

# 1988 CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL

Annotated English Translation

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## PREAMBLE

We the representatives of the Brazilian People, meeting as the National Constituent Assembly, to institute a Democratic State destined to assure the exercise of social and individual rights, liberty, security, well-being, development, equality and justice as supreme values of a fraternal, pluralistic and unbiased society, founded on social harmony and committed, in the domestic and international areas, to the peaceful solution of disputes, promulgate, under the protection of God, the following CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL.

## TITLE I

### FUNDAMENTAL PRINCIPLES

Art. 1<sup>o</sup>. The Federative Republic of Brazil, formed by the indissoluble union of States and Counties (*municípios*)<sup>1</sup>, as well as the Federal District, constitutes a Democratic State of Law and has as its bases:

- I — sovereignty;
- II — citizenship;
- III — the dignity of the individual;
- IV — the social values of work and free enterprise;
- V — political pluralism.

Sole Paragraph. All power emanates from the people, who exercise it through elected representatives or directly, according to this Constitution.

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<sup>1</sup> *Município* is usually translated by the English cognate "municipality," but its administrative characteristics are actually closer to a county than a municipality because it includes the rural territory surrounding an urban area.

Art. 2<sup>o</sup>. The branches of the Federal Government are the Legislative, the Executive and the Judiciary, which are independent and harmonious with each other.

Art. 3<sup>o</sup>. The fundamental objectives of the Federative Republic of Brazil are:

I — to construct a free, just and unified society;

II — to guarantee national development;

III — to eradicate poverty and marginal living conditions and to reduce social and regional inequalities;

IV — to promote the well-being of all, without prejudice as to origin, race, sex, color, age and any other forms of discrimination.

Art. 4<sup>o</sup>. The international relations of the Federative Republic of Brazil are governed by the following principles:

I — national independence;

II — prevalence of human rights;

III — self-determination of peoples;

IV — non-intervention;

V — equality among States;

VI — defense of peace;

VII — pacific solution of conflicts;

VIII — repudiation of terrorism and racism;

IX — cooperation among people for the progress of humanity;

X — concession of political asylum.

Sole Paragraph. The Federative Republic of Brazil shall seek the economic, political, social and cultural integration of the people of Latin America, with a view towards forming a Latin-American community of nations.

## TITLE II

### FUNDAMENTAL RIGHTS AND GUARANTEES

#### CHAPTER I

##### INDIVIDUAL AND COLLECTIVE RIGHTS AND DUTIES

Art. 5<sup>o</sup>. Everyone is equal before the law, with no distinction whatsoever, guaranteeing to Brazilians and foreigners resident in the Country the inviolability of the rights to life, liberty, equality, security and property, on the following terms:

I — men and women have equal rights and duties under the terms of this

II — no one shall be compelled to do or refrain from doing something except by virtue of law;

III — no one shall be submitted to torture or to inhumane or degrading treatment;

IV — the manifestation of thought is free, but anonymity is forbidden;

V — the right of reply is assured, in proportion to the offense, as well as compensation for pecuniary, moral<sup>2</sup> or reputational damages;

VI — freedom of conscience and belief is inviolable, assuring free exercise of religious beliefs and guaranteeing, as set forth in law, the protection of places of worship and their rites;

VII — rendering of religious assistance to collectively interned civilian and military entities is assured, in the terms of the law;

VIII — no one shall be deprived of any rights because of religious beliefs or philosophical or political convictions, unless invoked in order to be exempted from a legal obligation imposed upon all by one refusing to perform an alternative service established by law;

IX — expression and communication of intellectual, artistic and scientific activity are free, independent of any censorship or license;

X — personal intimacy, private life, honor and reputation are inviolable, guaranteeing the right to compensation for pecuniary or moral damages resulting from the violation thereof;

XI — the home is the individual's inviolable asylum, and no one may enter it without the dweller's consent, except in cases of *flagrante delicto*, disaster or rescue, or, during the day, with a court order;

XII — secrecy of correspondence and of telegraph, data and telephone communications is inviolable, except, in the latter case, by court order, in the situations and manner established by law for purposes of criminal investigation or the fact-finding phase of a criminal prosecution;

XIII — exercise of any job, trade or profession is free, observing the professional qualifications that the law establishes;

XIV — access to information is assured to everyone, protecting the confidentiality of the source whenever necessary for professional activity;

XV — movement within the national territory is free in peacetime, and any person may, under the terms of the law, enter, remain or leave with his or her property;

XVI — all persons may hold peaceful meetings, without weapons, in places open to the public, without need for authorization, so long as they do not

<sup>2</sup> The civil law concept of moral damages corresponds to the common law notion of pain and suffering. Moral damages are usually characterized as damages that are non-patrimonial in nature.

interfere with another meeting previously called for the same place, with only prior notice to the proper authority required;

XVII — freedom of association for lawful purposes is complete, but any paramilitary association is prohibited;

XVIII — creation of associations and, as set forth in law, of cooperatives, requires no authorization, prohibiting state interference in their operations;

XIX — associations may be compulsorily dissolved or have their activities suspended only by court decision; in the former case a final and unappealable decision is required;

XX — no one can be compelled to join an association or to remain in one;

XXI — when expressly authorized, associations have standing to represent their members judicially and extrajudicially;

XXII — the right of property is guaranteed;

XXIII — property shall attend to its social function;

XXIV — the law shall establish procedures for expropriation for public necessity, public use, or for social interest, upon just and prior compensation in cash, with the exception of cases provided in this Constitution;

XXV — in the event of imminent public danger, the proper authority may use private property, assuring the owner subsequent compensation in case of damage;

XXVI — whenever they are worked by families, small rural properties, as defined by law, shall not be subject to attachment for payment of debts stemming from their productive activities, with the law providing for ways to finance their development;

XXVII — exclusive rights to use, publish or reproduce their own works belongs to the authors, and such rights may be transmitted to their heirs for a period fixed by law;

XXVIII — the following are assured in the terms of the law:

- a) protection of individual participation in collective works and of reproduction of human voices and images, including in sports activities;
- b) the right of creators, performers and their respective syndicates<sup>3</sup> and associations to monitor the economic utilization of the works that they create or in which they participate;

XXIX — the law shall assure inventors of industrial inventions of a temporary privilege for their use, as well as protection of industrial creations, of ownership of trademarks, of company names and of other distinctive signs, taking into account social interests and the technological and economic development of the Country;

<sup>3</sup> Brazil has a syndicalist system in which classes of workers, employers, and professionals are organized into syndicates (*sindicatos*) for purposes of collective bargaining and defense of class interests.

XXX — the right of inheritance is guaranteed;

XXXI — inheritance of foreigners' assets located in the Country shall be governed by Brazilian law, for the benefit of the Brazilian spouse or children, whenever the personal law of the deceased is not more favorable to them;

XXXII — the State shall promote consumer protection in the form of the law;

XXXIII — all persons are entitled to receive from public agencies information in their private interest or of collective or general interest; such information shall be furnished within the period established by law, under penalty of liability, except for information whose secrecy is essential to the security of society and of the State;

XXXIV — all persons are guaranteed, without the payment of fees:

a) the right to petition public authorities in defense of rights or against illegality or abuse of power;

b) the obtaining of certificates from government departments, in order to defend rights and to clarify situations of personal interest.

XXXV — no law may exclude from review by the Judiciary any injury or threat to a right;

XXXVI — no law may impair a vested right, a perfected juridical act and *res judicata*;

XXXVII — there shall be no extraordinary courts or tribunals;

XXXVIII — the institution of the jury is recognized, with the organization given to it by law, assuring;

a) full defense;

b) secret voting;

c) sovereignty of verdicts;

d) jurisdiction to judge intentional crimes against life.

XXXIX — unless defined in prior law, there are no crimes, nor are there any penalties unless previously imposed by law;

XL — criminal law shall not be retroactive, except to benefit the defendant;

XLI — the law shall punish any discrimination whatsoever attacking fundamental rights and liberties;

XLII — the practice of racism constitutes a crime that is neither subject to bail nor to the statute of limitations and is punishable by imprisonment, according to law;

XLIII — the law shall regard as crimes that are not subject to bail, clemency or amnesty, the practice of torture, illicit trafficking in narcotics and similar drugs, terrorism, and those crimes defined as heinous; principals responsible for these crimes are those giving the orders, those carrying them out, and those who, although able to avoid them, fail to do so;

XLIV — the acts of civilian or military armed groups against the constitutional order and the Democratic State are nonbailable crimes for which the statute of limitations never runs;

XLV — no penalty shall extend beyond the person convicted, but liability for damages and a decree of loss of assets may, in accordance with the law, extend to successors and be enforced against them up to the limit of the value of the patrimony transferred;

XLVI — the law shall regulate individualization of punishment and shall adopt, *inter alia*, the following:

- a) deprivation or restriction of liberty;
- b) loss of property;
- c) fine;
- d) alternative social service;
- e) suspension or deprivation of rights.

XLVII — there shall be no penalties:

- a) of death, except in the case of declared war, in the terms of art. 84, XIX;
- b) of perpetual character;
- c) of forced labor;
- d) of banishment;
- e) of cruelty.

XLVIII — sentences shall be served in different kinds of establishments, according to the nature of the criminal offense, the age and the sex of the person sentenced;

XLIX — prisoners are assured respect for their physical and moral integrity;

L — female prisoners shall be assured conditions that allow them to remain with their children during the period of breast-feeding;

LI — no Brazilian shall be extradited, except for naturalized Brazilians in the cases of common crimes committed prior to naturalization, or proven involvement in unlawful traffic in narcotics and similar drugs, in the form of the law;

LII — no foreigner shall be extradited for a political or ideological offense;

LIII — no one shall be tried or sentenced other than by a competent authority;

LIV — no one shall be deprived of liberty or property without due process of law;

LV — litigants in judicial or administrative proceedings and those accused in general are assured the right to reply and an ample defense, with the measures and recourses inherent therein;

LVI — evidence obtained through unlawful means is inadmissible in judicial proceedings;

LVII — no one shall be considered guilty until his criminal conviction has become final and nonappealable (*trânsito em julgado*);

LVIII — a civilly identified person shall not be submitted to criminal identification, except in the situations provided by law;

LIX — private prosecution for crimes that are normally prosecuted publicly (*crimes de ação pública*) shall be permitted if a public prosecution is not brought within the period established by law;

LX — the law may restrict publicity of procedural acts only if required to defend privacy or social interest;

LXI — no one shall be arrested unless in *flagrante delicto* or by written and substantiated order of a proper judicial authority, except in the case of a military offense or a strictly military crime, as defined by law;

LXII — the arrest of any person and the place where he can be found shall be communicated immediately to the proper judge and to the arrested person's family or to a person designated by the judge;

LXIII — one under arrest shall be informed of his rights, which includes the right to remain silent, and shall be assured of the assistance of his family and legal counsel;

LXIV — one under arrest has the right to identification of those responsible for his arrest or his interrogation by police;

LXV — judicial authorities shall direct immediate release of those illegally arrested;

LXVI — no one shall be taken to prison or held therein when the law permits provisional liberty, with or without bond;

LXVII — there shall be no civil imprisonment for debt, except for a person who voluntarily and inexcusably defaults on a support obligation and for an unfaithful depository;

LXVIII — *habeas corpus* shall be granted whenever someone suffers or finds himself threatened with suffering violence or coercion in his freedom of movement through illegality or abuse of power;

LXIX — a writ of security<sup>4</sup> shall be issued to protect a liquid and certain right not protected by *habeas corpus* or *habeas data*<sup>5</sup> when the party responsible for the illegality or abuse of power is a public authority or an agent of a legal entity performing governmental duties;

LXX — a collective writ of security may be brought by:

<sup>4</sup> A writ of security (*mandado de segurança*) is a unique Brazilian institution with a summary procedure that combines aspects of the Anglo-American writs of mandamus, injunction and quo warranto.

<sup>5</sup> *Habeas data* is a new procedural action created by this Constitution allowing anyone to discover the information the government has about him in its data banks and to rectify that information if it is incorrect.

- a) a political party represented in the National Congress;
- b) a syndicate, class entity or association legally organized and in operation for at least one year, to defend the interests of its members or associates;

LXXI — a mandate of injunction<sup>6</sup> shall be issued whenever lack of regulations makes exercise of constitutional rights and liberties and the prerogatives inherent in nationality, sovereignty and citizenship infeasible;

LXXII — *habeas data* shall be granted:

- a) to assure knowledge of personal information about the petitioner contained in records or data banks of governmental or public entities;
- b) to correct data whenever the petitioner prefers not to do so through confidential judicial or administrative proceedings;

LXXIII — any citizen has standing to institute a popular action seeking to annul an act injurious to the public patrimony or to the patrimony of an entity in which the State participates, to administrative morality, to the environment and to historical and cultural monuments; except in a case of proven bad faith, the plaintiff is exempt from court costs and, if he loses, from the burden of paying the prevailing party's attorneys' fees and costs;

LXXIV — the State shall provide full and gratuitous legal assistance to anyone who proves that he has insufficient funds;

LXXV — the State shall indemnify a person convicted by judicial error, as well as a person who remains imprisoned longer than the period established by his sentence;

LXXVI — the following shall be gratuitous for persons recognized as poor, in the form of the law:

- a) civil registration of birth;
- b) death certificate;

LXXVII — *habeas corpus* and *habeas data* proceedings and, as set forth in law, acts necessary for the exercise of citizenship, are gratuitous.

§ 1º. The rules defining fundamental rights and guarantees are applicable immediately.

§ 2º. The rights and guarantees established in this Constitution do not exclude others arising from the regime and principles adopted by it, or from international treaties to which the Federative Republic of Brazil is a party.

<sup>6</sup> The mandate of injunction (*mandado de injunção*) is a novel procedural creation of this Constitution and is designed to protect unregulated constitutional rights. It bears little resemblance to Anglo-American injunction.

## CHAPTER II

### SOCIAL RIGHTS

Art. 6º. Education, health, labor, leisure, security, social security, protection of motherhood and childhood and assistance to the unprotected, are social rights, in the form of this Constitution.

Art. 7º. The following are rights of urban and rural workers, in addition to any others designed to improve their social condition:

I — an employment relationship protected against dismissal that is arbitrary or without cause, in the terms of a complementary law that shall establish compensatory indemnification, among other rights;

II — unemployment insurance, in the event of involuntary unemployment;

III — Guarantee Fund for Length of Service (*Fundo de Garantia do Tempo de Serviço*);<sup>7</sup>

IV — a national uniform minimum wage, fixed by law, capable of attending to basic living needs and those of a worker's family, with housing, food, education, health, leisure, clothing, hygiene, transportation and social security, with periodical adjustments to maintain its purchasing power, but prohibiting linking to these adjustments for any purpose;

V — a salary floor in proportion to the extent and complexity of the work;

VI — irreducibility of salary or wage, except when provided for in collective agreements or accords;

VII — for those receiving variable compensation, a guaranty that the salary or wage will never fall below the minimum wage;

VIII — a thirteenth salary<sup>8</sup> based on the entire compensation or retirement payments;

IX — higher remuneration for nighttime work than for daytime work;

X — salary protection, in the form of the law, with intentional retention of wages or salary constituting a crime;

XI — participation in the profits or results, independent of remuneration, and, exceptionally, participation in the management of the company, as defined by law;

<sup>7</sup> The Guarantee Fund for the Length of Service was created by statute in 1966 as an alternative to a tenure provision in Brazilian labor legislation. Employers make monthly deposits of 8 percent of an employee's salary in an interest-bearing monetarily corrected account in the name of the employee, who can withdraw the proceeds only on certain occasions, such as buying a home or job termination. If dismissed without just cause, the employee is also entitled to 8 percent of his last two months salary plus 10 percent of the accumulated deposits in the Fund.

<sup>8</sup> The thirteenth salary is a bonus of an additional month's salary mandated by Brazilian labor legislation.

- XII — family allowance for dependents;
- XIII — normal work hours that last no longer than eight hours per day and forty-four hours per week, permitting a trade off of work hours and reduction in the work day through an accord or a collective bargaining agreement;
- XIV — a work day of six hours for work carried out in interrupted shifts, unless otherwise established by collective bargaining;
- XV — paid weekly rest, preferably on Sundays;
- XVI — compensation for overtime work at least fifty per cent above the compensation for normal work;
- XVII — enjoyment of annual paid vacation with at least one third more than normal salary;
- XVIII — paid maternity leave without loss of job for a period of one hundred-twenty days;
- XIX — paternity leave, under terms fixed by law;
- XX — protection of the job market for women through specific incentives, in the terms of the law;
- XXI — prior notice of dismissal in proportion to period of service, with a minimum of thirty days, in the terms of the law;
- XXII — reduction of risks inherent in the job by means of health, hygiene and safety rules;
- XXIII — additional remuneration for hard, unhealthy or dangerous work, in the form of the law;
- XXIV — retirement pension;
- XXV — gratuitous assistance for the children and dependents from birth to six years of age in day-care centers and pre-schools;
- XXVI — recognition of collective bargaining accords and agreements;
- XXVII — protection in the face of automation, in the form of the law;
- XXVIII — work accident insurance, paid for by the employer, without excluding the indemnity for which the employer is liable in the event of malice or fault;
- XXIX — a cause of action for amounts due from employment, with a statute of limitations of:
- a) five years for urban workers, up to the limit of two years after termination of the employment contract;
  - b) until two years after termination of the contract, for rural workers.
- XXX — prohibition of any difference in salary, in performance of duties and in hiring criteria by reason of sex, age, color or marital status;
- XXXI — prohibition of any discrimination with respect to salary and hiring criteria for handicapped workers;

XXXII — prohibition of any distinction between manual, technical and intellectual labor or between respective professionals;

XXXIII — prohibition of nighttime, dangerous or unhealthy work for those under eighteen years of age, and of any work for those under fourteen years of age, except as an apprentice;

XXXIV — equal rights for workers with a permanent employment relationship and occasional workers.

Sole Paragraph. — The category of domestic workers is assured the rights set forth in subparagraphs IV, VI, VIII, XV, XVII, XVIII, XIX, XXI and XXIV, as well as integration into social security.

Art. 8°. Persons are free to form professional or syndical organizations, observing the following:

- I — the law may not require authorization of the State for organization of a syndicate, with the exception of registration with the proper agency, prohibiting the Government from interfering and intervening in syndical organizations;
- II — it is forbidden to create more than one syndical organization, of any level, representing a professional or economic category, in the same territorial base, which shall be defined by the interested workers or employers; a base may not be less than the area of one County.
- III — the syndicate is responsible for defending the collective or individual rights and interests of its category, including judicial or administrative disputes;
- IV — the general meeting shall fix dues, which, in the case of a professional category, shall be withheld from the payroll, to support the confederative system of the respective syndical representation, independent of the dues provided for by law;
- V — no one shall be required to become a member or to remain a member of a syndicate;
- VI — syndicates must participate in collective labor bargaining negotiations;
- VII — retired members shall be entitled to vote and be voted on in syndical organizations;
- VIII — an employee who is a syndicate member may not be dismissed from the moment he registers as a candidate for a leadership or representative position in the syndicate; if elected, even as an alternate, he may not be dismissed until one year after termination of his term of office, unless he commits a serious fault, in the terms of the law.

Sole Paragraph. The provisions of this article apply to the organization of rural syndicates and of fishing colonies, with due regard for the conditions established by law.

Art. 9°. The right to strike is assured, with the workers deciding when it is opportune to exercise it and on the interests to be defended by it.

§ 1º — The law shall define which services or activities are essential and shall provide for meeting the community's non-postponable necessities.

§ 2º — The responsible parties shall be subject to the penalties of the law for commission of abuses.

Art. 10. Participation of workers and employers is assured in the collegiate governmental agencies in which their professional or social security interests are the subjects of discussion and deliberation.

Art. 11. In firms with more than two hundred employees, election of an employee representative for the exclusive purpose of promoting direct discussions with employers is assured.

## CHAPTER III

### NATIONALITY

Art. 12. Brazilians are:

I — by birth:

- a) persons born in the Federative Republic of Brazil, even though of foreign parents, provided that they are not in the service of their country;
- b) persons born abroad of a Brazilian father or mother, so long as either is in the service of the Federative Republic of Brazil;
- c) persons born abroad of a Brazilian father or mother, so long as they are registered at a proper Brazilian department, or come to reside in the Federative Republic of Brazil before reaching the age of majority and, having reached majority, opt for Brazilian nationality at any time;

II — by naturalization:

- a) those who, as set forth by law, acquire Brazilian nationality; for persons whose country of origin is Portuguese-speaking, only one uninterrupted year of residence and moral integrity are required;
- b) foreigners of any nationality, resident in the Federative Republic of Brazil for over thirty uninterrupted years and without any criminal conviction, provided they request Brazilian nationality.

§ 1º. The rights inherent to native born Brazilians shall be attributed to Portuguese permanently resident in the Country if Brazilians are afforded reciprocal treatment, except in the cases provided for in this Constitution.

§ 2º. The law may not establish any distinction between Brazilians by birth and naturalized Brazilians, except in the cases provided for in this Constitution.

§ 3º. The following positions are restricted to native born Brazilians:

- I — President and Vice President of the Republic;
- II — President of the Chamber of Deputies;

III — President of the Federal Senate;

IV — Minister of the Supreme Federal Tribunal;

V — the diplomatic career;

VI — officer of the Armed Forces.

§ 4º. Loss of nationality shall be declared for a Brazilian:

I — whose naturalization cancelled by judicial decision of a court because of an activity obnoxious to the national interest;

II — acquires another nationality through voluntary naturalization.

Art. 13. Portuguese is the official language of the Federative Republic of Brazil.

§ 1º. The symbols of the Federative Republic of Brazil are the flag, anthem, coat of arms and seal.

§ 2º. The States, the Federal District and the Counties may have symbols of their own.

## CHAPTER IV

### POLITICAL RIGHTS

Art. 14. Popular sovereignty shall be exercised by universal suffrage, and by direct and secret vote, with equal value for all, and, in the terms of the law, by:

I — plebiscite;

II — referendum;

III — popular initiative.

§ 1º. Voter registration and voting are:

I — compulsory for persons over eighteen years of age;

II — optional for:

a) illiterate persons;

b) persons over seventy years of age;

c) persons over sixteen and under eighteen years of age.

§ 2º. Neither foreigners nor conscripts during their period of compulsory military service may register to vote.

§ 3º. The conditions for eligibility, according to the law, are the following:

I — Brazilian nationality;

II — full exercise of political rights

III — voter registration;

IV — electoral domicile in the district;

V — party affiliation;

## VI — minimum age of:

- a) thirty-five years for President and Vice President of the Republic and Senator;
- b) thirty years for Governor and Vice Governor of a State and of the Federal District;
- c) twenty-one years for Federal, State or District Representative, Prefect (*Prefeito*)<sup>9</sup>, Vice Prefect and Justice of the Peace;
- d) eighteen years for County Legislator (*Vereador*).

§ 4<sup>o</sup>. Persons that cannot register to vote or are illiterate are not eligible.

§ 5<sup>o</sup>. The President of the Republic, the Governors of the State and Federal District, Prefects and those that have succeeded them or replaced them during the six month preceding the election, are not eligible for the same offices in the subsequent term.

§ 6<sup>o</sup>. In order to run for other offices, the President of the Republic, the Governors of the State and Federal District and the Prefects must resign from their respective offices at least six months prior to the election.

§ 7<sup>o</sup>. The spouse and relatives by blood or marriage up to the second degree, or by adoption, of the President of the Republic, of the Governor of a State, Territory, or the Federal District, or a Prefect, or those replacing them during the six months preceding the election, are ineligible in the jurisdictional territory of the incumbent, unless they already hold elective office and are candidates for re-election.

§ 8<sup>o</sup>. A member of the armed forces who can register to vote is eligible under the following conditions:

- I — if he has served for less than ten years, he shall be on leave from military activities;
- II — if he has served for more than ten years, he shall be discharged from military duties by his superiors and, if elected, he shall be automatically retired upon taking office.

§ 9<sup>o</sup>. A complementary law shall establish other cases of ineligibility and the periods for which it shall remain in force, in order to protect normality and legitimacy of elections from the influence of economic power or abuse from holding an office, position or job in the direct or indirect administration.

§ 10<sup>o</sup>. An elective mandate may be challenged in the Electoral Courts within a period of fifteen days after certification of election, with the suit determining evidence of abuse of economic power, corruption or fraud.

§ 11<sup>o</sup>. A suit challenging a mandate shall be conducted in secrecy, and the plaintiff shall be liable, in the form of the law, if he is reckless or shows bad faith.

<sup>9</sup> *Prefeito*, usually translated as mayor, is actually the chief executive officer of the *município*, an administrative unit more like a county than a city. Hence, the civil law term "prefect" is used throughout this translation.

Art. 15<sup>o</sup>. Deprivation of political rights is forbidden; loss or suspension of such rights may occur only in cases of:

- I — cancellation of naturalization by a judgment that has become nonappealable;
- II — absolute civil incapacity;
- III — while the effects of a criminal conviction that has become nonappealable remain in force;
- IV — refusal to comply with an obligation imposed upon everyone or an alternative obligation, in terms of art. 5, VIII;
- V — administrative impropriety, in terms of art. 37, §4.

Art. 16. A law altering electoral procedure shall enter into force only one year after its promulgation.

## CHAPTER V

## POLITICAL PARTIES

Art. 17. The creation, merger, incorporation, and dissolution of political parties is free, with due regard for national sovereignty, the democratic regime, multiplicity of political parties and fundamental human rights, observing the following precepts:

- I — national character;
- II — prohibition of the receipt of financial resources from foreign entities or governments or from subordination to them;
- III — rendering of accounts to the Electoral Courts;
- IV — legislative functioning in accordance with the law.

§ 1<sup>o</sup>. Political parties are assured autonomy in defining their internal structure, organization and operation, and their by-laws shall establish rules of party loyalty and discipline.

§ 2<sup>o</sup>. After they have acquired legal capacity, in the form of the civil law, political parties shall register their by-laws with the Superior Electoral Tribunal.

§ 3<sup>o</sup>. Political parties have the right to resources from the party fund and to free radio and television time, in the form of the law.

§ 4<sup>o</sup>. Political parties are forbidden to utilize paramilitary organizations.



## TITLE III

### ORGANIZATION OF THE STATE

#### CHAPTER I

##### POLITICAL-ADMINISTRATIVE ORGANIZATION

Art. 18. The politico-administrative organization of the Federative Republic of Brazil includes the Federal Government (*União*), the States, the Federal District, and the Counties, all autonomous, in the terms of this Constitution.

§ 1º. The Federal Capital is Brasília.

§ 2º. The Federal Territories belong to the Federal Government, and their creation, transformation into States, or re-integration into their State of origin shall be regulated by a complementary law.

§ 3º. The States may merge among themselves, subdivide, or split in order to be annexed to others, or form new States or Federal Territories, with the approval of the population directly interested through a plebiscite, and the approval of Congress through a complementary law.

§ 4º. The creation, incorporation, consolidation and splitting of Counties shall preserve the continuity and historic-cultural unity of the urban environment, shall be implemented by a State law, obeying the requirements provided for in a State complementary law, and shall depend on prior consultation, through a plebiscite, of the population directly interested.

Art. 19. The Federal Government, States, Federal District and Counties are forbidden to:

- I — establish religions or churches, subsidize them, hinder their functioning, or maintain dependent relations or alliances with them or their representatives, with the exception of collaboration for the public interest, in the form of the law;
- II — refuse to certify public documents;
- III — create distinctions or preferences among Brazilians.

#### CHAPTER II

##### THE FEDERAL GOVERNMENT

Art. 20. Property of the Federal Government is:

- I — property presently belonging to it and that which may come to be attributed to it;

II — unoccupied lands indispensable for defense of the frontiers, of military fortifications and constructions, federal communication routes and federal access ways of preservation of the environment, as defined by law;

III — the lakes, rivers and any flowing water on lands that it owns; interstate waters, waters that serve as borders with other countries, waters that extend into or come from a foreign territory, as well as the bordering lands and river beaches;

IV — islands in rivers and lakes in zones bordering other countries; ocean beaches; islands in the ocean and offshore, excluding from the latter the areas referred to in art. 26, II;

V — natural resources of the continental shelf and of the exclusive economic zone;

VI — territorial seas;

VII — tidal lands and those added by accretion;

VIII — hydraulic energy sites;

IX — mineral resources, including those in the subsoil;

X — natural subterranean caves and archeological and pre-historic sites;

XI — lands traditionally occupied by Indians.

§ 1º. The States, Federal District and the Counties, as well as the agencies of direct administration of the Federal Government, are assured, in the terms of the law, participation in the results of exploitation of petroleum or natural gas, hydraulic energy resources, and other mineral resources in their respective territories, continental shelf, territorial sea or exclusive economic zone, or financial compensation for such exploitation.

§ 2º. A strip with a width of up to one hundred and fifty kilometers along the territorial borders, designated as frontier zone, is considered fundamental for defense of the national territory, and the occupation and use thereof shall be regulated by law.

Art. 21. The Federal Government has the power to:

- I — maintain relations with foreign States and participate in international organizations;
- II — declare war and make peace;
- III — assure national defense;
- IV — permit, in the cases provided for in a complementary law, transit by foreign forces through national territory or to remain there temporarily;
- V — decree a state of siege, state of defense and federal intervention;
- VI — authorize and supervise production of and commerce in war materials;
- VII — issue currency;

VIII — administer the Country's foreign exchange reserves and supervise financial transactions, especially credit, exchange, and capitalization, as well as insurance and private pension plans;

IX — prepare and execute national and regional plans for ordering the territory and for economic and social development;

X — maintain the postal service and national air mail;

XI — operate, either directly or through concessions to companies whose stock is government-controlled, telephone, telegraph, data transmission, and other public communications services, assuring the rendering of information services by entities of private law through the public telecommunications networks operated by the Federal Government;

XII — to operate, either directly or through authorization, concession or permission:

a) radio and television broadcasting services and other telecommunication services;

b) services and installations of electric energy and utilization of hydroelectric power, in cooperation with the States in which the hydroelectric sites are located;

c) air and aerospace navigation and airport infrastructure;

d) railway and waterway transportation services among Brazilian ports and national frontiers, or which cross State or Territorial boundaries;

e) passenger services for interstate and international highway transportation;

f) sea, river and lake ports;

XIII — organize and maintain the Judiciary, the Public Ministry<sup>10</sup> and the Public Defender's Office in the Federal District and the Territories;

XIV — organize and maintain the federal police, the federal highway and railway police, as well as the civil police, the military police and the military fire brigades of the Federal District and the Territories;

XV — organize and maintain official national statistical, geographical, geological and mapping services;

XVI — classify, for purposes of viewer discretion, public amusements and radio and television programs;

XVII — grant amnesty;

XVIII — plan and promote permanent defenses against public calamities, especially droughts and floods;

<sup>10</sup> The Public Ministry is a civil law career institution that has no precise counterpart in common law, although the Justice Department and public prosecutor share certain common features. The Public Ministry not only prosecutes criminal offenses, but it also represents the public interest in law and justice in civil matters. The Public Ministry may intervene in all cases involving incompetents, status of persons, guardianship, marriage, and any other cases of public interest.

XIX — institute a national system for management of hydraulic resources and define criteria for granting rights to the use thereof;

XX — institute directives for urban development, including housing, basic sanitation and urban transportation;

XXI — establish principles and directives for the national transportation system;

XXII — carry out maritime, air and border police services;

XXIII — operate nuclear services and installations of any nature and exercise governmental monopolies over research, mining, enrichment, reprocessing, industrialization, and commerce in nuclear ores and their by-products, in accordance with the following principles and conditions:

a) all nuclear activity within the national territory shall be allowed for peaceful purposes and shall be subject to approval by the National Congress;

b) via concession or permission, authorization may be granted for the use of radio isotopes for research and use in medicine, agriculture, industry and similar activities;

c) civil liability for nuclear damages does not depend on the existence of fault;

XXIV — organize, maintain and carry out inspection of working conditions;

XXV — establish the areas and conditions for the conduct of prospecting and mining (*garimpagem*)<sup>11</sup> in the form of associations.

Art. 22. The Federal Government has exclusive power to legislate on:

I — civil, commercial, penal, procedural, electoral, agrarian, maritime, aeronautical, space and labor law;

II — expropriation;

III — civilian and military requisitioning, in the event of imminent danger and in times of war;

IV — waters, energy, informatics, telecommunications and radio broadcasting;

V — postal service;

VI — the monetary system, measuring systems, and certifications and guarantees of metals;

VII — policies of credit, foreign exchange, insurance and transfer of valuables;

VIII — foreign and interstate commerce;

IX — directives of national transportation policy;

<sup>11</sup> *Garimpagem* is a Brazilian term for the kind of rudimentary prospecting and mining done by individuals who pan for gold or seek to uncover precious gems with picks and shovels.

- X — regime of the ports and lake, river, ocean, air and aerospace navigation;
- XI — transit and transportation;
- XII — mineral deposits, mines, mineral resources and metallurgy;
- XIII — nationality, citizenship and naturalization;
- XIV — indigenous populations;
- XV — emigration, immigration, entry, extradition and expulsion of foreigners;
- XVI — organization of the national employment system and conditions for practicing professions;
- XVII — organization of the Judiciary, of the Public Ministry, and the Public Defender's Office of the Federal District and of the Territories, as well as their administrative organization;
- XVIII — national systems of statistics, mapping and geology;
- XIX — savings systems, as well as obtaining and guaranteeing popular savings;
- XX — systems of consórcios<sup>12</sup> and drawings;
- XXI — general rules of organization, personnel, war materials, guarantees, enlistment and mobilization of the military police and military fire brigades;
- XXII — jurisdiction of the federal police and of the federal highway and railway police;
- XXIII — social security;
- XXIV — directives and bases for national education;
- XXV — public registries;
- XXVI — nuclear activities of any nature;
- XXVII — general rules for all types of bidding and contracting for the direct and indirect government administration, including foundations instituted and maintained by the Government, in its different spheres, and companies under its control;
- XXVIII — territorial defense, aerospace defense, maritime defense, civil defense and national mobilization;
- XXIX — commercial advertising.

Sole Paragraph. A complementary law may authorize the States to legislate on specific questions relating to the matters covered in this article.

<sup>12</sup> The *consórcio* is an ingenious Brazilian institution for financing consumer durables in the face of high inflation and astronomical interest rates. Entrants to the *consórcio* agree to pay a determined number of monthly quotas, sufficient to buy enough goods over time so that eventually every participant receives one. The month in which a participant receives his car or TV or other good is determined by lot.

Art. 23. The Federal Government, the States, the Federal District and the Counties, shall have joint power to:

- I — ensure that the Constitution, the laws and the democratic institutions are observed and that public patrimony is preserved;
- II — take care of public assistance and health, as well as to protect and guaranty handicapped persons;
- III — protect documents, historic, artistic, and cultural works and other goods, monuments, and notable natural landscapes, as well as archeological sites;
- IV — prevent the loss, destruction, or changing the characteristics of works of art and other goods of historic, artistic or cultural value;
- V — furnish means of access to culture, education and science;
- VI — protect the environment and combat pollution in any of its forms;
- VII — preserve the forests, fauna and flora;
- VIII — promote agricultural and livestock production and organize the food supply;
- IX — promote programs for construction of housing and improvement of habitational and basic sanitation conditions;
- X — combat the causes of poverty and the factors of marginalization, promoting integration of the disfavored sectors;
- XI — register, monitor and supervise concessions of rights to research and exploit hydraulic and mineral resources within their territories;
- XII — establish and implement an educational policy for traffic safety.

Sole Paragraph. — A complementary law shall establish rules for cooperation between the Federal Government and the States, the Federal District and the Counties, with a view towards balanced development and well-being on a nation-wide basis.

Art. 24. The Federal Government, the States and the Federal District shall have the power to legislate concurrently on:

- I — tax, financial, penitentiary, economic and urban planning law;
- II — the budget;
- III — commercial registries;
- IV — costs of forensic services;
- V — production and consumption;
- VI — forests, hunting, fishing, fauna, preservation of nature, defense of the soil and natural resources, protection of the environment and pollution control;
- VII — protection of historic, cultural, artistic, touristic, and scenic patrimony;

VIII — liability for damages to the environment, consumers, property and rights of artistic, aesthetic, historic, touristic, and scenic value;

IX — education, culture, teaching and sports;

X — creation, operation and procedures of the small claims courts;

XI — court procedures;

XII — social security, health protection and health defense;

XIII — legal assistance and public defense;

XIV — protection and social integration of handicapped persons;

XV — protection of childhood and youth;

XVI — organization, guarantees, rights and duties of the civil police.

§ 1<sup>o</sup>. Within the scope of concurrent legislation, the power of the Federal Government shall be limited to establishing general rules.

§ 2<sup>o</sup>. The power of the Federal Government to legislate under general rules does not preclude supplementary powers of the States.

§ 3<sup>o</sup>. If there is no federal law with respect to general rules, the States shall exercise full legislative powers to provide for their own peculiarities.

§ 4<sup>o</sup>. The supervenience of a federal law over general rules suspends the effectiveness of a State law, to the extent that it is contrary to the Federal Law.

## CHAPTER III

### THE FEDERATED STATES

Art. 25. The States are organized and governed by the Constitutions and laws that they adopt, observing the principles of this Constitution.

§ 1<sup>o</sup>. The powers not forbidden to them by this Constitution are reserved to the States.

§ 2<sup>o</sup>. It is incumbent upon the States to operate local services of piped-in gas directly or through concession to a state-owned company, with exclusive rights of distribution.

§ 3<sup>o</sup>. The States may, by means of a complementary law, create metropolitan regions, urban agglomerations and micro- regions, formed by grouping neighboring municipalities, in order to integrate the organization, planning and execution of public functions of common interest.

Art. 26. Included among the property of the States are:

I — surface or underground waters, whether flowing, emerging or in reservoirs, with the exception, in the latter case, in the form of the law, of those resulting from works carried out by the Federal Government;

II — ocean and coastal island areas, that are under their dominion, excluding those under the dominion of the Federal Government, Counties or third parties;

III — river and lake islands that do not belong to the Federal Government;

IV — vacant government lands not included among those of the Federal Government.

Art. 27. The number of Representatives in the State Legislative Assembly shall be three times the representation of the State in the House of Representatives and, upon reaching thirty-six, the number shall be increased by as many Representatives as there are Federal Representatives in excess of twelve.

§ 1<sup>o</sup>. The mandate of State Representatives shall be four years, and the provisions of this Constitution regarding the electoral system, inviolability, immunities, remuneration, loss of mandate, leaves of absence, impediments and enlisting in the Armed Forces shall apply to them.

§ 2<sup>o</sup>. The remuneration of the State Representatives shall be fixed in each legislature for the subsequent legislature by the Legislative Assembly, observing the provisions of arts. 150, II, 153, III and 153, § 2<sup>o</sup>, I.

§ 3<sup>o</sup>. The Legislative Assemblies have the power to determine their internal regulations, police and administrative services of their secretariat, and to fill the respective offices.

§ 4<sup>o</sup>. The law shall provide for popular initiative in State legislative processes.

Art. 28. The election of the State Governor and Lieutenant Governor, for a mandate of four years, shall be held ninety days before the end of their predecessors' mandate, and they shall take office on January 1st of the subsequent year, observing as well the provisions of art. 77.

Sole Paragraph. — A Governor who assumes another office or position of direct or indirect government administration shall lose his office, except for offices held by virtue of a public competitive examination and observing the provisions of art. 38, I, IV and V.

## CHAPTER IV

### THE COUNTIES

Art. 29<sup>o</sup>. Counties shall be governed by an organic law, voted in two rounds, with a minimum interval of ten days between each, and approved by two-thirds of the members of the County Legislature, which shall promulgate it, observing the principles established in this Constitution, the Constitution of the respective State and the following precepts:

I — election of the Prefect, the Vice Prefect and the County Legislators, for a term of office of four years, through direct and simultaneous elections held throughout the entire Country;

II — elections of the Prefect and Vice Prefect at least ninety days before the end of the mandate of their predecessors, applying the provisions of art. 77 to counties with more than two hundred thousand voters;

III — investiture of the Prefect and of the Vice Prefect on January 1st of the year subsequent to the election;

IV — a number of County Legislators proportional to the population of the County, observing the following limits:

a) a minimum of nine and a maximum of twenty-one in Counties with up to one million inhabitants;

b) a minimum of thirty-three and a maximum of forty-one in Counties with more than one million and less than five million inhabitants;

V — remuneration of the Prefect, the Vice Prefect and the County Legislators fixed by the County Legislature in each legislature for the subsequent one, observing the provisions of arts. 37, XI, 150, II, 153, III, and 153, § 2<sup>o</sup>, I;

VI — inviolability of County Legislators for their opinions, words and votes in exercise of their mandate and within the boundaries of the County;

VII — prohibitions and incompatibilities, while in the office of County Legislators, similar, where applicable, to the provisions of this Constitution for members of the National Congress and, of the Constitution of the respective State, for members of the Legislative Assembly;

VIII — trial of the Prefect before the Tribunal of Justice;<sup>13</sup>

IX — organization of legislative and supervisory functions of the County Legislature;

X — cooperation of representative associations in municipal planning;

XI — popular initiative bills of specific interest to the County, the city or the districts, through the manifestation of at least five percent of the voters;

XII — loss of mandate of the Prefect according to art. 28, sole paragraph.

Art. 30<sup>o</sup>. The Counties have the power to:

I — legislate on subjects of local interest;

II — supplement federal and state legislation where applicable;

III — institute and to collect taxes within their jurisdiction, as well as to apply their revenues, without prejudice to the requirement that they render accounts and publish provisional balance sheets within the periods established by law;

IV — create, organize and eliminate districts, observing state legislation;

<sup>13</sup> The Tribunal of Justice is the highest court in each state.

V — organize and perform essential public services of local interest, including collective transportation, either directly or by concession or permission;

VI — maintain, with the technical and financial cooperation of the Federal Government and the State, programs of pre-school and elementary education;

VII — render health services to the population, with the technical and financial cooperation of the Federal Government and State;

VIII — promote, where applicable, adequate ordering of land through planning and control of use, subdivision and occupation of urban soil;

IX — promote protection of local historic-cultural patrimony, observing the legislation and supervisory actions of the Federal Government and the States.

Art. 31. Supervision of the County shall be performed by the County Legislature, through outside control and by the internal control systems of the County Executive, in the form of the law.

§ 1<sup>o</sup>. Outside control of the County Legislature shall be exercised with the assistance of the State Tribunals of Accounts or Councils or County Tribunals of Accounts, if they exist.

§ 2<sup>o</sup>. The prior opinion, issued by the proper agency, on the accounts to be rendered by the Prefect annually, shall prevail unless there is a decision of two-thirds of the members of the County Legislature.

§ 3<sup>o</sup>. The accounts of the Counties shall remain available each year to any taxpayer for sixty days for examination and evaluation, and any taxpayer may question their legitimacy, in the terms of the law.

§ 4<sup>o</sup>. The creation of Tribunals, Councils or organs of County Accounts is forbidden.

## CHAPTER V

### THE FEDERAL DISTRICT AND THE TERRITORIES

#### SECTION I

##### THE FEDERAL DISTRICT

Art. 32. The Federal District, which may not be divided into Counties, shall be governed by an organic law, voted in two rounds with a minimum interval of ten days, and approved by two-thirds of the Legislative House, which shall promulgate it, observing the principles established in this Constitution.

§ 1<sup>o</sup>. The Federal District shall have the legislative powers reserved to the States and Counties.

§ 2<sup>a</sup>. The election of the Governor and the Lieutenant Governor, observing the provisions of art. 77, and the District Representatives shall coincide with that of the State Governors and Representatives, for terms of office of the same duration.

§ 3<sup>a</sup>. The provisions of art. 27 apply to the District Representatives and to the Legislative House.

§ 4<sup>a</sup>. A federal law shall provide for use, by the Government of the Federal District of the civil and military police and of the military fire brigade.

## SECTION II

### THE TERRITORIES

Art. 33. The law shall provide for the administrative and judicial organization of the Territories.

§ 1<sup>a</sup>. The Territories may be divided into Counties, which shall be subject, when applicable, to the provisions of Chapter IV of this Title.

§ 2<sup>a</sup>. The accounts of a Territorial Government shall be submitted to the National Congress, with the prior opinion of the Federal Tribunal of Accounts.

§ 3<sup>a</sup>. Federal Territories with over one hundred thousand inhabitants shall have, in addition to a Governor appointed according to this Constitution, trial and appellate courts, members of the Public Ministry, and federal public defenders; a law shall provide for elections to the Territorial Legislature and its decision-making authority.

## CHAPTER VI

### INTERVENTION

Art. 34. The Federal Government shall not intervene in the States or in the Federal District, except to:

- I — maintain national integrity;
- II — repel a foreign invasion or invasion of one unit of the Federation in another;
- III — put an end to a serious threat to public order;
- IV — guarantee the unimpeded functioning of any of the Branches of Government in the units of the Federation;
- V — reorganize the finances of a unit of the Federation that:
  - a) suspends payment of a debt guaranteed by government instruments or securities debt for more than two consecutive years, except in the event of *force majeure*;

b) fails to deliver to the Counties tax revenues established in this Constitution within the time periods established by law;

VI — provide for enforcement of a federal law, court order or decision;

VII — ensure compliance with the following constitutional principles:

- a) republican form, representative system and democratic regime;
- b) individual rights;
- c) county autonomy;
- d) rendering of accounts of public administration, both direct and indirect.

Art. 35. The State shall not intervene in its Counties, nor the Federal Government in the Counties located in a Federal Territory, except when:

I — debt guaranteed by government instruments or securities is not paid for two consecutive years, unless due to *force majeure*;

II — required accounts are not rendered, in the form of the law;

III — the required minimum in county revenues has not been applied in the maintenance and development of education;

IV — the Tribunal of Justice grants a representation suit to assure observance of principles set out in the State Constitution or to provide for enforcement of a law, court order or judicial decision.

Art. 36<sup>a</sup>. A decree of intervention shall depend:

I — in the case of art. 34, IV, on a request from the coerced or impeded Legislature or Executive, on an order from the Supreme Federal Tribunal if the coercion is exerted against the Judiciary;

II — in the case of disobedience of a court order or decision, on an order from the Supreme Federal Tribunal, Superior Tribunal of Justice, or the Superior Electoral Tribunal;

III — on the Supreme Federal Tribunals's granting a representation suit by the Procurator-General<sup>14</sup> of the Republic, in the hypothesis of art. 34, VII;

IV — on the Superior Tribunal of Justice's granting a representation suit from the Procurator-General of the Republic, in the case of refusal to enforce a federal law.

§ 1<sup>a</sup>. The decree of intervention, which shall specify the extent, period and conditions of enforcement and which, if applicable, shall appoint the intervenor, shall be submitted for review by the National Congress or the State Legislative Assembly within twenty-four hours.

§ 2<sup>a</sup>. If the National Congress or the Legislative Assembly are not in session, a special session shall be called within the same period of twenty-four hours.

<sup>14</sup> The Procurator General is head of the Public Ministry and performs many of the functions of the Attorney General in the United States.

§ 3º. In the cases of art. 34, VI and VII, or of art. 35, IV, upon waiver of review by the National Congress or by the Legislative Assembly, the decree shall be limited to suspending execution of the challenged act, if such measure is sufficient to restore normality.

§ 4º. Upon cessation of the reason for intervention, authorities removed from their offices shall return to them, unless there is a legal impediment.

## CHAPTER VII

### GOVERNMENT ADMINISTRATION

#### SECTION I

##### GENERAL PROVISIONS

Art. 37. The direct or indirect government administration, including foundations, of any of the Branches of the Federal Government, States, Federal District and Counties, shall obey the principles of legality, impersonality, morality, publicity as well as the following:

I — public offices, employment and positions are accessible to Brazilians who meet the requirements established by law;

II — investiture in public office or employment depends on prior approval in public competitive examinations, or such examinations and comparison of credentials, except for appointment to a commission position declared by law to have free appointment and discharge;

III — the period of validity of a public competitive examination shall be up to two years, extendable once for a like period;

IV — during a non-extendable period set forth in the notice of the public competition, those approved in the public competitive examination shall be called, with priority over newly approved applicants, to assume a career office or employment;

V — offices with commissions and positions of confidence shall be exercised, preferentially, by civil servants holding technical or professional career positions, in the events and on the conditions provided for by law;

VI — civil servants are guaranteed of the right of free syndical association;

VII — the right to strike shall be exercised under the terms and within the limits defined in a complementary law;

VIII — the law shall reserve a percentage of public offices and positions for handicapped persons and shall define the criteria for their hiring;

IX — the law shall set out the circumstances for hiring personnel for a fixed period of time in order to meet a temporary need of exceptional public interest;

X — general adjustments of civil servants' remuneration, without distinction between the indexes for civil and military personnel, shall always be done on the same date;

XI — the law shall establish the maximum limit and proportion between the highest and lowest remuneration of government employees, observing, as maximum limits and within the sphere of respective authority, the amounts received in cash as compensation of whatever sort, by members of the National Congress, Ministers of State, and Justices of the Supreme Federal Tribunal and their counterparts in the States, Federal District and Territories, and, in the Counties, the amounts received as monetary compensation by the Prefects;

XII — salaries for positions in the Legislative Branch and the Judiciary may not be higher than the compensation paid those in the Executive Branch;

XIII — linking or equating salaries, for purposes of compensating personnel in the public service, is prohibited, except for the provisions of the preceding subparagraph and of art. 39, § 1º;

XIV — pecuniary raises received by a government employee shall not be computed or accumulated, for purposes of granting subsequent raises, on the same account or on an identical basis;

XV — salaries of civil servants, both civilian and military, are irreducible, and their compensation shall comply with the provisions of arts. 37, XI, XII, 150, II, 153, III, and 153, § 2º, I;

XVI — accumulation of paid public offices is forbidden, except, when working hours are compatible, for:

- a) two teaching positions;
- b) one teaching position with another technical or scientific position;
- c) two exclusive positions for physicians;

XVII — the prohibition against accumulation extends to jobs and offices and includes autarchies (*autarquias*),<sup>15</sup> public companies, mixed-capital companies and foundations maintained by the Government;

XVIII — the Treasury and its inspectors shall, with their spheres of competence and jurisdiction, enjoy precedence over the other administrative sectors, as set forth in the law;

XIX — public companies, mixed-capital companies, autarchies or public foundations may be organized only by specific laws;

<sup>15</sup> An autarchy is a government agency that is classified as part of indirect administration and organized as an independent and autonomous legal entity with its own patrimony.

XX — organization of subsidiaries of the entities referred to in the preceding subparagraph, as well as participation by any of them in a private company, requires legislative authorization in each case;

XXI — except for cases specified in law, public works, services, purchases and dispositions shall be contracted through a process of public bidding that assures equal conditions to all bidders, with clauses that establish obligations of payments. The effective conditions of the bid shall be maintained, in the terms of the law, which shall only allow requirements of technical and economic qualifications essential to secure performance of the obligations.

§ 1º. Publicity of the acts, programs, public works, services, and campaigns of government agencies shall have an educational, informative, or social orientation character, and may not include names, symbols or images representing the personal promotion of governmental authorities or civil servants.

§ 2º. Non-observance of the provisions of subparagraphs II and III shall result in the nullity of the act and punishment of the authority responsible, in the terms of the law.

§ 3º. Complaints concerning rendering of public services shall be regulated by law.

§ 4º. Acts of administrative dishonesty shall result in suspension of political rights, loss of public office, freezing of assets and reimbursement of the Public Treasury, in the form and degree provided for by law, without prejudice to any applicable criminal action.

§ 5º. The law shall establish the limitations periods for offenses performed by any agent, whether or not a civil servant, that cause damage to the Public Treasury, excepting the respective actions for damages.

§ 6º. Legal entities of public and private law rendering public services shall be liable for the damages that their agents, acting in such capacity, cause to third parties, assuring the right to recoupment from the agent responsible in cases of *dolo*<sup>16</sup> or fault.

Art. 38. The following provisions apply to civil servants holding elective offices:

I — in the case of federal, state or district elective offices, they shall be furloughed from their office, employment or position;

II — if invested with the mandate of Prefect, they shall be furloughed from their offices, employment or positions, and may opt for remuneration;

III — if invested with the mandate of County Legislator, and if the working hours are compatible, they shall receive the benefits of their offices, employment or positions, without prejudice to remuneration for the elective office; if the hours are not compatible, the provisions of the preceding subparagraphs shall apply;

<sup>16</sup> *Dolo* has no single English translation. It can mean fraud, deceit, malice, or *mens rea*.

IV — in any case requiring furlough for the exercise of an elective mandate, the period of service shall be counted for all legal purposes, except for merit promotion;

V — in the case of furlough, the amounts shall be determined as if they had been in activity for purposes of social security benefits.

## SECTION II

### CIVIL SERVANTS

Art. 39. The Federal Government, the States, the Federal District and the Counties shall institute, within the spheres of their jurisdictions, a unified juridical regime and career plan for their own civil servants of direct governmental administration, autarchies and public foundations.

§ 1º. The law shall assure civil servants of direct administration equal remuneration for positions with equal or similar duties in the same Branch or among civil servants of the Executive, Legislature and Judiciary, except for advantages of an individual character and those relative to the nature of the work or location.

§ 2º. The provisions of art. 7, IV, VI, VII, VIII, IX, XII, XIII, XV, XVI, XVII, XVIII, XIX, XX, XXII, XXIII and XXX apply to these civil servants.

Art. 40º. Civil servants shall be retired:

I — for permanent disability, at full pay when such disability results from an accident while in service, an occupational disease or a serious, contagious or incurable illness, as specified by law; the pension is proportional in all other cases;

II — compulsorily, at seventy years of age, with a pension proportional to the period of service;

III — voluntarily:

a) at full pay after thirty-five years of service, if male, and upon thirty years, if female;

b) at full pay after thirty years of actual teaching activity, if male, and twenty-five, if female;

c) after thirty years of service, if male, and upon twenty-five, if female, with pay in proportion to this period;

d) at sixty-five years of age, if male, and at sixty, if female, with pay proportional to the period of service.

§ 1º. A complementary law may establish exceptions to the provisions of subparagraph III, a and c, for work considered hard, unhealthy or dangerous.

§ 2º. The law shall provide for retirement from temporary positions or employment.



§ 3<sup>o</sup>. The period of federal, state or municipal government service shall be computed in full for purposes of retirement and availability.

§ 4<sup>o</sup>. Retirement pensions shall be revised, in the same proportion and on the same date, whenever there is a change in the remuneration of active civil servants; any benefits or advantages subsequently granted to civil servants, including those resulting from transformation or reclassification of the office or position from which they retired, shall also be extended to retirees, in the form of the law.

§ 5<sup>o</sup>. Pension benefits for death shall correspond to the full amount of remuneration or earnings of the deceased civil servant, up to the limit established by law, observing the provisions of the preceding paragraph.

Art. 41. Civil servants appointed by virtue of public competitive examinations acquire tenure after two years of actual service.

§ 1<sup>o</sup>. Tenured civil servants shall only lose their positions through a court judgment that has become final and unappealable or an administrative proceeding in which they are assured a full defense.

§ 2<sup>o</sup>. Should the dismissal of a tenured civil servant be declared invalid by a judicial decision, the employee shall be reinstated, and any subsequent occupant of the position shall be reassigned to his original position, without the right to indemnification, placed in another position or released.

§ 3<sup>o</sup>. If his position is abolished or declared unnecessary, a tenured civil servant shall go on paid leave until being reassigned to another suitable position.

### SECTION III

#### SERVICEMEN IN THE ARMED FORCES

Art. 42. Members of the Armed Forces are federal military servicemen, and members of the military police and fire brigades are military servicemen of the respective States, Territories and the Federal District.

§ 1<sup>o</sup>. Ranks, with the prerogatives, rights and duties inherent to them, are assured fully to active or retired officers of the Armed Forces, the military police and fire brigades of the States, Territories and Federal District, and they shall have exclusive rights to military titles, posts and uniforms.

§ 2<sup>o</sup>. The ranks of officers of the Armed Forces are conferred by the President of the Republic, and those of officers of the military police and fire brigades of the States, Territories and Federal District, by their respective Governors.

§ 3<sup>o</sup>. Members of the military in active service who accept permanent civil service positions shall be transferred to the reserves.

§ 4<sup>o</sup>. Members of the military in active service who accept temporary non-elective public offices, employment, or positions, even in the indirect administration, shall remain part of their respective staffs; so long as they remain in this situation, they may only be promoted through seniority, and their period of service shall be counted only for that promotion and for transfer to the reserve, and

after two years away from active service, whether continuous or not, they shall be transferred to inactivity.

§ 5<sup>o</sup>. Military servicemen are forbidden to form syndicates and to strike.

§ 6<sup>o</sup>. While in actual service, military servicemen may not be affiliated with political parties.

§ 7<sup>o</sup>. An officer of the Armed Forces shall only lose his post and rank if adjudged unworthy or incompatible with being an officer, by decision of a permanent military tribunal in peacetime, or of a special tribunal in wartime.

§ 8<sup>o</sup>. Convicted officers sentenced after final judgment to imprisonment for more than two years by an ordinary military court shall be subjected to the adjudication provided for in the preceding paragraph.

§ 9<sup>o</sup>. The law shall provide for the age limits, tenure and other conditions for the transference of servicemen into inactivity.

§ 10<sup>o</sup>. The provisions of art. 40, §§ 4<sup>o</sup> and 5<sup>o</sup> apply to the servicemen referred to in this article and to their pensioners.

§ 11<sup>o</sup>. The provisions of art. 7, VIII, XII, XVII, XVIII, and XIX apply to the servicemen referred to in this article.

### SECTION IV

#### THE REGIONS

Art. 43. For administrative purposes, the Federal Government may articulate its actions in the same social and geog-economic complex, with a view towards its development and the reduction of regional inequalities.

§ 1<sup>o</sup>. A complementary law shall provide for:

I — conditions for integration of the regions of development;

II — the composition of the regional organizations that shall carry out, the form of the law, regional plans, integrated in national economic and social development plans and approved together with them.

§ 2<sup>o</sup>. Regional incentives shall include, *inter alia*, in the form of the law:

I — equality of tariffs, freight, insurance and other cost and price items that are the responsibility of the Government;

II — favorable interest rates for financing of priority activities;

III — exemptions, reductions or temporary deferment of federal taxes owed by individuals or legal entities;

IV — priority in the economic and social utilization of rivers, reservoirs, or dammable waters in low-income regions subject to periodic droughts.

§ 3<sup>o</sup>. In the areas referred to in § 2<sup>o</sup>. IV, the Federal Government shall grant incentives for the recovery of arid lands and cooperate with small and medium-sized rural land owners to establish sources of water and small-scale irrigation on their lands.

**TITLE IV****ORGANIZATION OF THE BRANCHES****CHAPTER I****LEGISLATIVE POWER****SECTION I****THE NATIONAL CONGRESS**

Art. 44. The Legislative Power is exercised by the National Congress, which is composed of the Chamber of Deputies and the Senate.

Sole Paragraph. — Each legislature shall last for four years.

Art. 45. The Chamber of Deputies consists of representatives of the people, elected by a system of proportionality in each State, Territory and the Federal District.

§ 1º. The total number of Deputies, as well as the representation of each State and the Federal District, shall be established by a complementary law in proportion to the population. The necessary adjustments shall be made in the year prior to the elections, so that none of those units of the Federation has fewer than eight nor more than seventy Deputies.

§ 2º. Each Territory shall elect four Deputies.

Art. 46. The Federal Senate consists of representatives of the States and the Federal District, elected by majority vote.

§ 1º. Each State and the Federal District shall elect three Senators, with mandates of eight years.

§ 2º. The representation of each State and the Federal District shall be renewed every four years, alternately reelecting one-third and two-thirds.

§ 3º. Each Senator shall be elected along with two alternates.

Art. 47. Except where there is a constitutional provision to the contrary, the decisions of each Chamber and its Committees shall be taken by a majority vote when an absolute majority of its members is present.

**SECTION II****POWERS OF THE NATIONAL CONGRESS**

Art. 48. The National Congress has the power, with the approval of the President of the Republic (not required for subjects specified in arts. 49, 51 and 52), to provide

for all matters within the jurisdiction of the Federal Government, especially concerning:

I — the tax system, tax collection and income distribution;

II — multiyear plans, budgetary directives, annual budgets, credit transactions, public debt and issuance of legal tender;

III — determination and modification of the number of troops in the Armed Forces;

IV — national, regional and sectorial development plans and programs;

V — national territorial boundaries, air and maritime space and property owned by the Federal Government;

VI — incorporation, subdivision or dismembering of areas of Territories or States, after hearing from the respective Legislative Assemblies;

VII — temporary transfer of the seat of the Federal Government;

VIII — granting of amnesty;

IX — organization of the Federal Government's and the Territories' administration, Judiciary and Public Defender's Office, and the organization of the Judiciary, Public Ministry and Public Defender's Office of the Federal District;

X — creation, transformation and abolition of public offices, employment and positions;

XI — creation, structuring and powers of the Ministries and organs of public administration;

XII — telecommunications and radio broadcasting;

XIII — financial matters, foreign exchange, monetary matters, and financial institutions and their operations;

XIV — money, limits on currency issuance and the amount of secured federal indebtedness.

Art. 49. The National Congress shall have exclusive powers:

I — to decide definitively on international treaties, accords or acts that involve serious charges or commitments on the national patrimony;

II — to authorize the President of the Republic to declare war, to make peace, to allow foreign forces to pass through national territory or to remain therein temporarily, with the exception of cases provided for in a complementary law;

III — to authorize the President and the Vice President of the Republic to leave the country for more than fifteen days;

IV — to approve a state of defense or federal intervention, to authorize a state of siege or to suspend any of these measures;

V — to stay normative acts of the Executive that exceed regulatory authority or the limits of legislative delegation;

VI — to transfer its seat temporarily;

VII — to fix identical remuneration for Federal Deputies and Senators, in each legislature for the subsequent one, observing the provisions of arts. 150, II, 153, III, and 153, § 2<sup>o</sup>, I;

VIII — to fix the remuneration of the President and of the Vice President of the Republic and the Ministers of State, observing the provisions of arts. 150, II, 153, III, and 153, § 2<sup>o</sup>, I;

IX — to review each year the accounts rendered by the President of the Republic and to consider the reports on the execution of the plans of the Government;

X — to supervise and to control, directly or through either of its Chambers, the acts of the Executive, including those of indirect administration;

XI — to safeguard the preservation of its legislative authority in the face of rule-making powers of the other Branches;

XII — to consider the granting and any renewing of concessions for radio and television broadcasting;

XIII — to select two-thirds of the members of the Federal Tribunal of Accounts;

XIV — to approve Executive initiatives referring to nuclear activities;

XV — to authorize a referendum and to call for a plebiscite;

XVI — to authorize exploitation and use of water resources, prospecting and mining of mineral wealth on Indian lands;

XVII — to give prior approval for the alienation or concession of public lands with an area greater than two thousand five hundred hectares.<sup>17</sup>

Art. 50. The Chamber of Deputies or the Federal Senate, as well as any of their Committees, may summon a Minister of State to give information personally on a predetermined matter, and his absence without adequate justification shall constitute a crime of responsibility.<sup>18</sup>

§ 1<sup>o</sup>. Ministers of State may appear before the Federal Senate, the Chamber of Deputies or any of their Committees, on their own initiative and by agreement with the respective Executive Committee (*Mesa*) to report on matters relevant to their Ministry.

§ 2<sup>o</sup>. The Executive Committees of the Chamber of Deputies and the Federal Senate may forward written requests for information to the Ministers of State, and

<sup>17</sup> One hectare is 10,000 square meters and is equivalent to 2.471 acres.

<sup>18</sup> A crime of responsibility is an act committed by a public official that contravenes the honesty, integrity or decorum of public administration. It can be a common crime and/or an impeachable offense. Depending on the context, it is hereafter translated either as a crime of responsibility or as impeachable offense.

refusal or noncompliance with such request within a period of thirty days, as well as the delivery of false information, shall constitute an impeachable offense.

## SECTION III

### CHAMBER OF DEPUTIES

Art. 51. The Chamber of Deputies has exclusive power:

I — to authorize, by two-thirds of its members, the institution of legal charges against the President and Vice President of the Republic and the Ministers of State;

II — to proceed to take the accounts of the President of the Republic, when they are not submitted to Congress within sixty days after start of the legislative session;

III — to prepare its internal regulations;

IV — to provide for its organization, operation, police creation and transformation or abolition of offices, jobs and positions of its services and fixing their respective remuneration, observing the parameters established in the law of budget directives;

V — to elect the members of the Council of the Republic, according to art. 89, VII.

## SECTION IV

### THE FEDERAL SENATE

Art. 52<sup>o</sup>. The Federal Senate has exclusive power:

I — to try the President and the Vice President of the Republic for impeachable offenses and the Ministers of State for crimes of the same nature connected with them;

II — to try the Ministers of the Supreme Federal Tribunal, the Procurator-General of the Republic, and the Advocate-General of the Republic for impeachable offenses;

III — to give its prior approval, by secret ballot, after public hearing, on the selection of:

a) magistrates, in the cases established in this Constitution;

b) Ministers of the Federal Tribunal of Accounts nominated by the President of the Republic;

c) Governors of the Territories;

d) president and directors of the Central Bank;

e) Procurator-General of the Republic;

f) holders of other positions as determined by law;

IV — to give its prior approval, by secret ballot, after closed hearing, on the selection of the heads of permanent diplomatic missions;

V — to authorize foreign financial transactions of interest to the Federal Government, States, Federal District, Territories and Counties;

VI — to establish, as proposed by the President of the Republic, global limits for the amount of the public debt of the Federal Government, States, Federal District and Counties;

VII — to provide for the global limits and conditions for foreign and domestic credit transactions of the Federal Government, States, Federal District and Counties, their autarchies and other entities controlled by the Federal Government;

VIII — to provide for the limits and conditions for the Federal Government's guaranteeing foreign and domestic credit transactions;

IX — to establish global limits and conditions for the amount of the secured debt of the States, the Federal District and the Counties;

X — to suspend enforcement, in full or in part, of laws declared unconstitutional by final decision of the Supreme Federal Tribunal;

XI — to approve, by absolute majority and by secret ballot, removal from office of the Procurator of the Republic before the end of his term of office;

XII — to draw up its internal regulations;

XIII — to provide for its organization, operation, police creation and transformation or extinction of offices, jobs and positions in its services and to determine their respective remuneration, observing the parameters established in the law of the budget directives;

XIV — to elect members of the Council of the Republic pursuant to art. 89, VII.

Sole Paragraph. In cases provided for in subparagraphs I and II, with respect to the President or the Supreme Federal Tribunal, a conviction, which may only be rendered by two-thirds vote of the Federal Senate, shall be limited to loss of office, with disqualification to hold any public office for a period of eight years, without prejudice to any other judicial sanctions that may be applicable.

## SECTION V

### DEPUTIES AND SENATORS

Art. 53. The Deputies and Senators shall enjoy immunity for their opinions, words and votes.

§ 1º. From the date of investiture, members of the National Congress may not be arrested, except in *flagrante delicto* for a nonbailable crime, nor may criminal charges be brought against them without prior authorization from their respective Chamber of Congress.

§ 2º. Denial of a request for a waiver of immunity or failure to consider it shall suspend the statute of limitations for the duration of the mandate.

§ 3º. In a case of *flagrante delicto* for a nonbailable crime, the case record shall be sent within twenty- four hours to the respective Chamber, which, by secret vote of a majority of its members, shall decide on imprisonment and whether to authorize determination of criminal liability.

§ 4º. The Deputies and Senators shall be judged by the Supreme Federal Tribunal.

§ 5º. The Deputies and Senators shall not be obliged to testify about information received or given because of the exercise of their mandate nor against those who confided in them or from whom they received information.

§ 6º. The calling of Deputies and Senators to duty in the Armed Forces, even if they are in the military and even in wartime, shall depend upon prior authorization from the respective Chamber.

§ 7º. The immunity of Deputies or Senators shall continue during a state of siege and may only be suspended by vote of two- thirds of the members of the respective Chamber, in cases of acts performed outside the premises of Congress that are incompatible with the implementation of such measure.

Art. 54. Deputies and Senators may not:

I — as from the date of certification of their election:

a) sign or maintain a contract with a legal entity of public law, an autarchy, a state-owned company, a mixed capital company or a public utility, unless the contract contains standard clauses;

b) accept or hold a remunerated office, position or job, including those that may be terminated at will, in the entities set out in the preceding subparagraph;

II — as from taking of office:

a) be the owner, controller or director of a company that enjoys a privilege as a result of a contract with a public entity or occupy any remunerated position therein;

b) hold an office or position subject to termination at will in the entities referred to in subparagraph I, a;

c) sponsor a cause in which any of the entities referred to in subparagraph I, a, have an interest;

d) be the holder of more than one public elective office or mandate.

Art. 55. Deputies or Senators shall lose their mandates if:

I — they infringe any of the prohibitions established in the preceding article;

II — their conduct is declared incompatible with parliamentary decorum;

III — they fail to attend, during each legislative term, one-third of the ordinary sessions of the Chamber to which they belong, except when on an authorized leave of absence or mission;

IV — they lose their political rights or have them suspended;

V — whenever decreed by the Electoral Courts, in the cases provided for in this Constitution;

VI — they are criminally convicted by a judgment that has become final and nonappealable.

§ 1<sup>º</sup>. In addition to the cases defined in internal regulations, abuse of the prerogatives granted to members of the National Congress or receipt of undue benefits is incompatible with parliamentary decorum.

§ 2<sup>º</sup>. In the cases of subparagraphs I, II and VI, loss of mandate shall be decided by the Chamber of Deputies or the Federal Senate, by secret ballot and absolute majority, on the initiative of the respective Executive Committee or of a political party represented in the National Congress, assuring a full defense.

§ 3<sup>º</sup>. In the cases provided for in subparagraphs III to V, loss of the mandate shall be declared by the Executive Committee of the respective Chamber *ex officio* or on the initiative of any of its members, or of a political party represented in the National Congress, assuring an ample defense.

Art. 56. Deputies or Senators shall not lose their mandates when:

I — invested in the office of Minister of State, Governor of a Territory, Secretary of State, Secretary of the Federal District, or Secretary of a Territory, Prefect of the Capital or head of a temporary diplomatic mission;

II — on leave of absence from the respective Chamber because of illness, or to pursue, without remuneration, a private matter, provided that, in the latter case, the leave does not exceed one hundred-twenty days per legislative session.

§ 1<sup>º</sup>. An alternate shall be called in cases of vacancy, of investiture in the positions provided for in this article or a leave of absence exceeding one hundred-twenty days.

§ 2<sup>º</sup>. If a vacancy occurs and there is no alternate, an election shall be held to fill the vacancy if more than fifteen months remain before the end of the mandate.

§ 3<sup>º</sup>. In the event of subparagraph I, the Deputy or Senator may opt for the remuneration of his elected office.

## SECTION IV

### SESSIONS

Art. 57. The National Congress shall meet in the Federal Capital, from February 15th to June 30th and from August 1st to December 15th.

§ 1<sup>º</sup>. Whenever the sessions scheduled for these dates fall on Saturdays, Sundays or holidays, they shall be transferred to the next business day.

§ 2<sup>º</sup>. A legislative session shall not be interrupted without approval of the bill for the law of budget directives.

§ 3<sup>º</sup>. In addition to other cases provided for in this Constitution, the Chamber of Deputies and the Federal Senate shall meet in a joint session:

I — to inaugurate the legislative session;

II — to draw up common by-laws and to regulate creation of services common to both Chambers;

III — to receive the oath of office of the President and Vice President of the Republic;

IV — to acknowledge a veto and to deliberate about it.

§ 4<sup>º</sup>. Each of the Chambers shall meet in preparatory sessions, starting on February 1st of the first year of the legislature, for the seating of its members and election of their respective Executive Committee for a two-year term, prohibiting reelection to the same position in the next election.

§ 5<sup>º</sup>. The President of the Senate shall preside over the Executive Committee of the National Congress, and the other positions shall be held, alternately, by the occupants of equivalent positions in the Chamber of Deputies and in the Federal Senate.

§ 6<sup>º</sup>. Extraordinary sessions of the National Congress shall be called:

I — by the President of the Senate, in the event of the decreeing of a state of defense or federal intervention, of a request for authorization to decree a state of siege and for the President and the Vice President of the Republic to take their oaths and offices;

II — by the President of the Republic, by the Presidents of the Chamber of Deputies and of the Federal Senate or at the request of a majority of the members of both Chambers in the event of urgency or relevant public interest.

§ 7<sup>º</sup>. In an extraordinary legislative session, the National Congress shall only consider matters for which it was convoked.

## SECTION VII

### COMMITTEES

Art. 58. The National Congress and its two Chambers shall have permanent and temporary committees, constituted in the form and with the powers provided for in the respective by-laws or in the act of their creation.

§ 1<sup>º</sup>. In forming the Executive Committees and each Committee, proportional representation of the political parties or parliamentary blocs that participate in the respective Chamber of Congress shall be assured to the extent possible.

§ 2<sup>o</sup>. The committees, based upon their subjects over which they have jurisdiction, shall have the powers to:

- I — discuss and vote on bills which, in accordance with the by-laws, the authority of the entire body is unnecessary, unless an objection is made by one-tenth of the members of the Chamber;
- II — hold public hearings with entities of the public;
- III — call Ministers of State to deliver information on subjects inherent to their duties;
- IV — receive petitions, claims, representations or complaints from any person against acts or omissions of government authorities or public entities;
- V — request the deposition of any authority or citizen;
- VI — examine construction programs and national, regional and sectorial development plans and issue opinions upon them.

§ 3<sup>o</sup>. Parliamentary investigative committees, whose own investigative powers shall be the same as judicial authorities, in addition to other powers set forth in the by-laws of their respective Chambers, shall be created by the Chamber of Deputies and the Federal Senate, either jointly or separately, at the request of one-third of its members, to investigate certain facts and for a determined period of time. If appropriate, their conclusions shall be forwarded to the Public Ministry to determine the civil or criminal liability of the infractions.

§ 4<sup>o</sup>. During recess, the National Congress shall be represented by a Committee elected by its two Chambers at the last ordinary session of the legislative term, with powers defined in common by-laws, and whose composition shall reflect the proportional representation of the political parties to the extent possible.

## SECTION VIII

### THE LEGISLATIVE PROCESS

#### SUBSECTION I

##### GENERAL PROVISIONS

Art. 59. The legislative process includes the preparation of:

- I — Constitutional amendments;
- II — complementary laws;
- III — ordinary laws;
- IV — delegated laws;
- V — provisional measures;

VI — legislative decrees;

VII — resolutions.

Sole Paragraph. — A complementary law shall provide for the preparation, reduction, alteration and consolidation of laws.

#### SUBSECTION II

##### AMENDMENTS TO THE CONSTITUTION

Art. 60. Constitutional amendments may be proposed by:

- I — at least one-third of the members of the Chamber of Deputies or the Federal Senate;
- II — the President of the Republic;
- III — more than one half of the Legislative Assemblies of units of the Federation, each manifesting its decision by a simple majority of its members.

§ 1<sup>o</sup>. The Constitution cannot be amended during federal intervention, state of defense or stage of siege.

§ 2<sup>o</sup>. A proposed amendment shall be debated and voted on in each Chamber of the National Congress, in two rounds, and shall be considered approved if it obtains three-fifths of the votes of the respective members in both rounds.

§ 3<sup>o</sup>. A Constitutional amendment shall be promulgated by the Executive Committees of the Chamber of Deputies and of the Federal Senate, taking the next sequential number.

§ 4<sup>o</sup>. Proposed Constitutional amendments shall not be discussed that tend to abolish the following:

- I — the federative form of the States;
- II — direct, secret, universal and periodic suffrage;
- III — separation of the powers;
- IV — individual rights and guarantees.

§ 5<sup>o</sup>. The subject of a defeated or prejudiced proposed Constitutional amendment may not be made the subject of another proposed amendment in the same legislative session.

#### SUBSECTION III

##### THE LAWS

Art. 61. Any member or Committee of the Chamber of Deputies or the Federal Senate or the National Congress, the President of the Republic, the Supreme Federal Tribunal, the Superior Tribunals, the Procurator-General of the Republic

and citizens, shall have the power to initiate complementary and ordinary laws, in the form and cases provided for in this Constitution.

§ 1<sup>a</sup>. The President of the Republic shall have the exclusive power to initiate the following laws:

I — those that fix or modify the number of troops in the Armed Forces;

II — laws that deal with:

- a) creation of public offices, positions or jobs in the direct administration and in autarchies, or an increase in their remuneration;
- b) administrative and judicial organization, tax and budgetary matters, public services and administrative personnel of the Territories;
- c) employees of the Federal Government and Territories, their legal regime, appointment to positions, tenure and retirement of civil servants, retirement and transfer of servicemen to inactive status;
- d) organization of the Federal Government's Public Ministry and Public Defender's Office, as well as general rules for the organization of the Public Ministry and Public Defender's Office of the States, the Federal District and the Territories;
- e) creation, structuring and powers of the Ministries and organs of government administration.

§ 2. Popular initiative may be exercised by presentation to the Chamber of Deputies of a draft of a law subscribed to by at least one percent of the national electorate, distributed throughout at least five States, with no less than three-tenths of one percent of the voters of each of these States.

Art. 62. In relevant and urgent cases, the President of the Republic may adopt provisional measures with the force of law; such measures shall be submitted immediately to the National Congress, which shall be convoked for an extraordinary session within five days if in recess.

Sole Paragraph. — Provisional measures shall lose their effectiveness as of the date of their issuance if they are not converted into law within a period of thirty days from the date of their publication, and the National Congress shall regulate the legal relations arising therefrom.

Art. 63. An increase in expenditures provided for shall not be permitted:

I — in bills that are the exclusive initiative of the President of the Republic, except for the provisions of art. 166, §§ 3<sup>a</sup> and 4<sup>a</sup>;

II — in bills on the organization of the administrative services of the Chamber of Deputies, the Federal Senate, Federal Tribunals and the Public Ministry.

Art. 64. The debates and votes on bills initiated by the President of the Republic, the Supreme Federal Tribunal and the Superior Tribunals shall start in the Chamber of Deputies.

§ 1<sup>a</sup>. The President of the Republic may request urgency in consideration of bills initiated by him.

§ 2<sup>a</sup>. In the event in the prior paragraph, if the Chamber of Deputies and the Federal Senate each fail to act on the bill successively within forty-five days, such bill shall be included on the agenda, and debate on other matters shall be suspended, so that the bill can be voted upon.

§ 3<sup>a</sup>. Amendments by the Federal Senate shall be considered by the Chamber of Deputies within a period of ten days, observing, as to the rest of the bill, the provisions of the preceding paragraph.

§ 4<sup>a</sup>. The time periods set out in § 2<sup>a</sup> shall not run when the National Congress is in recess and shall not apply to drafts of codes.

Art. 65. A bill approved by one Chamber shall be reviewed by the other in a single round of discussion and voting; if the reviewing Chamber approves the bill, it shall be sent for enactment or promulgation, or if it is rejected, it shall be archived.

Sole Paragraph. — If a bill is amended, it shall return to the Chamber that initiated it.

Art. 66<sup>a</sup>. The Chamber in which voting was concluded shall send the bill to the President of the Republic, who, if he consents, shall approve it.

§ 1<sup>a</sup>. If the President of the Republic deems all or part of a bill unconstitutional or contrary to the public interest, he shall veto it, either in whole or in part, within a period of fifteen business days, starting from the date he received it, and he shall advise the President of the Senate of the reasons for the veto within forty-eight hours.

§ 2<sup>a</sup>. A partial veto shall only apply to the full text of an article, paragraph, subparagraph or line.

§ 3<sup>a</sup>. After a period of fifteen days has elapsed, silence on the part of the President of the Republic shall operate as approval.

§ 4<sup>a</sup>. A veto shall be considered in a joint session within thirty days of receipt thereof and may only be rejected by an absolute majority of the Deputies and Senators by secret ballot.

§ 5<sup>a</sup>. If a veto is not upheld, the bill shall be sent to the President of the Republic for promulgation.

§ 6<sup>a</sup>. If the period established in § 4<sup>a</sup> lapses without its consideration, the veto shall be placed on the agenda of the next session, suspending other matters until final voting on it, except for the subjects dealt with in art. 62, sole paragraph.

§ 7<sup>a</sup>. If the law is not promulgated by the President of the Republic within forty-eight hours in the situations set out in §§ 3<sup>a</sup> and 5<sup>a</sup>, the President of the Senate shall promulgate it, and if he does not do so within the same period, it shall be incumbent upon the Vice President of the Senate to do so.

Art. 67. The subject of a rejected bill of law may only constitute the subject of a new bill in the same legislative session if proposed by an absolute majority of the members of any of the Chambers of the National Congress.

Art. 68. Delegated laws shall be drafted by the President of the Republic, who shall request delegation from the National Congress.

§ 1<sup>o</sup>. Acts within the exclusive powers of the National Congress, those within the exclusive power of the Chamber of Deputies or the Federal Senate, subjects reserved for complementary laws, and legislation on the following matters shall not be delegated:

I — organization of the Judiciary and the Public Ministry, and the careers and privileges of their members;

II — nationality, citizenship, and individual, political and electoral rights;

III — multiyear plans, budgetary directives and budgets.

§ 2<sup>o</sup>. Delegation to the President of the Republic shall be granted by Congressional resolution specifying its contents and the terms for its performance.

§ 3<sup>o</sup>. If the resolution determines that the bill shall be considered by Congress, it shall do so by a single vote, prohibiting any amendments.

Art. 69. Complementary laws shall be approved by an absolute majority.

## SECTION IX

### SUPERVISION OF ACCOUNTING, FINANCES, AND BUDGET

Art. 70. Supervision of the accounting, finances, budgets, operations and patrimony of the Federal Government and the entities of direct and indirect administration with respect to legality, legitimacy, economy, application of subsidies and waiver of revenues shall be exercised by the National Congress, by means of external control and through the internal control system of each Branch.

Sole Paragraph.— Accounts shall be rendered by any individual or public entity that uses, collects, keeps, manages or administers public funds, assets and securities or those for which the Federal Government is responsible, or that assumes obligations of pecuniary nature on behalf of the Federal Government.

Art. 71. External control under the responsibility of the National Congress shall be exercised with the assistance of the Federal Tribunal of Accounts, which shall have the power to:

I — examine the accounts rendered each year by the President of the Republic, by means of a prior opinion, which shall be prepared within sixty days of receipt thereof;

II — determine the accounts of administrators and others responsible for public funds, assets, and securities of the direct and indirect administration, including government-instituted or maintained foundations and companies and the accounts of those causing a loss, misplacement, or other irregularity resulting in damage to the public treasury;

III — consider, for registration purpose, the legality of acts of personnel hired for any position in the direct and indirect administration, including government-instituted and maintained foundations, excluding appointments to offices granted by commissions, as well as the granting of civil and

military retirements and pensions, except for subsequent benefits that may be granted without altering the legal basis therefore;

IV — carry out, on its own initiative or the initiative of the Chamber of Deputies, the Federal Senate, a technical Committee or an investigative commission, inspections and audits of an accounting, financial, budgetary, operational or property or patrimonial nature in the administrative units of the Legislative, Executive, and Judiciary and other entities referred to in subparagraph II;

V — supervise the national accounts of supranational companies in whose capital stock the Federal Government holds a direct or indirect interest, according to the terms established in the constitutive treaty;

VI — supervise application of any resources repassed by the Federal Government, under a convention, accord, arrangement or other similar instrument, to a State, the Federal District or a County;

VII — deliver information requested by any of the Chambers or any of the respective Committees of the National Congress with respect to supervision of the accounting, finances, budget, operations and patrimony, and as to the results of audits and inspections made;

VIII — in cases of illegal expenses or irregular accounts, apply to those responsible, the sanctions provided for in law, which shall establish, among other penalties, fines proportional to the damages caused to the public treasury;

IX — if illegalities are verified, establish a period for the agency or entity to take the necessary measures for exact enforcement of the law;

X — stay execution of a challenged act, if the challenge is not adhered to, advising the Chamber of Deputies and the Federal Senate of this decision;

XI — communicate to the proper power any irregularities or abuses determined.

§ 1<sup>o</sup>. In the case of a contract, the stay shall be adopted directly by the National Congress, which shall request immediately that the Executive take appropriate action.

§ 2<sup>o</sup>. If the National Congress or the Executive fails to take the actions provided for in the preceding paragraph within ninety days, the Tribunal shall decide the matter.

§ 3<sup>o</sup>. Decisions of the Tribunal imposing debts or fines shall be effective as executable judgments.

§ 4<sup>o</sup>. The Tribunal shall send quarterly and annual reports on its activities to the National Congress.

Art. 72. If there are signs of unauthorized expenses, even in the form of nonprogrammed investments or nonapproved subsidies, the permanent mixed Committees referred to in art. 166, § 1<sup>o</sup>, may request that the responsible government authority give the necessary explanations within five days.



§ 1º. If the explanations are given or if considered insufficient, the Committee shall ask the Tribunal to decide the matter conclusively within a period of thirty days.

§ 2º. If the Tribunal regards the expense as irregular and the Committee determines that it may cause irreparable damage or serious injury to the public economy, the Committee shall propose to the National Congress that the expenditure be suspended.

Art. 73º. The Federal Tribunal of Accounts, composed of nine Ministers, sits in Federal District, with its own staff and with jurisdiction throughout the entire Brazilian territory, and where appropriate, shall exercise the powers provided in art. 96.

§ 1º. Ministers of the Federal Tribunal of Accounts shall be nominated from Brazilians who satisfy the following requirements:

- I — more than thirty-five and less than sixty-five years of age;
- II — moral integrity and unblemished reputation;
- III — widely acknowledged understanding of law, accounting, economics and finances or government administration;
- IV — more than ten years of practice or of actual professional activity requiring the understanding mentioned in the preceding subparagraph.

§ 2º. Ministers of the Federal Tribunal of Accounts shall be chosen:

- I — one-third by the President of the Republic, with the approval of the Senate, two being alternately chosen from among auditors and members of the Public Ministry assigned to the Tribunal from lists of three candidates suggested by the Tribunal, in accordance with the criteria of seniority and merit;
- II — two-thirds by the National Congress.

§ 3º. Ministers of the Federal Tribunal of Accounts shall have the same guarantees, prerogatives, impediments, compensation and privileges as the Ministers of the Superior Tribunal of Justice and may retire with the benefits of the office only if they have actually served for more than five years.

§ 4º. When substituting for a Minister, an auditor shall have the same guarantees and impediments as the holder of the office, and when exercising other judicial duties, as a judge of a Regional Federal Tribunal.

Art. 74. The Legislature, Executive and Judiciary shall maintain integrated systems of internal control in order to:

- I — evaluate achievement of targets established in the multiyear plan, execution of governmental programs and of the budgets of the Federal Government;
- II — determine the legality and evaluate the efficacy and efficiency of budgetary, financial and patrimonial management by the agencies and entities of the federal administration, as well as of the application of public resources by entities of private law;

III — exercise control over credit transactions, *avals*,<sup>19</sup> and guarantees, as well as over the rights and property of the Federal Government;

IV — support external control in the performance of their institutional missions.

§ 1º. Upon learning of any irregularity or illegality, those responsible for internal control shall notify the Federal Tribunal of Accounts thereof, upon penalty of being jointly liable.

§ 2º. Any citizen, political party, association or syndicate has standing, in the form of the law, to denounce irregularities or illegalities to the Federal Tribunal of Accounts.

Art. 75. The rules established in this section shall apply, where appropriate, to the organization, composition and supervision of the Tribunals of Accounts of the States and the Federal District, as well as the Tribunals and Councils of Accounts of the Counties.

Sole Paragraph.— The State Constitutions shall provide for their respective Tribunal of Accounts, which shall be staffed by seven Councilors.

## CHAPTER II

### THE EXECUTIVE BRANCH

#### SECTION I

##### PRESIDENT AND VICE PRESIDENT OF THE REPUBLIC

Art. 76. The powers of the Executive are exercised by the President of the Republic, assisted by the Ministers of State.

Art. 77. The President and the Vice President of the Republic shall be elected simultaneously ninety days prior to termination of the current presidential mandate.

§ 1º. Election of the President of the Republic shall signify election of his running mate as Vice President.

§ 2º. Once registered by a political party, the candidate who obtains an absolute majority of votes, not counting those left blank or void, shall be considered the President-elect.

§ 3º. If no candidate attains an absolute majority on the first ballot, another election shall be held within twenty days after announcement of the results between the two candidates who obtained the greatest number of votes, and the one who obtains a majority of valid votes shall be deemed elected.

<sup>19</sup> An *aval* is a civil law form of guaranty. It is an independent suretyship contract under which a person not a party to a bill of exchange or promissory note guarantees its payment.

§ 4<sup>o</sup>. If, before the runoff election is held, a candidate dies, withdraws or is legally impaired, the candidate with the greatest number of votes among the remaining candidates shall be called.

§ 5<sup>o</sup>. In the hypothesis in the preceding paragraphs, if more than one candidate with an equal number of votes remains in second place, the older shall be qualified.

Art. 78. The President and the Vice President of the Republic shall take office at a session of the National Congress, taking an oath to maintain, defend and comply with the Constitution, to observe the laws, to promote the well being of the Brazilian people, and to sustain the union, integrity and independence of Brazil.

Sole Paragraph.— If within ten days from the date scheduled for assuming office, the President or Vice President, except for *force majeure*, has not assumed the office, it shall be declared vacant.

Art. 79. The Vice President shall replace the President in the event of impediment and shall succeed him in the event of vacancy.

Sole Paragraph.— The Vice President of the Republic, in addition to other powers conferred on him by complementary laws, shall assist the President whenever called on by the President for special missions.

Art. 80. In the event of impediment of the President and of the Vice President, or a vacancy in the respective offices, the President of the Chamber of Deputies, the President of the Federal Senate, and the President of the Supreme Federal Tribunal shall be called successively to serve as President.

Art. 81. If a vacancy occurs in the offices of President and Vice President of the Republic, an election shall be held ninety days after the last vacancy occurred.

§ 1<sup>o</sup>. If the vacancy occurs during the last two years of the President's term of office, the election for both offices shall be made by the National Congress within thirty days after the last vacancy occurred, in the form of the law.

§ 2<sup>o</sup>. In any event, those elected shall complete the terms of office of their predecessors.

Art. 82. The mandate of the President of the Republic is five years, and he may not be reelected for the subsequent term. The term of office shall begin on January 1st of the year following his election.

Art. 83. Under penalty of loss of office, the President and Vice President of the Republic may not leave the country for a period of more than fifteen days without authorization from the National Congress.

## SECTION II

### POWERS OF THE PRESIDENT OF THE REPUBLIC

Art. 84. The President of the Republic has the exclusive powers to:

I — appoint and dismiss Ministers of State;

II — exercise, with the assistance of the Ministers of State, the higher management of the federal administration;

III — initiate legislation, in the manner and cases provided for in this Constitution;

IV — approve, promulgate and order publication of laws, as well as to issue decrees and regulations for their faithful execution;

V — veto bills, either, wholly or partially;

VI — provide for the organization and functioning of the federal administration, in the form of the law;

VII — maintain relations with foreign States and to accredit their diplomatic representatives;

VIII — enter into international treaties, conventions and acts, subject to the approval of Congress;

IX — decree a state of defense or a state of siege;

X — decree and enforce federal intervention;

XI — send a message and plan of a government to Congress at the opening of the legislative session, describing the Country's situation and requesting the actions he deems necessary;

XII — grant pardons and commute sentences, after hearing, if necessary, from the organs instituted by law;

XIII — exercise supreme command over the Armed Forces, promote its generals and appoint them to positions that are exclusively theirs;

XIV — appoint, after approval by the Federal Senate, the Ministers of the Supreme Federal Tribunal and of the Superior Tribunals, the Governors of the Territories, the Procurator-General of the Republic, the president and directors of the Central Bank and other civil servants, when determined by law;

XV — appoint, observing the provisions of art. 73, the Ministers of the Federal Tribunal of Accounts;

XVI — appoint magistrates, in the cases provided for in this Constitution, and the Advocate-General of the Federal Government;

XVII — appoint members of the Council of the Republic, according to the terms of art. 89, VII;

XVIII — convoke and preside over the Council of the Republic and the National Defense Council;

XIX — declare war, in the event of foreign aggression, when authorized by Congress or, upon its subsequent ratification if the aggression occurs between legislative sessions, and decree full or partial national mobilization under the same conditions;

XX — make peace, if authorized by or upon the subsequent ratification by Congress;

XXI — confer decorations and honorary awards;

XXII — permit, in cases provided for by complementary law, foreign forces to enter Brazilian territory temporarily, or to remain therein temporarily;

XXIII — submit to Congress the multiyear plan, the draft of the law of budget directives and the budget proposals provided for in this Constitution;

XXIV — render annual accounts to Congress concerning the previous fiscal year, within sixty days of the opening of the legislative session;

XXV — provide for and abolish federal government offices, in accordance with the law;

XXVI — issue provisional measures with the force of law in the terms of art. 62;

XXVII — exercise other powers provided for in this Constitution.

**Sole Paragraph.** The President of the Republic may delegate the powers mentioned in subparagraphs VI, XII and XXV, first part, to Ministers of State, to the Procurator-General of the Republic or to the Advocate-General of the Federal Government, who shall observe the limitations set forth in the respective delegations.

### SECTION III

#### LIABILITY OF THE PRESIDENT OF THE REPUBLIC

Art. 85. Acts of the President of the Federal Government that are attempts on the Federal Constitution are impeachable offenses, especially those that go against:

- I — the existence of the Federal Government;
- II — free exercise of the powers of the Legislature, the Judiciary, the Public Ministry and the constitutional powers of the units of the Federation;
- III — exercise of political, individual and social rights;
- IV — internal security of the Country;
- V — probity in administration;
- VI — the budget law;
- VII — execution of the laws and court decisions.

**Sole Paragraph.** These offenses shall be defined in a special law, which shall establish the rules of procedure and trial.

Art. 86. If two-thirds of the Chamber of Deputies permit an accusation against the President of the Republic, he shall be tried before the Supreme Federal Tribunal for common criminal offenses or before the Federal Senate for impeachable offenses.

§ 1º. The President shall be suspended from his duties:

I — in common criminal offenses, if the accusation or criminal complaint is received by the Supreme Federal Tribunal;

II — in impeachable offenses, after proceedings are instituted by the Federal Senate.

§ 2º. If, after a period of one-hundred-eighty days, trial has not been concluded, the suspension of the President shall end, without prejudice to the normal progress of the proceedings.

§ 3º. The President of the Republic shall not be subject to arrest for common offenses until after a judgment of criminal conviction.

§ 4º. During his term of office, the President of the Republic may not be held liable for acts alien to the performance of his duties.

### SECTION IV

#### THE MINISTERS OF STATE

Art. 87. The Ministers of State shall be chosen from among Brazilians older than twenty-one who are in full possession of their political rights.

**Sole Paragraph.** A Minister of State, in addition to other powers set out in this Constitution and in law, shall have the power to:

I — orient, coordinate and supervise the agencies and entities of the federal administration in the area of his authority and to countersign acts and decrees signed by the President of the Republic;

II — to issue instructions for the enforcement of laws, decrees and regulations;

III — to submit an annual report on his management of the Ministry to the President of the Republic;

IV — to perform acts pertinent to the powers bestowed or delegated to him by the President of the Republic.

Art. 88. The law shall provide for the creation, structure and powers of the Ministries.

## SECTION V

### COUNCIL OF THE REPUBLIC AND COUNCIL OF NATIONAL DEFENSE

#### SUBSECTION I

##### COUNCIL OF THE REPUBLIC

Art. 89. The Council of the Republic is the superior consultative body for the President of the Republic and in which participate:

- I — the Vice President of the Republic;
- II — the President of the Chamber of Deputies;
- III — the President of the Senate;
- IV — the majority and the minority leaders of the Chamber of Deputies;
- V — the majority and minority leaders of the Federal Senate;
- VI — the Minister of Justice;
- VII — six Brazilian citizens by birth over the age of thirty-five, two of whom are appointed by the President of the Republic, two elected by the Federal Senate, and two elected by the Chamber of Deputies, all for a non-renewable term.

Art. 90. The Council of the Republic has the authority to give its opinion on:

- I — federal intervention, state of defense and state of siege;
- II — issues relevant to the stability of the democratic institutions.

§ 1<sup>º</sup>. The President of the Republic may call a Minister of State to participate in a Council meeting when the agenda includes a matter related to the respective Ministry.

§ 2<sup>º</sup>. The organization and operation of the Council of the Republic shall be regulated by law.

#### SUBSECTION II

##### COUNCIL OF NATIONAL DEFENSE

Art. 91. The National Defense Council is the consultative body of the President of the Republic on matters related to national sovereignty and to the defense of the democratic State, and in which participate as original members;

- I — the Vice President of the Republic;
- II — the President of the Chamber of Deputies;

III — the President of the Federal Senate;

IV — the Minister of Justice;

V — the military Ministers;

VI — the Minister of Foreign Affairs;

VII — the Minister of Planning.

§ 1<sup>º</sup>. The National Defense Council has the authority to:

- I — give its opinion in the event of declaration of war and making of peace, in accordance with this Constitution;
- II — give its opinion on the decreeing of a state of defense, state of siege and federal intervention;
- III — propose the criteria and conditions for utilization of areas indispensable to the security of the national territory and give its opinion on its effective use, especially for the frontier strip and in relationship to the preservation and exploitation of natural resources of any kind;
- IV — study, propose and monitor the development of initiatives required to guarantee national independence and defense of the democratic State.

§ 2<sup>º</sup>. The organization and operation of the National Defense Council shall be regulated by law.

## CHAPTER III

### THE JUDICIARY

#### SECTION I

##### GENERAL PROVISIONS

Art. 92. The Judiciary consists of:

- I — the Supreme Federal Tribunal;
- II — the Superior Tribunal of Justice;
- III — the Federal Regional Tribunals and the Federal Judges;
- IV — the Labor Tribunals and the Labor Judges;
- V — the Electoral Courts and the Electoral Judges;
- VI — the Military Tribunals and the Military Judges;
- VII — the Tribunals and Judges of the States, the Federal District and the Territories.

Sole Paragraph. The Supreme Federal Tribunal and the Superior Tribunals sit in the Federal Capital and have jurisdiction over the entire national territory.

Art. 93. A complementary law proposed by the Supreme Federal Tribunal shall set forth the Statute of the Judiciary, observing the following principles:

I — admission into the career, with the initial office of alternate judge, through a public competition of examinations and credentials, with the participation of the Brazilian Bar Association in all of its phases, and obeying the order of classification for appointments;

II — promotion from level to level, alternately through seniority and merit, observing the following rules:

a) promotion is mandatory for a judge who has appeared on the merit list for three consecutive times or five alternate times;

b) merit promotion presupposes two years of service at the respective level, and that the judge appears in the first fifth of the seniority list of such level, unless no one satisfying such requirements accepts the vacancy;

c) evaluation of merit according to criteria of promptness and reliability in exercising jurisdiction and by attendance and performance in recognized advanced training courses;

d) in determining seniority, the Tribunal may reject the most senior judge only by a two-thirds vote of its members, according to its own procedure, the ballot being repeated until the selection is determined.

III — access to the intermediate appellate Tribunals shall be based upon seniority and merit, alternately, determined at the last level or, if there is one, at the Tribunal of Alçada,<sup>20</sup> in the case of promotion to the Tribunal of Justice, in accordance with subparagraph II and the candidate's original class;

IV — provisions for official courses for preparation and improvement of judges as requisites for admission to and promotion in their careers;

V — the compensation of judges shall be fixed so that the differences between one career category and the next is not greater than ten percent, and under no circumstances may such compensation exceed that of Ministers of the Supreme Federal Tribunal;

VI — retirement with full pay is compulsory upon disability or at age seventy, and optional upon thirty years of service, with five years of actual performance as a judge;

VII — a regular judge shall reside in his respective judicial district;

VIII — removal, suspension and retirement of judges, because of public interest must be based on a two-thirds vote of the respective tribunal, assuring ample defense;

IX — all judgments of judicial bodies shall be public, and all decisions shall be substantiated, under penalty of being null. If required by public interest,

<sup>20</sup> The Tribunal of Alçada is an intermediate state court of appeals whose jurisdiction is limited by the amount in controversy.

the law may limit attendance at determined occasions to only the parties themselves and their attorneys, or only to the latter;

X — administrative decisions of the courts must be justifiable, and disciplinary decisions shall be adopted by an absolute majority of their membership;

XI — in courts with more than twenty-five judges, a special body may be organized with a minimum of eleven and a maximum of twenty-five members, for the purpose of exercising the administrative and jurisdictional powers that are the responsibility of the full court.

Art. 94. One-fifth of the places on the Federal Regional Tribunals and the Tribunals of the States, Federal District and Territories, shall be members with over ten years of service in the Public Ministry and by lawyers of widely acknowledged juridical understanding and unblemished reputations, with over ten years of actual professional activity, nominated in a list of six names by the organs that represent the respective groups.

Sole Paragraph. Upon receipt of the nominations, the Tribunal shall reduce the list to three names and send it to the Executive, who shall select one of the listed names for appointment within the next twenty days.

Art. 95. Judges enjoy the following guarantees:

I — life tenure, which, for judges of the first instance, shall be acquired only after two years in office. During this period, loss of office shall be determined by the Tribunal to which they are linked and, in other cases, by a court decision that has become unappealable;

II — irremovability, except by reason of public interest, according to art. 93, VII;

III — irreducibility of earnings, observing, with respect to compensation, the provisions of arts. 37, XI, 150, II, 153, III, and 153, § 2º, I.

Sole Paragraph. Judges are forbidden:

I — to hold, even when suspended from office, any other job or position, except as a teacher;

II — to receive, for any account or any pretext, court costs or participation in a case;

III — engage in political party activities.

Art. 96. The following shall have exclusive powers:

I — the Tribunals:

a) to elect their directive bodies and prepare their internal rules dealing with jurisdiction and the operations of the respective jurisdictional and administrative bodies, observing the rules of procedure and the procedural guarantees of the parties;

b) to organize their secretariats and auxiliary services and those of the courts subordinated to them, taking care to exercise their respective supervisory activities;

- c) to fill, in the form provided for in this Constitution, positions for career judges within their respective jurisdictions;
- d) to propose the creation of new courts;
- e) to fill, through public competitive examinations, or examinations and credentials, obeying the provisions of art. 169, sole paragraph, the positions necessary for the administration of Justice, with the exception of positions of confidence as defined by law;
- f) to grant leave, vacations and other absences to their members and to the judges and employees immediately subordinated to them;

II — the Supreme Federal Tribunal, the Superior Tribunals and the Tribunals of Justice, to propose to their respective Legislature, observing the provisions of art. 169:

- a) changes in the number of members of inferior Tribunals;
- b) creation and extinction of positions and the fixing of the compensation of their members, judges (including those of inferior Tribunals, if any), auxiliary services and the courts subordinated to them;
- c) creation or extinction of inferior Tribunals;
- d) changes in judicial organization and division;

III — the Tribunals of Justice to try judges of the States, of the Federal District and of the Territories, as well as the members of the Public Ministry, for common crimes and impeachable offenses, with the exception of the jurisdiction of the Electoral Courts.

Art. 97. Tribunals may declare laws or normative acts of the Government unconstitutional only by an absolute majority of their members or of the members of their respective special body.

Art. 98. The Federal Government shall create in the Federal District, the Territories and the States:

- I — special courts, staffed by professional judges, or professional and lay judges, with jurisdiction over conciliation, judgment and execution in civil suits of lesser complexity and minor criminal offenses. Proceedings shall be oral and very summary, permitting, in cases provided for by law, the taking and deciding of appeals by panels of judges of the first instance;
- II — salaried justices of the peace, consisting of citizens elected by direct, universal and secret ballot, for a term of office of four years, with jurisdiction in accordance with the law, to perform marriages, verify, *ex officio* or, if disputed, qualification proceedings, and exercise conciliatory functions of a non-judicial nature, in addition to other functions provided for in the law.

Art. 99. The Judiciary is assured administrative and financial autonomy.

§ 1º. The Tribunals shall draw up their budget proposals, with the limits stipulated jointly with the other Branches in the law of budget directives.

§ 2º. After hearing from other interested Tribunals, submission of the proposal shall be the responsibility:

- I — at the Federal level, of the Presidents of the Supreme Federal Tribunal and the Superior Tribunals, with the approval of their respective Tribunals;
- II — at the level of the States, Federal District and Territories, of the Presidents of the Tribunals of Justice, with the approval of their respective Tribunals.

Art. 100. Except for debts that are in the nature of support, the judgment debts of the Federal, State or County Treasuries shall be paid exclusively in the chronological order of submission of the judicial orders of payment of such judgments and from the accounts for the respective debts. The designation of cases or persons in budget appropriations and the opening of additional credits for such purpose is prohibited.

§ 1. The budgets of entities of public law must include the funds required for payment of judgments against them for which judicial orders of payment were submitted by July 1st, on which date their values shall be updated, and payment shall be made by end of the following fiscal year.

§ 2. The budgetary appropriations and the credits opened shall be consigned to the Judiciary, allocating the respective amounts to the appropriate departments. It is incumbent upon the President of the Tribunal that rendered the decision requiring payment to determine to pay the judgment, in accordance with the possibilities permitted by the amount of funds deposited, and to authorize, at the creditor's request and only in the event of failure to respect his right of precedence, seizure of the amount required to satisfy the judgment.

## SECTION II

### THE SUPREME FEDERAL TRIBUNAL

Art. 101. The Supreme Federal Tribunal is composed by eleven Ministers, chosen from citizens over thirty-five years and under sixty-five years old, with notable juridical knowledge and unblemished reputations.

Sole Paragraph. The Ministers of the Supreme Federal Tribunal shall be appointed by the President of the Republic, with approval of an absolute majority of the Federal Senate.

Art. 102. The Supreme Federal Tribunal has primary responsibility for safeguarding the Constitution, with the power:

I — to try and to decide, as matters of original jurisdiction:

- a) direct actions of unconstitutionality of federal or state laws or normative acts;
- b) charges of common criminal offenses against the President of the Republic, the Vice President, members of the National Congress, the Tribunal's own Ministers, and the Procurator-General of the Republic;

- c) charges of common criminal offenses and impeachable offenses against Ministers of State, with the exception of the provision of art. 52, I, members of the Superior Tribunals and the Federal Tribunal of Accounts, and the chiefs of permanent diplomatic missions;
- d) *habeas corpus* when the petitioner is someone referred to in the preceding subsections; writs of security and *habeas data* against acts of the President of the Republic, the Executive Committees of the Chamber of Deputies and the Federal Senate, the Federal Tribunal of Accounts, the Procurator-General of the Republic, and the Supreme Federal Tribunal itself;
- e) litigation between a foreign State or international organization and the Federal Government, State, the Federal District or a Territory;
- f) cases and conflicts between the Federal Government and the States, the Federal Government and the Federal District, or between one another, including their respective entities of indirect administration;
- g) extradition requests from foreign States;
- h) homologation (*homologação*)<sup>21</sup> of foreign judgments and granting of *exequatur*<sup>22</sup> to letters rogatory, which may be delegated by its internal rules to its President;
- i) *habeas corpus*, when the constraining party or the petitioner is a tribunal, authority or functionary whose acts are directly subject to the jurisdiction of the Supreme Federal Tribunal, or if it deals with a crime subject to the jurisdiction of the Supreme Federal Tribunal in one sole instance;
- j) criminal revision (*revisão criminal*)<sup>23</sup> and a rescissory action<sup>24</sup> from its own judgments;
- k) [there is no subsection k in the original text]
- l) claims to preserve its jurisdiction and to guarantee the authority of its decisions;
- m) execution of a judgment in cases within its original jurisdiction, allowing it to delegate the powers to perform procedural acts;

<sup>21</sup> Foreign judgments may not be enforced in Brazil until they are homologated, i.e. confirmed or recognized, by the President of the Supreme Federal Tribunal.

<sup>22</sup> Unlike other civil law countries, where *exequatur* refers to the confirmation of foreign judgments, Brazil uses the term *exequatur* to refer exclusively to the order issued by the President of the Supreme Federal Tribunal directing the lower courts to comply with requests to grant letters rogatory.

<sup>23</sup> The criminal revision is an action that can be brought at any time to correct or set aside a judgment of criminal conviction that has become final and nonappealable.

<sup>24</sup> The rescissory action is an action that can be brought to set aside a civil judgment that has become final and unappealable. It must be brought within two years of the date the judgment became final and unappealable.

- n) actions in which all members of the judiciary have a direct or indirect interest, and those in which more than half of the members of the tribunal of origin are disqualified or have a direct or indirect interest;
- o) conflicts of jurisdiction between the Superior Tribunal of Justice and any other tribunals, between Superior Tribunals, or between the latter and any other tribunals;
- p) requests for a provisional measure (*medida cautelar*)<sup>25</sup> in direct actions of unconstitutionality;
- q) mandates of injunction, when elaboration of the regulatory rule is the responsibility of the President of the Republic, the National Congress, the Chamber of Deputies, the Federal Senate, the Executive Committees of one of these Legislative Chambers, the Federal Tribunal of Accounts, one of the Superior Tribunals or the Supreme Federal Tribunal itself;

II — to decide, on ordinary appeal:

- a) *habeas corpus*, writs of security, *habeas data* and mandates of injunction decided originally by the Superior Tribunals, in the event of denial;
- b) political crimes;

III — to decide on extraordinary appeal, cases decided in sole or last instance, when the appealed decision:

- a) is contrary to a provision of this Constitution;
- b) declares a treaty or a federal law unconstitutional;
- c) upholds a law or act of local government challenged as violative of this Constitution.

Sole Paragraph. A petition claiming failure to comply with a fundamental precept stemming from this Constitution shall be heard by the Supreme Federal Tribunal, in accordance with the law.

Art. 103. A direct action of unconstitutionality may be brought by:

- I — the President of the Republic;
- II — the Executive Committee of the Federal Senate;
- III — the Executive Committee of the Chamber of Deputies;
- IV — the Executive Committee of the Legislative Assembly;
- V — a State Governor;
- VI — the Procurator-General of the Republic;
- VII — the Federal Council of the Brazilian Bar Association;

<sup>25</sup> A provisional measure is an auxiliary judicial order, designed to preserve the status quo or to avoid injury, such as an attachment, an order to produce or protect evidence, an appointment of a guardian or a provisional support award.

VIII — a political party represented in the National Congress;

IX — a syndical confederation or a national class entity.

§ 1<sup>o</sup>. The Procurator-General of the Republic shall be heard from first in direct actions of unconstitutionality and in all cases coming within the jurisdiction of the Supreme Federal Tribunal.

§ 2<sup>o</sup>. Whenever there is a declaration of unconstitutionality because of lack of measures to make a constitutional rule effective, the appropriate Branch shall be notified to adopt the necessary measures, and if dealing with an administrative body, to do so within thirty days.

§ 3<sup>o</sup>. When it considers the unconstitutionality of a legal rule or a normative act on its face, the Supreme Federal Tribunal shall first summon the Advocate-General of the Republic to defend the challenged act or text.

### SECTION III

#### SUPERIOR TRIBUNAL OF JUSTICE

Art. 104. The Superior Tribunal of Justice shall consist of at least thirty-three Ministers.

Sole Paragraph. The Ministers of the Superior Tribunal of Justice shall be appointed by the President of the Republic, from Brazilians over thirty-five and under sixty-five years old, and of notable legal knowledge and unblemished reputations, upon approval by the Federal Senate, with:

I — one-third from the judges of the Federal Regional Tribunals and one-third from the justices (*desembargadores*) of the Tribunals of Justice, nominated in a list of three names drawn up by the Tribunal itself;

II — one-third, in equal parts, from the lawyers and members of the Public Ministry of the Federal Government, the States, the Federal District, and the Territories, selected alternately as set out in art. 94.

Art. 105. The Superior Tribunal of Justice has the power:

I — to try and decide as a matter of original jurisdiction;

a) for common crimes, the Governors of the States and the Federal District and, for common crimes and impeachable offenses, the justices of the Tribunals of Justice of the States and the Federal District, the members of the Tribunals of Accounts of the States and the Federal District, the members of the Federal Regional Tribunals, the Regional Electoral and Labor Tribunals, the members of the Councils or Tribunals of Accounts of the Counties, and the members of the Public Ministry of the Federal Government acting before the tribunals;

b) writs of security and *habeas data* against the acts of a Minister of State or of the Tribunal itself;

c) *habeas corpus*, when the constraining party or the petitioner is in any of the persons mentioned in subsection *a*, or when the constraining

party is a Minister of State, with the exception of the jurisdiction of the Electoral Courts;

d) jurisdictional conflicts between any tribunals, except as provided in art. 102, I, o, as well as between a tribunal and judges not subordinated to it, and between judges subordinated to different tribunals;

e) criminal revisions and rescissory actions from its own decisions;

f) claims to preserve its jurisdiction and to guarantee the authority of its decisions;

g) conflicts of authority between administrative and judicial authorities of the Federal Government, or between judicial authorities of one State and administrative authorities of another State or the Federal District, or between those of the latter and those of the Federal Government;

h) mandates of injunction when preparation of the regulatory rule is the responsibility of a federal organ, entity or authority, of direct or indirect administration, with the exception of cases falling under the jurisdiction of the Supreme Federal Tribunal and the organs of Military Justice, the Electoral Courts, the Labor Courts and the Federal Courts;

II — to decide on ordinary appeal:

a) denials of *habeas corpus* decided in sole or last instance by the Federal Regional Tribunals or by the tribunals of the States, the Federal District, and Territories;

b) denials of writs of security decided originally by the Federal Regional Tribunals or by the Tribunals of the States, the Federal District and the Territories;

c) cases in which the parties on one side are a foreign State or an international organization, and, on the other side, a County or a person resident or domiciled in the Country;

III — to decide on special appeal cases decided, in sole or last instance, by the Federal Regional Tribunals or by the Tribunals of the States, the Federal District and Territories, when the appealed decision:

a) is contrary to a treaty or federal law, or denies the effectiveness thereof;

b) upholds a law or act of a local government challenged as contrary to federal law;

c) interprets federal law differently from another tribunal.

Sole Paragraph. A Federal Justice Council shall operate together with the Superior Tribunal of Justice, with responsibility, as set out in law, to supervise the administration and budgets of the Federal Courts at the first and second instances.



## SECTION IV

## FEDERAL REGIONAL TRIBUNALS AND FEDERAL JUDGES

Art. 106. The following are organs of the Federal Courts:

I — the Federal Regional Tribunals;

II — the Federal Judges;

Art. 107. The Federal Regional Tribunals consist of at least seven judges, recruited, whenever possible, from their respective regions and appointed by the President of the Republic from Brazilians over thirty and under sixty-five years old, with:

I — one-fifth from lawyers with more than ten years of actual professional activity and members of the Federal Public Ministry with more than ten years of career service;

II — the remainder through promotion of federal judges with more than five years of service, alternating between seniority and merit.

Sole Paragraph. A law shall regulate removal or transfer of judges of the Federal Regional Tribunals and determine their jurisdiction and seat.

Art. 108. The Federal Regional Tribunals have the power:

I — to try and decide as a matter of original jurisdiction:

a) federal judges from the area of their jurisdiction, including those of the Military and Labor Courts, for common crimes and impeachable offenses, as well as members of the Federal Public Ministry, except for the jurisdiction of the Electoral Courts;

b) criminal revisions and rescissory actions from their own decisions and from those of the federal judges of the region;

c) writs of security and *habeas data* against an act of the Tribunal itself or of a federal judge;

d) *habeas corpus*, when the constraining authority is a federal judge;

e) jurisdictional conflicts between federal judges subordinated to the Tribunal;

II — to decide on appeal cases decided by federal judges and by state judges exercising federal jurisdiction within the area of their jurisdiction.

Art. 109. The federal judges have the power to try and decide:

I — cases in which the Federal Government, an autarchy or a federal public company has an interest as plaintiffs, defendants, assistants or opponents, except for bankruptcy, employment-related accidents and those subject to the Electoral and Labor Courts;

II — cases between a foreign State or international organization and a County or a person domiciled or resident in Brazil;

III — cases based on a treaty or a contract of the Federal Government with a foreign State or international organization;

IV — political crimes and criminal offenses detrimental to the property, services or interests of the Federal Government or of its autarchies or public companies, excluding minor offenses (*contravenções*) and except for cases within the jurisdiction of the Military and Electoral Courts;

V — crimes provided for in international treaties or conventions, when proceedings have been initiated in the Country and the result has to take place or should have taken place abroad, or reciprocally;

VI — crimes against the organization of labor and, in cases determined by law, against the financial system and the economic-financial order;

VII — writs of *habeas corpus*, in criminal matters subject to their jurisdiction or when the constraint stems from an authority whose acts are not directly subject to another jurisdiction;

VIII — writs of security and *habeas data* against an act of a federal authority, except for those cases subject to the jurisdiction of the federal tribunals;

IX — crimes committed aboard ships or aircraft, except for those subject to the jurisdiction of the Military Courts;

X — crimes of a foreigner's irregular entry or stay, execution of letters rogatory after *exequatur*, enforcement of foreign court decisions after homologation, cases referring to nationality, including the respective options and naturalization;

XI — disputes over the rights of Indians.

§ 1º. Cases in which the Federal Government is the plaintiff shall be brought in the judicial section where the other party is domiciled.

§ 2º. Cases against the Federal Government shall be brought in the judicial section of the plaintiff's domicile, where the act or fact causing the complaint occurred, or where the thing causing the complaint is situated or in the Federal District.

§ 3º. If no federal judge sits in the judicial district, cases in which the parties are a social security institution and its beneficiary shall be tried and decided in the state courts or in the forum of the domicile of the insured or the beneficiary; the law may permit other cases to be tried and adjudicated in the state courts.

§ 4º. In the hypothesis of the preceding paragraph, the appeal that may be taken shall always be to the Federal Regional Tribunal in the jurisdictional area of the judge of the first instance.

Art. 110. Each State, as well as the Federal District, shall constitute a judicial section, which shall have its seat in the respective Capital, with courts located as established by law.

Sole Paragraph. In the Federal Territories, the jurisdiction and powers granted to the federal judges shall be attributed to the judges of the local courts, in the form of the law.

## SECTION V

### LABOR TRIBUNALS AND LABOR JUDGES

Art. 111. The Labor Court System consists of:

- I — the Superior Labor Tribunal;
- II — the Regional Labor Tribunals;
- III — the Boards of Conciliation and Judgment (*Juntas de Conciliação e Julgamento*).

§ 1º. The Superior Labor Tribunals shall be composed of twenty-seven Ministers, chosen from Brazilians over thirty-five years and under sixty-five years old, appointed by the President of the Republic after approval by the Federal Senate, with:

- I — seventeen professional judges with life tenure, of which eleven shall be chosen from career labor judges, three from lawyers and three from members of the Labor Public Ministry;
- II — ten temporary class members, with equal representation of labor and management.

§ 2º. The Tribunal shall send to the President of the Republic lists of three names, observing the provisions of art. 94, for vacancies destined for lawyers and members of the Public Ministry Office, and, for the temporary class members, the results of elections by the directorates of national confederations of labor and management, as the case may be; the lists of three names for filling the positions destined for career labor judges shall be prepared by the professional Ministers with life tenure.

§ 3º. The law shall set out the jurisdiction of the Superior Labor Tribunal.

Art. 112. There shall be at least one Regional Labor Tribunal in each State and in the Federal District, and the law shall set up the Boards of Conciliation and Judgment. In those judicial districts in which they are not set up, the law may confer their jurisdiction on judges of law.

Art. 113. The law shall provide for the constitution, investiture, jurisdiction, guarantees and conditions for performance for the organs of the Labor Court System, assuring equal representation for workers and employers.

Art. 114. The Labor Court System has the power to conciliate and adjudicate individual and collective labor disputes between workers and employers, including foreign public entities and those of the direct and indirect public administration of the Counties, the Federal District, the States and the Federal Government, and, in the form of the law, other controversies stemming from labor relations, as well as litigation resulting from compliance with their own decisions, including collective decisions.

§ 1º. If collective bargaining negotiations are frustrated, the parties may appoint arbitrators.

§ 2º. If any of the parties refuses to negotiate or to arbitrate, the respective syndicates may litigate a collective labor dispute, and the Labor Courts may establish rules and conditions respecting the contractual provisions and the legal minimums for the protection of labor.

Art. 115. The Regional Labor Tribunals shall be formed by judges appointed by the President of the Republic, two-thirds of which shall be professional judges with life tenure and one-third of which shall be temporary class representatives, observing, with respect to the professional judges, the proportions established in art. 111, § 1º, I.

Sole Paragraph. The judges of the Regional Labor Tribunals shall be:

- I — labor judges chosen by promotion, alternately on seniority and merit;
- II — lawyers and members of the Labor Public Ministry, obeying the provisions of art. 94;
- III — class representatives nominated in lists of three names by the directorates of the federations and syndicates with their territorial base in the region.

Art. 116. A Board of Conciliation and Judgment shall consist of one labor judge, who shall preside, and two temporary class representatives, representing labor and management.

Sole Paragraph. The temporary class representatives of the Boards of Conciliation and Judgment shall be appointed by the President of the Regional Labor Tribunal, in the form of the law, with one reappointment being permitted.

Art. 117. The mandate of the temporary class representatives in all cases is three years.

Sole Paragraph. The temporary class representatives shall have alternates.

## SECTION VI

### ELECTORAL TRIBUNALS AND JUDGES

Art. 118. The Electoral Justice System consists of:

- I — the Superior Electoral Tribunal;
- II — the Regional Electoral Tribunals;
- III — the Electoral Judges;
- IV — the Electoral Boards.

Art. 119. The Superior Electoral Tribunal shall be composed of at least seven members, chosen:

- I — through election, by secret ballot, with:
  - a) three judges from among the Ministers of the Supreme Federal Tribunal;

b) two judges from among the Ministers of the Superior Tribunal of Justice;

II — two judges by appointment of the President of the Republic from six lawyers of notable legal knowledge and good moral character, indicated by the Supreme Federal Tribunal.

Sole Paragraph. The Superior Electoral Tribunal shall elect its President and Vice President from the Ministers of the Supreme Federal Tribunal, and an Electoral Inspector General from the Ministers of the Superior Tribunal of Justice.

Art. 120. There shall be a Regional Electoral Tribunal in the Capital of each State and in the Federal District.

§ 1º. The Regional Electoral Tribunals shall be formed:

I — through election, by secret ballot:

a) of two judges from the justices of the Tribunals of Justice;

b) of two judges from the judges of law, chosen by the Tribunal of Justice;

II — by one judge of the Federal Regional Tribunal that sits in the Capital of the State or in the Federal District, or in the absence thereof, by a federal judge chosen in any case by the respective Federal Regional Tribunal;

III — by two judges appointed by the President of the Republic from six lawyers of notable legal knowledge and good moral character, nominated by the Tribunal of Justice.

§ 2º. The Regional Electoral Tribunal shall elect its President and Vice President from among the justices.

Art. 121. A complementary law shall provide for the organization and jurisdiction of the electoral tribunals, judges of law and boards.

§ 1º. The members of the tribunals, the judges of law and the members of the electoral boards, while exercising their functions and to the extent applicable to them, shall enjoy full guarantees and shall be irremovable.

§ 2º. Except for a valid reason, the judges of the electoral tribunals shall serve for at least two years and never for more than two consecutive two-year periods, and their alternates shall be chosen at the same time and through the same procedure, in equal numbers for each category.

§ 3º. The decisions of the Superior Electoral Tribunal are not appealable, with the exception of those contrary to this Constitution and those denying *habeas corpus* or a writ of security.

§ 4º. Decisions of the Regional Electoral Tribunals may only be appealed when:

I — they contravene an express provision of this Constitution or law;

II — a divergence in the interpretation of a law between two or more electoral courts exists;

III — they deal with ineligibility or issuance of certificates of election in federal or state elections;

IV — they annul certificates of election or decree loss of federal or state elective offices;

V — they deny *habeas corpus*, writ of security, *habeas data* or a mandate of injunction.

## SECTION VII

### MILITARY COURTS AND MILITARY JUDGES

Art. 122. The Military Justice System consists of:

I — the Superior Military Tribunal;

II — the Military Tribunals and Military Judges instituted by law.

Art. 123. The Superior Military Tribunal shall be composed of fifteen Ministers with life tenure, appointed by the President of the Republic after approval of their nominations by the Federal Senate, with three from admirals of the Navy, four from generals of the Army, three from generals of the Air Force, all in active service and in the highest career rank, and with five from among civilians.

Sole Paragraph. The civilian Ministers shall be chosen by the President of the Republic from Brazilians more than thirty-five years old, with:

I — three from lawyers of notable legal knowledge and unblemished conduct, with more than ten years of actual professional activity;

II — two, by equal choice, from military judges and members of the Military Public Ministry.

Art. 124. The Military Justice System shall have jurisdiction to try and adjudicate the military crimes defined by law.

Sole Paragraph. The law shall provide for the organization, operation and jurisdiction of the Military Justice System.

## SECTION VIII

### TRIBUNALS AND JUDGES OF THE STATES

Art. 125. The States shall organize their Justice Systems, observing the principles established in this Constitution.

§ 1º. The jurisdiction of the courts shall be defined in the State Constitution, and the law of judicial organization shall be proposed by the Tribunal of Justice.

§ 2º. It is the responsibility of the States to institute an action of unconstitutionality of state or county laws or normative acts contrary to the State Constitution, it being prohibited to confer standing to act on only one organ.

§ 3º. Through proposal of the Tribunal of Justice, a state law may create a state Military Justice System, which shall consist at the first instance of Councils of Justice and at the second instance of the Tribunal of Justice itself or by a Tribunal of a Military Justice in those States in which the military police number more than twenty thousand members.

§ 4º. The State Military Justice System shall try and adjudicate members of the military police and firemen for military crimes defined by law, and it shall be the responsibility of the appropriate court to decide on the loss of post and loss of rank of officers and loss of grade of servicemen.

Art. 126. To decide rural land conflicts, the Tribunal of Justice shall designate special judges with jurisdiction exclusively over agrarian matters.

Sole Paragraph. Whenever necessary to exercise jurisdiction efficiently, the judge shall go personally to the place of the legal controversy.

## CHAPTER IV

### POSITIONS ESSENTIAL TO JUSTICE

#### SECTION I

##### THE PUBLIC MINISTRY

Art. 127. The Public Ministry is a permanent institution, essential to the jurisdictional function of the State, with responsibility for defending the juridical order, the democratic regime and indispensable social and individual interests.

§ 1º. Unity, indivisibility and functional independence are institutional principles of the Public Ministry.

§ 2º. The Public Ministry is assured functional and administrative autonomy, and it may, observing the provisions of art. 169, propose to the Legislature creation and extinction of its positions and auxiliary services, filling them through competitive public examinations, or examinations and credentials. The law shall provide for its organization and operation.

§ 3º. The Public Ministry shall draw up its budgetary proposal within the limits established in the law of budgetary directives.

Art. 128. The Public Ministry includes:

I — the Public Ministry of the Federal Government, which consists of:

- a) the Federal Public Ministry;
- b) the Labor Public Ministry;
- c) the Military Public Ministry;
- d) the Public Ministry of the Federal District and the Territories;

#### II — the Public Ministries of the States.

§ 1º. The head of the Public Ministry of the Federal Government is the Procurator-General of the Republic, appointed by the President of the Republic from career members over thirty- five years of age, after approval by an absolute majority of the members of the Federal Senate, for a term of office of two years, re-appointment being permitted.

§ 2º. The Procurator-General of the Republic can be removed from office, on the initiative of the President of the Republic, upon prior authorization by an absolute majority of the Federal Senate.

§ 3º. The Public Ministry of the States, the Federal District and the Territories shall make up a list of three names from career members, in the form of the respective law, for selection of their Procurators-General, who shall be appointed by the Heads of the Executive Branch for a term of office of two years, re-appointment being permitted.

§ 4º. The Procurators-General of the States, the Federal District and Territories may be removed from office by an absolute majority of the Legislature, in the form of a respective complementary law.

§ 5º. Complementary laws of the Federal Government and of the States, which may be proposed by the respective Procurators-General, shall establish the organization, the powers and the by-laws of each Public Ministry, observing with respect to their members:

I — the following guarantees:

- a) life tenure after two years in office, capable of losing their positions only by a court decision that has become unappealable;
- b) non-transferability, except by reason of public interest, through a decision of the appropriate collegiate body of the Public Ministry, by vote of two-thirds of its members, assuring ample defense;
- c) irreducibility of compensation, observing, with respect to remuneration, the provisions of arts. 37, XI, 150, II, 153, III, 153, § 2º, I;

II — the following prohibitions:

- a) receiving, on any account and under any pretext, fees, percentages or procedural costs;
- b) practicing law;
- c) participating in a commercial company, in the form of the law;
- d) performing, even when on leave, any other public function, except for teaching;
- e) performing political party activities, unless there is an exception provided for in law.

Art. 129. The institutional functions of the Public Ministry are:

I — the exclusive power to bring public criminal prosecutions, in the form of the law.

II — to safeguard effective respect by the Government and services of public relevance for rights protected by this Constitution, taking the necessary means to guarantee such rights;

III — to institute civil inquiries and public civil actions to protect the public and social patrimony, the environment and other diffuse and collective interests;

IV — to institute direct actions of unconstitutionality or representation (*representação*)<sup>26</sup> for purposes of intervention by the Federal Government and by the States, in the cases set forth in this Constitution;

V — to defend judicially the rights and interests of the indigenous populations;

VI — to issue notices in administrative procedures under its jurisdiction, requesting information and documents to guide them, in the form of the respective complementary law;

VII — to exercise external control over activities of the police, according to the complementary law mentioned in the preceding article;

VIII — to request investigations and the institution of police inquiries, indicating the legal basis for its procedural acts;

IX — to perform other functions conferred upon it, so long as they are compatible with its purposes, prohibiting judicial representation and legal advice for public entities;

§ 1º. The standing of the Public Ministry to bring civil actions provided for in this article shall not preclude the standing of third parties in the same cases, according to the provisions of this Constitution and the law.

§ 2º. The functions of the Public Ministry may only be performed by career personnel, who must reside in the judicial district of their respective assignment.

§ 3º. Admission into the career shall take place by means of a public competition of examinations and credentials, assuring participation of the Brazilian Bar Association in such competition and observing the order of classification for appointments.

§ 4º. The provisions of art. 93, II and VI apply to the Public Ministry, where appropriate.

Art. 130. The provisions of this section relating to the rights, prohibitions and the form of investiture apply to members of the Public Ministry attached to Tribunals of Accounts.

<sup>26</sup> Representation is a direct action for challenging the constitutionality of any statute or normative act on its face directly before the Supreme Federal Tribunal. Under prior constitutions, representations could be brought only by the Procurator-General.

## SECTION II

### ADVOCACY-GENERAL OF THE REPUBLIC

Art. 131. The Advocacy-General of the Federal Government is the institution which, either directly or through a connected organ, represents the Federal Government, both judicially and extrajudicially, and it is responsible, according to a complementary law providing for its organization and operations, for the activities of legal consultancy and advice to the Executive.

§ 1º. The head of the Advocacy-General of the Republic is the Advocate-General of the Republic, freely appointed by the President of the Republic from among citizens over thirty-five years of age, of notable legal knowledge and unblemished reputation.

§ 2º. Entry into the initial phases of the career of the institution dealt with in this article shall be by public competition of examinations and credentials.

§ 3º. Representation of the Federal Government for execution of tax debts owed to it is the responsibility of the Procurator-General of the National Treasury, observing the provisions of the law.

Art. 132. The Procurators of the States and of the Federal District shall provide judicial representation and legal counseling to their respective federated units, and they shall be organized into careers into which admission shall depend on a public competition of examinations and credentials, observing the provisions of art. 135.

## SECTION III

### THE PRACTICE OF LAW AND THE PUBLIC DEFENDER'S OFFICE

Art. 133. Lawyers are indispensable to the administration of justice, and they are inviolable for their acts and statements in the practice of their profession, within the limits of the law.

Art. 134. The Public Defender's Office is an institution essential to the State's jurisdictional function, and it shall be responsible for rendering legal advice to the needy and defending them at all instances, as set out in art. 5, LXXIV.

Sole Paragraph. A complementary law shall organize the Public Defender's Office of the Federal Government, the federal District and the Territories and prescribe general rules for its organization in the States, with career positions, filled at the entry level through a public competition of examinations and credentials, assuring its members the guarantee of non-transferability and prohibiting the practice of law outside their institutional duties.

Art. 135. The principles of art. 37, XII, and art. 39, § 1º apply to the careers regulated under this Title.

**TITLE V****DEFENSE OF THE STATE AND DEMOCRATIC INSTITUTIONS****CHAPTER I****STATE OF DEFENSE AND STATE OF SIEGE****SECTION I****STATE OF DEFENSE**

Art. 136. After having heard from the Council of the Republic and the National Defense Council, the President of the Republic may decree a state of defense in certain restricted locations to preserve or promptly to reestablish public order or social peace threatened by grave and imminent institutional instability or affected by large scale natural calamities.

§ 1º. The decree instituting a state of defense shall determine the time of its duration, specify the areas affected and indicate, within the terms and limits of the law, which of the following coercive measures will be in force:

I — restrictions on the rights of:

- a) assembly, even when taking place within the heart of associations;
- b) secrecy of correspondence;
- c) secrecy of telegraph and telephone communication;

II — occupation and temporary use of public goods and services in the event of a public calamity, with the Federal Government being liable for the resulting damages and costs.

§ 2º. The duration of state of defense may not exceed thirty days, and it may be extended once for an equal period if the reasons justifying the respective decree persist.

§ 3º. When a state of defense is in force:

I — imprisonment for a crime against the State, determined by the party executing the measure, shall be immediately communicated by such party to the proper judge, who shall release the prisoner if the imprisonment is illegal; the prisoner may request examination of the *corpus delicti* from the police authority;

II — the communication shall be accompanied by a statement by the authority as to the physical and mental state of the detainee at the time of arrest;

III — no person may be imprisoned or detained for more than ten days, unless authorized by the Judiciary;

IV — maintaining a prisoner incommunicado is prohibited.

§ 4º. When a state of defense has been decreed or extended, the President of the Republic shall submit the act with the respective justification within twenty-four hours to the National Congress, which shall decide on it by absolute majority.

§ 5º. If in recess, the National Congress shall be convoked extraordinarily within five days.

§ 6º. The National Congress shall examine the decree within ten days of its receipt, and should continue functioning while the state of defense is in force.

§ 7º. If the decree is rejected, the state of defense shall cease immediately.

**SECTION II****STATE OF SIEGE**

Art. 137. After having heard from the Council of the Republic and the National Defense Council, the President of the Republic may request authorization from the National Congress to decree a state of siege in the event of:

- I — a serious disturbance with national effects or the occurrence of facts that evidence the ineffectiveness of a measure taken during the state of defense;
- II — declaration of state of war or response to foreign armed aggression.

Sole Paragraph. Upon requesting authorization to decree a state of siege or to extend it, the President of the Republic shall submit the reasons for such request, and the National Congress shall decide on it by absolute majority.

Art. 138. The decree of a state of siege shall indicate its duration, the necessary rules to implement it and the constitutional guarantees that are to be suspended. After publication, the President of the Republic shall designate the executor of the specific measures and the affected areas.

§ 1º. In the case of art. 137, I, a state of siege may not be decreed for more than thirty days, nor may each prolongation exceed a like period; in the case of subparagraph II, a state of siege may be decreed for the entire period of the war or foreign aggression.

§ 2º. If authorization to decree a state of siege is requested during a legislative recess, the President of the Federal Senate shall immediately convoke the National Congress to meet extraordinarily within five days in order to consider the act.

§ 3º. The National Congress shall remain in session until the end of the coercive measures.

Art. 139. When a state of siege decreed under art. 137, I, is in effect, only the following measures may be taken against individuals:

- I — obligation to remain in a determined place;

II — detention in a building not destined for persons accused or convicted of common crimes;

III — restrictions regarding the inviolability of correspondence, the secrecy of communications, the rendering of information and freedom of press, radio broadcasting and television, in the form of the law;

IV — suspension of freedom of assembly;

V — search and seizure in one's domicile;

VI — intervention in public utility companies;

VII — requisitioning of goods.

Sole Paragraph. Not included in the restrictions of subparagraph III is the broadcasting of statements made by legislators in their Legislative Chambers, if authorized by the respective Executive Committee.

## SECTION III

### GENERAL PROVISIONS

Art. 140. After hearing from party leaders, the Executive Committee of the National Congress shall designate a Committee composed of five of its members to accompany and to supervise implementation of measures related to a state of defense and state of siege.

Art. 141. When the state of defense or state of siege ceases, its effects shall also cease, without prejudice to liability for unlawful acts committed by its executors or agents.

Sole Paragraph. As soon as the state of defense or state of siege ceases, the measures applied when in force shall be reported by the President of the Republic in a message to the National Congress, specifying and justifying what was done, listing the names of those affected and indicating the restrictions applied.

## CHAPTER II

### ARMED FORCES

Art. 142. The Armed Forces, made up of the Navy, the Army and the Air Force, are permanent and regular national institutions, organized on the basis of hierarchy and discipline, under the supreme authority of the President of the Republic, and intended to defend the Nation, guarantee the constitutional branches of government and, on the initiative of any of these branches, law and order.

§ 1<sup>º</sup>. A complementary law shall set out the general rules to be adopted for the organization, training and employment of the Armed Forces.

§ 2<sup>º</sup>. *Habeas corpus* does not lie for military disciplinary punishments.

Art. 143. Military service is compulsory in the terms of the law.

§ 1<sup>º</sup>. The Armed Forces shall have the power, in the form of the law, to assign alternative service in peacetime to those who, after enlistment, are conscientious objectors, understood as objections based on religious beliefs and philosophical or political convictions for exemption from activities of an essentially military character.

§ 2<sup>º</sup>. Women and clergymen are exempt from compulsory military service in peacetime but are subject to other duties that may be given to them by law.

## CHAPTER III

### PUBLIC SECURITY

Art. 144. Public security, the duty of the State and the right and responsibility of all, is exercised for the preservation of public order and the security of persons and property, by means of the following organs:

I — federal police;

II — federal highway police;

III — federal railway police;

IV — civilian police;

V — military police and firemen.

§ 1<sup>º</sup>. The federal police, instituted by law as a permanent body and structured into a career, is designed:

I — to detect criminal offenses against the political and social order or detrimental to property, services and interests of the Federal Government, its autarchies and state companies, as well as other offenses with interstate or international repercussions, requiring uniform repression according to law;

II — to prevent and to repress illegal traffic in narcotics and similar drugs, contraband and smuggling, without prejudice to action by the treasury and other government organs in their respective areas of jurisdiction;

III — to perform the functions of maritime, air and frontier police;

IV — exclusively to perform the functions of judicial police of the Federal Government.

§ 2<sup>º</sup>. The federal highway police is a permanent body structured into a career and designed to patrol the federal highways openly, in the form of law.

§ 3<sup>º</sup>. The federal railway police is a permanent body structured into a career and designed to patrol the federal railways openly, in the form of the law.

§ 4<sup>º</sup>. Excluding the jurisdiction of the Federal Government, the civil police, directed by career police chiefs, has the duty to act as judicial police and to detect criminal offenses, with the exception of military offenses.

§ 5<sup>a</sup>. The military police is responsible for ostensibly policing and preserving public order; the military firemen, in addition to the duties defined by law, are responsible for carrying out activities of civil defense.

§ 6<sup>a</sup>. The military police and firemen, auxiliary forces and the Army reserves, together with the civilian police, are under the control of the Governors of the State, the Federal District and the Territories.

§ 7<sup>a</sup>. The law shall regulate the organization and operation of the bodies responsible for public security in such a way as to guarantee the efficiency of their activities.

§ 8<sup>a</sup>. The Counties may organize county guards in order to protect county property, services and facilities, in the form of the law.

## TITLE VI

### TAXATION AND BUDGET

#### CHAPTER I

#### NATIONAL TRIBUTARY SYSTEM

#### SECTION I

##### GENERAL PRINCIPLES

Art. 145. The Federal Government, the States, the Federal District and the Counties may levy the following tributes:

I — taxes;

II — fees, by virtue of the exercise of police power or for effective or potential use of specific and divisible public services rendered to taxpayers or placed at their disposition;

III — assessments for public works.

§ 1<sup>a</sup>. Whenever possible, taxes shall be personal and shall vary with the economic capacity of the taxpayer. To make these objectives effective, the tax administration may identify the patrimony, income and economic activities of the taxpayer, respecting individual rights and the terms of the law.

§ 2<sup>a</sup>. Fees may not be calculated on the same basis as taxes.

Art. 146. A complementary law shall:

I — deal with conflicts of taxing power among the Federal Government, the States, the Federal District and the Counties;

II — regulate the constitutional limitations on the taxing power;

III — establish general rules for tax legislation, particularly as to:

a) the definition of taxes and their types, as well as, with respect to taxes specified in this Constitution, the definition of the respective taxable events, basis for calculation and taxpayers;

b) tax liability, assessment, credit, limitations periods and laches;

c) adequate tax treatment for the cooperative acts performed by cooperative entities.

Art. 147. In Federal Territories, the Federal Government has the power to levy state taxes and, if the Territory is not divided into Counties, county taxes as well. The Federal District has the power to impose county taxes.

Art. 148. The Federal Government, through a complementary law, may impose compulsory loans:

I — to defray extraordinary expenses resulting from public calamity, foreign war or imminence thereof;

II — in the event of a public investment of urgent character and relevant national interest, observing the provisions of art. 150, III, *b*.

Sole Paragraph. Applications of the funds derived from a compulsory loan shall be tied to the expense that was the basis for its imposition.

Art. 149. The Federal Government has the exclusive power to institute social contributions, contributions regarding intervention in the economic domain and contributions in the interest of professional or economic categories, as an instrument of its activity in the respective areas, observing the provisions of arts. 146, III, and 150, I and III, and without prejudice to the provisions of art. 195, § 6<sup>a</sup>, relative to the contributions mentioned in that provision.

Sole Paragraph. The States, the Federal District and the Counties may institute a contribution collected from their employees to fund systems of social security and social assistance for their benefit.

#### SECTION II

##### LIMITATIONS ON THE TAXING POWER

Art. 150. Without prejudice to other guarantees assured the taxpayer, the Federal Government, the States, the Federal District and the Counties are prohibited from:

I — exacting or increasing a tax without a law that does so;

II — instituting unequal treatment among taxpayers that are similarly situated, prohibiting the making of any distinction because of professional occupation or job performed by them, regardless of the legal denomination of income, securities or rights;

III — collecting taxes:

a) for taxable events that occurred before the law that instituted or increased them went into force;



b) in the same fiscal year in which the law that instituted or increased them was published;

IV — using taxes for purposes of confiscation;

V — establishing limitations on the movement of persons or goods by means of interstate or intercounty taxes, except for the collection of tolls for the use of highways maintained by the Government;

VI — levying taxes on:

a) patrimony, income or services of one another;

b) temples of any religion;

c) patrimony, income or services of political parties, including their foundations, labor unions and non-profit educational and social assistance institutions, observing the requirements of the law;

d) books, newspapers, periodicals and paper intended for the printing thereof.

§ 1<sup>º</sup>. The prohibition contained in subparagraph III, *b* shall not apply to the taxes provided for in arts. 153, I, II, IV and V, and 154, II.

§ 2<sup>º</sup>. The prohibition contained in subparagraph VI, *a* extends to autarchies and foundations instituted and maintained by the Government with respect to the patrimony, income and services connected with their essential purposes.

§ 3<sup>º</sup>. The prohibitions contained in subparagraph VI, *a* and in the preceding paragraph do not apply to the patrimony, income and services connected with the exploitation of economic activities governed by the rules that apply to private ventures or to ventures in which users render a counterperformance or pay prices or tariffs, nor exempt one who has agreed to buy property from the obligation to pay the real estate tax.

§ 4<sup>º</sup>. The prohibitions contained in subparagraph VI, subsections *b* and *c* encompass only the patrimony, income and services connected with the essential purpose of the entities mentioned therein.

§ 5<sup>º</sup>. The law shall determine measures for consumer clarification about taxes levied on goods and services.

§ 6<sup>º</sup>. Any amnesty or remission involving taxes or social security may be granted only through a specific federal, state or county law.

Art. 151. The Federal Government is forbidden:

I — to levy taxes that are not uniform throughout the entire national territory or that imply a distinction or preference in relation to a State, the Federal District or a County, to the detriment of another; however, fiscal incentives may be granted to promote balance in socio-economic development among different regions of the Country;

II — to tax income from public debt obligations of the States, the Federal District and the Counties, as well as the remuneration and benefits of the irrespective public agents, at higher levels than those fixed for its own obligations and agents;

III — to grant exemptions from taxes within the jurisdiction of the States, the Federal District or the Counties.

Art. 152. The States, the Federal District and the Counties are prohibited from establishing a tax differential between goods and services of any nature because of their origin or destination.

## SECTION III

### TAXES OF THE FEDERAL GOVERNMENT

Art. 153. The Federal Government has the power to levy taxes on:

I — importation of foreign products;

II — exportation abroad of national or nationalized products;

III — income and benefits of any nature;

IV — industrialized products;

V — credit transactions, foreign exchange operations, insurance or transactions relating to negotiable instruments or securities;

VI — rural property;

VII — large fortunes, according to a complementary law.

§ 1<sup>º</sup>. The Executive may, with due regard for the conditions and limits established by law, change the rates on the taxes set out in subparagraphs I, II, IV and V.

§ 2<sup>º</sup>. The tax provided for in subparagraph III:

I — shall be based on criteria of generality, universality and progressiveness, in the form of the law;

II — shall not be imposed, according to the terms and limits established by law, on income derived from retirement benefits and pensions paid by the social security system of the Federal Government, the States, the Federal District and the Counties to persons more than sixty-five years old and whose total income consists exclusively of income derived from labor.

§ 3<sup>º</sup>. The tax provided for in subparagraph IV:

I — shall be selective, based on the essentiality of the product;

II — shall be noncumulative, with an offset against the tax owed on each transaction of the amount charged on previous transactions;

III — shall not be imposed on industrialized products destined for export.

§ 4<sup>º</sup>. The rates on the tax provided for in subparagraph VI shall be set in a way that discourages maintenance of unproductive real property and shall not be imposed on small rural holdings, as defined by law, when exploited by the owner himself or with his family, if the owner has no other real property.

§ 5<sup>o</sup>. Gold, when defined by law as a financial asset or instrument of foreign exchange, shall be subject exclusively to the tax mentioned in subparagraph V of the main provision of this article, which shall be owed on the original transaction; the minimum rate shall be one per cent, ensuring transference of the amount collected in the following terms:

I — thirty per cent to the State, the Federal District or the Territory, depending on the origin;

II — seventy per cent to the County of origin.

Art. 154. The Federal Government may impose:

I — by means of a complementary law, taxes not listed in the preceding article, provided they are noncumulative and have a specific taxable event or basis of assessment other than those specified in this Constitution;

II — in the case of foreign war or its imminent threat, extraordinary taxes, whether or not included in its taxing power, which shall be gradually repealed when the causes for their creation cease.

## SECTION IV

### STATE AND FEDERAL DISTRICT TAXES

Art. 155. The States and the Federal District have the power to impose:

I — taxes on:

a) transfers by death and donations of any property or rights;

b) transactions relating to circulation of goods and the performance of services of interstate and intercounty transportation and communications, even if the transactions and performance begin abroad;

c) ownership of automotive vehicles;

II — a surtax of up to five per cent of amounts paid to the Federal Government by individuals or legal entities domiciled in the respective territories, for the tax provided for in art. 153, III, on profits, capital gains and earnings from capital.

§ 1<sup>o</sup>. The tax set out in subparagraph I, a:

I — can be imposed, with respect to real property and its respective rights, by the State or Federal District where the property is located;

II — can be imposed, with respect to personalty, securities and credit instruments, by the State or Federal District where the inventory or listing is probated, or the domicile of the donor;

III — shall have its jurisdiction regulated by a complementary law;

a) if the donor is domiciled or resident abroad;

b) if the deceased was a foreign resident or domiciliary, owned property abroad or had an inventory probated abroad;

IV — shall have its maximum rates fixed by the Federal Senate.

§ 2<sup>o</sup>. The tax set forth in subparagraph I, b shall conform to the following:

I — it shall be noncumulative, with an offset against the tax owed on each transaction of circulation of goods or performance of services by the amount charged on the previous ones by the same State, by another State or by the Federal District;

II — exemption or non-incidence, unless the contrary is determined in legislation:

a) shall not imply a credit to offset the amount due on subsequent transactions or performances;

b) shall carry with it annulment of credits for prior transactions;

III — may be selective, depending upon the essentiality of the merchandise or services;

IV — a resolution of the Federal Senate, on the initiative of the President of the Republic or of one-third of the Senators, approved by an absolute majority of its members, shall set the rates applicable to interstate and export transactions and performances;

V — the Federal Senate may:

a) set minimum rates for internal transactions, by resolution on the initiative of one-third and approved by an absolute majority of its members;

b) fix maximum rates for the same transactions to resolve specific conflicts involving interests of States, by a resolution on the initiative of an absolute majority and approved by two thirds of its members;

VI — unless there is a decision to the contrary by the States and the Federal District, in the terms of subparagraph XII, g, the intrastate rates on circulation of goods and performing of services may not be lower than those established for interstate transactions;

VII — for transactions and performances with respect to goods and services destined for final consumers located in another State, the following shall be adopted:

a) the interstate rate, when the recipient is the taxpayer;

b) the intrastate rate, when the recipient is not the taxpayer;

VIII — in the situation in subsection a of the preceding subparagraph, the tax corresponding to the difference between the intrastate rate and the interstate rate shall be allocated to the State where the recipient is located;

IX — shall also be imposed:

a) on the entry of merchandise imported from abroad, even when dealing with goods intended for consumption or the fixed assets of the establishment, as well as on services performed abroad, the tax being

allocated to the State where the establishment receiving the merchandise or services is located;

b) on the total value of the transaction, when merchandise is furnished with services not included in the taxing power of the Counties;

X — shall not be imposed:

a) on transactions transferring industrialized products abroad, excluding semi-processed products, as defined in a complementary law;

b) on transactions transferring to other States petroleum, including lubricants, petroleum-derived liquid and gaseous combustibles and electric energy;

c) on gold, in the situation defined in art. 153, § 5<sup>o</sup>;

XI — shall not include in its assessment basis the amount of the tax on industrialized products, when the transaction between taxpayers involves a product destined for industrialization or commercialization and constitutes the taxable event for both taxes;

XII — a complementary law shall:

a) define the taxpayers;

b) deal with tax substitution;

c) regulate the regime for offsetting taxes;

d) establish the location of transactions of circulation of goods and of performance of services for purposes of collection of the tax and definition of the establishment responsible;

e) in exports abroad exclude from incidence of the tax services and products other than those mentioned in subparagraph X, a;

f) provide for the maintenance of a credit for services and merchandise sent to other States and exported abroad;

g) regulate the way fiscal exemptions, incentives and benefits shall be granted and revoked by resolutions of the States and the Federal District.

§ 3<sup>o</sup>. Except for the taxes dealt with in subparagraph I, b, of the main provision of this article and in arts. 153, I and II, and 156, III, no other tax shall be imposed on transactions involving electric energy, liquid and gaseous combustibles, lubricants and minerals of the Country.

## SECTION V

### COUNTY TAXES

Art. 156. The Counties have the power to levy taxes on:

I — urban land and buildings;

II — any type of non-gratuitous *inter vivos* transfers of real property, whether natural or by physical accession, and any *in rem* rights to real property, except for guarantees, as well as the assignment of rights to its acquisition;

III — retail sales of liquid and gaseous fuels, except for diesel oil;

IV — services of any nature not included in art. 155, I, b, as defined in a complementary law.

§ 1<sup>o</sup>. The tax provided for in subparagraph I may be progressive, under the terms of county law, in order to ensure achievement of the social function of property.

§ 2<sup>o</sup>. The tax provided for in subparagraph II:

I — shall not be imposed on the transfer of property or rights incorporated into the patrimony of a legal entity in paying up its capital, nor upon the transfer of property or rights stemming from consolidation, merger, spin-off or extinction of a legal entity, unless, in the latter cases, the preponderant activity of the acquiring party is the purchase and sale of such property or rights, the leasing of real property or mercantile leasing;

II — belongs to the County where the property is located.

§ 3<sup>o</sup>. The tax provided for in subparagraph III does not preclude the incidence on the same transaction of the state tax set out in art. 155, I, b.

§ 4<sup>o</sup>. A complementary law shall:

I — fix the maximum rates for the taxes provided for in subparagraphs III and IV;

II — exclude from incidence of the tax provided for in subparagraph IV the exports of services abroad.

## SECTION VI

### DIVISION OF TAX REVENUES

Art. 157. The following belong to the States and the Federal District:

I — the proceeds from the collection of the federal tax on income and earnings of any nature withheld from income paid on any account by them, their autarchies and by foundations they institute and maintain;

II — twenty percent of the proceeds from the collection of the tax that the Federal Government institutes in the exercise of the jurisdiction attributed to it by art. 154, I.

Art. 158. The following belong to the Counties:

I — the proceeds from the collection of the Federal tax on income and earnings of any nature withheld from income paid on any account by them, their autarchies and by foundations they institute and maintain;

II — fifty per cent of the proceeds from the collection of the federal tax on rural property located in the County;

III — fifty per cent of the proceeds from the collection of the state tax on ownership of automotive vehicles licensed in their territory;

IV — twenty-five per cent of the proceeds from the collection of the state tax on transactions of circulation of goods and on performance of services of interstate and intercounty transportation and communication.

Sole Paragraph. The revenue portions belonging to the Counties as mentioned in subparagraph IV shall be credited according the following criteria:

I — at least three-quarters, in proportion to the value added in transactions of circulation of merchandise and performing services carried out in their territories;

II — up to one-quarter, as established in state law or, in the case of the Territories, in federal law.

Art. 159. The Federal Government shall turn over:

I — forty-seven percent of the proceeds from the collection of taxes on income and earnings of any nature and industrialized products in the following manner:

- a) twenty-one and one-half percent to the Participation Fund of the States and the Federal District;
- b) twenty-two and one-half percent to the Participation Fund of the Counties;
- c) three percent, for application in programs to finance the productive sectors of the North, Northeast and Center-West Regions, through their regional financial institutions, in accordance with regional development plans, with the semi-arid area of the Northeast being assured of half the funds intended for the Region, as established in the law;

II — ten percent of the proceeds from the collection of the tax on industrialized products to the States and Federal District, in proportion to the value of respective exports of industrialized products.

§ 1º. For purposes of calculating the amount to be turned over under subparagraph I, the portion of the collection of the tax on income and earnings of any nature belonging to the States, the Federal District and the Counties according to arts. 157, I, and 158, I, shall be excluded.

§ 2º. No unit of the federation may be allocated a share in excess of twenty percent of the amount referred to in subparagraph II, and any excess shall be distributed among the other participants, maintaining the apportionment criteria established therein.

§ 3º. The States shall turn over to the respective Counties twenty-five percent of the resources they receive under the terms of subparagraph II, observing the criteria established in art. 158, sole paragraph, I and II.

Art. 160. The retention or any restriction on the delivery and use of the resources allocated under this section to the States, the Federal District and the Counties, including any tax additions and increases, is prohibited.

Sole Paragraph. This prohibition does not prevent the Federal Government from conditioning delivery of the resources on payment of creditors.

Art. 161. A complementary law shall:

I — define the value added for the purposes of art. 158, sole paragraph, I;

II — establish rules for the delivery of the funds dealt with in art. 159, especially the criteria for apportionment of the funds provided for in its subparagraph I, seeking to maintain socio-economic balance between States and the Counties;

III — provide for monitoring by the beneficiaries of the calculation of the quotas and release of the shares provided for in arts. 157, 158 and 159.

Sole Paragraph. The Federal Tribunal of Accounts shall calculate the quotas referring to the participation funds mentioned in subparagraph II.

Art. 162. The Federal Government, the States, the Federal District and the Counties shall announce, by the last day of month following collection, the amounts of each of the taxes collected, the funds received, the value of the taxes delivered and to be delivered and the numerical expression of the apportionment criteria.

Sole Paragraph. — The data disclosed by the Federal Government shall be broken down by State and by County, and those of the States, by County.

## CHAPTER II

### PUBLIC FINANCE

#### SECTION I

##### GENERAL RULES

Art. 163. A complementary law shall provide for:

I — public finance;

II — the public debt, both foreign and domestic, including the debt of the autarchies, foundations and other entities controlled by the Government;

III — concession of guarantees by governmental entities;

IV — issuance and redemption of government bonds;

V — supervision of financial institutions;

VI — foreign exchange transactions carried out by organs and entities of the Federal Government, the States, the Federal District and the Counties;

VII — compatibility of functions of the official credit institutions of the Federal Government, safeguarding the full characteristics and operating conditions of those intended for regional development.

Art. 164. The power of the Federal Government to issue money shall be exercised exclusively through the Central Bank.

§ 1<sup>o</sup>. The Central Bank is prohibited from directly or indirectly granting loans to the National Treasury and to any organ or entity that is not a financial institution.

§ 2<sup>o</sup>. In order to regulate the money supply or interest rates, the Central Bank may purchase and sell securities issued by the National Treasury.

§ 3<sup>o</sup>. The cash balances of the Federal Government shall be deposited in the Central Bank; the cash balances of the States, the Federal District, the Counties, governmental organs or entities and companies controlled by the Government shall be deposited in official financial institutions, except for cases established by law.

## SECTION II

### BUDGETS

Art. 165. Laws initiated by the Executive shall establish:

- I — the multiyear plan;
- II — the budget directives;
- III — the annual budgets.

§ 1<sup>o</sup>. The law that institutes the multiyear plan shall establish, in regionalized form, the directives, objectives and targets of the federal public administration for capital expenses and other expenses resulting therefrom and for those regarding continuing programs.

§ 2<sup>o</sup>. The law of budget directives shall contain the targets and priorities of the federal public administration, including the capital expenses for the following fiscal year, shall orient preparation of the annual budget law, shall provide for changes in tax legislation and shall establish the investment policies for official promotional financing agencies.

§ 3<sup>o</sup>. The Executive shall publish, within thirty days of the end of each two-month period, a report summarizing its implementation of the budget.

§ 4<sup>o</sup>. The national, regional and sectorial plans and programs provided for in this Constitution shall be prepared in accordance with the multiyear plan and shall be examined by Congress.

§ 5<sup>o</sup>. The annual budget law shall include:

I — the fiscal budget for the Branches of the Federal Government, their funds, organs, and entities of direct and indirect administration, including foundations instituted and maintained by the Government;

II — the investment budget for companies in which the Federal Government directly or indirectly holds the majority of the voting capital;

III — the social security budget, covering all linked entities and organs of direct or indirect administration, as well as funds and foundations instituted and maintained by the Government.

§ 6<sup>o</sup>. The budget bill shall be accompanied by a regionalized demonstration of the effect on revenues and expenses resulting from exemption, amnesties, remissions, subsidies and benefits of a financial, tax and credit nature.

§ 7<sup>o</sup>. The budgets established in § 5<sup>o</sup>, I and II, of this article, compatible with the multiyear plan, shall include among their functions that of reducing interregional inequalities according to population criteria.

§ 8<sup>o</sup>. The annual budget law shall not contain any alien provision that does not represent a forecast of revenues and establishment of expenses, but such prohibition does not include authorization to create supplementary appropriations and borrow money, even by anticipating revenues, in the terms of the law.

§ 9<sup>o</sup>. A complementary law shall:

I — determine the effectiveness and terms of the fiscal year, preparation and organization of the multiyear plan, the law of budget directives and the annual budget law;

II — establish rules of financial and property management by the direct and indirect administration, as well as conditions for the institution and operation of funds.

Art. 166. Bills regarding the multiyear plan, budget directives, annual budgets and additional credits shall be considered by the two Chambers of Congress in the form of common internal regulations.

§ 1<sup>o</sup>. A permanent mixed Committee of Senators and Deputies shall be responsible for:

I — examining and issuing its opinion on the bills referred to in this article and on the annual accounts submitted by the President of the Republic;

II — examining and issuing its opinion on the national, regional and sectorial plans and programs provided for in this Constitution, and monitoring and supervising the budget, without prejudice to the activity of the other committees of the National Congress and of its Chambers, created in accordance with art. 58.

§ 2<sup>o</sup>. Amendments shall be submitted to the mixed Committee, which shall issue its opinion on them, and shall be considered, according to internal regulations, by the Plenary Session of the two Chambers of the National Congress.

§ 3<sup>o</sup>. Amendments to the annual budget bill or to bills that modify it may only be approved if:

I — they are compatible with the multiyear plan and with the law of budget directives;

II — they specify the necessary funds, which may only stem from elimination of expenditures, excluding those that deal with:

- a) appropriations for personnel and their indirect costs;
- b) debt servicing;

c) constitutional tax transfers to the States, Counties and Federal District; or

III — they are related:

a) to the correction of errors or omissions; or

b) to the provisions in the text of the bill.

§ 4<sup>º</sup>. Amendments to the budget directives bill may not be approved if they are incompatible with the multiyear plan.

§ 5<sup>º</sup>. The President of the Republic may send a message to the National Congress proposing modification of the bills referred to in this article so long as the mixed Committee has not started to vote on the part for which a change is proposed.

§ 6<sup>º</sup>. Bills on the multiyear plan, budget directives and annual budget shall be submitted by the President of the Republic to the National Congress in accordance with the complementary act referred to in art. 165, § 9<sup>º</sup>.

§ 7<sup>º</sup>. To the extent they do not conflict with the provisions of this section, the other rules on legislative procedure apply to the bills mentioned in this article.

§ 8<sup>º</sup>. Those resources which, by virtue of a veto, amendment or rejection of the annual budget bill, have no corresponding expenditure, may be used, as the case may be, through special or supplemental appropriations, with prior and specific legislative authorization.

Art. 167. It is prohibited to:

I — begin programs or projects not included in the annual budget law;

II — expend funds or assume direct obligations that exceed the budgetary or additional appropriations;

III — borrow funds in excess of the amount of capital expenses unless authorized through supplemental or special appropriations for a precise purpose, approved by an absolute majority of the Legislature;

IV — tie tax revenues to an organ, fund or expenditure, except for apportionment of the proceeds from collection of taxes referred to in arts. 158 and 159, allocation of funds to maintain and develop education, determined in art. 212 and guaranteeing loans by anticipating revenues provided for in art. 165, § 8<sup>º</sup>;

V — open a supplemental or special appropriation without prior legislative authorization and without identification of the respective funds;

VI — reclassify, reallocate or transfer funds from one programming category to another or from one organ to another without prior legislative authorization;

VII — grant or utilize unlimited appropriations;

VIII — utilize, without specific legislative authorization, funds from the tax and social security budgets to satisfy a need or cover a deficit of companies, foundations and funds, including those mentioned in art. 165, § 5<sup>º</sup>;

IX — institute funds of any nature without prior legislative authorization.

§ 1<sup>º</sup>. No investment whose execution extends beyond a fiscal year may be started without prior inclusion in the multiyear plan or without a law authorizing such inclusion, under penalty of an impeachable offense.

§ 2<sup>º</sup>. Special and extraordinary appropriations shall be in force in the fiscal year in which they are authorized, unless the act authorizing them is promulgated during the last four months of that fiscal year, in which case, the limits of their balances being reopened, they shall be incorporated into the budget of the subsequent fiscal year.

§ 3<sup>º</sup>. Opening of extraordinary appropriations shall only be permitted to meet unforeseeable and urgent expenses, such as those resulting from war, internal commotion or public calamity, observing the provisions of art. 62.

Art. 168. Funds corresponding to budgetary appropriations, including supplementary and special appropriations, destined for organs of the Legislature, Judiciary and the Public Ministry, shall be delivered to them by the twentieth day of each month, in the form of the complementary law referred to in art. 165, § 9<sup>º</sup>.

Art. 169. Expenditures for active and inactive personnel of the Federal Government, States, Federal District and Counties may not exceed the limits established in a complementary law.

Sole Paragraph. Granting of any advantage or increase in remuneration, creation of positions or changes in career structures, as well as hiring of personnel at any level, by organs and entities of direct or indirect administration, including government-created and maintained foundations, may only be done:

I— if there is a prior budgetary appropriation sufficient to cover the estimated personnel expenditures and the increases resulting therefrom;

II— if there is specific authorization in the law of budget directives, with the exception of public companies and mixed capital companies.

## TITLE VII

### ECONOMIC AND FINANCIAL ORDER

#### CHAPTER I

##### GENERAL PRINCIPLES OF ECONOMIC ACTIVITY

Art. 170. The economic order, founded on the valorization of human labor and free enterprise, is intended to assure everyone a dignified existence, according to the dictates of social justice, observing the following principles:

I — national sovereignty;

II — private property;

III — the social function of property;

- IV — free competition;
- V — defense of the consumer;
- VI — defense of the environment;
- VII — reduction of regional and social inequalities;
- VIII — a search for full employment;
- IX — favored treatment for small-scale Brazilian firms of national capital.

Sole Paragraph. Free exercise of any economic activity is assured for all, without need for any governmental authorization, except in the cases provided for by law.

Art. 171. One shall consider that:

I — a Brazilian company is one organized under the laws of Brazil and that has its headquarters and management in the Country;

II — a Brazilian company of national capital is one whose effective control is permanently held, either directly or indirectly, by individuals domiciled and resident in the Country or by entities of domestic public law, understanding by effective control of the company ownership of a majority of its voting capital and the exercise, both in fact and in law, of the decision-making power to manage its activities.

§ 1º. With respect to a Brazilian company of national capital, the law may:

I — concede protection and special and temporary benefits to develop activities considered strategic for national defense or essential to the development of the Country;

II — whenever it considers a sector essential for development of national technology, establish *inter alia*, the following conditions and requirements:

a) the requirement that the control referred to in subpart II of the main heading be extended to the firm's technological activities, understanding thereby, the exercise, in fact and in law, of the decision-making power to develop or to absorb technology;

b) percentages of capital participation by individuals domiciled and resident in the Country or entities of domestic public law.

§ 2º. In the acquisition of goods and services, the Government shall give preferential treatment, in the terms of the law, to Brazilian companies of national capital.

Art. 172. The law shall regulate on the basis of national interest, investments of foreign capital, granting incentives for reinvestment and regulating remittance of profits.

Art. 173. With the exception of the cases provided for in this Constitution, direct exploitation of an economic activity by the State shall only be permitted when necessary for the imperatives of national security or a relevant collective interest, as defined by law.

§ 1º. Public companies, mixed capital companies and other entities engaged in economic activities are subject to the same juridical regime as that governing private companies, including labor and tax obligations.

§ 2º. Public companies and mixed capital companies may not enjoy fiscal privileges that are not extended to private sector companies.

§ 3º. The law shall regulate the relationship of public companies with the State and with society.

§ 4º. The law shall repress abuse of economic power seeking to dominate markets, to eliminate competition and to increase profits arbitrarily.

§ 5º. Without prejudice to the individual liability of the officers of a legal entity, the law shall establish the liability of the latter, subjecting it to penalties compatible with its nature for acts that contravene the economic and financial order and the popular economy.

Art. 174. As the normative and regulating agent of economic activity, the State shall, in the form of the law, perform the functions of supervision, incentives and planning, the latter being binding for the public sector and advisory for the private sector.

§ 1º. The law shall establish the directives and bases for planning balanced national development, which shall incorporate and make compatible national and regional development plans.

§ 2º. The law shall support and stimulate cooperativism and other forms of association.

§ 3º. The State shall favor the organization of cooperatives for prospecting and mining activity (*atividade garimpeira*), taking into account protection of the environment and the socio-economic promotion of the prospectors and miners.

§ 4º. The cooperatives referred to in the preceding paragraph shall have priority in obtaining authorizations or concessions for prospecting and mining of mineral resources and deposits in the areas where they are operating and in those fixed in accordance with art. 21, XXV, in the form of the law.

Art. 175. The Government is responsible for providing public services, either directly or under regimes of concessions, always through public bidding, in the form of the law.

Sole Paragraph. The law shall provide for:

I — the regime for companies that have concessions or permissions to provide public services, the special character of their contracts and of their extension and the conditions for lapse, supervision and termination of the concessions or permissions;

II — the rights of users;

III — rate policy;

IV — the obligation to maintain adequate service.

Art. 176. Mineral deposits, whether being worked or not, and other mineral resources and hydraulic energy sites constitute property distinct from the soil for

the effects of exploitation or use, and belong to the Federal Government, guaranteeing to the concessionaire ownership of the output of the deposit.

§ 1<sup>o</sup>. Prospecting and working of mineral resources and the use of the hydraulic sites referred to in the main heading of this article may only be done through authorization or concession of the Federal Government, in the national interest, by Brazilians or by a Brazilian company of national capital, in the form of the law, which shall establish the specific conditions under which these activities may be developed in the frontier areas or in Indian lands.

§ 2<sup>o</sup>. The owner of the soil is assured a share in the results of working the deposit, in the form and in the value provided for by law.

§ 3<sup>o</sup>. Prospecting authorization shall always be for a limited period, and the authorizations and concessions provided for in this article may not be assigned or transferred, either in whole or in part, without prior legal consent from the granting authority.

§ 4<sup>o</sup>. Utilization of renewable energy sites of small capacity does not depend upon authorization or concession.

Art. 177. The Federal Government has a monopoly on the following:

- I — prospecting and exploitation of deposits of petroleum, natural gas and other fluid hydrocarbons;
- II — refining of national or foreign petroleum;
- III — importation or exportation of products and basic derivatives resulting from the activities provided for in the prior subparagraphs;
- IV — maritime transportation of crude oil of national origin or of basic petroleum derivatives produced in the Country, as well as the pipeline transportation of crude oil, its derivatives and natural gas of whatever origin;
- V — prospecting, mining, enrichment, reprocessing, industrialization or commerce in ores, nuclear minerals and their derivatives.

§ 1<sup>o</sup>. The monopoly provided for in this article includes the risks and results stemming from the activities mentioned therein, and the Federal Government is prohibited from granting or conceding any participation whatsoever, in specie or in value, in the exploitation of petroleum or natural gas deposits, except for the provisions of art. 20, § 1<sup>o</sup>.

§ 2<sup>o</sup>. The law shall provide for the transportation and use of radioactive materials within the national territory.

Art. 178. The law shall provide for:

- I — the organization of air, ocean and land transportation;
- II — the predominance of national carriers and of vessels of Brazilian flag and registry, and those of the exporting or importing country;
- III — bulk transportation;
- IV — utilization of fishing and other vessels.

§ 1<sup>o</sup>. Organization of international transportation shall comply with the agreements signed by the Federal Government, in accordance with the principle of reciprocity.

§ 2<sup>o</sup>. Carriers, ship owners, captains and at least two-thirds of the crew of national vessels shall be Brazilian.

§ 3<sup>o</sup>. Coastal and internal navigation shall be reserved for national vessels, except in the case of public necessity as provided by law.

Art. 179. The Federal Government, the States, the Federal District and the Counties shall afford micro-firms and small firms, as defined by law, different juridical treatment, seeking to stimulate them through simplification, elimination or reduction of their administrative, tax, social security and credit obligations, by means of a law.

Art. 180. The Federal Government, the States, the Federal District and the Counties shall promote and grant incentives to tourism as a factor of social and economic development.

Art. 181. Response to a requisition of a document or for information of a commercial nature, made by a foreign administrative or judicial authority to an individual or legal entity resident or domiciled in the Country, needs authorization from the proper governmental authority.

## CHAPTER II

### URBAN POLICY

Art. 182. The urban development policy carried out by the County Governments, according to general guidelines fixed by law, is intended to order the full development of cities' social functions and to guarantee the well-being of their inhabitants.

§ 1<sup>o</sup>. The master plan, approved by the County Legislature, which is obligatory for cities of over twenty thousand inhabitants, is the basic policy instrument of urban development and expansion.

§ 2<sup>o</sup>. Urban property performs its social function when it conforms to the fundamental requirements for the city's ordering expressed in the master plan.

§ 3<sup>o</sup>. Expropriation of urban property shall be done with prior and just compensation in money.

§ 4<sup>o</sup>. County Governments may, by means of a specific law for areas included in the master plan, require that the owner of unbuilt, underused or unused urban land provide for adequate use of such land, under penalty, successively, of:

- I — compulsory subdivision or construction;
- II — building and urban property tax rates that increase over time;
- III — expropriation with payment in bonds of the public debt, from an issue previously approved by the Federal Senate, redeemable in up to ten years, in



equal and successive annual installments, assuring the real value of the compensation and legal interest.

Art. 183. Whoever possesses as his own an urban area of up to two hundred and fifty square meters, for five years without interruption or opposition, using it as his or as his family's residence, shall acquire title to such property, provided that he does not own any other urban or rural property.

§ 1º. The deed of title and concession of use shall be granted to the man or woman, or both, regardless of their marital status.

§ 2º. This right shall not be recognized more than once for the same holder.

§ 3º. Public lands may not be acquired by usucapio.<sup>27</sup>

### CHAPTER III

#### AGRICULTURAL LAND POLICY AND AGRARIAN REFORM

Art. 184. For the purposes of agrarian reform, the Federal Government has the power to expropriate for social interest rural property that is not fulfilling its social function, through prior and just compensation in agrarian debt bonds, with a clause for preservation of real value, redeemable in up to twenty years, starting from the second year after issue, and whose utilization shall be defined in law.

§ 1º. Useful and necessary improvements shall be compensated in cash.

§ 2º. The decree declaring property of social interest for agrarian reform purposes authorizes the Federal Government to file the expropriation action.

§ 3º. A complementary law shall establish a special summary adversary procedure for expropriation actions.

§ 4º. The budget shall determine each year the total volume of agrarian debt bonds, as well as the amount of resources allocated to the agrarian reform program in the fiscal year.

§ 5º. Transfers of property expropriated for agrarian reform purposes are exempt from federal, state and municipal taxes.

Art. 185. The following shall not be subject to expropriation for agrarian reform purposes:

I — small and medium-sized rural property, as defined in the law, so long as its owner does not own other property;

II — productive property.

Sole Paragraph. The law shall guarantee special treatment for productive property and set rules for compliance with the requirements for its social function.

<sup>27</sup> Usucapio is a Roman law concept for acquiring title to land by the running of the statute of limitations. It differs from the common law concept of adverse possession in that only good faith holders under a claim of right can acquire title by usucapio.

Art. 186. Its social function is performed when rural property simultaneously conforms to the following requirements, in accordance with the criteria and standards prescribed by law:

I — rational and adequate use;

II — adequate use of available natural resources and preservation of the environment;

III — observance of the provisions regulating labor relations;

IV — exploitation that favors the well-being of owners and workers.

Art. 187. Agricultural policy shall be planned and executed in the form of the law, with the effective participation of the productive sector, consisting of producers and rural workers, as well as the sectors of marketing, storage and transportation, particularly taking into account:

I — credit and fiscal instruments;

II — prices compatible with production costs and marketing guarantees;

III — incentives for research and technology;

IV — technical assistance and rural extension;

V — agricultural insurance;

VI — cooperativism;

VII — rural electricity and irrigation;

VIII — housing for rural workers.

§ 1º. Agricultural planning includes the activities of agro-industry, livestock, fishing and forestry.

§ 2º. Agricultural policy actions shall be made compatible with agrarian reform actions.

Art. 188. The use to which public and vacant lands are put shall be made compatible with agricultural policy and the national agrarian reform plan.

§ 1º. The transfer or concession, by whatever manner, of public lands with an area of more than two thousand and five hundred hectares to an individual or legal entity, even through an intermediary, needs prior approval of the National Congress.

§ 2º. Transfers or concessions of public lands for agrarian reform purposes are excluded from the provision of the prior paragraph.

Art. 189. The beneficiaries of the distribution of rural land under the agrarian reform shall receive title deeds or concessions of use that are nonnegotiable for a period of ten years.

Sole Paragraph. Title deeds and concessions of use shall be conferred on the man or the woman, or to both, irrespective of their marital status, pursuant to the terms and conditions provided for in the law.

Art. 190. The law shall regulate and limit the acquisition or leasing of rural property by foreign individuals or legal entities and shall determine which cases shall require authorization from the National Congress.

Art. 191. Anyone who is not the owner of rural or urban property but possesses as his own for five uninterrupted years, without opposition, an area of land not exceeding fifty hectares in a rural zone and with his labor or that of his family makes the land productive and resides thereon, shall acquire ownership of the land.

Sole Paragraph. Public lands may not be acquired by usucapio.

## CHAPTER IV

### THE NATIONAL FINANCIAL SYSTEM

Art. 192. The National Financial System, structured to promote the balanced development of the Country and to serve collective interests, shall be regulated by a complementary law that shall also provide for:

I — authorization for the functioning of financial institutions, assuring official and private banking institutions access to all instruments of the banking financial market, and prohibiting such institutions from engaging in activities not provided for in the authorization dealt with in this subparagraph;

II — authorization and operation of insurance, social security and capitalization companies, as well as the official supervisory and reinsurance agencies;

III — conditions for the participation of foreign capital in the institutions referred to in the prior subparagraphs, with particular attention to:

- a) the national interest;
- b) international agreements;

IV — organization, operation and duties of the Central Bank and other public and private financial institutions;

V — requirements for the appointment of members of the board of directors of the Central Bank and other financial institutions, as well as their impediments after leaving office;

VI — creation of a fund or insurance, for the purpose of protecting the popular economy, guaranteeing loans, investments and deposits up to a certain amount, prohibiting participation of resources of the Federal Government;

VII — criteria restricting the transfer of savings from regions with incomes below the national average to more developed regions;

VIII — functioning of credit cooperatives and requirements for their operations with their own structure as financial institutions.

§ 1º. The authorization referred to in subparagraphs I and II shall be nonnegotiable and nontransferable. Transfer of control of the authorized legal

entity is permitted and shall be conceded without charge, according to the law of the national financial system, to a legal entity whose directors are technically qualified and have unblemished reputations and that proves that its economic capacity is compatible with the undertaking.

§ 2º. The financial resources for regional programs and projects for which the Federal Government is responsible shall be deposited in their regional credit institutions and invested by them.

§ 3º. The real rate of interest, including commissions and any other remuneration directly or indirectly related to the extension of credit, shall not exceed twelve percent per annum; the charging of interest above this limit shall be deemed the crime of usury and punished, in all of its forms, in the manner determined by law.

## TITLE VIII

### THE SOCIAL ORDER

#### CHAPTER I

##### GENERAL PROVISIONS

Art. 193. The social order shall be founded on the primacy of labor and aimed at social well-being and justice.

#### CHAPTER II

##### SOCIAL SECURITY

##### SECTION I

##### GENERAL PROVISIONS

Art. 194. Social security consists of an integrated group of actions initiated by the branches of the government and by society, designed to assure rights relating to health, social security and social assistance.

Sole Paragraph. It is the responsibility of the Government, in the terms of the law, to organize social security, based on the following objectives:

- I — universality of coverage and attendance;
- II — uniformity and equivalence of benefits and services for urban and rural populations;
- III — selectivity and distribution in the provision of benefits and services;

IV — irreducibility of the value of the benefits;

V — equity in sharing costs;

VI — diversity in the basis of financing;

VII — democratic and decentralized character of administrative management, with participation of the community, particularly of workers, businessmen and retired persons.

Art. 195. Social security shall be financed by the entire society, either directly or indirectly, in the terms of the law, through funds derived from the budgets of the Federal Government, States, Federal District, and Counties and from the following social contributions:

I — from employers, assessed on the payroll, invoices and profits;

II — from workers;

III — from lottery receipts.

§ 1º. The revenues of the States, Federal District and Counties intended for social security shall be included in their respective budgets and shall not be part of the federal budget.

§ 2º. The proposal for the social security budget shall be prepared jointly by the agencies responsible for health, social security and social assistance, taking into account the targets and priorities established in the law of budget directives, assuring each area the management of its funds.

§ 3º. A legal entity owing funds to the social security system, as established by the law, may not contract with the Government nor receive from it benefits or fiscal or credit incentives.

§ 4º. The law may institute other sources in order to guarantee maintenance or expansion of social security, observing the provisions of art. 154, I.

§ 5º. No social security benefit or service may be created, increased or extended without a corresponding source of full funding.

§ 6º. The social contributions dealt with in this article may be exacted only ninety days after the date of publication of the law that instituted or modified them, and the provisions of art. 150, III, *b* shall not apply to them.

§ 7º. Charitable entities of social assistance complying with the requirements established by law are exempt from social security contributions.

§ 8º. Rural producers, sharecroppers, half owners, tenant farmers, prospectors, miners and artisan fishermen, as well as their respective spouses, who conduct their activities as a family enterprise, without permanent employees, shall contribute to social security by applying a rate to the proceeds from the marketing of their production and shall be entitled to benefits in the terms of the law.

## SECTION II

### HEALTH

Art. 196. Health is the right of all persons and the duty of the State and shall be guaranteed by social and economic policies aimed at reducing the risk of illness and other maladies and by universal and equal access to all activities and services for the promotion, protection and recovery of health.

Art. 197. Health activities and services are of public relevance, and it is the responsibility of the Government to provide, in the terms of the law, for their regulation, supervision and control. Such activities and services should be carried out directly or through third parties and also by individuals or legal entities of private law.

Art. 198. Public health activities and services are part of a regionalized and hierarchical network and constitute a unified system, organized in accordance with the following directives:

I — decentralization, with sole management in each sphere of government;

II — full service, giving priority to preventive activities, without prejudice to treatment services;

III — community participation.

Sole Paragraph. The unified health system shall be financed, in the terms of art. 195, with funds from the social security budget of the Federal Government, the States, the Federal District and the Counties, as well as other sources.

Art. 199. Health care is open to private enterprise.

§ 1º. Private institutions may participate on a complementary basis in the unified health system, according to its directives, by means of contracts or agreements of public law, with a preference given to philanthropic and non-profit entities.

§ 2º. Allocation of public funds to aid or to subsidize for-profit private institutions is prohibited.

§ 3º. Direct or indirect participation of foreign firms or capital in health assistance in the Country is prohibited, except for cases provided for by law.

§ 4º. The law shall provide for the conditions and requirements to facilitate the removal of human organs, tissues, and substances for the purposes of transplants, research and treatment, as well as the collection, processing and transfusion of blood and its byproducts, forbidding all types of commercialization.

Art. 200. The unified health system shall, in addition to other duties in the terms of the law:

I — control and supervise procedures, products and substances of interest to health and participate in the production of medicines, equipment, immuno-biological products, hemo-derivatives and other inputs;

II — perform sanitary and epidemiological supervisory actions, as well as those of workers' health;

III — organize human resources training in the health area;

IV — participate in the formulation of basic sanitation policy and performance of activities relating thereto;

V — increase scientific and technological development within its sphere of action;

VI — supervise and inspect foodstuffs, including control of their nutritional contents, as well as drinks and water for human consumption;

VII — participate in the control and inspection of production, transportation, storage and use of psychoactive, toxic and radioactive substances and products;

VIII — collaborate in environmental protection, including that of the work place.

### SECTION III

#### SOCIAL SECURITY

Art. 201. Social security plans, through contributions, in the terms of the law, shall provide for:

I — coverage of the events of illness, disability and death, including those resulting from work accidents, old age and confinement;

II — aid for the support of the dependents of insured persons with low incomes;

III — maternity protection, especially for pregnant women;

IV — protection for involuntarily unemployed;

V — pensions for the death of an insured man or woman, for the spouse or companion and dependents, obeying the provisions of § 5<sup>o</sup> and art. 202.

§ 1<sup>o</sup>. Any person may participate in the benefits of social security, through contributions in accordance with a social security plan.

§ 2<sup>o</sup>. Readjustment of benefits in order to preserve their real value on a permanent basis, according to criteria defined in law, is assured.

§ 3<sup>o</sup>. All contribution salaries taken into account in the calculation of benefits shall be corrected monetarily.

§ 4<sup>o</sup>. The amounts habitually earned by an employee, in whatever form, shall be incorporated into salary for the purposes of social security contributions and consequent effects on benefits, in the cases and in the form of the law.

§ 5<sup>o</sup>. No benefit that replaces the contribution salary or the earnings from labor of the insured shall have a monthly value lower than the minimum wage.

§ 6<sup>o</sup>. The Christmas bonus of retired persons and pensioners shall be based on the value of earnings in the month of December of each year.

§ 7<sup>o</sup>. Social security shall provide collective insurance of a supplementary and optional nature, funded by additional contributions.

§ 8<sup>o</sup>. Any governmental subsidy or aid to for-profit private social security entities is forbidden.

Art. 202. Retirement is assured, in the terms of the law, with benefits calculated on the average of the last thirty-six contribution salaries, monetarily corrected month by month, upon proof that adjustments to contribution salaries to maintain their real values were regular, obeying the following conditions:

I — at sixty-five years of age for men and sixty years for women, this age limit being reduced by five years for rural workers of both sexes and for those who carry out their economic activities with their family, including rural producers, mineral prospectors, miners and artisan fishermen;

II — after thirty-five years of work for men and thirty years for women, or in less time, if subject to work under special conditions, detrimental to health or physical integrity, as defined in law;

III — after thirty years for male and after twenty-five years for female teachers who have been actually engaged in teaching.

§ 1<sup>o</sup>. Men, after thirty years of work, and women after twenty-five years, may take proportional retirement.

§ 2<sup>o</sup>. For retirement purposes, one is assured that periods of contribution in public administration and in private activity, both rural and urban, shall be taken into account on a reciprocal basis, in which case the various social security systems shall financially compensate themselves, according to criteria established by law.

### SECTION IV

#### SOCIAL ASSISTANCE

Art. 203. Social assistance shall be rendered to those who need it, regardless of contributions to social security, and shall have the following objectives:

I — protection of the family, maternity, childhood, adolescence and old age;

II — support of needy children and adolescents;

III — promotion of integration into the labor force;

IV — training and rehabilitation of the handicapped and promotion of their integration into the community;

V — guarantee of a monthly benefit of one minimum wage to the handicapped and the elderly who prove that they are without means to provide for their own support or to have their family provide for their support, in conformity with what the law provides.

Art. 204. Government actions in the social assistance area shall be done with funds from the social security budget, provided for in art. 195, along with other sources, and shall be organized on the basis of the following directives:

- I — political-administrative decentralization, with responsibility for coordination and general rules lying within the federal sphere and coordination and execution of respective programs lying within the state and county spheres, as well as charitable and social assistance entities;
- II — participation of the population, by means of representative organizations, in the formulation of policies and in the control of actions taken at all levels.

## CHAPTER III

### EDUCATION, CULTURE AND SPORTS

#### SECTION I

#### EDUCATION

Art. 205. Education, which is the right of all and the duty of the State and family, shall be promoted and encouraged with societal collaboration, seeking the full development of the individual, preparation for the exercise of citizenship and qualification for work.

Art. 206. Teaching shall be provided on the basis of the following principles:

- I — equality of conditions for access to and staying in school;
- II — freedom of learning, teaching, researching and expressing thoughts, art and knowledge;
- III — pluralism of ideas and of pedagogical concepts, and the coexistence of public and private teaching institutions;
- IV — free public education in official establishments;
- V — valorization of teaching professionals, guaranteeing, in the form of the law, career plans for public school teachers, with a professional minimum salary and admittance exclusively by means of public competitive examinations and credentials, assuring a unified legal regime for all institutions maintained by the Federal Government;
- VI — democratic administration of public teaching, in the form of the law;
- VII — guarantee of a standard of quality.

Art. 207. Universities enjoy autonomy with respect to didactic, scientific and administrative matters, as well as autonomy in financial and patrimonial management, and shall comply with the principle of indivisibility of teaching, research and extension.

Art. 208. The State's duty towards education shall be effectuated through the guarantees of:

- I — free, compulsory elementary education, including those who did not have access to school at the proper age;
- II — progressive extension of free compulsory secondary school education;
- III — special educational assistance for the handicapped, preferably within the ordinary school system;
- IV — assistance to children from birth to six years of age in day-care centers and pre-schools;
- V — access to higher levels of education, research and artistic creation, according to individual capacity;
- VI — provision of regular night courses adequate to the student's condition;
- VII — attendance to elementary school students through supplementary programs of school books, educational supplies, transportation, food and health assistance.

§ 1º. Access to compulsory and free education is a subjective public right.

§ 2º. The Governments's failure to offer compulsory education or offering it irregularly implies the liability of the proper authority.

§ 3º. The Government has the responsibility to conduct a census of elementary school students, to conduct roll call and to make sure, jointly with parents or guardians, that students attend school.

Art. 209. Education is open to private enterprise, observing the following conditions:

- I — compliance with the general rules of national education;
- II — authorization and evaluation of quality by the Government.

Art. 210. Minimum curricula shall be established for elementary education so as to assure a common basic education and respect for national and regional cultural and artistic values.

§ 1º. Optional religious education shall constitute a discipline during normal school hours in public elementary schools.

§ 2º. Regular elementary education shall be given in the Portuguese language, also assuring to indigenous communities the use of their native languages and their own learning procedures.

Art. 211. The Federal Government, the States, the Federal District and the Counties shall organize a collaborative regime for their educational systems.

§ 1º. The Federal Government shall organize and finance the federal educational system and that of the Territories, and shall render technical and financial assistance to the States, the Federal District and the Counties for the development of their educational systems, making compulsory schooling a priority.

§ 2º. Counties shall give priority to elementary and pre-school education.

Art. 212. The Federal Government shall apply annually not less than eighteen percent of its tax receipts, and the States, the Federal District and the Counties at least twenty-five percent of their tax receipts, including revenues resulting from transfers, for the maintenance and development of education.

§ 1<sup>o</sup>. For the purposes of the calculation provided for in this article, the share of tax revenues transferred from the Federal Government to the States, Federal District and Counties, or from the States to their respective Counties, shall not be considered as revenues of the government making the transfer.

§ 2<sup>o</sup>. For purposes of complying with the main provision of this article, the federal, state and county educational systems and the funds employed pursuant to art. 213 shall be taken into account.

§ 3<sup>o</sup>. Distribution of public funds shall assure priority to meeting the needs of compulsory education pursuant to the national educational plan.

§ 4<sup>o</sup>. The supplementary food and health assistance programs provided for in art. 208, VII, shall be financed with funds derived from social contributions and other budgetary funds.

§ 5<sup>o</sup>. An additional source of financing for public elementary education shall be the educational salary contribution collected, in the form of the law, from firms, which may deduct from it funds spent on elementary education by their employees and dependents.

Art. 213. Public funds shall be allocated to public schools, and may be directed to community, religious and philanthropic schools, as defined in the law, that:

I — prove that they are not-for-profit and apply their surplus funds in education;

II — assure that their patrimony will be transferred to another community, philanthropic or religious school, or to the Government, in the event they terminate their activities.

§ 1<sup>o</sup>. The funds dealt with in this article may be used for scholarships for elementary and secondary education, in the form of the law, for those who show that they have insufficient funds, whenever there are no places or regular courses in the public school system in the locale where the student resides, with the Government being obligated to invest, on a priority basis, in expansion of the system in that locale.

§ 2<sup>o</sup>. University research and extension activities may receive financial support from the Government.

Art. 214. The law shall establish a multiyear national educational plan, designed to articulate and to develop the various levels of education and to integrate governmental actions that lead to:

I — eradication of illiteracy;

II — universality of school attendance;

III — improvement of the quality of teaching;

IV — vocational training;

V — humanistic, scientific and technological promotion of the country.

## SECTION II

### CULTURE

Art. 215. The State shall guarantee to all full exercise of cultural rights and access to sources of national culture, and shall support and grant incentives to the valorization and diffusion of cultural manifestations.

§ 1<sup>o</sup>. The State shall protect manifestations of popular, indigenous and Afro-Brazilian cultures and those of other participant groups in the process of national civilization.

§ 2<sup>o</sup>. The law shall provide for the determination of highly significant commemorative dates for the various national ethnic segments.

Art. 216. Brazilian cultural patrimony includes material and immaterial goods, taken either individually or as a whole, that refer to the identity, action and memory of the various groups that have formed Brazilian society, including:

I — forms of expression;

II — modes of creating, making and living;

III — scientific, artistic and technological creations;

IV — works, objects, documents, buildings and other spaces intended for artistic-cultural manifestations;

V — urban complexes and sites with historical, landscape, artistic, archeological, paleontological, ecological and scientific value.

§ 1<sup>o</sup>. The Government, with the collaboration of the community, shall promote and protect Brazilian cultural patrimony by inventories, registries, surveillance, monument decrees, expropriation and other forms of precaution and preservation.

§ 2<sup>o</sup>. It is the responsibility of public administration, in the form of the law, to maintain governmental documents and to take measures to make them available for consultation by those that need to do so.

§ 3<sup>o</sup>. The law shall establish incentives for the production and knowledge of cultural property and values.

§ 4<sup>o</sup>. Damages and threats to the cultural patrimony shall be punished, in the form of the law.

§ 5<sup>o</sup>. All documents and sites bearing historical reminiscences of the old *quilombos*<sup>28</sup> are declared to be historical monuments.

<sup>28</sup> A *quilombo* was a hideout for fugitive black slaves.

## SECTION III

### SPORTS

Art. 217. It is the duty of the State to foster formal and informal sporting activities as each individual's right, observing:

- I — the autonomy, as to their organization and operation, of entities and associations controlling sports;
- II — the allocation of public funds for the priority promotion of educational sports and, in specific cases, high-income sports;
- III — differentiated treatment for professional and non-professional sports;
- IV — the protection of and granting incentives to national sporting events.

§ 1º. The Judiciary shall only hear legal actions relating to the regulation of sport competitions after exhaustion of remedies in courts of sports justice, as regulated by the law.

§ 2º. The courts of the sports justice shall render final decisions within a maximum period of sixty days from the date of filing the action.

§ 3º. The Government shall encourage leisure as a means of social promotion.

## CHAPTER IV

### SCIENCE AND TECHNOLOGY

Art. 218. The State shall promote and encourage scientific development, research and technological training.

§ 1º. Basic scientific research shall receive priority treatment from the State, taking into account the public good and scientific progress.

§ 2º. Technological research shall be oriented principally towards solution of Brazilian problems and towards development of the national and regional productive systems.

§ 3º. The State shall support human resources training in the areas of science, research and technology and shall concede to those engaged in such activities special means and conditions of work.

§ 4º. The law shall support and stimulate firms that invest in research, in creation of technology appropriate for the Country, and in training and improvement of their human resources and that adopt compensation systems that assure employees, apart from their salary, participation in the economic gains resulting from the productivity of their labor.

§ 5º. The States and the Federal District may link part of their budgetary receipts to public entities for the promotion of education and scientific and technological research.

Art. 219. The domestic market comprises part of the national patrimony and shall be encouraged so as to make viable cultural and socio-economic development, the well-being of the population and the technological autonomy of Brazil, in the terms of federal law.

## CHAPTER V

### SOCIAL COMMUNICATION

Art. 220. The expression of thoughts, creation, speech and information, through whatever form, process or vehicle, shall be subject to no restrictions, observing the provisions of this Constitution.

§ 1º. No law shall contain any provision that may constitute an impediment to full freedom of information by the press in any medium of social communication, observing the provisions of art. 5º, IV, V, X, XIII and XIV.

§ 2º. Any and all censorship of a political, ideological and artistic nature is forbidden.

§ 3º. It is the province of Federal law to:

I — regulate public entertainment and shows, and it is the responsibility of the Government to advise about their nature, the ages for which they are not recommended and the locales and times unsuitable for showing them;

II — establish legal measures that guarantee individuals and families the opportunity to defend themselves against radio and television programs or schedules that contravene the provisions of art. 221, as well as against commercials for products, practices and services that may be harmful to health and the environment.

§ 4º. Commercial advertising of tobacco, alcoholic beverages, pesticides, medicine and therapies shall be subject to legal restrictions, in the terms of subparagraph II of the preceding paragraph, and shall contain, whenever necessary, warnings about the harms caused by their use.

§ 5º. Social communication media may not, directly or indirectly, be subject to monopoly or oligopoly.

§ 6º. Publication of printed means of communication shall not require the license of any authority.

Art. 221. The production and programming of radio and television stations shall comply with the following principles:

I — preferences for educational, artistic, cultural and informational purposes;

II — promotion of national and regional culture and stimulation of any independent production aimed at its dissemination;

III — regionalization of cultural, artistic and journalistic production, according to percentages established by law;

IV — respect for the ethical and social values of the individual and family.

Art. 222. The ownership of journalism firms and radio and television broadcasting firms is restricted to native-born Brazilians or those naturalized more than ten years ago, who shall be responsible for management and intellectual orientation.

§ 1<sup>o</sup>. Participation by a legal entity in the capital stock of a journalism or broadcasting firm is prohibited except for political parties and legal entities whose capital is owned exclusively and nominally by Brazilians.

§ 2<sup>o</sup>. The participation referred to in the prior paragraph may be carried out only through capital without the right to vote and may not exceed thirty percent of the capital stock.

Art. 223. The Executive Branch has the power to grant and renew concessions, permissions and authorizations for radio and television broadcasting services, observing the principle of complimentation of private, public and state systems.

§ 1<sup>o</sup>. Congress shall consider such acts within the time period of art. 64, §§ 2<sup>o</sup> and 4<sup>o</sup>, starting from the date of receipt of the message.

§ 2<sup>o</sup>. Nonrenewal of concessions or permissions requires approval by at least two-fifths of Congress in nominative voting.

§ 3<sup>o</sup>. Acts that grant or renew shall be legally effective only after consideration by the National Congress, in accordance with the preceding paragraphs.

§ 4<sup>o</sup>. Cancellation of a concession or permission prior to its expiration date requires a judicial decision.

§ 5<sup>o</sup>. The term of a concession or permission shall be ten years for radio broadcasting and fifteen years for television broadcasting.

Art. 224. For the purposes of the provisions contained in this chapter, Congress shall institute, as an auxiliary organ, the Social Communications Council, in the form of the law.

## CHAPTER VI

### THE ENVIRONMENT

Art. 225. Everyone has the right to an ecologically balanced environment, which is a public good for the people's use and is essential for a healthy life. The Government and the community have a duty to defend and to preserve the environment for present and future generations.

§ 1<sup>o</sup>. To assure the effectiveness of this right, it is the responsibility of the Government to:

I — preserve and restore essential ecological processes and provide for ecological management of the species and ecosystems;

II — preserve the diversity and integrity of the Country's genetic patrimony and to supervise the entities dedicated to research and manipulation of genetic material;

III — define, in all units of the Federation, territorial spaces and their components that are to be specially protected, with any change or and suppression permitted only through law, prohibiting any use that compromises the integrity of the characteristics that justify their protection;

IV — require, in the form of the law, a prior environmental impact study, which shall be made public, for installation of works or activities that may cause significant degradation of the environment;

V — control the production, commercialization and employment of techniques, methods and substances that carry a risk to life, to the quality of life and to the environment;

VI — promote environmental education at all levels of teaching and public awareness of the need to preserve the environment;

VII — protect the fauna and the flora, prohibiting, in the form of the law, all practices that jeopardize their ecological functions, cause extinction of species or subject animals to cruelty.

§ 2<sup>o</sup>. Those who exploit mineral resources are obligated to restore any environmental degradation, in accordance with technical solutions required by the proper governmental agencies, in the form of the law.

§ 3<sup>o</sup>. Conduct and activities considered harmful to the environment shall subject the infractors, be they individuals or legal entities, to penal and administrative sanctions, in addition to the obligation to repair the damages caused.

§ 4<sup>o</sup>. The Brazilian Amazon Forest, the Atlantic Woods, the Serra do Mar, the Pantanal of Mato Grosso, and the Coastal Zone are the national patrimony, and they shall be utilized, in the form of the law, under conditions assuring preservation of the environment, including use of natural resources.

§ 5<sup>o</sup>. Vacant lands or those reverted to the States through discriminatory actions,<sup>29</sup> which are necessary to protect natural ecosystems, are inalienable.

§ 6<sup>o</sup>. Power plants with nuclear reactors shall be located as defined in federal law; if not, they may not be installed.

## CHAPTER VII

### FAMILY, CHILDREN, ADOLESCENTS AND ELDERLY

Art. 226. The family, the foundation of society, enjoys special protection from the State.

§ 1<sup>o</sup>. Marriage is civil, and performance of the ceremony is gratuitous.

§ 2<sup>o</sup>. Religious marriage has civil effects, in the terms of the law.

<sup>29</sup> A discriminatory action is a mixed administrative-judicial action brought by the Federal Government or the States to separate public from private lands.



§ 3<sup>o</sup>. For purposes of State protection, a stable union between a man and a woman is recognized as a family unit, and the law shall facilitate conversion of such unions into marriage.

§ 4<sup>o</sup>. The community formed by either parent and his or her descendants is also considered a family unit.

§ 5<sup>o</sup>. The rights and duties of the conjugal society shall be exercised equally by men and women.

§ 6<sup>o</sup>. Civil marriage may be dissolved by divorce after judicial separation for more than one year in cases expressed in law, or after proven *de facto* separation for more than two years.

§ 7<sup>o</sup>. Based upon the principles of human dignity and responsible parenthood, couples are free to decide on family planning; it is incumbent upon the State to provide educational and scientific resources for the exercise of this right, prohibiting any coercion on the part of official or private institutions.

§ 8<sup>o</sup>. The State shall assure assistance to the family in the person of each of its members and shall create mechanisms to suppress violence in the ambit of family relationships.

Art. 227. It is the duty of the family, the society and the State to assure children and adolescents, with absolute priority, the rights to life, health, food, education, leisure, professionalization, culture, dignity, respect, liberty and family and community harmony, in addition to safeguarding them against all forms of negligence, discrimination, exploitation, violence, cruelty and oppression.

§ 1<sup>o</sup>. The State shall promote full health assistance programs for children and adolescents, permitting participation by non-governmental entities and obeying the following precepts:

I — allocation of a percentage of public health funds to assist mothers and infants;

II — creation of programs of preventive and specialized care for the physically, sensorially or mentally handicapped, as well as programs of social integration for handicapped adolescents through training for a job and living together, and facilitation of access to public facilities and services by eliminating prejudices and architectural obstacles.

§ 2<sup>o</sup>. The law shall provide standards for the construction of public parks and buildings and the manufacturing of public transportation vehicles in ways that guarantee appropriate access to the handicapped.

§ 3<sup>o</sup>. The right to special protection shall encompass the following aspects:

I — a minimum age of fourteen years to be allowed to work, observing the provisions of art. 7<sup>o</sup>, XXXIII;

II — guarantee of social security and labor law rights;

III — guarantee of access to school for the adolescent worker;

IV — guarantee of full and formal understanding of the charges of an infraction, equality with respect to the procedural phase and technical

defenses by qualified professionals, according to the provisions of specific protective legislation;

V — obedience to the principles of brevity, exceptionality and respect for the particular condition of being a developing individual when deciding whether to apply any liberty-depriving measure;

VI — Government encouragement, through legal assistance, fiscal incentives and subsidies, in the terms of the law, for protection through guardianship of orphaned or abandoned children or adolescents;

VII — prevention and specialized treatment programs for children and adolescents dependent on narcotics and related drugs.

§ 4<sup>o</sup>. The law shall severely punish abuse of, violence towards, and sexual exploitation of children and adolescents.

§ 5<sup>o</sup>. Adoption shall be assisted by the Government, in the form of the law, which shall establish the cases and conditions under which foreigners may adopt.

§ 6<sup>o</sup>. Regardless of whether born in or out of wedlock or adopted, children shall have the same rights and qualifications, prohibiting any discrimination with respect to filiation.

§ 7<sup>o</sup>. In attending to the rights of children and adolescents, the provisions of art. 204 shall be taken into consideration.

Art. 228. Minors under eighteen years of age are not criminally responsible, subject to the rules of special legislation.

Art. 229. Parents have a duty to assist, raise and educate their minor children, and children of age have a duty to help and to support their parents in old age, need or sickness.

Art. 230. The family, society and the State have a duty to assist the elderly, assuring their participation in the community, defending their dignity and well-being, and guaranteeing their right to life.

§ 1<sup>o</sup>. Support programs for the elderly shall be carried out preferably in their homes.

§ 2<sup>o</sup>. Those over sixty-five years of age are guaranteed free urban public transportation.

## CHAPTER VIII

### INDIANS

Art. 231. The social organization, customs, languages, creeds and traditions of Indians are recognized, as well as their original rights to the lands they traditionally occupy. The Federal Government has the responsibility to delineate these lands and to protect and assure respect for all their property.

§ 1<sup>o</sup>. Lands traditionally occupied by Indians are those on which they live on a permanent basis, those used for their productive activities, those indispensable for

the preservation of environmental resources necessary for their well-being and those necessary for their physical and cultural reproduction, according in their uses, customs and traditions.

§ 2º. The lands traditionally occupied by Indians are destined for their permanent possession, and they shall be entitled to the exclusive usufruct<sup>30</sup> of the riches of the soil, rivers and lakes existing thereon.

§ 3º. Utilization of hydric resources, including their energy potential, and prospecting and mining of mineral wealth on Indian lands may only be done with the authorization of the National Congress, after hearing from the communities involved, which shall be assured of participation in the results of the mining, in the form of the law.

§ 4º. The lands dealt with in this article are inalienable and nontransferable, and the statute of limitations does not run against rights thereto.

§ 5º. Removal of Indian groups from their lands is prohibited except by referendum of the National Congress, in the event of epidemic that places the population at risk or in the interest of the sovereignty of the Country, after deliberation of the National Congress, guaranteeing, under all circumstances, immediate return as soon as the risk ceases.

§ 6º. Acts aimed at the occupation, dominion and possession of the lands referred to in this article, or at exploitation of the natural wealth of the soil, rivers and lakes existing thereon, are null and void, producing no legal effects, except in the case of relevant public interest of the Federal Government, according to the provisions of a complementary law; such nullity and extinction of acts shall not give rise to a right to compensation or to sue the Federal Government, except, in the form of the law, for improvements resulting from occupation in good faith.

§ 7º. The provisions of art. 174, §§ 3º and 4º do not apply to Indian lands.

Art. 232. Indians, their communities and their organizations have standing to sue to defend their rights and interests, with the Public Ministry intervening in all stages of the procedure.

## TITLE IX

### GENERAL CONSTITUTIONAL PROVISIONS

Art. 233. For the purposes of art. 7º, XXIX, every five years the rural employer shall prove to the Labor Courts that he has complied with his labor obligations toward rural employees, in the presence of the latter and of their syndical representatives.

<sup>30</sup> Usufruct is a civil law concept that vests in a person, called the usufructuary, the right to enjoy the fruits or profits of property that is owned by another and the duty to maintain the substance of the property.

§ 1º. Once he has proved that the obligations mentioned in this article have been complied with, the employer is exempt from any burdens resulting from such obligations in the respective period. If the employee and his representative do not agree with the employer's proof, the Labor Courts shall resolve the dispute.

§ 2º. In any case, the employee shall in any case have the right to claim judicially the credits that he believes he is entitled to for the last five years.

§ 3º. If the employer wishes, he can provide the proof mentioned in this article at intervals of less than five years.

Art. 234. The Federal Government is prohibited from assuming, directly or indirectly, as a result of creation of a State, charges related to expenses with inactive personnel and charges and amortization of domestic and foreign debts of the public administration, including the indirect administration.

Art. 235. During the first ten years after the creation of a State, the following basic rules shall be observed:

I — the Legislative Assembly shall be made up of seventeen Deputies if the population of the State is less than six hundred thousand inhabitants, and of twenty-four Representatives, if the population is equal to or exceeds that number, up to one million and five hundred thousand inhabitants;

II — the Government shall have no more than ten Departments;

III — the Tribunal of Accounts shall have three members, appointed by the elected Governor, from among Brazilians of proven good reputation and notorious knowledge;

IV — the Tribunal of Justice shall have seven Justices;

V — the first Justices shall be appointed by the elected Governor, chosen in the following manner;

a) five from among judges with more than thirty-five years old, presiding within the area of the new State or of the State which gave rise to the new State;

b) two from among public prosecutors, under the same conditions, and attorneys of proven good reputation and legal knowledge, with at least ten years of professional practice, obeying with the procedure set out in the Constitution;

VI — in the case of a State created from a Federal Territory, the first five Justices may be chosen from among judges of law from any part of the Country;

VII — in each Judicial District, the first Judges of Law, the first Public Prosecutors, and the first Public Defenders shall be appointed by the elected Governor after a public competition of examinations and credentials;

VIII — until promulgation of the State Constitution, the positions in the State's Procuracy-General, Advocacy-General, and Defender-General's Office, shall be held by lawyers of notorious knowledge, at least thirty-five years old, appointed by the elected Governor and removable at will;

IX — if the new State results from the transformation of a Federal Territory, the transfer of financial charges from the Federal Government for payment of opting civil servants who belonged to the Federal Administration shall take the following form;

a) in the sixth year after its creation, the State shall assume twenty percent of the financial charges of paying the civil servants, with the balance remaining the responsibility of the Federal Government;

b) in the seventh year, the State's charges shall increase by thirty percent,<sup>31</sup> and, in the eighth year, the remaining fifty percent;

X — the appointments following the first appointments for the offices referred to in this article shall be regulated by the State Constitution;

XI — budgetary expenses for personnel may not exceed fifty percent of the State's revenues.

Art. 236. Notary and registry services are provided privately by Governmental delegation.

§ 1º. The law shall regulate the activities, discipline the civil and criminal liability of notaries, registrars and their agents and define supervision of their acts by the Judiciary.

§ 2º. Federal law shall establish the general rules for fixing fees for notarial and registration services.

§ 3º. Becoming a notary public or registrar depends on a public competition of examinations and credentials. No office may remain vacant for more than six months without opening a public competition to fill it by approval of a new entrant or a transferee.

Art. 237. The Finance Ministry shall exercise the supervision and control over foreign commerce that are essential to the defense of the interests of the National Treasury.

Art. 238. The law shall organize the sale and resale of petroleum combustibles, gasohol and other fuels derived from renewable raw materials, respecting the principles of this Constitution.

Art. 239. The revenues from contributions to the Program of Social Integration created by Complementary Law Nº. 7 of September 7, 1970, and to the Program for the Formation of the Patrimony of Civil Servants created by Complementary Law Nº. 8 of December 3, 1970, shall finance the unemployment insurance program and the bonus referred to in § 3º of this article, starting from the promulgation of this Constitution.

§ 1º. At least forty percent of the funds referred to in the main provision of this article shall be allocated to finance economic development programs through the National Bank of Economic and Social Development (BNDES), with criteria for remuneration that preserve their value.

<sup>31</sup> Whether this is 30 percent of the entire amount or 30 percent of the 20 percent assumed by the State in the sixth year is ambiguous in the Portuguese.

§ 2º. The accumulated patrimonies of the Program of Social Integration and the Program for the Formation of Patrimony of Civil Servants are preserved, maintaining the criteria for withdrawal in the situations provided for in specific laws, with the exception of withdrawal because of marriage, prohibiting distribution of the revenues dealt with in the main provision of this article for deposit in the individual accounts of participants.

§ 3º. Employees who receive monthly compensation of up to two minimum wages from employers who contribute to the Program of Social Integration or to the Program for the Formation of Patrimony of Civil Servants are assured payment of an annual minimum wage, which shall include the income from the individual accounts, in the case of those who have already participated in such programs before the date of promulgation of this Constitution.

§ 4º. Funding for the unemployment insurance program shall receive an additional contribution from any company whose labor force turnover exceeds the average turnover rate of the sector, in the form established by law.

Art. 240. The present compulsory contributions by employers on their payrolls, destined for private entities of social service and professional training linked to the syndicalist system, are excluded from the provisions of art. 195.

Art. 241. The principle of art. 39, § 1º, corresponding to the careers regulated by art. 135 of this Constitution, applies to career district police chiefs.

Art. 242. The principle of art. 206, IV, does not apply to official educational institutions created by state or municipal law, in existence on the date of promulgation of this Constitution, and that are not totally or preponderantly maintained with public funds.

§ 1º. The teaching of the History of Brazil shall take into account the contribution of the different cultures and ethnic groups in the formation of the Brazilian people.

§ 2º. The School of Pedro II, located in the city of Rio de Janeiro, shall be maintained in the federal sphere.

Art. 243. Tracts of land in any region of Brazil on which illegal cultivations of psychotropic plants are found shall be expropriated immediately and used specifically for settlement of tenant farmers and for the cultivation of food and medicinal products, without any compensation to the owner and without prejudice to other sanctions provided for by law.

Sole Paragraph. Any and all goods of economic value seized as a result of illegal traffic in narcotics and similar drugs shall be confiscated and shall revert to the benefit of institutions and personnel specialized in the treatment and recovery of addicts and in equipping and funding the activities of supervision, control, prevention and repression of the crime of trafficking in such substances.

Art. 244. The law shall provide for the adaptation of public sites and buildings and of existing public transportation vehicles, so as to ensure adequate access to the handicapped, pursuant to the provisions of art. 227, § 2º.

Art. 245. The law shall provide for the circumstances and conditions under which the Government shall assist needy heirs and dependents of victims of intentional crimes, without prejudice to the civil liability of the perpetrator of the unlawful act.

Brasília, October 5, 1988

[Signatures of members of the Constituent Assembly omitted]

## TRANSITIONAL CONSTITUTIONAL PROVISIONS

Art. 1<sup>º</sup>. At the time of its promulgation, the President of the Republic, the President of the Supreme Federal Tribunal, and members of the National Congress shall take an oath to maintain, defend and comply with the Constitution.

Art. 2<sup>º</sup>. On September 7, 1993, through a plebiscite, the electorate shall define the form of government (republic or constitutional monarchy) and the system of government (parliamentary or presidential) that shall prevail in the Country.

§ 1<sup>º</sup>. Widespread dissemination of these forms and systems through means of mass communication shall be assured free of charge from concessionaires of public services.

§ 2<sup>º</sup>. Upon promulgation of the Constitution, the Superior Electoral Tribunal shall issue rules regulating this article.

Art. 3<sup>º</sup>. This Constitution shall be revised after five years, counting from its promulgation, by the vote of an absolute majority of members of the National Congress in unicameral session.

Art. 4<sup>º</sup>. The mandate of the present President of the Republic shall end on March 15, 1990.

§ 1<sup>º</sup>. The first election for President of the Republic after promulgation of the Constitution shall be held on November 15, 1989, without applying the provisions of art. 16 of the Constitution.

§ 2<sup>º</sup>. The irreducibility of the present representation of the States and Federal District in the Chamber of Deputies is assured.

§ 3<sup>º</sup>. The mandates of the Governors and Vice Governors elected on November 15, 1986, shall end on March 15, 1991.

§ 4<sup>º</sup>. The mandates of the present Prefects, Vice Prefects and County Legislators shall end on January 1, 1989, when those elected shall take office.

Art. 5<sup>º</sup>. The provisions of art. 16 and the rules of art. 77 of the Constitution shall not apply to the elections scheduled for November 15, 1988.

§ 1<sup>º</sup>. For the elections on November 15, 1988, electoral domicile in the district at least four months prior to the election shall be required, and candidates who meet such requirement and satisfy the other legal requisites may register with the Electoral Courts after promulgation of the Constitution.

§ 2<sup>º</sup>. In the absence of a specific legal provision, it shall be up to the Superior Electoral Tribunal to issue the rules required to hold the 1988 elections, respecting current law.

§ 3<sup>º</sup>. Current members of the Federal and State Legislatures elected as Vice Prefects shall not lose their parliamentary mandates if called to serve as Prefects.

§ 4<sup>º</sup>. For the representation to be elected in 1988, the number of county legislators per county shall be determined by the respective Regional Electoral Tribunal, respecting the limits set out in art. 29, IV, of the Constitution.

§ 5<sup>º</sup>. In the elections to be held on November 15, 1988, except for those who already hold an elective mandate, spouses and relatives by blood, or marriage or adoption, up to the second degree, of the President of the Republic, a State Governor, the Governor of the Federal District and Prefects who have served more than half of their mandate, are ineligible for any office within the jurisdiction of the office holder.

Art. 6<sup>º</sup>. In the six months following promulgation of the Constitution, groups of at least thirty Federal Congressmen may request that the Superior Electoral Tribunal register a new political party; their petition is to be accompanied by the manifesto, by-laws and program, duly signed by the petitioners.

§ 1<sup>º</sup>. Provisional registration, which is to be granted promptly by the Superior Electoral Tribunal pursuant to this article, gives to the new party all the rights, duties and prerogatives of existing parties, including the right to participate, under its own name, in elections held during the twelve months following its formation.

§ 2<sup>º</sup>. The new party automatically loses its provisional registration if, within twenty-four months of its formation, it does not obtain definitive registration from the Superior Electoral Tribunal in accordance with law.

Art. 7<sup>º</sup>. Brazil shall strive for creation of an international human rights tribunal.

Art. 8<sup>º</sup>. Amnesty is granted to those who, during the period from September 18, 1946, to the date of promulgation of the Constitution, were affected, for exclusively political reasons, by exceptional acts, either institutional or complementary, to those encompassed by Legislative Decree N<sup>º</sup>. 18, of December 15, 1961, and to those affected by Decree-Law N<sup>º</sup>. 846 of September 12, 1969, assuring during their inactivity, the promotions to the offices, positions or ranks to which they would be entitled had they been in active service, obeying the periods for remaining in positions provided for in the laws and regulations in force, respecting the characteristics and peculiarities of the careers of public civil servants and the military, observing their respective juridical regimes.

§ 1<sup>º</sup>. The provisions of this article shall cause financial effects only after promulgation of the Constitution, prohibiting any kind of retroactive remuneration.

§ 2<sup>º</sup>. The benefits established in this article are assured to private sector workers, and officers and representatives of syndicates who, for exclusively political reasons, were punished, dismissed or compelled to leave the remunerated activities they performed, as well as to those who were prevented from carrying out their professional activities by ostensive pressures or secret official procedures.

§ 3<sup>º</sup>. Economic reparations shall be granted, in accordance with a law initiated by the National Congress and that shall enter in force within twelve months after promulgation of the Constitution, to all citizens who were prevented from carrying out specific professional activities in civil life because of Reserved

Ordinances Nº. S-50-GM5 of June 19, 1964, and Nº. S-285-GM5 of the Aeronautics Ministry.

§ 4º. Those who, by the force of institutional acts, have gratuitously served in the elective office of county legislators shall be entitled to computation of the respective periods for purposes of public service retirement and social security.

§ 5º. The amnesty granted in the terms of this article applies to civil servants and to employees at all levels of government or in governmental foundations, state companies or mixed-capital companies under state control, except for military Ministries, who have been punished or dismissed because of professional activities interrupted by decision of their workers, as well as because of Decree-Law No. 1.632 of August 4, 1978, or for exclusively political reasons, assuring readmission of those affected as of 1979, observing the provisions of § 1º.

Art. 9º. Those who, for exclusively political reasons, had their mandates quashed or their political rights suspended during the period from July 15 to December 31, 1969, by acts of the then President of the Republic, may request that the Supreme Federal Tribunal recognize the rights and advantages interrupted by these punitive acts, provided that they prove that such acts were grossly flawed.

Sole Paragraph. The Supreme Federal Tribunal shall render its decision within one hundred-twenty days from the interested party's request.

Art. 10. Until such time as the complementary law referred to in art. 7º, I, of this Constitution is enacted:

I — the protection referred to therein is limited to a fourfold increase of the percentages provided for in the main provision of art. 6º, and § 1º of Law No. 5.107 of September 13, 1966;

II — arbitrary dismissal or dismissal without just cause is prohibited:

a) for employees elected to the position of a director of an internal accident prevention committee, from the date of registration as a candidate until one year after the end of his mandate;

b) for a pregnant employee, from the date the pregnancy is confirmed until five months after birth.

§ 1º. Until the law regulates the provisions of art. 7º, XIX, of the Constitution, the period of paternity leave referred to in the subparagraph shall be five days.

§ 2º. Until further legal provisions, the contributions to fund the activities of rural syndicates shall be collected together with the rural property tax by the same collecting agency.

§ 3º. After the promulgation of the Constitution, upon initial proof of compliance with labor obligations by rural employers, pursuant to art. 233, the regularity of the contract and the updating of labor obligations for the entire period shall be certified before the Labor Courts.

Art. 11. Each State Legislative Assembly with constituent powers shall draft the State Constitution within one year of the promulgation of the Federal Constitution, obeying the principles of the Federal Constitution.

Sole Paragraph. After a State Constitution has been promulgated, it shall be the responsibility of the County Legislatures to vote on their respective Organic Laws within six months, in two terms of discussion and voting, respecting the provisions of the Federal and State Constitutions.

Art. 12. Within ninety days of the promulgation of the Constitution, a Committee on Territorial Studies shall be created, with ten members appointed by the National Congress and five by the Executive, for the purpose of submitting studies concerning the national territory and draft bills on new territorial units, notably in the Legal Amazon and in areas awaiting solutions.

§ 1º. Within one year the Committee shall submit the results of its studies to the National Congress so that such studies may be examined during the next twelve months, in the terms of the Constitution, with the Committee dissolving shortly thereafter.

§ 2º. Within three years of the enactment of the Constitution, the States and the Counties by agreement or arbitration should demarcate their borders presently in litigation, and for such purpose they may alter and compensate areas because of natural phenomena, historical criteria, administrative convenience and the accommodation of the bordering populations.

§ 3º. At the request of the interested States and Counties, the Federal Government may take on the task of demarcation.

§ 4º. If within three years after the promulgation of the Constitution, the demarcation task has not been concluded, the Federal Government shall determine the boundaries of the disputed areas.

§ 5º. The current borders of the State of Acre with the States of Amazonas and Rondônia are recognized and confirmed, in conformity with the cartographic and geodesic surveys conducted by the Tripartite Commission composed of representatives of the States and of the specialized technical services of the Brazilian Institute of Geography and Statistics.

Art. 13. The State of Tocantins is created by carving it out of the area described in this article, and its admission shall occur on the forty-sixth day after the elections provided for in § 3º, but not before January 1, 1989.

§ 1º. The State of Tocantins is part of the Northern Region and is bounded by the State of Goiás along the northern boundaries of the Counties of São Miguel do Araguaia, Porangatu, Formoso, Minaçu, Cavalcante, Monte Alegre de Goiás and Campos Belos, maintaining the current eastern, northern and western borders of Goiás with the States of Bahia, Piauí, Maranhão, Pará and Mato Grosso.

§ 2º. The Executive shall designate one of the cities of the State as its provisional Capital until approval of the definitive seat of government by the Constituent Assembly.

§ 3º. The Governor, Vice Governor, Senators, Federal Deputies, and State Representatives shall be elected, in a single round, within seventy-five days after promulgation of the Constitution, but not before November 15, 1988, at the discretion of the Superior Electoral Tribunal, obeying, *inter alia*, the following rules:

I — the period for party affiliation of the candidates shall end seventy-five days prior to the date of the election;

II — the dates for the regional party conventions to decide upon coalitions and choice of candidates, for the presentation of the request to register the candidates chosen and for other legal procedures shall be determined on a special calendar by the Electoral Courts;

III — occupants of state or county offices that have not definitively resigned such offices by seventy-five days prior to the date of the elections provided for in this paragraph are ineligible;

IV — the current regional directors of the political parties of the State of Goiás are maintained, with the national executive committees being responsible for designating provisional committees for the State of Tocantins, under the terms and for the purposes provided for in the law.

§ 4<sup>o</sup>. The mandates of Governor, Vice Governor and Federal and State Representatives elected in accordance with the preceding paragraph shall end concurrently with those of the other units of the Federation; the mandate of the Senator elected with the fewest votes shall end at the same time, and the mandates of the other two Senators shall end at the same time as those Senators elected in 1986 in the other States.

§ 5<sup>o</sup>. The State Constituent Assembly shall be installed on the forty-sixth day after election of its members, but not before January 1, 1989, under the presidency of the President of the Regional Electoral Tribunal of the State of Goiás and shall inaugurate the elected Governor and Vice Governor on the same date.

§ 6<sup>o</sup>. The legal rules regulating the division of the State of Mato Grosso shall apply, where appropriate, to the creation and admission of the State of Tocantins, observing the provisions of art. 234 of the Constitution.

§ 7<sup>o</sup>. The State of Goiás is released from debts and charges resulting from undertakings within the territory of the new State, and the Federal Government is authorized to assume such debts under at its discretion.

Art. 14. The Federal Territories of Roraima and of Amapá are transformed into Federated States, maintaining their current geographic borders.

§ 1<sup>o</sup>. The admission of the States shall occur upon inauguration of their governors elected in 1990.

§ 2<sup>o</sup>. The rules and criteria adopted for the creation of the State of Rondônia apply to the transformation and admission of the States of Roraima and Amapá, respecting the provisions of the Constitution and of this Act.

§ 3<sup>o</sup>. Within forty-five days after promulgation of the Constitution, the President of the Republic shall submit to the Federal Senate for consideration the names of governors of the States of Roraima and Amapá, who shall exercise the powers of the Executive until the new States are admitted with the inauguration of their elected governors.

§ 4<sup>o</sup>. So long as their transformation into States remains uncompleted in the terms of this article, the Federal Territories of Roraima and Amapá shall be

benefited by the transfer of funds provided for in arts. 159, I, *a*, of the Constitution and 34, § 2<sup>o</sup>, II of this Act.

Art. 15. The Federal Territory of Fernando de Noronha is abolished and its area is reincorporated into the State of Pernambuco.

Art. 16. Until the provisions of art. 32, § 2<sup>o</sup>, of the Constitution become effective, the President of the Republic, with the approval of the Federal Senate, shall be responsible for appointing the Governor and Vice Governor of the Federal District.

§ 1<sup>o</sup>. Until the Federal District's Legislature is installed, its powers shall be exercised by the Federal Senate.

§ 2<sup>o</sup>. Until the Legislative Chamber is installed, supervision of the accounting, finances, budgets, operations and patrimony of the Federal District shall be done by the Federal Senate through external control, with the assistance of the Tribunal of Accounts of the Federal District, observing the provisions of art. 72 of the Constitution.

§ 3<sup>o</sup>. The property of the Federal District shall include the assets that come to be attributed to it by the Federal Government in the form of the law.

Art. 17. Earnings, remuneration, advantages and additional pay, as well as retirement benefits being received inconsistently with this Constitution, shall be reduced immediately to the limits arising therefrom, not permitting invocation of vested rights nor allowing receipt of excess sums on any account.

§ 1<sup>o</sup>. Cumulative holding of two positions or jobs exclusively for doctors by one person is assured if held by a military physician in the direct or indirect public administration.

§ 2<sup>o</sup>. Cumulative holding of two positions or jobs exclusively for health professionals by one person is assured if held in the direct or indirect public administration.

Art. 18. Any legislative or administrative act, issued after installation of the National Constituent Assembly, whose objective is to grant tenure to a public servant admitted without a public competitive examination to the direct or indirect administration, including foundations instituted and maintained by the Government, is null and without juridical effect.

Art. 19. Civil public servants of the Federal Government, States, Federal District and Counties, in the direct administration, autarchies and public foundations, who, on the date of promulgation of the Constitution, have held their positions for at least five continuous years, without having been admitted in the manner regulated by art. 37 of the Constitution, are deemed to have tenure in the public service.

§ 1<sup>o</sup>. The period of service of the civil servants referred to in this article shall be counted as a credential when they take a competition for the purpose of effectuating their admission in the form of the law.

§ 2<sup>o</sup>. The provisions of this article do not apply to the holders of confidential positions, offices or jobs or those on committees, nor to those who the law declares freely dischargeable. The period of service of these persons shall not be computed for the purposes of the main provision of this article, unless they are civil servants.

§ 3º. The provisions of this article do not apply to professors at the superior levels, in the terms of the law.

Art. 20. Within one hundred and eighty days, the rights of inactive civil servants and pensioners shall be revised, and the income and pensions owed them shall be updated so as to adjust them to the provisions of the Constitution.

Art. 21. Professional judges with a limited term of office who have been admitted by means of a public competition of examinations and credentials and who are in office on the date this Constitution is promulgated, acquire tenure, observing the probationary period, and they shall comprise a group being phased out, maintaining the jurisdiction, prerogatives and restrictions of the laws to which they have been subjected, except for those inherent to the transitory nature of their investiture.

Sole Paragraph. Retirement of the judges referred to in this article shall be regulated by the rules established for other state judges.

Art. 22. Public defenders holding office by the date of installation of the National Constituent Assembly are assured the right to opt for the career, observing the guarantees and prohibitions provided for in art. 134, sole paragraph, of the Constitution.

Art. 23. Until art. 21, XVI, of the Constitution is regulated, those presently holding the positions of federal censor shall continue to exercise functions compatible with such office in the Federal Police Department, observing the constitutional provisions.

Sole Paragraph. The law referred to shall provide for the utilization of the Federal Censors, in the terms of this article.

Art. 24. Within eighteen months of the promulgation of the Constitution, the Federal Government, States, Federal District and Counties shall issue laws establishing criteria for making their personnel compatible with the provisions of art. 39 of the Constitution and with the administrative reform resulting therefrom.

Art. 25. One hundred and eighty days after the promulgation of the Constitution, such period being subject to extension by law, all legal provisions conferring or delegating to an organ of the Executive, powers assigned by the Constitution to the National Congress shall be revoked, especially with respect to:

I — normative actions;

II — allocations or transfers of funds of any kind.

§ 1º. The effects of decree-laws sent to the National Congress and not evaluated by it when the Constitution is promulgated shall be regulated in the following manner:

I — if issued by September 2, 1988, they shall be evaluated by the National Congress within a period of up to one hundred and eighty days from the date of promulgation of the Constitution, not counting the time Congress is in recess;

II — if the time period defined in the preceding subparagraph elapses without evaluation of the decree-laws mentioned therein, they shall be deemed rejected;

III — in the situations defined in subparagraphs I and II, acts performed when the respective decree-laws were in effect shall be fully valid; if necessary, the National Congress may legislate on their remaining effects.

§ 2º. Decree-laws issued between September 3, 1988, and the promulgation of the Constitution shall, on the latter date, be converted into provisional measures, applying the rules established in art. 62, sole paragraph.

Art. 26. Within one year of the promulgation of the Constitution, the National Congress shall sponsor, through a mixed Committee, an analytical and expert examination of the acts and facts that produced Brazil's foreign debt.

§ 1º. The Committee shall have the legal authority of a parliamentary investigative committee for purposes of requisitions and calling witnesses, and shall act with the assistance of the Federal Tribunal of Accounts.

§ 2º. If irregularities are found, the National Congress shall propose that the Executive declare the acts null and void and shall send the process to the Federal Public Ministry, which shall take appropriate action within sixty days.

Art. 27. The Superior Tribunal of Justice shall be installed under the Presidency of the Supreme Federal Tribunal.

§ 1º. Until the Superior Tribunal of Justice is installed, the Supreme Federal Tribunal shall exercise the powers and jurisdiction defined in the prior constitutional regime.

§ 2º. The initial composition of the Superior Tribunal of Justice shall be made up:

I — by utilization of the Ministers of the Federal Tribunal of Appeals;

II — by appointment of the Ministers needed to complete the number established in the Constitution.

§ 3º. For the purposes of the Constitutional provision, the present Ministers of the Federal Tribunal of Appeals shall be deemed to belong to the class they came from at the time of their appointment.

§ 4º. After the Tribunal has been installed, retired Ministers of the Federal Tribunal of Appeals automatically become retired Ministers of the Superior Tribunal of Justice.

§ 5º. The Ministers referred to in § 2º, II, shall be indicated in a list of three by the Federal Tribunal of Appeals, observing the provisions of art. 104, sole paragraph, of the Constitution.

§ 6º. Five Federal Regional Tribunals are created, to be installed within six months from promulgation of the Constitution; their jurisdiction and seat are to be determined by the Federal Tribunal of Appeals, taking into account the number of cases and their geographical location.

§ 7º. Until the Federal Regional Tribunals are installed, the Federal Tribunal of Appeals shall exercise the jurisdiction attributed to the Federal Regional Tribunals throughout the National territory. The Federal Tribunal of Appeals shall also provide for their installation and indicate candidates for all initial offices by

means of a list of three that may include federal judges of any region, observing the provisions of § 9<sup>o</sup>.

§ 8<sup>o</sup>. After promulgation of the Constitution, filling vacant positions for Ministers of the Federal Tribunal of Appeals is prohibited.

§ 9<sup>o</sup>. If there are no federal judges with the minimum period of service provided for in art. 107, II, of the Constitution, promotions may be granted to judges with fewer than five years in office.

§ 10<sup>o</sup>. The Federal Courts shall have the power to adjudicate the cases filed therein until promulgation of the Constitution, and the Federal Regional Tribunals, as well as the Superior Tribunal of Justice, shall decide rescissory actions against decisions rendered until then by the Federal Courts, including those involving matters for which jurisdiction has been transferred to another branch of the Judiciary.

Art. 28. The federal judges dealt with in art. 123, § 2<sup>o</sup>, of the Constitution of 1967, with the redaction given by Constitutional Amendment No. 7 of 1977, shall be vested in office in courts of the Judiciary Section for which they were appointed or designated; if there are no vacancies, the existing courts shall be divided.

Sole Paragraph. For purposes of promotion by seniority, the period of service of such judges shall be computed from the day they took office.

Art. 29. Until such time as the complementary laws related to the Public Ministry and to the Advocate-General of the Federal Government are approved, the Federal Public Ministry, the Office of the Procurator of the National Treasury, the Legal Advisory Offices of the Ministries, the Procuracies and Legal Departments of federal autarchies with their own representation and the members of the Procuracies of universities that are public foundations shall continue to conduct their activities within their respective powers.

§ 1<sup>o</sup>. Within one hundred and twenty days, the President of the Republic shall send to the National Congress a draft of a complementary law providing for the organization and operations of the Federal Advocacy-General.

§ 2<sup>o</sup>. The present Procurators of the Republic, in accordance with the complementary law, shall be given the irrevocable option between careers in the Federal Public Ministry and in the Federal Advocacy-General.

§ 3<sup>o</sup>. A member of the Public Ministry admitted prior to the promulgation of the Constitution may opt for the previous regime with respect to guarantees and advantages, observing as to prohibitions the legal situation on the date of promulgation.

§ 4<sup>o</sup>. The present members of the supplementary staff of the Public Ministries of Labor and the Military who have acquired tenure in these positions become integral members of the staff of their respective careers.

§ 5<sup>o</sup>. It is the responsibility of the current Procuracy General of the National Treasury, directly or by delegation, which may be made to the State Public Ministry, to represent the Federal Government legally in court in tax cases, in their respective spheres of authority, until such time as the complementary laws provided for in this article are enacted.

Art. 30. The legislation that creates the justices of the peace shall maintain the present judges of peace until the new justices take office, assuring them the rights and powers conferred upon the latter, and shall determine the date for the election provided for in art. 98, II, of the Constitution.

Art. 31. The clerks of the law courts, as defined by law, shall be taken over by the State, respecting the rights of the present clerks.

Art. 32. The provisions of art. 236 do not apply to notarial and registry services that have already been made official by the Government, respecting the rights of their employees.

Art. 33. Except for support payments, the value of pending court orders for payment of judgments against the government on the date of the promulgation of the Constitution, including remaining interest and monetary correction, may be paid in the currency of the day, with updating, in equal and successive annual installments, over a maximum period of eight years from July 1, 1989, by Executive decision issued within one hundred and eighty days from promulgation of the Constitution.

Sole Paragraph. To comply with the provisions of this article, the debtor entities may each year issue, in the exact amount of the payment, bonds of the public debt, which shall not be computed for purposes of determining the aggregate limit of indebtedness.

Art. 34. The national tax system shall go into effect on the first day of the fifth month following promulgation of the Constitution; until then the system of the 1967 Constitution, with the redaction given by Amendment No. 1 of 1969 and subsequent amendments, is retained.

§ 1<sup>o</sup>. When the Constitution is promulgated, arts. 148, 149, 150, 154, I, 156, III, and 159, I, c, shall go into force, revoking all provisions to the contrary in the 1967 Constitution and the Amendments that modified it, especially its art. 25, III.

§ 2<sup>o</sup>. The Fund for the Participation of the States and of the Federal District and Fund for the Participation of the Counties shall obey with the following determinations:

I — starting with the promulgation of the Constitution, the percentages shall be eighteen and twenty percent, respectively, calculated on the revenues from collection of the taxes referred to in art. 153, III and IV, maintaining the present criteria for apportionment until entry into force of the complementary law referred to in art. 161, II;

II — one percentage point shall be added to the percentage of the Fund for the Participation of the States and the Federal District in fiscal year 1989; starting in and including 1990, one half of one percent per fiscal year shall be added up to and including 1992, reaching in 1993 the percentage established in art. 159, I, a;

III — the percentage for the Fund for the Participation of the Counties shall be raised at the rate of one-half of one percent per fiscal year, starting in and including 1989, until it reaches the limit established in art. 159, I, b.



§ 3<sup>a</sup>. When the Constitution has been promulgated, the Federal Government, the States, the Federal District and the Counties may issue the laws necessary to apply the national tax system therein provided for.

§ 4<sup>a</sup>. The laws issued in accordance with the preceding paragraph shall take effect as soon as the national tax system provided for in this Constitution enters into force.

§ 5<sup>a</sup>. Once the new national tax system is in force, application of the preexisting legislation is assured to the extent that it is not incompatible with the new national tax system and with the legislation referred to in §§ 3 and 4.

§ 6<sup>a</sup>. Until December 31, 1989, the provisions of art. 150, III, *b* do not apply to the taxes dealt with in arts. 155, I, *a* and *b*, and 156, II and III, which may be collected thirty days after the publication of the law that instituted or increased such taxes.

§ 7<sup>a</sup>. Until fixed in a complementary law, the maximum rates for the county tax on retail sales of liquid and gaseous combustibles shall not exceed three percent.

§ 8<sup>a</sup>. If, within sixty days of promulgation of this Constitution, the complementary law necessary for the institution of the tax dealt with in art. 155, I, *b*, has not been issued, the States and the Federal District shall determine the rules to regulate the matter provisionally by means of a compact entered into in accordance with Complementary Law No. 24, of January 7, 1975.

§ 9<sup>a</sup>. Until a complementary law deals with the matter, firms distributing electric power, shall be responsible for the payment of the tax on the circulation of merchandise levied on electric power from production or importation up to the last operation, either as taxpayers or taxpayer substitutes, at the time the product leaves their establishments, even if the destination is another unit of the Federation. The tax is calculated on the price charged on the final sale, assuring payment of such tax to the State or to the Federal District, depending on the place where such sale occurs.

§ 10<sup>a</sup>. So long as the law provided for in art. 159, I, *c*, which is to be enacted by December 31, 1989, is not in force, the funds dealt with in that provision shall be allocated in the following manner:

I — six-tenths of one percent to the Northern Region, through Banco da Amazonia S.A.;

II — one and eight-tenths percent to the Northeastern Region, through Banco do Nordeste do Brasil S.A.;

III — six-tenths of one percent to the Central Western Region, through Banco do Brasil S.A..

§ 11<sup>a</sup>. The Development Bank of the Central-West is hereby created, in the terms of the law, so as to comply with the determinations of arts. 159, I, *c* and 192, § 2<sup>a</sup>, of the Constitution in that region.

§ 12<sup>a</sup>. The urgency provided for in art. 148, II, shall not adversely affect collection of the compulsory loan created for the benefit of Centrais Elétricas Brasileiras S.A. (Eletrobrás) by Law No. 4.156 of November 28, 1962, as subsequently amended.

Art. 35. The provisions of art. 165, § 7<sup>a</sup> shall be complied with progressively over a period of up to ten years, distributing the funds among the macro-economic regions in proportion to their population, based on the situation determined for the 1986-87 biennium.

§ 1<sup>a</sup>. In applying the criteria dealt with in this article, the total expenses shall exclude expenses for:

I — projects considered priorities in the multiyear plan;

II — national security and defense;

III — maintenance of the federal organs in the Federal District;

IV — Congress, the Federal Tribunal of Accounts and the Judiciary;

V — servicing the debt of the direct and indirect administration of the Federal Government, including foundations instituted and maintained by the Federal Government.

§ 2<sup>a</sup>. Until such time as the complementary law referred to in art. 165, § 9<sup>a</sup>, I and II, comes into force, the following rules shall be obeyed:

I — the proposed multiyear plan that is to be in effect until the end of the first fiscal year of the subsequent presidential mandate shall be submitted not less than four months before the end of the first fiscal year and returned for presidential approval by the end of the legislative term;

II — the bill of the law on budget directives shall be submitted not less than eight and a half months before the end of the fiscal year and returned for presidential approval by the end of the first period of the legislative term;

III — the bill of the budget law of the Federal Government shall be submitted not less than four months before the end of the fiscal year and returned for presidential approval by the end of the legislative term.

Art. 36. Funds in existence on the date the Constitution is promulgated, except for those resulting from tax exemptions which become private property and those of interest to national defense, shall be eliminated if they are not ratified by Congress within two years.

Art. 37. Adaptation to what is established in art. 167, III, shall be done within five years, reducing the excess at the rate of at least one fifth per year.

Art. 38. Until enactment of the complementary law referred to in art. 169, the Federal Government, the States, the Federal District and the Counties shall not spend more than sixty-five percent of the amount of their respective current revenues on personnel.

Sole Paragraph. When the respective expenditures with personnel exceed the limit provided for in this article, the Federal Government, the States, the Federal District and the Counties shall return to such limit by reducing the excess percentage at the rate of one-fifth per year.

Art. 39. After the promulgation of the Constitution, for purposes of compliance with the constitutional provisions that involve variations of expenses and receipts of the Federal Government, the Executive shall prepare and the Legislature shall consider a bill revising the budget law of fiscal year 1989.

Sole Paragraph. The National Congress shall vote on the complementary law provided for in art. 161, II, within twelve months.

Art. 40. The Free Trade Zone of Manaus, with its characteristics of a free trade area, export and import and fiscal incentives, shall be maintained for a period of twenty-five years from promulgation of the Constitution.

Sole Paragraph. The criteria that regulate or which come to regulate approval of projects in the Free Trade Zone of Manaus may be modified only by federal law.

Art. 41. The Executive Branches of the Federal Government, the States, the Federal District and the Counties shall reevaluate all sectorial tax incentives now in force and shall propose the appropriate measures to their respective Legislative Branches.

§ 1<sup>o</sup>. Those incentives not confirmed by law within two years for the date of the promulgation of the Constitution shall be considered revoked.

§ 2<sup>o</sup>. Revocation shall not prejudice any rights that have vested before such date, with respect to incentives granted conditionally and for limited periods of time.

§ 3<sup>o</sup>. Incentives granted by interstate compacts in accordance with art. 23, § 6<sup>o</sup> of the 1967 Constitution, with the redaction of Amendment No. 1 of October 17, 1969, shall also be reevaluated and reconfirmed within the time limits of this article.

Art. 42. For fifteen years, the Federal Government shall allocate from the funds destined for irrigation:

I — twenty percent to the Central-Western Region;

II — fifty percent to the Northeastern Region, preferentially in the semi-arid region.

Art. 43. On the date of the promulgation of the law regulating the prospecting and mining of mineral resources and deposits, or within one year from the date of the promulgation of this Constitution, the authorizations, concessions and other instruments conferring mineral rights shall lose their effects if one cannot prove that the prospecting or mining has been started within the legal time limits or if they have become inactive.

Art. 44. Brazilian firms presently owning prospecting authorizations, concessions for the working of mineral resources, and concessions for using hydraulic energy sites shall have four years, starting from the promulgation of the Constitution, to comply with the requirements of art. 176, § 1<sup>o</sup>.

§ 1<sup>o</sup>. Except for provisions of national interest set out in the constitutional text, Brazilian firms shall be excused from compliance with the provisions of art. 176, § 1<sup>o</sup>, so long as, during the period of four years from the date of promulgation of the Constitution, the product of their mines and processing is destined for industrialization within the national territory in their own establishments or in industrial firms controlled by them.

§ 2<sup>o</sup>. Brazilian firms owning hydraulic energy concessions for use in their industrialization processes are excused from compliance with the provisions of art. 176, § 1<sup>o</sup>.

§ 3<sup>o</sup>. The Brazilian firms referred to in § 1<sup>o</sup> may only have prospecting authorizations or permits to mine or exploit hydraulic energy sites so long as the energy and the products of the mines are utilized in their respective industrial processes.

Art. 45. Refineries operating in the Country under the aegis of art. 43 and under the conditions of art. 45 of Law Nº. 2.004 of October 3, 1953 are excluded from the monopoly established in art. 177, subparagraph II, of the Constitution.

Sole Paragraph. Risk contracts made with Petróleo Brasileiro S.A. (Petrobrás) for the exploration of petroleum that are in force on the date of the promulgation of the Constitution are exempt from the prohibition of art. 177, § 1<sup>o</sup>.

Art. 46. Credits against entities under intervention or extra-judicial liquidation, even when such proceedings are converted into bankruptcy, are subject to monetary correction from the date of maturity until the date of actual payment, without interruption or suspension.

Sole Paragraph. The provisions of this article shall also apply:

I — to transactions carried out after the proceedings referred to in the main provision of this article have been decreed;

II — to loans, financing, refinancing, financial assistance for liquidity, assignments or subrogation of mortgages or mortgage bonds, fulfillment of guarantees of deposits by the public or purchases of liabilities, including those carried out with resources from funds intended for such purposes;

III — to credits existing prior to the promulgation of this Constitution;

IV — to credits of governmental administrative entities prior to promulgation of this Constitution and not liquidated by January 1, 1988.

Art. 47. Liquidation of debts, including subsequent renegotiations and settlements thereof, even when adjudicated, arising from any loans granted by banks and by financial institutions, shall be without monetary correction provided the loan was granted:

I — to micro- and small businessmen or to their establishments in the period from February 28, 1986, to February 28, 1987;

II — to mini, small, or medium rural producers in the period from February 28, 1986, to December 31, 1987, so long as it relates to rural credit.

§ 1<sup>o</sup>. For the purposes of this article, micro-firms are legal entities and proprietorships with annual incomes of up to ten thousand National Treasury Bonds (OTNs), and small firms are legal entities and proprietorships with annual incomes of up to twenty-five thousand National Treasury Bonds (OTNs).

§ 2<sup>o</sup>. Classification as a mini, small, and medium rural producers shall be made in accordance with the rural credit rules in force at the time of the contract.

§ 3<sup>o</sup>. The exemption from monetary correction referred to in this article shall only be granted in the following cases:

I — if the initial debt, plus legal interest and judicial fees, is liquidated within ninety days of promulgation of this Constitution;

II — if the application of the funds is not contrary to the propose of the financing, with the burden of proof placed upon the creditor institution;

III — if the creditor institution fails to demonstrate that the borrower has the means to pay his debt, excluding from such means the borrower's establishment, the house in which he lives, and his instruments for work and production;

IV — if the beneficiary does not own more than five rural modules.

§ 4<sup>º</sup>. The benefits dealt with in this article do not apply to debts already paid nor to debtors who are members of the Constituent Assembly.

§ 5<sup>º</sup>. For debts maturing after this deadline for liquidation of the debt, banks and financial institutions shall provide, by a separate instrument, for amendment of the original contractual conditions so as to adjust them to this benefit if the borrower is interested in doing so.

§ 6<sup>º</sup>. Under no circumstances shall the granting of this benefit by private commercial banks bring with it a burden for the Government, not even through refinancing and repassing of funds through the Central Bank.

§ 7<sup>º</sup>. In the case of repassing to official financing agents or credit cooperatives, the burden shall fall upon the original source of funds.

Art. 48. Within one hundred-twenty days of the promulgation of this Constitution, Congress shall elaborate consumer protection code.

Art. 49. The law shall regulate the institution of emphyteusis<sup>32</sup> in urban real property, the tenants having the option, in the event of extinction, to redeem the emphyteusis, by acquisition of direct title in accordance with the provisions contained in the respective contracts.

§ 1<sup>º</sup>. In the absence of a contractual clause, the criteria and bases currently in force in special federal legislation on real property shall be adopted.

§ 2<sup>º</sup>. The rights of presently registered occupants shall be assured by application of another type of contract.

§ 3<sup>º</sup>. Emphyteusis shall continue to be applied to tidelands and areas added thereto by accretion, located within the security strip along the coast line.

§ 4<sup>º</sup>. After redemption of the emphyteusis, the former holder of direct title shall, within ninety days, under penalty of liability, entrust all documents related to such title to the custody of the proper real estate registry.

Art. 50. An agricultural law, to be enacted within one year, shall set out, in the terms of this Constitution, the objectives and instruments of agricultural policy, priorities, crop planning, marketing, internal supply, foreign markets and agrarian credit institutions.

<sup>32</sup> Emphyteusis is a civil law institution in which land is leased for an annual rent to a tenant either in perpetuity or for a long period of time. The tenant is under an obligation to maintain the estate but can alienate the leasehold or pass it to his successors, and the lessor or his heirs have a right of reentry only for nonpayment of rent.

Art. 51. All donations, sales and grants of public lands of areas greater than three thousand hectares, made in the period from January 1, 1962, to December 31, 1987, shall be reviewed by the National Congress, within the three years after promulgation of the Constitution.

§ 1<sup>º</sup>. Review of sales shall be based exclusively on the criterion of legality of the transaction.

§ 2<sup>º</sup>. Review of grants and donations shall be based on the criteria of legality and convenience to the public interest.

§ 3<sup>º</sup>. In the cases provided for in the preceding paragraphs, if illegality is proven, or if it is in the public interest, the lands shall revert to the patrimony of the Federal Government, the States, the Federal District or the Counties.

Art. 52. Until the conditions referred to in art. 192, III, are determined, the following shall be prohibited:

I — installation of new agencies of foreign domiciled financial institutions in the Country;

II — increases in the percentage of participation by individuals and legal entities resident or domiciled abroad in the capital of financial institutions headquartered in the Country.

Sole Paragraph. The prohibition referred to in this article does not apply to authorizations resulting from international accords, reciprocal agreements or agreements of interest to the Brazilian government.

Art. 53. Former combatants who actually participated in bellicose operations during the Second World War, in the terms of Law No. 5.315 of September 12, 1967, shall be assured the following rights:

I — admission to public service with tenure, without having to undergo competitive examinations;

II — a special pension corresponding to that left by a second lieutenant of the Armed Forces, which may be applied for at any time and may not be accumulated with any other income received from the public coffers, except for social security benefits, reserving the right to choose;

III — in the event of death, a proportional pension for the widow or companion or dependent, in an amount equal to that of the prior subparagraph;

IV — free medical, hospital and educational assistance, including dependents;

V — retirement at full pay after twenty-five years of actual service under any juridical regime;

VI — priority in the acquisition of one's own home for those who do not own one, or for their widows or companions.

Sole Paragraph. Granting of the special pension referred to in subparagraph II replaces, for all legal effects, any other pension already granted to an ex-combatant.

Art. 54. When without resources, rubber-tappers recruited pursuant to Decree-Law No. 5.813 of September 14, 1943, and protected by Decree-Law No. 9.882 of September 16, 1946, shall receive a monthly pension for life in the amount of two minimum wages.

§ 1<sup>a</sup>. The benefit extends to rubber-tappers who, at the request of the Brazilian Government, contributed to the war effort by working in rubber production in Amazon Region during the Second World War.

§ 2<sup>a</sup>. The benefits established in this article may be transferred to dependents who are recognizably in need.

§ 3<sup>a</sup>. The benefit shall be granted according to a law to be proposed by the Executive within one hundred and fifty days after promulgation of the Constitution.

Art. 55. Until the law of budget directives is approved, at least thirty percent of the social security budget, excluding unemployment insurance, shall be allocated to the health sector.

Art. 56. Until a law regulates art. 195, I, the revenues resulting from at least five of the six-tenths of one percent corresponding to the rate of the contribution referred to in Decree-Law No. 1.940 of May 25, 1982, as amended by Decree-Law No. 2.049 of August 1, 1983, by Decree No. 91.236 of May 8, 1985, and by Law No. 7.611 of July 8, 1987, shall be integrated with social security revenues, except for commitments assumed for ongoing programs and projects exclusively during fiscal year 1988.

Art. 57. The debts of the States and Counties for social security contributions up to June 30, 1988, shall be liquidated, with monetary correction, in one hundred and twenty monthly installments, eliminating interest and penalties applicable thereto, as long as the debtors request installment payments and begin such payments within one hundred and eighty days from promulgation of this Constitution.

§ 1<sup>a</sup>. The amount to be paid in each of the first two years shall not be less than five percent of the total consolidated and updated debt, with the balance being divided into equal monthly installments.

§ 2<sup>a</sup>. Liquidation may include payments in the form of assignments of assets and rendering of services, in accordance with Law No. 7.578 of December 23, 1986.

§ 3<sup>a</sup>. As security for payment of the installments, the States and Counties shall each year in their respective budgets make the appropriations required for payment of their debts.

§ 4<sup>a</sup>. If any of the conditions established for permitting installment payments are not satisfied, the total debt shall be considered past due, and default interest shall be payable on it; in such event, the portion of the funds corresponding to the Participation Funds that has been allocated to the debtor States and Counties shall be blocked and transferred to social security for payment of their debts.

Art. 58. Benefits paid on a continuous basis and maintained by social security on the date the Constitution is promulgated shall have their values revised in order to restore their purchasing power, expressed in multiples of the minimum wage they

represented on the date when they were granted, obeying this criterion for updating until implantation of the cost-benefit plan referred to in the following article.

Sole Paragraph. The monthly benefit payments, updated in accordance with this article, shall be due and payable from the seventh month after promulgation of the Constitution.

Art. 59. Not more than six months after the promulgation of the Constitution, bills relating to organization of social security and for the cost-benefit plans shall be submitted to the National Congress, which shall have six months in which to examine them.

Sole Paragraph. Upon approval by the National Congress, the plans shall be implemented progressively in the following eighteen months.

Art. 60. In the first ten years after promulgation of the Constitution, the Government shall make a concerted effort, with the mobilization of all organized sectors of society and with the application of at least fifty percent of the funds referred to in art. 212 of the Constitution, to eradicate illiteracy and make elementary education universal.

Sole Paragraph. Within the same time period, public universities shall decentralize their activities so as to extend higher education to cities of greater population density.

Art. 61. The educational entities referred to in art. 213, as well as the educational and research foundations whose creation has been authorized by law, which satisfy the requirements of subparagraphs I and II of this article and which during the last three years have received public funds, may continue to receive such funds, unless otherwise established by law.

Art. 62. The law shall create the National Rural Apprenticeship Service (SENAR), modeled on the legislation for the National Industrial Apprenticeship Service (SENAI) and the National Commercial Apprenticeship Service (SENAC), without prejudice to the powers of the governmental agencies that act in the area.

Art. 63. A Committee composed of nine members, three from the Legislature, three from the Judiciary and three from the Executive, is created to promote commemoration of the centennial of the proclamation of the Republic and of promulgation of the first republican constitution in the Country, provided that such Committee may, at its discretion, be subdivided into as many subcommittees as may be necessary.

Sole Paragraph. In carrying out its duties, the Committee shall promote studies, debates and assessments of the political, social, economic and cultural development of the Country, and may join efforts with state and county governments and with public and private institutions desiring to take part in the events.

Art. 64. The National Press and other printing departments of the Federal Government, the States, the Federal District and the Counties, of direct or indirect administration, including foundations instituted and maintained by the Government, shall provide a popular edition of the full text of the Constitution, that shall be made available, free of charge, to schools, public registry offices, syndicates, barracks, churches and other representative community organizations,

so that each Brazilian citizen may receive from the State a copy of the Brazilian Constitution.

Art. 65. The Legislature shall regulate art. 220, § 4<sup>o</sup> within twelve months.

Art. 66. The concessions of public telecommunication services presently in force are maintained, in accordance with the law.

Art. 67. The Federal Government shall conclude the demarcation of Indian lands for five years after promulgation of the Constitution.

Art. 68. Final title shall be recognized for the remaining members of the *quilombo* communities who are occupying their lands, and the State shall grant them the respective deeds.

Art. 69. The States shall be allowed to maintain legal advisory offices independent from their Procuracy-Generals or Advocacy-Generals, provided that they have separate organs for their respective functions on the date of enactment of this Constitution.

Art. 70. The present jurisdiction of the state courts is maintained until defined in the State Constitutions, pursuant to art. 125, § 1<sup>o</sup> of this Constitution.

Brasília, October 5, 1988.

[Signatures omitted]