias/30166-pib-cresce-3-2-no-4-tri-mas-fecha-2020-com-queda-de-4-1-a-maior-em-25-anos> (accessed 1 February 2021).

confirmed the competing competence of subnational governments in this case.⁴⁸

Due to the great fiscal and socioeconomic differences between local governments and the evolution of the disease itself, the measures local governments took to combat Covid-19 diverged significantly while also lacking essential coordination. In other words, there was indeed cohesion among local governments—notable, given their history of competition and disagreement—but with little coordination. This characteristic hindered their work and led to inefficiencies. The vacuum left by the federal government in dealing with the problem can be cited as the main reason for the coordination problems the Brazilian federation faced during the pandemic. For example, no crisis management committee was established in order to bring together representatives of the three levels of government and ensure a smooth, synchronised response, or allow local and regional governments to play a more active role in managing the crisis.

Even so, some local governments, depending on their fiscal capacity, took steps to mitigate the socioeconomic effects of the pandemic. A survey of 302 municipalities found that they implemented the following measures, among others: distribution of food baskets to vulnerable populations (98 per cent); investments in health care (96 per cent); social assistance policies for the vulnerable populations such as the homeless or destitute (91 per cent); protection of women and children from domestic violence (76 per cent); employment guarantee policies (50 per cent); aid policies for local companies (43 per cent); and basic income grants to the most vulnerable (39 per cent).⁴⁹

As regards direct measures in health and of a socioeconomic nature, the city of Niterói, in the state of Rio de Janeiro, became an exemplary performer and was lauded in the international media by the likes of Deutsche Welle⁵⁰ and El País.⁵¹ It is important to note, however, that

⁴⁸ Available at www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=441447 (accessed 5 July 2021).

⁴⁹ IBOPE, *Pesquisa Impactos da COVID-19 nos Municípios* (São Paulo: IBOPE Inteligência, 2020) 52.

⁵⁰ Available at www.dw.com/pt-br/como-niter%C3%B3i-se-tornou-exemplo-na-prepara%C3%A7%C3%A3o-contra-a-covid-19/a-53042311.

⁵¹ Available at <https://brasil.elpais.com/brasil/2020-05-07/niteroi-se-antecipa-ao-coronavirus-e-planeja-testar-mais-que-eua-e-coreia-do-sul.html>.

Niterói is a point outside the curve in terms of revenue structure and local economic dynamics—among other things, it enjoys an important flow of resources from oil royalties. This is not common for municipalities in Brazil, where federal ‘help’ to local governments is usually fully warranted.

Local governments were still playing a proactive role at the beginning of 2021, a point at which the country underwent its second, and more lethal, wave of Covid-19. Given the inefficiency (and consequent delay) of the federal government in acquiring vaccines, and supplies to produce vaccines in national laboratories, the municipalities agreed to purchase vaccines—something unprecedented in the history of the country, given that a successful National Immunisation Plan has been in place since the mid-1970s (albeit relegated to the background by the federal government during the pandemic). Led by the FNP, a large consortium of municipalities was created for the joint acquisition of vaccines.⁵² The consortium’s endeavour was legally supported not only by a 2005 law but by a Supreme Court decision made in favour of the municipalities due to the urgent need to vaccinate the population.

In Brazil, the federal state was a complicating factor in a situation of acute crisis, yet at the same time it was the federative model—and, within it, the action taken by subnational governments—that enabled the country to avert a potential humanitarian disaster.

10 EMERGING ISSUES AND TRENDS

This chapter has discussed the place and role of municipalities in Brazil, which are responsible for meeting the growing social obligations assigned to them by the Constitution. As mentioned, they spend more on service delivery than the 26 states and the Federal District, and are responsible for 44 per cent of direct public investment, yet face several challenges.

Regardless of regional inequality with respect to economic and technical capabilities, municipalities have the same status as political and administrative units, and thus are accorded symmetrical treatment with respect to their rights and duties. Besides that, scarce resources, most of

⁵² By 16 March 2021, about 2400 municipalities had already joined the consortium. List available at <https://multimidia.fnp.org.br/biblioteca/documentos/item/932-lista-final-municipios-que-manifestaram-interesse-em-aderir-ao-consorcio-publico-para-comprade-vacinas> (accessed 5 July 2021).

which are earmarked, reduce the room for decision-making in local policies aiming to fulfil the specific needs of the population. Furthermore, elected representatives, who are entitled to vote on the budget, are rarely able to understand, or interested in, the social and economic needs of the cities and their populations. In closing this chapter, some emerging issues are briefly discussed.

On the fiscal side, there are two important issues to address: tax reform, and growing concern about civil servants' own social security systems, a theme that explains most of the fiscal difficulties currently experienced by the states.

In recent years, the tax reform agenda has been discussed in the Congress, although it does not always receive the necessary interest from the federal government. Changes in the country's tax system have direct implications for municipal revenue and autonomy. Indirect taxes in Brazil, under the competence of the three spheres of government, are the focus of the reform proposals under discussion. The greatest risk for municipalities is losing their main tax, ISS, and receiving, as compensation, transfers from other spheres. Giving up the tax with the greatest potential revenue could overhaul the horizontal distribution of resources among local governments, substantially harming the fiscal condition of medium and large cities, whose major tax is the ISS.

As mentioned, the diversity among municipalities usually translates into conflicting interests, as is the case with tax reform. An increase in transfers may benefit small municipalities and more than compensate for the loss of ISS collection, but the opposite result is anticipated by medium and large cities, making it difficult to reach consensus.

Brazil made an important pension reform in 2019, under Constitutional Amendment 103. However, the new directives concerning fiscal sustainability are not obligatory for states and municipalities, since the text leaves it up to each state and municipality to approve, in its respective legislative house, a more stringent regime of its own. This has impacted on just more than 2000 municipalities which have their own regimes (the rest, linked to the general regime, have already been affected by the reform). The mayors of these cities allege political difficulty in approving reforms of this scope, due to pressure from civil servants and resistance in the City Council. Not by chance, just over a year after the amendment, few municipalities had approved changes to the rules of their regimes. Their own regimes, however, present a clear trajectory of unsustainability

in the long term, requiring the adoption of new rules as quickly as possible.

Federative coordination assumes particular importance in the implementation of public policies, an area in which municipalities still need to make progress. In the health sector, a tripartite intergovernmental commission would be an innovation in public policy management—it would serve as a forum for negotiation, discussion, and decision-making among managers in regard to operational matters and to the development of national, state, and regional pacts towards a unified health system. The institutionalisation of intergovernmental arenas is thus an important point for federative coordination.

Another important challenge concerns the multiple dimensions of providing urban services relating to transportation. The urban public transport sector, concentrated mostly in metropolitan regions, has been subject to financing problems over time, given that it is based on a model in which the user bears the sole responsibility for the cost of the service. With a few exceptions, there is no public fund to subsidise tariffs in a sector essential for the urban economy and the welfare of citizens who have to spend an increasing amount of time commuting between their residence and workplace. The recent increase of mobile applications (such as Uber) and other sharing platforms has aggravated the financial situation of concessionary companies year after year. The Covid-19 pandemic added yet another challenge: How to operate on a minimal scale in a scenario of social isolation and the growth of remote work, while still complying with the health protocols required in this new reality?

In addition to being highly urbanised, Brazil has a complex urban system. The survey Area of Influence of Cities—REGIC 2018, produced by the IBGE—defines the hierarchy of Brazilian urban centres and delimits the areas of influence associated with them.⁵³ The survey identified 15 main urban centres from which all cities in the country receive direct influence, whether from one or more metropolises simultaneously.

The theme of metropolitan regions—MRs—deserves attention. The history of these institutions is marked by two phases. In the 1970s, the federal government, to support national development planning, created nine MRs to be managed and controlled by state governments. The MRs

⁵³ For more information about REGIC, go to <https://www.ibge.gov.br/geociencias/cartas-e-mapas/redes-geograficas/15798-regioes-de-influencia-das-cidades.html?=&t=oque-e>.

were supposed to play an administrative coordination role, both in the provision of services of common interest to the states and municipalities and in regional and local planning. Within a framework of high federal centralisation, however, they had no decision-making power. The second phase commenced with the enactment of the 1988 Constitution. Its decentralisation drive entailed important changes in the management of MRs. As mentioned, municipalities were elevated to members of the federation with a status like that of states. The competence to create and organise metropolitan areas, however, was transferred from the national government to the states, a move politically inconsistent with the new status of municipalities.

Insofar as states cannot interfere with municipal autonomy, the MRs, created to oversee the organisational and operational integration of public services, have remained mere administrative institutions without political status or legislative power. Without effective means to enforce coordination, a state government cannot prevent conflicting and overlapping policies from arising between municipalities in an MR and between those municipalities and the state. Furthermore, there are no legal criteria to guide the identification of urban agglomerations with metropolitan functions that should be classified as MRs. The political interests of state governors and mayors prevail in defining the boundaries of metropolitan areas. Presently, there are 76 metropolitan regions, which comprise 1038 municipalities spread across 23 of the 26 states.

Examining the metropolitan reality in 2005, Observatório das Metrópoles conducted a national study of major urban spaces, in particular those nucleated around state capital cities, to assess the importance of these agglomerations in the national and regional urban network.⁵⁴ Only 15 urban agglomerations, where population and wealth as well as the direction and coordination of the national economy are concentrated, were identified as real MRs,⁵⁵ which is nearly half the number of officially recognised MRs. The economic relevance of these 15 agglomerations,

⁵⁴ Observatório das Metrópoles is a virtual institute committed to the study of metropolitan problems, comprising more than 200 researchers working at 51 institutions, such as government agencies and nongovernmental organisations, under the joint coordination of the Urban and Regional Planning and Research Institute (IPPUR) at the Federal University of Rio de Janeiro and the Federation of Social and Educational Assistance Agencies (FASE).

⁵⁵ Indicators to identify clusters with metropolitan status and to rank them were population, number of bank branches, mass of personal income, concentration of cutting-edge

each of which includes a large number of municipalities, is remarkable. In 2004, about 67 million people lived in their 295 municipalities, within 154,000 km². Although this represents only 1.8 per cent of the country's surface, it hosts 39 per cent of the economically active population and 43 per cent of the labour force in the manufacturing industry. Yet these are the same areas where unequal social conditions often manifest their most perverse effects.

Notwithstanding the social and economic importance of MRs, institutional arrangements and public policies to boost state and local government coordination in metropolitan areas have not yet been developed. The result is a gap between deep social needs and the institutional capacity to formulate and implement feasible solutions. The lack of incentives for cooperation between municipalities (and between them and the states) induces autarchic behaviour when confronting problems that have impacts beyond jurisdictional borders. For example, investments in infrastructure made by the state and by the municipalities along the territory of a metropolitan region are not coordinated, as a result wasting scarce resources.

In 2015, Law 13,089 brought to life the Statute of the Metropolis with the purpose of establishing guidelines for the planning, management, and implementation of public functions of common interest to metropolitan areas and urban agglomerations through

sharing of responsibilities and actions between entities of the Federation in terms of organization, planning and execution of public functions of common interest, through the execution of an integrated and articulated system of planning, projects, financial restructuring, implementation, operation and management.⁵⁶

One of the instruments to be used is an integrated development plan (*Plano de Desenvolvimento Urbano Integrado*, PDUI) approved by state law. It should be prepared jointly by representatives of the state, the municipalities that are members of the regional unit, and civil society organisations. Presently, only a few MRs have approved their PDUIs. Besides the institutional difficulties faced by MRs, the deterioration of

activities related to those considered productive, financial movement, headquarters of the 500 largest companies in Brazil, and number of airline passengers.

⁵⁶ Law 13.089 of 12 January 2015.

the fiscal situation of most states and the shortage of resources for investment by the states and municipalities serve to postpone once more the search for solutions for the deep problems experienced by people living in metropolitan areas.

This chapter has highlighted the importance of municipalities in Brazil, a country of continental dimensions where regional economic and income inequality prevails. Decentralisation accords municipalities a prominent role in providing services to citizens, as was evidenced in the Covid-19 pandemic. The lack of federal coordination during this period was, to a large extent, compensated for by municipal initiatives which, it is true, had a generous contribution of federal resources. As such, the municipal role should remain and even expand, not only for the duration of the triple crisis—health, economic, and social—but also because of unmet demands that have accumulated in areas where municipalities have a strong presence, such as education, as a result of the stoppage of activities and the failure to develop alternative ways to deliver education and social assistance in the context of an impoverished population.

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