

# BRAZIL-CONSTITUTION

## Preamble

[Adoption of the new Constitution]

We, the representatives of the Brazilian People, assembled in the National Constituent Assembly to institute a Democratic State for the purpose of ensuring the exercise of social and individual rights, liberty, security, well being, development, equality and justice as supreme values of a fraternal, pluralist and unprejudiced society, based on social harmony and committed, in the internal and international spheres, to the peaceful solution of disputes, promulgate, under the protection of God, this Constitution of the Federative Republic of Brazil.

## Title I Fundamental Principles

### Article 1 [State Principles]

(0) The Federative Republic of Brazil, formed by the indissoluble union of States and Municipalities, as well as the Federal District, is a legal Democratic State and is founded on:

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

(1) All power emanates from the people, who exercise it by means of elected representatives or directly, according to this Constitution.

### Article 2 [State Powers]

The Legislative, the Executive and the Judiciary, which are independent of and harmonious among each other, are Branches of the Union.

### Article 3 [State Objectives]

The fundamental objectives of the Federative Republic of Brazil are:

- I. to build a free, just and solidary 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.

### Article 4 [International Relations]

(0) 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 the States;
- VI. defense of peace;
- VII. pacific solution of conflicts;
- VIII. repudiation of terrorism and racism;
- IX. cooperation among people for the progress of mankind;
- X. granting of political asylum.

(1) The Federative Republic of Brazil shall seek economic, political, social, and cultural integration of the peoples of Latin America, in order to form a Latin American community of nations.

## **Title II Fundamental Rights and Guarantees**

### **Chapter I Individual and Collective Rights and Duties**

#### **Article 5 [Equality]**

(0) All persons are equal before the law, without any distinction whatsoever, and Brazilians and foreigners resident in Brazil are assured of inviolability of the right of life, liberty, equality, security, and property, on the following terms:

- I. men and women have equal rights and duties under this Constitution;
- II. no one shall be obliged to do or not to do something other than by virtue of law;
- III. no one shall be submitted to torture or to inhuman or degrading treatment;
- IV. the expression of thought is free, and anonymity is forbidden;
- V. the right to answer is ensured, in proportion to the offense, besides compensation for property or moral damages to the image;
- VI. freedom of conscience and of belief is inviolable, ensuring the free exercise of religious cults and guaranteeing, as set forth in the law, the protection of places of worship and their rites;
- VII. under the terms of the law, the rendering of religious creed or of philosophical or political belief, unless such are claimed for exemption from a legal obligation imposed upon everyone and the person refuses to perform an alternative obligation established by law;
- IX. the expression of intellectual, artistic, scientific and communications activities is free, without any censorship or licence;
- X. the privacy, private life, honor and image of persons are inviolable, and the right to compensation for property or moral damages resulting from the violation thereof is ensured;
- XI. the home is the inviolable asylum of the individual, and no one may enter it without the dweller's consent, save in the case of "flagrante delicto" or

disaster, or to give help, or, during the day, by court order;

XII. the secrecy of correspondence and of telegraphic, data and telephone communications is inviolable, except, in the latter case, by court order, in the events and in the manner established by the law for purposes of criminal investigation or criminal procedural discovery;

XIII. the practice of any work, trade or profession is free, observing the professional qualifications which the law may establish;

XIV. access to information is ensured to everyone and confidentiality of the source is protected whenever necessary for the professional activity;

XV. locomotion within the national territory is free in times of peace, and any person may, under the terms of the law, enter it, remain in it or leave it with his or her assets;

XVI. all persons may hold peaceful meetings, without weapons, in places open to the public, regardless of authorization, provided that they do not frustrate another meeting previously called for the same place, subject only to prior notice to the proper authority;

XVII. full freedom of association for lawful purposes is granted, any paramilitary association being forbidden;

XVIII. the creation of associations and, set forth in the law, of cooperatives, does not require any authorization by the state;

XIX. associations may only be compulsorily dissolved or have their activities suspended by court decision, and, in the first case, only if the decision is final and unappealable;

XX. no one can be compelled to become associated or to remain associated;

XXI. associations, when expressly authorized to do so, are entitled to represent their members in and out of court;

XXII. the right to own property is guaranteed;

XXIII. ownership of property shall attend to its social function;

XIV. the law shall establish the procedure of expropriation for public use or need, or for social interest, against just and prior compensation in money, with the exception of the cases set forth in this Constitution;

XXV. in the event of imminent public danger, the proper authority may make use of private property, and the owner shall be assured of subsequent compensation, in case of damages;

XXVI. small rural properties, as defined by law, whenever they are explored by the family, are not subject to attachment for the payment of debts incurred by reason of their productive activities, and the law shall provide for the means to finance their development;

XXVII. authors have exclusive rights to use, publish or reproduce their works, and such rights may be conveyed to their heirs for the period which the law may establish;

XXVIII. under the terms of the law, the following is ensured:

(a) protection of individual participation in collective works and of reproduction of the human voice and image, including such with regard to

sports activities;

(b) the right to the authors, performers, and respective trade unions and associations to monitor the economic exploitation of the works which they create or in which they participate;

XXIX. the law shall assure the authors of industrial inventions of a temporary privilege for their use, as well as protection of industrial creations, of ownership of trade marks, of companies names and of other distinctive signs, with due regard for social interests and for the technological and economic development of Brazil;

XXX. the right to inheritance is guaranteed; XXXI. succession to assets owned by foreigners and located in Brazil shall be governed by Brazilian law, in favor of the Brazilian spouse or children, whenever the personal law of the decedent is not favorable to them; XXXII. the State shall provide, as set forth in the law, for the defense of consumers;

XXXIII. all persons are entitled to receive from government agencies information of private interest to such persons or of collective or general interest which shall be provided within the period established by law, subject to liability, with the exception of information whose secrecy is vital to the security of society and of the State;

XXXIV. all persons are ensured, without the payment of fees:

(a) the right to petition the public authorities in defending rights or against illegal acts or abuse of power;

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

XXXV. the law shall not exclude from review by the Judiciary any violation of or threat to a right; XXXVI. the law shall not impair a vested right, a perfect juridical act, and the principle of res judicata; XXXVII. there shall be no extraordinary court or tribunal;

XXXVIII. the institution of the jury is recognized, with the organization attributed to it by the law, and the guarantee of:

a) full defense;

b) secret voting;

c) sovereignty of the verdicts;

d) jurisdiction to adjudicate intentional crimes against life;

XXXIX. there is no crime without a previous law which defines it, nor is there any punishment without a previous legal imposition;

XL. the penal law shall not be retroactive, except to the benefit of the defendant;

XLI. the law shall punish any discrimination against fundamental rights and liberties;

XLII. the practice of racism is a crime not entitled to bail or to the statute of limitations, and subject to imprisonment, according to the law;

XLIII. the law shall consider the practice of torture, unlawful traffic of narcotics and similar drugs, terrorism and crimes defined as heinous crimes to



be crimes not entitled to bail and to mercy or amnesty, and the principals, the accessories and those who, although able to avoid them, abstain from doing so, shall be held liable;

XLIV. the acts of civilian or military armed groups, against the constitutional and democratic order, are crimes not entitled to bail or subject to the statute of limitations;

XLV. no sentence shall pass from the person of the convict, but the liability for damages and a decree of loss of assets may, under the terms of the law, be extended to the successors and enforced against them up to the limit of the value of the assets transferred; XLVI. the law shall regulate the individualization of punishment and shall adopt, inter alia the following: a) deprivation or restriction of freedom;

b) loss of assets;

c) fines;

d) alternative social obligation;

e) suspension or prohibition of rights;

XLVII. there may be no sentence:

a) of death, except in the event of declared war, according to Article 84 XIX;

b) of life imprisonment;

c) of hard labor;

d) of banishment;

e) which is cruel.

XLVIII. the sentence shall be served in separate establishments, according to the nature of the criminal offence, the age, and the sex of the convict;

XLIX. convicts are assured of respect for their physical and moral integrity;

L. female convicts are allowed to keep their children with them during the period in which they are breast feeding;

LI. no Brazilian may be extradited, except for naturalized Brazilians in the case of a common crime committed before naturalization, or proven involvement in the unlawful traffic of narcotics and similar drugs, as set forth in the law;

LII. extradition of a foreigner for a political or ideological crime may not be granted;

LIII. no one shall be sued or sentenced other than by the proper authority;

LIV. no one may be deprived of his or her freedom or assets without due process of law;

LV. litigants in court or administrative proceedings and defendants in general are assured of the use of the adversary system and of full defense, with the means and remedies inherent thereto;

LVI. evidence obtained through unlawful means is inadmissible in the proceedings;

VII. no one may be considered guilty until the criminal sentence has become final and unappealable;

LVIII. a person who has undergone civil identification shall not be subjected to criminal identification, except in the cases set forth in the law;

LIX. private prosecution against public offenses shall be admitted if public prosecution is not filed within the period established by law;

LX. the law may only restrict publicity of procedural acts when it is necessary to defend privacy or social interests; LXI. no one may be arrested except 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 or she is being held must immediately be communicated to the proper judge and to the arrested person's family or to the person designated by him or her;

LXIII. the arrested person has to be informed of his or her rights, amongst which is the right to remain silent, and the arrested person shall be assured of the assistance of his or her family and of legal counsel;

LXIV. the arrested person is entitled to identification of the persons responsible for his or her arrest or police interrogation;

LXV. an illegal arrest must immediately be remitted by the judicial authority;

LXVI. no one may be taken to prison or held therein when the law admits release on own recognizance, with or without bail;

LXVII. there shall be no civil arrest for indebtedness, save for that of a person liable for voluntary and inexcusable default on an alimony obligation and that of an unfaithful trustee; LXVIII. the right to habeas corpus is granted whenever someone suffers or believes he or she is threatened by violence or coercion in his or her freedom of movement, by illegal act, or abuse of power; LXIX. a writ of mandamus shall be issued to protect a clear legal right which is not protected by habeas corpus or habeas data, when the party responsible for the illegal act or abuse of power is a public authority or an agent of a legal entity performing government duties; LXX. a collective writ of mandamus may be filed by: a) a political party, represented in Congress;

b) a trade union, professional entity, or association legally organized and in operation for at least one year, to defend the interests of its members or associates;

LXXI. an injunction shall be issued whenever the absence of regulations makes it unfeasible to exercise the constitutional rights and liberties and the prerogatives inherent to nationality, sovereignty, and citizenship; LXXII. the right to habeas data is granted: a) to ensure knowledge of information relating to the person of the petitioner, contained in records or data banks of government entities or of public entities;

b) for the correction of data, if the petitioner does not prefer to do so through confidential, judicial, or administrative proceedings;

LXXIII. any citizen has standing to institute an action seeking to annul an act to the public property or to property pertaining to an entity in which the State participates, to administrative morality, to the environment, and to historical and cultural monuments, and the plaintiff shall, except in the vent

of proven bad faith, be exempt from court costs and from the burden of loss of suit;

LXXIV. the State has to provide full and gratuitous legal assistance to whoever proves not to have sufficient funds;

LXXV. the State shall indemnify a person convicted by a judicial error, and also convict who remains imprisoned longer than the period established in the sentence;

LXXVI. the following shall be gratuitous for persons known to be poor, as set forth in the law:

a) civil registration of birth;

b) death certificates; LXXVII. habeas corpus and habeas data proceedings and, set forth in the law, the acts required to exercise citizenship are gratuitous.

(1) The provisions defining fundamental rights and guarantees are applicable immediately.

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

## Chapter II Social Rights

### Article 6 [Basic principles]

Education, health, work, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute, are social rights under this Constitution.

### Article 7 [The Rights]

(0) The following are rights of city and rural workers, notwithstanding any others that seek to improve their social condition:

I. employment protected against arbitrary dismissal or against dismissal without cause, according to a supplemental law which shall establish severance payment, among other rights;

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

III. unemployment compensation fund;

IV. a minimum wage nationwide, established by law, capable of satisfying their basic living needs and those of their families with housing, food, education, health, leisure, clothing, hygiene, transportation, and social security, with periodical adjustments to maintain its purchasing power, it being forbidden to bind it 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 covenants;

VII. guarantee of salary or wage never below the minimum wage, for those receiving variable compensation;

- VIII. a thirteenth salary based on the full compensation or on the pension payment;
- IX. compensation for night work above that for daytime work;
- X. salary protection, as established by law, malicious withholding of a salary being considered a crime;
- XI. participation in the profits or results, independent of compensation, and, exceptionally, participation in the management of the company, as defined by law;
- XII. family allowance for their dependents;
- XIII. normal work hours not exceeding eight hours per day and forty-four hours per week, with the option to set off work hours and reduce the work day through an agreement or a collective bargaining covenant;
- XIV. a work day of six hours for work carried out in uninterrupted shifts, unless otherwise established by collective bargaining;
- XV. paid weekly leave, preferably on Sundays;
- XVI. compensation for overtime work at least fifty per cent above the compensation for normal work;
- XVII. annual vacation with compensation at least one third above the normal salary;
- XVIII. maternity leave without loss of job and of salary, for a period of one hundred and twenty days;
- XIX. paternity leave, under the terms established by law;
- XX. protection of the work market for women through specific incentives according to the law;
- XXI. prior notice of dismissal in proportion to period of service, but at least thirty days, under the terms of the law;
- XXII. reduction of work risks by means of health, hygiene, and safety rules;
- XXIII. additional compensation for unhealthy or dangerous work, as established by law;
- XXIV. retirement pension;
- XXV. gratuitous assistance for the children and dependents from birth to six years of age, in day care centers and kindergardens;
- XXVI. recognition of covenants and of collective bargaining agreements;
- XXVII. protection by virtue of automation, as established by law;
- XXVIII. work accident insurance, under the responsibility of the employer, without excluding the indemnity for which the employer is liable, in the event of malice or fault;
- XXIX. legal action for credits arising out of employment, with a statute of limitations:
- a) of five years for city workers, up to the limit of two years after ending the employment contract;
  - b) of up to two years after ending 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 the respective professionals;

XXXIII. prohibition of night, dangerous, or unhealthy work for minors under eighteen years of age, and of any work for minors under fourteen years of age, except as an apprentice;

XXXIV. equal rights for workers with a permanent employment bond and sporadic workers.

(1) The category of domestic workers is assured of the rights set forth in Items IV, VI, VIII, XV, XVII, XVIII, XIX, XXI and XXIV, as well as integration into the social security system.

**Article 8 [Work and trade union]**

(0) Professional or trade union association is free, with due regard for the following:

- I. the law may not require State authorization for a trade union to be founded, except for registration with the proper agency, it being forbidden to the Government to interfere and intervene in trade union organization;
- II. it is forbidden to create more than one trade union 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, which base may not cover less than the area of one Municipality;
- III. it is incumbent upon the trade union to defend the collective or individual rights and interests of the category, including in court or administrative disputes;
- IV. the general meeting shall establish the contribution which, in the case of a professional category, shall be discounted from the payroll, to support the confederative system of the respective trade union representation, regardless of the contribution set forth in the law;
- V. no one shall be required to become a member or to remain a member of a trade union;
- VI. it is compulsory for the trade unions to take part in collective labor bargaining;
- VII. retired members shall be entitled to vote and be voted on in trade union organizations;
- VIII. dismissal of an employee who is a union member is forbidden as from the moment when he or she registers as a candidate for a position of union leader or representative and, if elected, even as an alternate, until one year after termination of his or her term of office, unless he or she commits a serious fault under the terms of the law.

(1) The provisions of this article apply to the organization of rural trade unions and of fishing communities, with due regard for the conditions

established by law.

#### Article 9 [Strike]

(0) The right to strike is guaranteed, and it is incumbent upon the workers to decide on the advisability of exercising it and on the interests to be defended thereby.

(1) The law defines which services or activities are essential and provides for the community's basic needs to be satisfied.

(2) In cases of abuse, the responsible parties are to be submitted to the penalties of the law.

#### Article 10 [Representation]

The participation of workers and employers is ensured in the collegiate bodies of government agencies in which their professional or social security interests are the subject of discussion and resolution.

#### Article 11 [Authority of the representative]

In companies having more than two hundred employees, the election of an employee representative is ensured for the exclusive purpose of furthering direct discussions with their employers.

### Chapter III Nationality

#### Article 12 [Brazilian Nationality]

(0) The following are Brazilians:

I. by birth:

- a) those born in the Federative Republic of Brazil, even if of foreign parents, provided that they are not in the service of their country;
- b) those born abroad, of a Brazilian father or a Brazilian mother, provided that either of them is serving the Federative Republic of Brazil;
- c) those born abroad, of a Brazilian father or a Brazilian mother, provided that they are registered with a proper Brazilian authority, or those who come to live in Brazil before coming of age and, having come of age, opt for Brazilian nationality at any time;

II. naturalized:

- a) those who, as set forth by law, acquire Brazilian nationality, and, for persons originating from Portuguese speaking countries, the only requirement being residence for one uninterrupted year and moral integrity;
- b) foreigners of any nationality, resident in the Federative Republic of Brazil for over thirty years uninterruptedly and without any criminal conviction, provided that they apply for Brazilian nationality.

(1) The rights inherent to born Brazilians shall be attributed to Portuguese citizens permanently resident in Brazil if Brazilians are afforded reciprocal treatment, except in the events set forth in this Constitution.

(2) The law may not establish any distinction between born and naturalized Brazilians, except in the events set forth in this Constitution.

(3) Only born Brazilians may hold the office of:

I. President and Vice President of the Republic;

II. President of the House of Representatives;

III. President of the Federal Federal Senate;

IV. Justice of the Federal Supreme Court;

V. the diplomatic career;

VI. officer of the Armed Forces.

(4) Loss of nationality shall be declared for a Brazilian who:

I. has his naturalization cancelled by court decision by virtue of an activity detrimental to the national interests;

II. acquires another nationality except in case of:

a) recognition of the original nationality by the foreign legislation;

b) imposition of naturalization by foreign rules, to the Brazilian resident in foreign State, as a condition for him to stay in its territory or for the exercise of civil rights.

#### Article 13 [Language and Federation Symbols]

(0) Portuguese is the official language of the Federative Republic of Brazil.

(1) The national flag, anthem, coat of arms, and seal are symbols of the Federative Republic of Brazil.

(2) The States, the Federal District, and the Municipalities may have symbols of their own.

## Chapter IV Political Rights

Article 14 [Sovereignty of the People and Political Rights of the Citizens] (0) The sovereignty of the people is exercised by universal suffrage, and by direct and secret ballot, with equal value for all, and, according to the law, by:

I. plebiscite;

II. referendum;

III. initiative of the people.

(1) Electoral enrolment 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.

(2) Foreigners cannot register as voters and neither can conscripts during their period of compulsory military service.

(3) The conditions for eligibility, according to the law, are the following:

I. Brazilian nationality;

II. Full exercise of political rights;

III. electoral enrolment;

IV. electoral domicile in the district;

V. membership in a political party;

VI. the 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, Mayor, Vice Mayor, and Justice of Peace;

d) eighteen years for City Councilman.

(4) Persons that are illiterate or cannot register as voters are not eligible.

(5) The President of the Republic, the State and Federal District Governors, the Mayors and those that have succeeded them or replaced them during the six months preceding the election, are not eligible to the same offices in the subsequent term.

(6) In order to run for other offices, the President of the Republic, the State and Federal District Governors, and the Mayors shall resign from their respective offices at least six months before the election.

(7) 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 or Territory, or of the Federal District, of a Mayor or those that have replaced them during the six months preceding the election, are not eligible in the jurisdiction of the incumbent, unless they already hold an elective office and are candidates for re-election.

(8) An active member of the armed forces who can register as voter 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 of military duties by his superiors and, if elected, he shall be automatically retired upon investiture.

(9) A supplemental law shall establish other cases of ineligibility and the periods for such ineligibility to cease, in order to protect normal and legitimate elections from the influence of economic power or abuse in the exercise of an office, position, or job in the direct or indirect administration.

(10) Exercise of an elective office may be challenged before the Electoral Courts within a period of fifteen days after investiture, substantiating the suit with evidence of abuse of economic power, corruption, or fraud.

(11) The suit challenging the office shall be conducted in secrecy and the plaintiff is liable under the law if the suit is reckless or involves manifest bad faith.

#### Article 15 [Suspension of political rights]



Disfranchisement of political rights is forbidden, and loss or suspension of such rights shall apply only in the event of:

- I. cancellation of naturalization by a final and unappealable judgement;
- II. absolute civil incapacity;
- III. final and unappealable criminal sentence, as long as its effects last;
- IV. refusal to comply with an obligation imposed upon everyone or an alternative obligation, according to Article 5 VIII;
- V. administrative dishonesty, according to Article 37 (4).

#### Article 16. [Electoral procedure laws]

The law that alters the electoral procedure comes into force on the date of its publication, and does not apply to the elections that take place within one year of it being in force.

### Chapter V Political Parties

#### Article 17 [Political Association]

(0) The creation, consolidation, merger and extinction of political parties is free, with due regard for national sovereignty, the democratic regime, plurality of political parties, the fundamental rights of the individual, and observing

the following precepts:

- I. national character;
- II. prohibition from receiving financial assistance from a foreign entity or government or from subordination to same;
- III. rendering of accounts to the Electoral Courts;
- IV. operation in Congress according to the law.

(1) Political parties are assured of autonomy in defining their internal structure, organization, and operation, and their bylaws shall establish rules of party loyalty and discipline.

(2) After acquiring legal capacity under civil law, political parties shall register their bylaws at the Superior Electoral Court.

(3) Political parties are entitled to funds from the party fund and to gratuitous access to radio and television, as set forth in the law.

(4) Political Parties are forbidden to use paramilitary organizations.

## Title III The Organization of the State

### Chapter I The Political and Administrative Organization

#### Article 18 [Organization of Authorities]

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(0) The political administrative organization of the federative Republic of Brazil comprises the Union, the States, the Federal District, and the Municipalities, all being autonomous under this Constitution.

(1) Brasilia is the Federal Capital.

(2) The Federal Territories are part of the Union, and their creation, transformation into States, or re-integration into the State of origin are governed by a supplemental law.

(3) The States may be merged into each other, subdivided, or split to be annexed to others, or form new States or Federal Territories, subject to the approval of the population directly involved, through a plebiscite, and of Congress, through a supplemental law.

(4) The creation, merger, consolidation, and splitting of Municipalities shall preserve the continuity and historical cultural unity of the urban environment, shall be implemented by a State act, obeying the requirements established in a State supplemental law, and shall depend on prior consultation of the population directly involved, by means of a plebiscite.

Article 19 [Forbidden to the State]

The Republic, the States, the Federal District, and the Municipalities are forbidden to:

- I. establish religious cults or churches, subsidize them, hamper their operation or maintain with them or their representatives relations of dependency or alliance, with the exception of cooperation for the public interest, as set forth in the law;
- II. refuse to certify public documents;
- III. create differences between Brazilians or preferences between each other.

## Chapter II The Union

Article 20 [Propriety of the Union]

(0) The following is property of the Union:

- I. property belonging to it at present and property that may be attributed to it;
- II. unoccupied government lands indispensable for defense of the frontiers, of the forts, and military constructions, of the federal access ways and for preservation of the environment, as defined by the law;
- III. the lakes, rivers, and any water courses of any kind on lands owned by the Republic, or which water more than one State, serve as borders with other countries, or run into or from a foreign territory, as well as bank lands and river beaches;
- IV. river and lake islands in zones bordering on other countries, sea beaches, ocean and shore islands, the latter excluding the areas referred to in Article 26 II;
- V. natural resources of the continental shelf and of the exclusive economic

zone;

VI. territorial waters;

VII. tide lands and those added to them;

VIII. hydraulic energy potentials;

IX. mineral resources, including those in the subsoil;

X. natural underground cavities and pre-historical and archaeological sites;

XI. lands traditionally occupied by Indians.

(1) Under the terms of the law, the States, Federal District, and the Municipalities, as well as the agencies of the direct administration of the Republic are assured of participation in the result of the exploitation of petroleum or natural gas, of hydric resources for the purpose of generating electric energy, and of other natural resources in their respective territory, continental shelf, territorial waters, or exclusive economic zone, or financial compensation for such exploitation.

(2) The strip for land with a width of up to one hundred and fifty kilometres along the land frontiers, designated as frontier strip, is considered fundamental for defense of the national territory, and the occupation and use thereof shall be regulated by law.

#### Article 21 [Powers and responsibilities of the Union]

It is incumbent upon the Union:

I. to maintain relations with foreign States and participate in international organizations;

II. to declare war and make peace;

III. to warrant national defense;

IV. to allow, in the events set forth in a supplemental law, foreign forces to cross the national territory or remain in it temporarily;

V. to decree state of siege, state of defense, and federal intervention;

VI. to authorize and monitor the production and trade of war material;

VII. to issue currency;

VIII. to administer Brazil's foreign exchange reserves and monitor financial transactions, especially credit, foreign exchange and capitalization, as well as those of insurance and private pension plans;

IX. to prepare and carry out national and regional plans for ordaining the territory and for economic and social development;

X. to maintain the post service and national air mail;

XI. operate, directly or through authorization, concession or permission, the telecommunications services, as set forth by law, which law shall provide for the organization of the services, the establishment of a regulatory agency and other institutional issues;

XII. operate, directly or through authorization, concession or permission:

a) the services of sound broadcasting and of sound and image broadcasting;

b) electric services and facilities and energetic use of water courses, in cooperation with the States in the hydroenergetic potentials are located;

c) air and aerospace navigation and airport infrastructure;

d) railway and waterway transportation services between Brazilian ports and

national frontiers or beyond the State or Territory borders;

e) services of interstate and international highway transportation of passengers;

f) sea, river, and lake ports;

XIII. to organize and maintain the Judiciary Branch, the Attorney General's office and the Public Defender's Office of the federal District and of the Territories;

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

XV. to organize and maintain official statistical, geographical, geological and mapping services of national scope;

XVI. to classify, for purposes of indication, public amusements, and radio and television programs censorship being forbidden;

XVII. to grant amnesty;

XVIII. to plan and promote permanent defense against public calamities, especially droughts and floods;

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

XX. to institute guidelines for city development, including housing, basic sanitation, and city transportation;

XXI. to establish principles and guidelines for the national transportation system;

XXII. to carry out maritime, air, and frontier police services;

XXIII. to operate nuclear facilities and services of any nature and exercise state monopoly over research, mining, enrichment, and reprocessing, industrialization, and trade of nuclear ore and their byproducts, complying with the following principles and conditions:

a) all nuclear activity within the national territory shall be subject to approval by Congress;

b) under a concession or permission, authorization may be granted for the use of radiosotopes for research and use in medicine, agriculture, industry and like activities;

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

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

XXV. to establish the areas and conditions for the conduct of gold digging activities in activities in associative form.

#### Article 22 [Legislative exclusivity]

(0) It is incumbent exclusively upon the Union 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. post service;

VI. monetary and measures system, metal certificates and guarantees;

VII. policy for credit, foreign exchange, insurance, and transfer of valuables;

VIII. foreign and interstate trade;

IX. guidelines of the national transportation policy;

X. regime of the ports and lake, river, ocean, air, and aerospace navigation;

XI. traffic and transportation;

XII. mineral deposits, mines, other mineral resources, and metallurgy;

XIII. nationality, citizenship, and naturalization;

XIV. Indian populations;

XV. emigration, immigration, entry, extradition, and expulsion of foreigners;

XVI. organization of the national employment system and conditions for practising professions;

XVII. organization of the Judiciary, of the Attorney General's Office and of the Public Defender's Office of the Federal District and of the Territories, as well as the administrative organization thereof;

XVIII. national statistical system and mapping and geology system;

XIX. systems for savings, as well as obtaining and guaranteeing public savings;

XX. consortium and raffle systems;

XXI. general organization rules, troops, war materials, guarantees, enlisting, and mobilizing military police forces and military fire brigades;

XXII. jurisdiction of the federal police and of the federal highway and railway police;

XXIII. social security;

XXIV. guideline and bases for national education;

XXV. public registries;

XXVI. nuclear activities of any nature;

XXVII. general rules for all kinds 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 defence, maritime defence, civil defence, and national mobilization;

XXIX. commercial advertising;

(1) A supplemental law may authorize the States to legislate on specific questions to the matters listed in this article.

#### Article 23 [Common Powers]

(0) It is incumbent, in common, upon the Union, the States, the Federal

District, and the Municipalities:

- I. to ensure that the Constitution, the laws, and the democratic institutions are complied with and that public property is preserved;
- II. to attend to public assistance and health, as well as to protection and guarantee of handicapped persons;
- III. to protect documents, works, and other assets of historical, artistic and cultural value, monuments and remarkable natural scenery, as well as archaeological sites;
- IV. to prevent works of art and other assets of historical, artistic or cultural value from being taken out of the country, destroyed and decharacterized;
- V. to provide means of access to culture, to education and to science;
- VI. to protect the environment and fight pollution in any of its forms;
- VII. to preserve the forests, fauna, and flora;
- VIII. to foment agricultural and livestock production and organize the supply of food;
- IX. to promote programs for the construction of housing and the improvement of housing and basic sanitation conditions;
- X. to fight the causes of poverty and the factors leading to marginal living conditions, promoting integration of the unprivileged sectors;
- XI. to register, monitor, and supervise concessions of rights to research and exploit hydric and mineral resources within their territories;
- XII. to establish and implement an educational policy for traffic safety.

(1) A supplemental law shall establish rules for cooperation between the Republic and the States, the Federal District and the Municipalities in view of balanced development and well being on a nation wide basis.

#### Article 24 [Concurrent Legislation]

(0) It is incumbent upon the Union, the States, and the Federal District to legislate concurrently on:

- I. tax, financial, penitentiary, economic, and city planning law;
- II. the budget;
- III. commercial registries;
- IV. costs of forensic services;
- V. production and consumption;
- VI. forests, hunting, fishing, fauna, reservation of nature, defense of the soil and natural resources, protection of the environment, and pollution control;
- VII. protection of historical, cultural, artistic and touristic monuments, including natural scenic beauties;
- VIII. liability for damages to the environment, to consumers, to assets and rights of an artistic, aesthetic, historical and touristic value, including natural scenic beauties;
- IX. education, culture, teaching, and sports;
- X. creation, operation, and proceedings of the small claims courts;

- XI. court procedure;
- XII. social security, protection, and defense of health;
- XIII. legal assistance and public defense;
- XIV. protection and social integration of handicapped persons;
- XV. protection of childhood and of youth;
- XVI. organization, guarantees, rights and duties of the civil police.

(1) Within the scope of concurrent legislation, the jurisdiction of the Republic is limited to establishing general rules.

(2) The jurisdiction of the Republic to legislate under general rules does not preclude the supplementary jurisdiction of the States.

(3) If there is no federal law on general rules, the States exercises full legislative jurisdiction to provide for their peculiarities.

(4) The supervenience of a federal law over general rules suspends the effectiveness of a State law, to that extent that it is contrary thereto.

## Chapter III The Federated States

### Article 25 [The States of the Federation]

(0) The States are organized and governed by the Constitutions and the laws which they may adopt, with due regard for the principles of this Constitution.

(1) To the States is reserved jurisdiction over the matters not forbidden to them by this Constitution.

(2) The states have the power to operate, directly or by means of concession, the local services of piped gas, as provided for by law, it being forbidden to issue any provisional measure for its regulation.

(3) The States may, by means of a supplemental law, institute metropolitan regions, city agglomerations, and microregions, formed by grouping neighbouring municipalities, in order to integrate the organization, planning and execution of public functions of common interest.

### Article 26 [Property of the States]

The following are included among the property of the States:

I. superficial or underground waters, whether flowing, emerging or in reservoirs, with the exception, in the latter case, as set forth in the law, of those resulting from works carried out by the Republic;

II. areas, on ocean and coastal islands, which are under their domain, excluding those under the domain of the Republic, Municipalities, or third parties;

III. river and lake islands which do not belong to the Republic;

IV. vacant government lands not comprised among those of the Republic.

### Article 27 [Composition of Legislative]

(0) The number of representatives on the State Legislative Assembly is three

times the representation of the State on the House of Representatives and, when the number attains thirty-six, is increased by as many Representatives as there are Federal Representatives in excess of twelve.

(1) The term of the State Representatives is four years, and they are subject to the provisions of this Constitution regarding the electoral system, inviolability, immunities, compensation, loss of office, leave of absence, impairments, and enlisting into the Armed Forces.

(2) The remuneration of the State Deputies is established, in each legislative term, for the subsequent one, by the Legislative Assembly, as provided by Articles 150 II, 15, III, and 153 (2) I, in the proportion of seventy-five percent, at most, of the remuneration established, in legal tender, for the Federal Deputies.

(3) It is incumbent upon the Legislative Assemblies to provide on their internal regulations, police and administrative services of their secretariat, and to fill the respective offices.

(4) The law provides for public initiative in State legislative proceedings.

#### Article 28 [Executive branch]

(0) The election of the State Governor and Vice Governor, for a term of office of four years, is held ninety days before the end of their predecessors' term of office, and they take office on January 1st of the subsequent year, observing, otherwise, the provisions of Article 77.

(1) A Governor who assumes another office or function of direct or in direct government administration loses his office, except for offices taken by virtue of a public competitive examination and observing the provisions of Article 38 I, IV, and V.

### Chapter IV The Municipalities

#### Article 29 [The Municipalities]

Municipalities are governed by organic law, voted in two rounds, with a minimum interval of ten days between each voting, and approved by two thirds of the members of the City Council, which shall enact it, complying with the principles established in this Constitution and in the Constitution of the respective State and with the following precepts:

I. election of the Mayor, of the Vice Mayor, and of the City Councilmen, for a term of office of four years, through direct and simultaneous elections held throughout the entire country;

II. elections of the Mayor and of the Vice Mayor at least ninety days before the end of the term of office of those who are to be succeeded, subject to the provisions of Article 77 in the event of municipalities with more than two hundred thousand voters;

III. investiture of the Mayor and of the Vice Mayor on January 1st of the year subsequent to the year of election;

IV. a number of City Councilmen in proportion to the population of the



Municipality, observing the following limits:

- a) a minimum of nine and a maximum of twenty-one in Municipalities with up to one million inhabitants;
- b) a minimum of thirty-three and a maximum of forty-one in Municipalities with over one million and under five million inhabitants;
- c) a minimum of forty-two and a maximum of fifty-five in Municipalities with over five million inhabitants;

V. compensation of the Mayor, of the Vice Mayor, and of the Councilmen established by the City Council in each legislature for the subsequent one, with due regard for the provisions of Articles 37 XI, 150 II, 153 III, and 153 (2) I;

VI. the remuneration of the City Councilmen shall correspond, at the most, to seventy-five percent of the remuneration established, in legal tender, for the State Deputies, except for the provisions of Article 37 XI;

VII. the total expenditure with the remuneration of the City Councilmen may not exceed the amount of five percent of the revenue of the Municipality;

VIII. inviolability of City Councilmen for their opinions, words, and votes while in office and within the jurisdiction of the Municipality;

IX. prohibitions and incompatibilities, while in the office of City Councilmen, similar, where applicable, to the provisions of this Constitution for members of Congress and, of the Constitution of the respective State, for members of the Legislative Assembly;

X. trial of the Mayor before the Court of Appeals;

XI. organization of the legislative and supervisory functions of the City Council;

XII. cooperation of representative associations in municipal planning;

XIII. public initiative in bills of law of specific interest to the Municipality, the city or the districts, through the manifestation of at least five percent of the voters;

XIV. loss of the office of Mayor according to Article 28 (1).

#### Article 30 [Municipal of Self Government]

It is incumbent upon the Municipalities:

I. to legislate on matters of local interest;

II. to supplement federal and state legislation where applicable;

III. to institute and collect the taxes coming under their jurisdiction, as well as apply their revenues, regardless of the obligation to render accounts and public trial balance sheets within the periods established by law;

IV. to create, organize, and suppress districts, with due regard for state legislation;

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

VI. to maintain with the technical and financial cooperation of the Republic and State, pre-school education and elementary school programs;

- VII. to render, with the technical and financial cooperation of the Republic and State, health services to the population;
- VIII. to promote, where applicable, adequate land ordainment through planning and control of use, apportionment, and occupation of the city soil;
- IX. to promote the protection of local historical cultural monuments, with due regard for federal and state legislation and supervision.

#### Article 31 [Supervision]

(0) Supervision of the Municipality is exercised by the Municipal Legislative Branch, through outside control, and by the internal control systems of the Municipal Executive Branch, as set forth in the law.

(1) Outside control of the City Council is exercised with the assistance of the Audit Courts of the State or Municipality or of the Audit Councils or Courts of the Municipalities, whenever existing.

(2) The prior opinion, issued by the proper agency, on the accounts to be rendered by the Mayor annually, shall only not prevail by a decision of two thirds of the members of the City Council.

(3) The accounts of the Municipalities remain each year available to any taxpayer for sixty days, for examination and evaluation, and any taxpayer may question their legitimacy according to the law.

(4) The creation of new Municipal Audit Courts, Councils, or agencies is forbidden after the promulgation of this Constitution.

## Chapter V The Federal District and the Territories

### Section I The Federal District

#### Article 32 [The Federal District Government]

(0) The Federal District, which may not be divided into Municipalities, is 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 enact it, complying with the principles established in this Constitution.

(1) The legislative jurisdiction reserved to the States and Municipalities is attributed to the Federal District.

(2) The election of the Governor and of the Vice Governor, with due regard for the provisions of Article 77, and of the District Representatives shall coincide with that of the State Governors and Representatives, for a term of office of the same duration.

(3) The provisions of Article 27 apply to the District Representatives and to the Legislative Assembly.

(4) A federal law shall provide for the use, by the Government of the Federal District, of the civil and military police and of the military fire brigade.

## Section II The Territories

### Article 33 [The Territories of the Republic]

(0) The law provides for the administrative and judicial organization of the Territories.

(1) The Territories may be divided into Municipalities, which shall be subject, when applicable, to the provisions of Chapter IV of this Title.

(2) The accounts of the Government of a Territory are submitted to Congress, with the prior opinion of the Audit Tribunal of the Union.

(3) In Federal Territories with over one hundred thousand inhabitants, besides the Governor appointed according to this Constitution, there shall be judicial bodies of first and second instances, members of the Attorney General's Office, and federal public defenders; the law shall provide for the elections of the Territory House and its decision making authority.

## Chapter VI Intervention

### Article 34 [Federal Intervention on States and Federal District]

The Republic may not intervene in the States or in the Federal District, except to:

- I. maintain national integrity;
- II. fight back a foreign invasion or invasion of one unit of the Federation in another;
- III. put an end to a serious jeopardy to public order;
- IV. guarantee the free exercise of any of the Branches in the units of the Federation;
- V. reorganize the finances of a unit of the Federation which:
  - a) suspends payment of a consolidated debt for more than two consecutive years, except in the event of force majeure;
  - b) fails to deliver to the Municipalities tax revenues established in this Constitution, within the periods of time established by law;
- VI. provide for the 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) the rights of the individual;
  - c) municipal autonomy;
  - d) rendering of accounts of the direct and indirect government administration.

### Article 35 [Intervention in a Municipality]

The State may not intervene in its Municipalities, and neither the Republic in the Municipalities located in a Federal Territory, unless:

- I. the consolidated debt is not paid for two consecutive years, except for reasons of force majeure;
- II. the proper accounts are not rendered, according to the law;
- III. the minimum required amount of municipal revenues has not been applied in the maintenance and development of education;
- IV. the Court of Appeals grants a petition to ensure compliance with principles indicated in the State Constitution or for enforcement of a law, court order or decision.

**Article 36 [Rules of Procedure]** (0) A decree of intervention shall depend:

- I. in the event of Article 34 IV, on a request from the coerced or impeded Legislative or Executive, or in a requisition from the Federal Supreme Court, if the coercion is exerted against the Judiciary;
- II. in the event of a court order or decision, on a requisition from the Federal Supreme Court, the Superior Court of Appeals, or the Superior Electoral Court;

III. on the Federal Supreme Court granting a petition from the Attorney General of the Republic, in the event of Article 34 VII;

IV. on the Superior Court of Appeals granting a petition from the Attorney General of the Republic, in the case of refusal to enforce a federal law.

(1) The decree of intervention, which shall specify the extent, the period and the conditions of enforcement and which, if applicable, shall appoint the intervenor, shall be submitted to review by Congress or the State Legislative Assembly within twenty four hours.

(2) If Congress or the Legislative Assembly are not in session, an extraordinary session shall be called within the same twenty four hours.

(3) In the events of Article 34 VI and VII, or of Article 35 VI, upon waiver of review by Congress or by the Legislative Assembly, the decree shall be limited to staying execution of the challenged act, if such measure is sufficient to restore normality.

(4) When the reasons for the intervention cease, the authorities removed from their offices shall return to them, unless there is a legal impediment.

## Chapter VII Public Administration

### Section I General Provisions

**Article 37 [General Basis]**

(0) The direct or indirect government administration of any of the Branches of the Republic of the States, of the Federal District and of the Municipalities, as well as any of their foundations, shall obey the principles of lawfulness, impersonality, morality, publicity, and also the following:

I. public offices, positions, and functions are accessible to Brazilians who satisfy the requirements established by law;

II. investiture in a public office or position depends on prior approval in a



public competitive examination of tests or of tests and titles, except for appointment to a commission office declared by law to be free for appointment and discharge;

III. the period validity of a public examination is up to two years, extendable once for a like period;

IV. during the unextendable period set forth in the public call notice, a person approved in a public competitive examination of tests or of tests and titles shall be called, with priority over new approved applicants, to assume an office or position in the career;

V. commission offices and bonafide functions are exercised preferentially, by civil servants holding a technical or professional career office, in the events and on the conditions set forth in the law;

VI. civil servants are assured of the right to free union association;

VII. the right to strike is exercised under the terms and within the limits defined in a supplemental law;

VIII. the law reserves a percentage of public offices and positions for handicapped persons and defines the criteria for hiring them;

IX. the law establishes the cases of hiring a given person for a period of time in order to attend to a temporary need of exceptional public interest;

X. general review of the compensation of government employees, without distinction of indices between civil and military servants, shall always take place on the same date;

XI. the law establishes the maximum limit and proportion between the highest and lowest compensation of government employees, observing, as maximum limits and within the sphere of respective authority, the amounts received as any kind of compensation, in legal tender, by members of Congress, Ministers of State, and Justices of the Federal Supreme Court and the corresponding offices in the States, Federal District, and Territories, and, in the Municipalities, the amounts received as compensation, in legal tender, by the Mayor;

XII. the compensation for the offices of the Legislative and of the Judiciary may not be higher than the compensation paid for the Executives;

XIII. it is forbidden to link or equalize salaries, for purposes of compensating personnel in the public service, excepting the provisions of the preceding item and of Article 39 (1);

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

XV. the salaries of civil and military servants are irreducible and their compensation shall comply with the provisions of Articles 37 XI, XII, 150 II, 153 III, and 153 (2) I;

XVI. remunerated accumulation of public offices is forbidden, except, when the working hours are compatible:

a) of two positions of teacher;

b) of one position of teacher with another technical or scientific position;

c) of two exclusively medical positions;

- XVII. the accumulating prohibition extends to positions and functions and includes autonomous governments entities, public companies, mixed capital companies, and foundations maintained by the Government;
- XVIII. the financial administration and its fiscal servants shall, within their spheres of authority and jurisdiction, enjoy precedence over the other administration sectors, as set forth in the law;
- XIX. a public company, a mixed capital company, an autonomous government entity or a public foundation may only be organized through a specific law;
- XX. the organization of subsidiaries of the entities mentioned in the preceding item requires legislative authorization in each case, as also participation by any of them in a private company;
- XXI. except for the cases specified in the law, public works, services, purchases, and disposals shall be contracted by public bidding, ensuring equal conditions to all bidders, with clauses that establish payment obligations, maintaining the effective conditions of the bid, according to the law, which shall only allow requirement of technical and economic qualifications essential to secure performance of the obligations.
- (1) The publicity of government agencies acts, programs, public works, services, and campaigns shall be of an educational, informative, or social orientation character, and may not include names, symbols, or images representing personal promotion of government authorities or employees.
- (2) Non compliance with the provisions of items II and III results in nullity of the act and punishment of the responsible authority, according to the law.
- (3) Complaints relating to the rendering of public services are regulated by law.
- (4) Acts of administrative dishonesty result in suspension of political rights, loss of public office, prohibition to transfer personal property and reimbursement to the Public Treasury, in the manner and grading set forth in the law, without prejudice to the applicable criminal action.
- (5) The law establishes the statute of limitations for unlawful acts performed by any agent, whether or not a civil servant, which cause losses to the Public Treasury, regardless of the respective claims for reimbursement.
- (6) Public entities and private entities rendering public services are liable for the damages caused to third parties, by their agents, in such capacity, ensuring the right of recourse against the liable agent in cases of intent or fault.

#### Article 38 [Servants and Representatives]

The following provisions apply to a civil servant exercising an elective office:

- I. in the case of a federal, state, or district elective office, he shall leave his office, position of function;
- II. if vested in the office of Mayor, he is removed from the office, position, or function, and he may opt for the respective compensation;

- III. if vested in the office of City Councilman, and if the working hours are compatible, he receives the benefits of his office, position, or function, without prejudice to compensation for the elective office, and, if there is no such compatibility, the provisions of the preceding item apply;
- IV. in any case requiring leave of absence for the exercise of an elective office, his period of service is counted for all legal purposes, except for promotion by merit;
- V. for purposes of social security benefits, in the case of leave of absence, the amounts are determined as if he were in activity.

## Section II Civil Servants

### Article 39 [Civil Servants Regime]

(0) The Republic, the States, the Federal District, and the Municipalities institute, within their jurisdiction, a sole juridical regime and career plans for the servants of the direct government administration, of autonomous government entities, and of public foundations.

(1) The law ensures, to direct administration servants, equal salaries for offices with equal or similar duties in the same Branch or between servants of the Executive, Legislative, and Judiciary Branches, except for individual advantages and those relative to work nature or location.

(2) The provisions of Article 7 IV, VI, VII, VIII, IX, XII, XIII, XV, XVI, XVII, XVIII, XIX, XX, XXII, XXIII, and XXX apply to the servants.

### Article 40 [Retirement]

(0) A civil servant goes into retirement:

I. for permanent disability, the pension being full when such disability results from a work accident, a professional disease or a serious, contagious or incurable illness, as specified by law, and being proportional in all other cases;

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

III. voluntarily:

a) upon thirty-five years of service, if a man, and upon thirty years, if a woman, with full pay;

b) upon thirty years of actual teaching activity, if a man, and twenty-five, if a woman, with full pay;

c) upon thirty years of service, if a man, and upon twenty-five, if a woman, with pay in proportion to this period;

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

(1) A supplemental law may establish exceptions to the provisions of item II a) and c), in the case of work considered hard, unhealthy, or dangerous.

(2) The law shall provide for retirement in temporary offices or positions.

(3) The period of federal, state, or municipal government service is computed in full for purposes of retirement and of disengagement.

(4) Retirement pension are reviewed, in the same proportion and on the same date, whenever there is a change in the compensation of servants in activity, and any benefits or advantages subsequently granted to servants in activity shall also be extended to retirees, including those resulting from transformation or reclassification of the office or function from which they retired, as set forth in the law.

(5) The benefit of pension for death has to correspond to the full amount of compensation or earnings of the deceased servant, up to the limit established by law, with due regard for the provisions of the preceding paragraph.

(6) The retirement and pension benefits of the federal civil servants shall be financed by resources originating from the Union and from the contributions of the civil servants, under the terms of the law.

#### Article 41 [Tenure]

Servants appointed by virtue of a public examination acquire tenure after two years of actual service.

(1) A tenured civil servant only loses his or her office by virtue of a final and unappealable court decision or by means of administrative proceedings in which he or she is assured of full defense.

(2) If the dismissal of a tenured servant is voided by a court decision, he or she has to be reinstated and any holder of the vacancy to be taken back to the original office without the right to indemnity, placed in another office or disengaged.

(3) Upon extinction of an office or declaration of its redundancy, a tenured servant shall remain on paid disengagement until his or her adequate placement in another office.

### Section III Military Public Servants

Article 42 [Military Servants] (0) Members of the Armed Forces are federal military servicemen, and those of the state troops and of the military fire brigades are military servicemen of the respective States, of Territories and of the Federal District.

(1) The ranks, with the prerogatives, rights, and duties inherent to them, are ensured fully to the officers in active service, those of the reserve or in retirement, of the Armed Forces, of the state troops and of the military fire brigade of the States, Territories and Federal District, and they have exclusive rights to military titles, posts and uniforms.

(2) The ranks of officers of the Armed Forces are awarded by the President of the Republic and those of officers of the state troops and military fire brigades of the States, Territories, and Federal District, by their respective Governors.

(3) A member of the Armed Forces in active service is transferred to the reserve if he accepts a permanent civil public office.

(4) A member of the Armed Forces in active service who accepts a temporary



public office, position, or function, which is not elective, even in the indirect administration, shall be put on leave, and, as long as he remains in this situation, he may only be promoted through seniority, and his 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, he shall be retired.

(5) Servicemen are forbidden to join trade unions and to strike.

(6) While in actual service, a servicemen may not belong to political parties.

(7) An officer of the Armed Forces only loses his post and rank if he is judged unworthy of or incompatible with the dignity of being an officer, by decision of a permanent military court, in times of peace, or of a special martial court, in times of war.

(8) An officer sentenced through a final and unappealable judgement in a common or military court to imprisonment for more than two years, is submitted to the trial set forth in the preceding paragraph.

(10) The provisions in Article 40 (4), (5), and (6) apply to the servicemen referred to in this article and to their pensioners.

(11) The provisions of Article 40 (4) and (5) apply to the servicemen referred to in this article and to their pensioners.

(12) The provisions of Article 7 VIII, XII, XVII, XVIII, and XIX apply to the servicemen referred to in this article.

## Section IV The Regions

**Article 43 [Administrative Regions of the Republic]** (0) For administrative purposes, the Republic may coordinate its action in one same social and geoeconomic complex, seeking to achieve its development and to reduce regional differences.

(1) A supplemental law provides for:

I. the conditions for the integration of developing regions;

II. the composition of the regional organizations which shall carry out, as set forth in the law, the regional plans included in the national economic and social development plans and approved together with same.

(2) Regional incentives include, besides others, as set forth in the law:

I. equal tariffs, freight, insurance, and other cost and price items which are the responsibility of the Government;

II. favoured interest rates for financing of priority activities;

III. exemptions, reductions, or temporary deferment of federal taxes due by individuals or by legal entities;

IV. priority in the economic and social use of rivers and dammed or damnable water masses in low income regions subject to periodical droughts.

(3) In the areas referred to in Paragraph (2) IV, the Republic shall grant incentives for the recovery of arid lands and shall cooperate with small and medium sized rural owners in implementing water sources and small scale irrigation in their tracts of land.

## Title IV The Organization of the Powers

# Chapter I The Legislative Power

## Section I The National Congress

### Article 44 [Federal Legislative Branch]

(0) The Legislative Authority of the Republic is exercised by the National Congress, which is composed of the House of Representatives and of the Federal Senate.

(1) Each legislature has a duration of four years.

### Article 45 [House Composition]

(0) The House of Representatives is formed by representatives of the people, elected by the proportional system in each State, in each Territory and in the Federal District.

(1) The total number of Representatives, as well as the representation per State and for the Federal District, is established by a supplemental law in proportion to the population, the necessary adjustments to be made in the year preceding the elections, so that none of those units of the Federation has less than eight or more than seventy Representatives.

(2) Each Territory elects four Representatives.

### Article 46 [Representation in the Senate]

(0) The Federal Senate is composed of members representing the States and the Federal District, elected by majority vote.

(1) Each State and the Federal District shall elects three Senators with term of office of eight years.

(2) One third and two thirds of the representation of each State and of the Federal District are renewed every four years, alternately.

(3) Each Senator is elected with two alternates.

### Article 47 [Deliberative Quorum]

Unless otherwise established in this Constitution, the resolutions of each Chamber of Congress and of its Committees are adopted by a majority vote with the attendance of the absolute majority of its members.

## Section II Powers of the National Congress

### Article 48 [Legislative Powers]

It is incumbent upon Congress, with the sanction of the President of the Republic, which sanction shall not be required in the events specified in Articles 49, 51, and 52, to provide for all the matters within the jurisdiction of the Republic and especially on:

I. system of taxation, collection, and income distribution;

II. pluriannual plan, budgetary directives, annual budget, credit transactions, public debt, and issue of money;

- III. establishment and modification of the number of troops of the Armed Forces;
- IV. national, regional, and sectorial development programs and plans;
- V. boundaries of the national territory, air, and maritime space and property owned by the Republic;
- VI. incorporation, subdivision, or splitting of areas of Territories or States, after hearing the respective Legislative Assemblies;
- VII. temporary transfer of the seat of the Federal Government;
- VIII. granting of amnesty;
- IX. the administrative organization, judicial organization, Attorney General's Office organization, and Public Defender's office organization of the Republic and of the Territories, and the judicial organization, Attorney General's Office organization and Public Defender's Office organization of the Federal District;
- X. creation, transformation, and extinction of public offices, positions, and functions;
- XI. creation, structuring, and responsibilities of the Ministries and Government administration agencies;
- XII. telecommunications and radio broadcasting;
- XIII. financial, foreign exchange, and monetary matters, financial institutions and their operations;
- XIV. currency, currency issuance limits, and amount of federal indebtedness.

#### Article 49 [Exclusive Functions]

It is exclusively incumbent upon Congress:

- I. to resolve conclusively on international acts, agreements, or treaties which involve charges or commitments against the national patrimony;
- II. to authorize the President of the Republic to declare war, to make peace, to allow foreign forces to go through the national territory, or remain therein temporarily, except for the cases set forth in a supplemental law;
- III. to authorize the President and the Vice President of the Republic to leave the country, when such absence exceeds fifteen days;
- IV. to approve a state of defense and federal intervention, authorize a state of siege, or suspend any of these measures;
- V. to stay normative acts of the Executive Branch which exceed the regulametary authority or the limits of the legislative delegation of Powers;
- VI. to temporarily transfer its seat;
- VII. to establish identical compensation for Federal Representatives and Senators, in each legislature, for the subsequent one, with due regard for the provisions of Articles 150 II, 153 III, and 153 (2) I;
- VIII. to establish for each fiscal year the compensation of the President and of the Vice President of the Republic and of the Ministers of State, with due regard for the provisions of Articles 150 II, 153 III, and 153 (2) I;
- IX. to each year examine the accounts rendered by the President of the

- Republic and evaluate the reports on the execution of Government plans;
- X. to supervise and control, directly or through the Federal Senate and/or the House of Representatives, the acts of the Executive, including those of the indirect administration;
- XI. to ensure the preservation of its legislative authority in view of the normative responsibility of the other Branches;
- XII. to evaluate acts of concession and renewal of concession of radio and television stations;
- XIII. to choose two thirds of the members of the Audit Tribunal of the Union;
- XIV. to approve initiatives of the Executive Branch regarding nuclear activities;
- XV. to authorize a referendum and to call a plebiscite;
- XVI. to authorize, in Indian lands, the exploitation and use of hydric resources, and prospecting and mining of mineral resources;
- XVII. to give its prior approval for the disposal or concession of public lands with an area of over two thousand and five hundred hectares.

**Article 50 [Calling Officers for explanations]** (0) The House of Representatives or the Federal Senate, as well as any of their Committees, may call upon a Minister of State to personally render information on a pre determined matter, and his absence without adequate justification shall constitute a criminal malversion.

(1) The Ministers of State may attend the Federal Senate, the House of Representatives, or any of their Committees, on their own initiative and by agreement with the respective Presiding Board, to report on a matter relevant to their Ministry.

(2) The Presiding Board of the House of Representatives and of the Federal Senate may forward written requests for information to the Ministers of State, and refusal or non compliance with such request within a period of thirty days, as well as the rendering of false information, shall constitute a criminal malversion.

### Section III House of Representatives

#### **Article 51 [Exclusive Authority]**

It is exclusively incumbent upon the House of Representatives:

- I. to authorize, by two thirds of its members, the institution of legal action against the President and Vice President of the Republic and the Ministers of State;
- II. to take the accounts of the President of the Republic, when they are not submitted to Congress within sixty days of opening of the legislative session;
- III. to prepare its internal regulations;
- IV. to provide for its organization, operation, police, creation, transformation, or extinction of offices, positions, and functions of its services and establishment of the respective compensation, observing the



guidelines established in the budget directives law;

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

## Section VI Federal Senate

**Article 52 [Exclusive Powers]** (0) It is incumbent exclusively upon the Federal Senate:

I. to sue and try the President and Vice President of the Republic for criminal malversion and the Ministers of State for crimes of the same nature connected therewith;

II. to sue and try the Justices of the Federal Supreme Court, the Attorney General of the Republic and the Advocate General of the Republic for criminal malversion;

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

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

b) Justices of the Audit Tribunal of the Union appointed by the President of the Republic;

c) Governor of a Territory;

d) president and directors of the Central Bank;

e) Attorney General of the Republic;

f) holders of other offices as determined by the 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 transactions of a financial nature, of interest to the Republic, the States, the Federal District, the Territories and the Municipalities;

VI. to establish, as proposed by the President of the Republic, aggregate limits for the amount of the consolidated debt of the Republic, the States, the Federal District and the Municipalities;

VII. to provide for the aggregate limits and conditions for foreign and domestic credit transactions of the Republic, the

States, the Federal District and the Municipalities, of their autonomous government entities, and other entities controlled by the Federal Government;

VIII. to provide for the limits and conditions for the Republic to render its guarantee in foreign and domestic credit transactions;

IX. to establish aggregate limits and conditions for the amount of debt of the States, the Federal District and the Municipalities;

X. to stay the application, in full or in part, of a law declared unconstitutional by final decision of the Federal Supreme Court;

XI. to approve, by absolute majority and by secret ballot, the removal from office of the Attorney General 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, transformation, or extinction of offices, positions, and functions of its

services and to determine the respective compensation, with due regard for the guidelines established in the budget directives law;

XIV. to elect the members of the Council of the Republic pursuant to Article 89 VII.

(1) In the events set forth in Items I and II, the Chief Justice of the Federal Supreme Court acts as President, and the sentence, which may only be rendered by two thirds of the Federal Federal Senate, is limited to loss of office, with disqualification to hold any public office for a period of eight years, without prejudice to other applicable judicial sanctions.

## Section V Representatives and Senators

### Article 53 [Inviolability, Imunity]

(0) The Representatives and Senators enjoy inviolability regarding their opinions, words, and votes.

(1) From the date of investiture, the members of Congress may not be arrested, except in flagrante delicto of a crime not entitled to bail, nor may they be criminally sued, without prior authorization from the respective Chamber of Congress.

(2) Denial of the request for authorization or the absence of a resolution suspends the statute of limitations for the duration of the term of office.

(3) In the event of flagrante delicto of a crime not entitled to bail, the case record has to be sent within twenty-four hours to the respective Chamber of Congress, which, by secret ballot of a majority of its members, shall resolve on the arrest and authorize or not the determination of criminal liability.

(4) The Representatives and Senators are judged by the Federal Supreme Court.

(5) The Representatives and Senators are not required to render testimony on information received or rendered by virtue of the exercise of their term of office nor against the persons who rendered them information or those who received information from them.

(6) The enlistment of Representatives and Senators into the Armed Forces, even if they are servicemen and even in times of war, depends upon prior authorization from the respective Chamber of Congress.

(7) The immunities of Representatives or Senators subsists during a state of siege, and may only be suspended by the vote of two thirds of the members of the respective Chamber of Congress, in the event of acts performed outside the premises of Congress, which are incompatible with the implementation of such measure.

### Article 54 [Forbidden Actions]

Representatives and Senators shall not:

I. as from the date of issue of the certificates:

a) execute or maintain a contract with a public entity, an autonomous government entity, a state owned company, a mixed capital company or a public utility company, unless the contract complies with uniform clauses;

b) accept or hold a remunerated office, function or job, including those which may be terminated "ad nutum", in the entities listed in the preceding item;

II. as from taking of office:

a) be the owners, controllers, or directors of a company which enjoys a privilege as a result of a contract with a public entity or perform a remunerated function therein;

b) hold an office or a function subject to termination "ad nutum" in the entities referred to in Item I a);

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

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

#### Article 55 [Cassation of Mandate]

(0) A Representative or Senator loses his or her office:

I. if he or she infringes upon any of the prohibitions established in the preceding article;

II. if his or her conduct is declared to be incompatible with parliamentary decorum;

III. if he or she fails to attend, during each legislative term, one third of the ordinary sessions of his or her Chamber of Congress, except for a leave of absence or a mission authorized by such Chamber of Congress;

IV. if he or she loses or suffers suspension of his or her political rights;

V. whenever decreed by the Electoral Courts, in the events set forth in this Constitution;

VI. if he or she is criminally convicted by a final and unappealable sentence.

(1) Abuse of the prerogatives ensured to members of Congress or receipt of undue advantages, besides such cases as are defined in the internal regulations, is incompatible with parliamentary decorum.

(2) In the events of Items I, II and VI, loss of office is decided by the House of Representatives or by the Federal Senate, by secret ballot and absolute majority, on the initiative of the respective Presiding Board or of a political party represented in Congress, full defense being ensured.

(3) In the events set forth in Items III to V, the loss is declared by the Presiding Board of the respective Chamber of Congress ex officio or on the initiative of any of its members, or of a political party represented in Congress, full defense being ensured.

#### Article 56 [No Cassation of Mandate]

(0) A Representative or Senator does not lose his or her office if:

I. he or she is vested in an office of Minister of State, Governor of a Territory, Secretary of a State, of the Federal District, or of a Territory, Mayor of a State Capital or head of a temporary diplomatic mission;

II. he or she is on leave of absence from the respective Chamber of Congress by virtue of illness, or to pursue, without compensation, a private matter, provided that, in this case, the absence does not exceed one hundred and

twenty days per legislative term.

(1) The alternate is called in cases of vacancy, of investiture in the functions set forth in this article, or of leave of absence exceeding one hundred and twenty days.

(2) If a vacancy occurs and there is no alternate, an election has to be held to fill the vacancy if more than fifteen months remain, before the end of the term of office.

(3) In the event of Item I, the Representative or Senator may opt for compensation of the elected office.

## Section VI Sessions

### Article 57 [Meetings]

(0) Congress meets each year in the Federal Capital, from February 15th to June 30th and from August 1st to December 15th.

(1) If sessions scheduled for these dates fall on a Saturday, a Sunday or a holiday, such meetings is transferred to the immediately subsequent business day.

(2) A legislative term is not interrupted without approval of the bill for the budget directives law.

(3) In addition to other cases set forth herein, the House of Representatives and the Federal Senate meets in a joint session to:

I. inaugurate the legislative term;

II. draw up the regulations and regulate the creation of services common to both Chambers of Congress;

III. take the oath of the President and Vice President of the Republic;

IV. acknowledge a veto and resolve thereon.

(4) The House of Representatives and the Federal Senate meet in preparatory sessions, as from February 1st, in the first legislative year, for the inauguration of its members and election of the respective Presiding Boards, for a term of office of two years, re-election to the same office in the immediately subsequent election being prohibited.

(5) The Presiding Board of joint Congress Sections is presided over by the President of the Federal Senate, and the remaining offices are held, alternately, by the occupants of equivalent offices in the House of Representatives and in the Federal Senate.

(6) Congress is called for an extraordinary session:

I. by the President of the Federal Senate, in the event of decree 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 House of



Representatives and of the Federal Senate, or at the request of a majority of the members of both Chambers of Congress in the event of urgency or relevant public interest.

(7) In an extraordinary legislative session, Congress only conducts the business for which it was called.

## Section VII Committees

### Article 58 [Constitution of Committees]

(0) Congress and its two Chambers have permanent and temporary committees, which are formed in the manner and with the duties set forth in the respective regulations or in the act determining the creation thereof.

(1) In forming the Presiding Boards and each Committee, proportional representation of the political parties or of the parliamentary groups which participate in the respective Chamber of Congress shall be ensured to the extent possible.

(2) It is incumbent upon the committees, based upon the subject of their authority:

I. to discuss and vote on bills of law which, in accordance with the regulations, are not within the authority of the Plenary, except in the event of appeal by one tenth of the members of one of the Chambers of Congress;

II. to hold hearings with entities of society;

III. to call Ministers of State to render information on matters inherent to their duties;

IV. to receive petitions, claims, statements, or complaints from any person against acts or omissions of government authorities or entities;

V. to request the deposition of any authority or citizen;

VI. to examine construction work programs and national, regional, and sectorial development plans and issue opinions thereon.

(3) Parliamentary investigation committees, which shall have the investigation powers inherent to the judicial authorities, in addition to other powers set forth in their respective regulations, are created by the House of Representatives and by the Federal Senate, jointly or severally, at the request of one third of its members, for investigation of a certain fact and for a certain period of time, and their conclusions shall, if necessary, be forwarded to the Attorney General's Office to determine the civil or criminal liability of the offenders.

(4) During recess there is a standing Committee to represent Congress, elected by its two Chambers at the last ordinary session of the legislative term, with duties defined in the common regulations, the composition of which shall, to the extent possible, reflect the proportional representation of the political parties in Congress.

## Section VIII Legislative Procedure

### Subsection 1 General Provisions

#### Article 59 [Laws]

(0) Legislative procedure includes the preparation of:

- I. amendments to the Constitution;
- II. supplemental laws;
- III. statutory laws;
- IV. delegated laws;
- V. provisional measures;
- VI. legislative decrees;
- VII. resolutions.

(1) A supplemental law provides for the preparation, drafting, amendment, and consolidation of laws.

### Subsection II Amendments to the Constitution

#### Article 60 [Amendment of the Constitution]

(0) The Constitution may be amended on the proposal of:

- I. at least one third of the members of the House of Representatives or of the Federal Senate;
- II. the President of the Republic;
- III. more than one half of the Legislative Assemblies of the units of the Federation, each of which expresses itself by a simple majority of its members.

(1) The Constitution may not be amended during federal intervention, state of defense or state of siege.

(2) The proposal is discussed and voted in each Chamber of Congress, in two rounds, and it is considered approved if it obtains three-fifths of the votes of the respective members in both rounds.

(3) An amendment to the Constitution is enacted by the Presiding Boards of the House of Representatives and of the Federal Senate, with a respective sequence number.

(4) No resolution is discussed concerning an amendment proposal which tends to abolish:

- I. the federative form of the State;
- II. the direct, secret, universal, and periodic vote;
- III. the separation of the Government Branches;
- IV. individual rights and guarantees.

(5). The subject dealt with in an amendment proposal that is rejected or considered impaired cannot be the subject of another proposal in the same

legislative term.

### Subsection III The Laws

**Article 61 [Law-making procedure]** (0) The initiative of supplemental laws and statutory laws is incumbent upon any member of Committees of the House of Representatives, of the Federal Senate or of Congress, upon the President of the Republic, the Federal Supreme Court, the Superior Courts, the Attorney General of the Republic, and the citizens, in the manner and events set forth in this Constitution.

(1) The initiative of the following laws is incumbent solely upon the President of the Republic:

I. laws which determine or modify the number of troops in the Armed Forces;

II. laws which deal with:

a) creation of public offices, functions, or positions in the direct administration and in autonomous government entities, or increase in the compensation thereof;

b) administrative and judicial organization, tax, and budgetary matters, public services, and administrative personnel of the Territories;

c) Government employees of the Republic and Territories, their legal treatment, appointment to offices, tenure and retirement of civil servants, retirement, and transfer of servicemen to inactivity;

d) organization of the Attorney General's Office and of the Public Defender's Office of the Republic, as well as general rules for the organization of the Attorney General's Office and of the Public Defender's Office of the States, the Federal District and the Territories;

e) creation, structuring, and duties of the Ministries and government administration agencies.

(2) Public initiative may be exercised by presentation to the House of Representatives of a bill of law subscribed by at least one percent of Brazilian voters, distributed throughout at least five States, with no less than three tenths percent of the voters of each of these States.

### **Article 62 [Provisional Measures]**

(0) In relevant and urgent cases, the President of the Republic may adopt provisional measures with the force of law and shall submit such measures to Congress immediately. If Congress is in recess, an extraordinary session shall be called within five days.

(1) Provisional measures lose their effectiveness as from the date of their issuance if they are not converted into law within a period of thirty days as from their publication, and Congress regulates the legal relations arising therefrom.

### **Article 63 [Expenditure]**

An increase in expenditure is not admitted if it is established:

- I. in bills which are the exclusive initiative of the President of the Republic, except for the provisions of Article 166 (3) and (4);
- II. in bills on the organization of the administrative services of the House of Representatives, the Federal Senate, the Federal Courts, and the Attorney General's Office.

#### Article 64 [Discussion, Voting]

(0) The discussion and vote of bills of law which are the initiative of the President of the Republic, of the Federal Supreme Court, and of the Superior Courts commences in the House of Representatives.

(1) The President of the Republic may request urgency in the examination of bills of his initiative.

(2) If, in the case set forth in the previous paragraph, the House of Representatives and the Federal Senate fail to each, successively, express themselves on the proposition, within up to forty-five days, such proposition is included in the agenda and resolution on other matters are suspended for the proposition to be voted.

(3) Amendments of the Federal Senate are examined by the House of Representatives within a period of ten days, with due regard, otherwise, for the provisions of the preceding paragraph.

(4) The periods of time set forth in Paragraph (2) do not run when Congress is in recess and do not apply to bills for codes.

#### Article 65 [Aprovation, Revision]

(0) A bill of law approved by one Chamber of Congress is reviewed by the other in a single discussion and voting round, and, if the reviewing Chamber approves the bill, it is sent for sanctioning or enactment, or if it is rejected, it is dismissed.

(1) If a bill is amended, it shall return to the initial Chamber.

#### Article 66 [Sanction and Promulgation]

(0) The Chamber of Congress in which voting was concluded sends the bill of law to the President of the Republic, who sanctions it if he consents thereto.

(1) If the President of the Republic deems all or part of the bill to be unconstitutional or contrary to public interests, he shall veto it fully or partially within fifteen business days as from the date of receipt and advise the President of the Federal Senate of the reasons for the veto within forty-eight hours.

(2) A partial veto only applies to the full text of an article, paragraph, item, or subitem.

(3) After a period of fifteen days has elapsed, silence on the part of the President of the Republic operates as sanctioning.

(4) A veto examines in a joint session within thirty days of receipt thereof, and may only be rejected by an absolute majority of the Representatives and



Senators by secret ballot.

(5) If the veto is not upheld, the bill is submitted to the President of the Republic for enactment.

(6) If the period established in Paragraph (4) elapses without a resolution, the veto is included in the agenda of the next session, suspending other propositions until final voting thereof, except for the matter referred to in Article 62 (1).

(7) If the law is not enacted by the President of the Republic within forty-eight hours, in the events set forth in Paragraphs (3) and (5), the President of the Federal Senate enacts it and, if he fails to do so within the same period, it is incumbent upon the Vice President of the Federal Senate to do so.

#### Article 67 [Rejected Drafts]

The subject of a rejected bill of law may only be the subject of a new bill in the same legislative term on the proposal of the absolute majority of the members of any of the Chambers of Congress.

#### Article 68 [Delegated Laws]

(0) Delegated laws are drawn up by the President of the Republic who requests delegation from Congress.

(1) Acts subject to the exclusive authority of Congress, those subject to the exclusive authority of the House of Representatives or of the Federal Senate, matters reserved for supplemental laws, and legislation on the following shall not be delegated:

I. organization of the Judicial Branch and of the Attorney

General's Office, and the career and privileges of their members;

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

III. pluriannual plans, budgetary guidelines, and budgets.

(2) Delegation to the President of the Republic is granted by resolution of Congress, which specifies its contents and the terms for performance thereof.

(3) If the resolution determines that the bill is examined by Congress, the latter does so by a single ballot without any amendments.

#### Article 69 [Supplemental Laws]

Supplemental laws shall be approved by absolute majority.

#### Section IX Accounting, Financial, and Budgetary Control

#### Article 70 [Parliamentary Control]

(0) Control of the accounts, finances, budgets, operations, and property of the Republic and of the direct and indirect administration entities as to lawfulness, legitimacy, economicalness, application of subsidies, and waiver of revenues is exercised by Congress, by means of external control and through the internal control system of each Branch.

(1) Accounts are rendered by any individual or public entity which uses, collects, keeps, manages, or administers public moneys, assets, and values or

those for which the Republic is responsible, or which, on behalf of the Republic, assumes obligations of a pecuniary nature.

**Article 71 [External Audit]**

(0) External control under the responsibility of Congress is exercised with the assistance of the Audit Tribunal of the Union, which shall:

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

II. evaluate the accounts of the administrators and others who are responsible for public moneys, assets, and values of the direct and indirect administration, including foundations and companies instituted or maintained by the Federal Administration, and the accounts of those who have caused a loss, misplacement, or other irregularity resulting in losses to the public treasury;

III. examine, for registration purposes, the lawfulness of acts of any personnel hired in the direct and indirect administration, including foundations instituted and maintained by the Government, excepting appointments to commission offices, as well as the approval of civil and military retirement and pension, except for subsequent benefits which do not alter the legal grounds for such approval;

IV. carry out, on its own initiative or the initiative of the House of Representatives, the Federal Senate or a technical or investigation Committee, inspections and audits of an accounting, financial, budgetary, operational, or property nature in the administrative units of the Legislative, Executive, and Judicial Branches and other entities referred to in Item II;

V. control the national accounts of supranational companies in whose capital stock the Republic holds a direct or indirect interest, according to the terms established in the acts of incorporation;

VI. control the application of any funds transferred by the Republic, under a contract, agreement, arrangement, or other similar instrument, to a State, to the Federal District or to a Municipality;

VII. render the information requested by any of the Chambers or any of the respective Committees of Congress concerning accounting, financial, budgetary, operational, and property control and the results of audits and inspections made;

VIII. apply to the responsible parties, in the event of illegal expenses or irregular accounts, the sanctions provided for in law, which shall establish, among other penalties, a fine proportional to the damages caused to the public treasury;

IX. establish a period for the agency or entity to take the action required for the proper enforcement of the law, if an illegality is determined;

X. stay, if not heeded, the performance of the contested act, advising the House of Representatives and the Federal Senate of this decision;

XI. inform the proper Branch on any irregularities or abuses determined.

(1) In the event of a contract, the action of staying is taken directly by Congress which immediately requests the Executive to take the proper action.

(2) In the event that Congress or the Executive does not take the action set forth in the preceding paragraph, within ninety days, a Court decides the matter.

(3) Decisions of a Court resulting in the imposition of a debt or fine have the effectiveness of an execution instrument.

(4) Each quarter and each year, the Court presents to Congress a report on its activities.

#### Article 72 [Committee]

(0) The permanent mixed Committees referred to in Article 166 (1), may, in view of indications of unauthorized expenses, even if in the form of non programmed investments or of non approved subsidies, request the responsible government authority to render the necessary explanations within five days.

(1) If the explanations are not rendered or if they are considered insufficient, the Committee requests the Court to give the final opinion on the matter within a period of thirty days.

(2) If the Court considers the expense to be irregular, the Committee shall, if it believes that the expenditure may cause irreparable damages or serious injury to the public economy, propose to Congress that it be suspended.

#### Article 73 [Audit Tribunal of the Union]

(0) The Audit Tribunal of the Union, which is made up of nine Justices, has its seat in the Federal District, has its own staff and has jurisdiction throughout the entire Brazilian territory, and exercises, where appropriate, the duties set forth in Article 96.

(1) The Justices of the Audit Tribunal of the Union are appointed among 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. notorious knowledge of the law, accounting, economics, and finances or of government administration;

IV. more than ten years of practice or of actual professional activity requiring the knowledge mentioned in the preceding item.

(2) The Justices of the Audit Tribunal of the Union are chosen as follows:

I. one third by the President of the Republic with the approval of the Federal Senate, two of them being alternately chosen among auditors and members of the Attorney General's Office at the Court, as indicated in a triple list by the Court, in accordance with criteria of seniority and merit;

II. two thirds by Congress.

(3) The Justices of the Audit Tribunal of the Union have the same guarantees, prerogatives, impediments, compensation, and privileges as the Justices of the Superior Court of Justice and may only retire with the benefits of the office if they have actually held office for

more than five years.

(4) An auditor, when replacing a Justice, has the same guarantees and impediments as the Justice and, when exercising other duties of the bench, those of a judge of a Federal Regional Court.

#### Article 74 [Internal Control]

(0) The Legislative, Executive, and Judicial Branches maintain an integrated system of internal control for the purpose of:

I. evaluating the achievement of the targets established in the pluriannual plan, the implementation of government programs, and of the Republic's budgets;

II. determining the lawfulness and evaluating the results, as to effectiveness and efficiency, of budgetary, financial, and property administration of the agencies and entities of the federal administration, as well as of the application of Government funds by private entities;

III. exercising control over credit transactions, guarantees, as well as over the rights and assets of the Republic;

IV. supporting external control in the performance of its institutional mission.

(1) The persons responsible for internal control shall, upon learning of any irregularity or illegality, inform the Audit Tribunal of the Union thereof, subject to joint liability.

(2) Any citizen, political party, association or trade union has standing under the law to denounce irregularities or illegalities to the Audit Tribunal of the Union.

#### Article 75 [Application]

(0) The provisions of this section apply, where appropriate, to the organization, composition and control of the Audit Courts of the States and Federal District, and the Audit Courts and Councils of the Municipalities.

(1) The State Constitutions provide for the respective Audit Courts, which are made up of seven Council Members.

## Chapter II Executive Branch

### Section 1 President and Vice President of the Republic

#### Article 76 [President, Ministers]

The Executive Branch is exercised by the President of the Republic, assisted by the Ministers of State.

#### Article 77 [Election]

(0) Election of the President and of the Vice President of the Republic takes



place simultaneously, ninety days before the end of the current presidential term of office.

(1) Election of the President of the Republic includes election of the Vice President registered with him.

(2) The candidate who, being registered by a political party, obtains an absolute majority of votes, not counting blank or void votes, is considered to be elected as President.

(3) If no candidate attains an absolute majority in the first ballot, another election has to be held within twenty days after announcement of the results; the two candidates who obtained the greatest number of votes then compete and the one who obtains a majority of valid votes is considered elected.

(4) In the event that, before the second election is held, a candidate dies, withdraws, or is legally impaired, the candidate with the greatest number of votes among the remaining candidates is called.

(5) If, in the event of the preceding paragraphs, more than one candidate with an equal number of votes remain in second place, the eldest one is qualified.

#### Article 78 [Taking of office, Oath Before Congress]

(0) The President and the Vice President of the Republic takes office in a session of Congress. They take an oath to maintain, defend, and carry out the Constitution, comply with the laws, further the general good of the Brazilian people, sustain the union, integrity, and independence of Brazil.

(1) In the event that ten days as from the date scheduled for taking of office, the President or the Vice President, except for force majeure, has not taken office, such office has to be declared vacant.

#### Article 79 [Vice President]

(0) The Vice President replaces the President in the event of impediment and succeeds him in the event of vacancy.

(1) The Vice President of the Republic, in addition to other duties attributed to him by supplemental laws, assists the President whenever called by the President for special missions.

#### Article 80 [Double Vacancy]

In the event of impediment of the President and of the Vice President, or of vacancy in the respective offices, the President of the House of Representatives, the President of the Federal Senate, and the Chief Justice of the Federal Supreme Court are called successively to exercise the Presidency.

#### Article 81 [New Elections, Electoral College]

(0) If a vacancy occurs in the offices of President and Vice President of the Republic, elections are held ninety days after the last vacancy occurred.

(1) If the vacancy occurs during the last two years of the President's term of office Congress holds elections for both offices within thirty days after the

last vacancy occurred, in accordance with the law.

(2) In any of the cases, those elected complete the term of office of their predecessors.

#### Article 82 [Term]

The term of office of the President of the Republic is four years and he may not be re-elected for the subsequent term. { Note: The 1997 re-election amendment is in force, but has not yet been included into the ICL-Edition. } The term of office commences on January 1st of the year following the year of his election.

#### Article 83 [Leaving the Country]

The President and the Vice President of the Republic may not, without authorization from Congress, leave the country for a period of more than fifteen days, subject to loss of office.

### Section II Duties of the President of the Republic

Article 84 [Functions] (0) It is incumbent exclusively upon the President of the Republic:

- I. to appoint and dismiss the Ministers of State;
- II. to exercise, with the assistance of the Ministers of State, the higher management of the federal administration;
- III. to commence the legislative procedure, in the manner and in the events set forth in this Constitution;
- IV. to sanction, enact, and cause the publication of laws, as well as to issue decrees and regulations for the true enforcement thereof;
- V. to veto bills of law, wholly, or partially;
- VI. to provide for the organization and operation of the federal administration, in accordance with the law;
- VII. to maintain relations with foreign States and to accredit their diplomatic representatives; VIII. to enter into international treaties, conventions and acts, ad referendum of Congress; IX. to decree a state of defense and state of siege;
- X. to decree and enforce federal intervention;
- XI. to send a government message and plan to Congress when the legislative term is opened, describing the country's situation and requesting the action he deems necessary;
- XII. to grant pardons and reduce sentences, after hearing the entities instituted by law, if necessary;
- XIII. to exercise supreme command over the Armed Forces, promote its generals, and to appoint them to the offices held exclusively by them;
- XIV. to appoint, after approval by the Federal Senate, the Justices of the Federal Supreme Court and of the Superior Courts, the Governors of the Territories, the Attorney General of the Republic, the president and directors of the Central Bank, and other civil servants, when required by law;
- XV. to appoint, with due regard for the provisions of Article 73, the Justices of the Federal Audit Court;

- XVI. to appoint judges in the events established herein and the Advocate General of the Republic;
- XVII. to appoint members of the Council of the Republic pursuant to Article 89 VII;
- XVIII. to call and preside over the Council of the Republic and the National Defense Council;
- XIX. declare war, if authorized by Congress or upon its referendum, whenever this occurs between legislative terms and, under the same conditions, decree full or partial national mobilization;
- XX. to make peace, if authorized by or upon the referendum of Congress;
- XXI. to confer decorations and honorary distinctions;
- XXII. to permit, in the events set forth in supplemental laws, that foreign forces enter the Brazilian territory, or temporarily remain therein;
- XXIII. to submit to Congress the pluriannual plan, the budget, directives bill of law and the budget proposals set forth in this Constitution;
- XXIV. to each year render accounts to Congress concerning the previous fiscal year, within sixty days of the opening of the legislative term;
- XXV. to fill and extinguish federal government offices, in accordance with the law;
- XXVI. to issue provisional measures, with the forces of law, according to Article 62;
- XXVII. to perform other duties set forth in this Constitution.

(1) The President of the Republic may delegate the duties mentioned in Items VI, XII, and XXV, first part, to the Ministers of State, to the Attorney General of the Republic, who shall observe the limitations established in the respective delegations.

### Section III Liability of the President of the Republic

#### Article 85 [Responsability Crimes]

(0) Those acts of the President of the Republic which contravene the Federal Constitution and contravene especially the following are criminal malversion:

- I. existence of the Republic;
- II. free exercise of the powers of the Legislative, the Judiciary, the Attorney General's Office, 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. honesty in the administration;
- VI. budgetary law;
- VII. compliance with the laws and with court decisions.

(1) Such crimes are defined in a special law, which establish the rules of procedures and trial.

#### Article 86 [Impeachment]

If charges against the President of the Republic are admitted by two thirds of the House of Representatives, he is submitted for trial before the Federal Supreme Court for common criminal offenses or before the Federal Federal Senate for criminal malversion.

(1) The President is suspended from his duties:

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

II. in the event of criminal malversion, after proceedings are instituted by the Federal Senate.

(2) If, after a period of one hundred and eighty days, trial has not been concluded, suspension of the President ceases without prejudice to the normal progress of the proceedings.

(3) In the event of common offenses, the President of the Republic cannot be subject to arrest as long as no sentence is rendered.

(4) During his term of office, the President of the Republic may not be held liable for acts outside the performance of his duties.

#### Section IV The Ministers of State

##### Article 87 [Ministers]

(0) The Ministers of State are chosen among Brazilians who have attained the age of twenty-one years and who possess political rights.

(1) It is incumbent upon a Minister of State, in addition to other duties established in this Constitution and in the law:

I. to exercise guidance, coordination, and supervision of the agencies and entities of the federal administration in the area of his authority and to give his referendum to 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 to the President of the Republic an annual report on his management of the Ministry;

IV. to perform acts pertinent to the duties assigned or delegated to him by the President of the Republic.

##### Article 88 [Ministeries]

The law provides for the creation, structuring, and duties of the Ministries.

#### Section V Council of the Republic and Council of National Defense

##### Subsection I Council of the Republic

##### Article 89 [The Council of the Republic]

(0) The Council of the Republic is a higher body for consultation by the President of the Republic, and its members are:



- I. the Vice President of the Republic;
- II. the President of the House of Representatives;
- III. the President of the Federal Senate;
- IV. the majority and the minority leaders of the House of Representatives;
- V. the majority and the minority leaders of the Federal Senate;
- VI. the Minister of Justice;
- VII. six Brazilian born citizens of over thirty-five years of age, two of which appointed by the President of the Republic, two elected by the Federal Federal Senate, and two elected by the House of Representatives, all with a term of office of three years and not eligible for re appointment.

#### Article 90 [Powers, Necessary Consultation]

- (0) It is incumbent upon the Council of the Republic to opine on:
- I. federal intervention, state of defense, and state of siege;
  - II. matters relevant to the stability of the democratic institutions.
- (1) The President of the Republic may call a State Minister to participate in a Council meeting, when the agenda includes a matter related to the respective Ministry.
- (2) The organization and operation of the Council of the Republic are regulated by law.

#### Subsection II Council of National Defense

#### Article 91 [Advisory Body]

- (0) The Council of National Defense is the consultation body of the President of the Republic on matters related to national sovereignty and to defense of the democratic State, and the following are its original members:
- I. the Vice President of the Republic;
  - II. the President of the House of Representatives;
  - 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) It is incumbent upon the Council of National Defense to:
- I. opine in the event of declaration of war and making of peace, according to this Constitution;
  - II. opine on the decreeing of state of defense, state of siege, and federal intervention;
  - III. propose the criteria and conditions for the use of areas which are indispensable to the security of the national territory and opine on their effective use, especially on the frontier strip and on those related to the preservation and exploitation of natural resources of any kind;

IV. study, propose, and monitor the development of measures required to guarantee national independence and defense of democratic State.

(2) The organization and operation of the Council of National Defense are regulated by law.

## Chapter III Judiciary Branch

### Section I General Provisions

#### Article 92 [Bodies]

following are bodies of the Judiciary Branch:

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

(1) The Federal Supreme Court and the Superior Courts have their seat in the Federal Capital and jurisdiction over the entire national territory.

#### Article 93 [Statute of Judicature]

A supplemental law proposed by the Federal Supreme Court shall provide for the bylaws of the Judicature, observing the following principles:

- I. admission into the career, with the initial office of alternate judge, through a public competitive examination of tests and titles, with the participation of the Brazilian Bar in all of its phases, and adopting 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 for three consecutive times or five alternative times in a merit list;
  - b) merit promotion presupposes two years in office in the respective level, and that the judge appears in the top fifth part of the seniority list of such level, unless no one satisfying such requirements is willing to accept the vacancy;
  - c) evaluation of merit according to criteria of promptness and reliability in administering justice and performance in recognized extension courses;
  - d) in determining seniority, the court may only refuse the most senior judge by the vote of two thirds of its members, according to a specific procedure,

the ballot being repeated until the appointment is determined.

III. access to the courts of second instance are based on seniority and merit, alternately, determined at the last level or, if existing, at the Court of Appeals of Limited Jurisdiction, in the case of promotion to the Court of Appeals, in accordance with Item II and to the candidate's group of origin;

IV. establishment of official courses for preparation and improvement of judges as requisites for admission and promotion in their careers;

V. the compensation of judges are established with a difference of not more than ten per cent from one to another career category, and under no circumstances may such compensation exceed that of the Justices of the Federal Supreme Court;

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

VII. a permanent judge resides in the respective judicial district;

VIII. acts of removal, of suspension from office and of retirement of a judge, for public interest, are based on a decision adopted by the vote of two thirds of the respective court, ensuring ample defense;

IX. all judgements of bodies of the Judiciary Branch are public, and all decisions must be substantiated, under penalty of being null, and the law may, if the public interest so requires, limit attendance in given acts to only the interested parties and their attorneys, or only to the latter;

X. administrative decisions of the courts shall present a justification, and disciplinary decisions shall be adopted by an absolute majority of their members;

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 duties which are the responsibility of the full court.

#### Article 94 [Composition of some Courts]

One fifth of the seats on the Federal Regional Courts, of the Courts of Appeals of the States and of the Federal District and Territories are formed by members of the Attorney General's Office with over ten years of service, and by lawyers of notorious legal knowledge and unblemished reputation, with over ten years of actual professional activity, indicated in a list of six names by the entities which represent the respective groups.

(1) Upon receipt of the indications, the court sets up a list of three names and sends it to the Executive, which within the subsequent twenty days chooses one of the listed names for appointment.

#### Article 95 [Guarantees of the Judges]

(0) Judges enjoy the following guarantees:

I. life tenure, which, at first instance, shall only be acquired after two years in office and, during this period, loss of office is determined by the

court to which they belong and, in other cases, by a final and unappealable court decision;

II. irremovability, except by reason of public interest, according to Article 93 VIII;

III. irreducibility of earnings, with due regard, with respect to compensation, for the provisions of Articles 37 XI, 150 II, 153 III, and 153

(2) I.

(1) Judges are forbidden to:

I. hold, even when suspended from office, any other office or position, except for a teaching position;

II. receive, on any account or for any reason, court costs or participation in a lawsuit;

III. engage in political party activities.

#### Article 96 [Incumbencies]

(0) It is incumbent exclusively upon:

I. the Courts of Appeals:

a) to elect their directive bodies and prepare their internal regulations following the rules of procedure and the procedural guarantees of the parties, establishing the jurisdiction and operation of the respective jurisdictional and administrative bodies;

b) to organize their secretariats and ancillary services and those of the courts connected with them, ensuring performance of the respective inspection activities;

c) to fill, in the manner set forth in this Constitution, offices of career judges within their respective jurisdiction;

d) to propose the creation of new courts of first instance;

e) to fill by means of public competitive examination of tests, or of tests and titles, with due regard for the provisions of Article 169 (1), the offices required for the administration of Justice, with the exception of positions of trust as defined by law;

f) to grant leave, vacations, and other absences to their members and to the judges and employees who are immediately subordinated to them;

II. the Federal Supreme Court, the Superior Courts, and the Courts of Appeals, to propose to the respective Legislative Branch, with due regard for the provisions of Article 169:

a) alteration in the number of members of lower courts;

b) creation and extinction of offices and establishment of the compensation of their members, of the judges, including those of the lower courts, if any, of the ancillary services, and of the courts subordinated to them;

c) creation or extinction of lower courts,

d) alteration of the judiciary organization and division;

III. the Courts of Appeals to try judges of the States, of the Federal District and of the Territories, as well as the members of the Attorney General's Office, for common crimes and criminal malversion, except in those



cases coming under the jurisdiction of the Electoral Courts.

**Article 97 [Unconstitutionality]**

The courts may declare the unconstitutionality of a law or of a normative act of the Government only by an absolute majority of their members or of the members of the respective special body.

**Article 98 [Territories and Federal District]**

The Republic, in the Federal District and in the Territories, and the States, shall create:

I. specialized courts, which have qualified judges or qualified and lay judges, with jurisdiction for conciliation, judgment and execution of civil suits of lesser complexity and criminal offenses of lower offensive potential, by oral and summary proceedings, allowing, in the cases set forth in the law, settlement and judgment of appeals by panels of judges of first instance; II. remunerated justice of peace, formed by citizens elected by direct, universal, and secret ballot with a term of office of four years and jurisdiction to, as set forth in the law, perform marriages, verify, ex officio or by reason, of a challenge, qualification proceedings, and exercise conciliatory functions of a non-jurisdictional nature, besides other functions set forth in the law.

**Article 99 [Full Autonomy]**

(0) The Judiciary Branch is assured of administrative and financial autonomy.

(1) The courts draw up their budget proposals, within the limits stipulated jointly with the other Branches in the budget directives law.

(2) The proposal shall, after hearing the other interested courts, be forwarded:

I. at Federal level, by the Chief Justices of the Federal Supreme Court and of the Superior Courts, with the approval of the respective courts;

II. at State level, as well as the level of the Federal District and Territories, by the Chief Justices of the Courts of Appeals, with the approval of the respective courts.

**Article 100 [Special Payments]**

(0) Except for alimony credits, payments owed by the Federal, State or Municipal Treasuries by virtue of a court decision is made exclusively in chronological order of submission of the judicial requests and on account of the respective credits, it being forbidden to designate cases or persons in budget appropriations and in additional credits opened for such purpose.

(1) It is compulsory for the budget of public entities to include the funds required for the payment of their debts as shown on the judicial requests submitted on or before July 1st, on which date their values are adjusted, and payment is made until the end of the following fiscal year.

(2) The budgetary appropriations and the credits opened are allotted to the

Judiciary, and the respective amounts are paid to the appropriate department. It shall be incumbent upon the Chairman of the Court which rendered the decision to determine payment according to the amount of the deposit, and to authorize, at the creditor's request and exclusively in the event that his right of precedence is not respected, seizure of the amount required to satisfy the debt.

## Section II Federal Supreme Court

### Article 101 [Composition, Nomination]

(0) The Federal Supreme Court is formed by eleven Justices, chosen among citizens over thirty-five years and under sixty-five years of age, with notorious legal knowledge and unblemished reputation.

(1) The Justices of the Federal Supreme Court shall be appointed by the President of the Republic, after the choice is approved by the absolute majority of the Federal Senate.

### Article 102 [Functions, Constitutional Court]

(0) The Federal Supreme Court is responsible, mainly, for safeguarding the Constitution and it is incumbent upon it:

I. to process and adjudicate, originally:

- a) direct actions of unconstitutionality of a federal or state law or normative act, and declaratory actions of constitutionality of a federal law or normative act;
- b) in common criminal offenses, the President of the Republic, the Vice President, the members of Congress, its own Justices and the Attorney General of the Republic;
- c) in common criminal offenses and criminal malversion, the Ministers of State, excepting the provisions of Article 52 I, the members of the Superior Courts, those of the Federal Audit Court and the heads of permanent diplomatic missions;
- d) habeas corpus when the petitioner is any one of the persons referred to in the preceding subsections; writs of mandamus and habeas data against acts of the President of the Republic, of the Presiding Boards of the House of Representatives and of the Federal Senate, of the Audit Tribunal of the Union, of the Attorney General of the Republic, and of the Federal Supreme Court itself;
- e) litigation between a foreign State or international organization and the Republic, a State, the Federal District or a Territory;
- f) disputes and conflicts between the Republic and the States, the Republic and the Federal District, or between one another, including their respective indirect administration entities;
- g) extradition requested by a foreign State;
- h) homologation of foreign court decisions and the granting of exequatur to letters rogatory, which may be conferred by its internal regulations upon its President;
- i) habeas corpus, when the constraining party or the petitioner is a court, authority or

employee whose acts are directly subject to the jurisdiction of the Federal Supreme Court, or in the case of a crime subject to the same jurisdiction in one sole instance; j) criminal review of and rescissory action for its decisions;

k) claims for the preservation of its jurisdiction and guarantee of the authority of its decisions;

l) enforcement of a court decision in a case for which it has original jurisdiction, the delegation of authority to perform procedural acts being allowed;

m) suits in which all members of the courts are directly or indirectly involved, and suits in which more than half of the members of the court of origin are impaired or have a direct or indirect interest;

n) conflicts of jurisdiction between the Superior Court of Justice and any other courts, between Superior Courts, or between the latter and any other court;

o) requests for a writ of prevention in direct actions of unconstitutionality;

p) writs of injunction, when preparation of the regulation is the responsibility of the President of the Republic, of Congress, of the House of Representatives, of the Federal Senate, of the Presiding Boards of one of these Legislative Chambers, of the Audit Tribunal of the Union, of one of the Superior Courts, or of the Federal Supreme Court itself;

II. to adjudicate, at ordinary appeal level: a) habeas corpus, writs of mandamus, habeas data and writs of injunction decided in a sole instance by the Superior Courts, in the event of a denial; b) political crimes;

III. to adjudicate, at extraordinary appeal level, cases decided in a sole or last instance, when the appealed decision:

a) is contrary to a provision of this Constitution;

b) declares the unconstitutionality of a treaty or a federal law;

c) considers valid a law or an act of a local government contested under this Constitution.

(1) A claim of non-compliance with a fundamental precept deriving from this Constitution shall be examined by the Supreme Federal Court, under the terms of the law.

(2) Final decisions on merits, pronounced by the Supreme Federal Court, in declaratory actions of constitutionality of a federal law or normative act, shall have force against all, as well as a binding effect, as regards the other bodies of the Judicial Power, as well as the Executive Power.

**Article 103 [Unconstitutional Acts Cassation]** (0) Unconstitutionality action may be instituted by:

I. the President of the Republic;

II. the Presiding Board of the Federal Senate;

III. the Presiding Board of the House of Representatives;

IV. the Presiding Board of a State Legislative Assembly;

V. a State Governor;

VI. the Attorney General of the Republic;

VII. the Federal Council of the Brazilian Order of Lawyers;

VIII. a political party represented in Congress;

IX. a confederation of labor unions or a national class entity.

(1) The Attorney General of the Republic shall first be heard in unconstitutionality actions and in all suits coming under the jurisdiction of the Federal Supreme Court.

(2) Upon declaration of unconstitutionality through lack of procedures to make a constitutional provision effective, the appropriate Branch is notified to adopt the necessary action and, in the case of an administrative body, to do so within thirty days.

(3) When the Federal Supreme Court examines the theoretical unconstitutionality of a legal provision or normative act, it shall first summon the Advocate General of the Republic, who shall defend the challenged act or text.

(4) A declaratory action of constitutionality may be filed by the President of the Republic, the Directing Board of the Federal Senate, the Directing Board of the Chamber of Deputies or by the Attorney-General of the Republic.

### Section III Superior Court of Justice

**Article 104 [Composition, Nomination]** (0) The Superior Court of Justice is formed by at least thirty-three Justices.

(1) The Justices of the Superior Court of Justice are appointed by the President of the Republic, selected among Brazilians over thirty-five and under sixty-five years of age, and of notorious legal knowledge and unblemished reputation, after approval of the choice by the Federal Senate, of which:

I. one third among the judges of the Federal Regional Courts, and one third among the judges of the Courts of Appeals, indicated in a list of three names drawn up by the Court itself;

II. one third, in equal parts, among lawyers and members of the Attorney General's Office of the Republic, of the States, of the Federal District and of the Territories, alternately, indicated as set forth in Article 94.

**Article 105 [Functions of the Court]** (0) It is incumbent upon the Superior Court of Justice:

I. to process and adjudicate, originally:

a) in common crimes, the Governors of the States, and of the Federal District and, in common crimes and criminal malversion, the justices of the Courts of Appeals of the States and of the Federal District, the members of the Audit Courts of the States and of the Federal District, those of the Federal Regional Courts, of the Regional Electoral and Labor Courts, the members of Audit Courts or Councils of the Municipalities, and the members of the Attorney General's Office of the

Republic, who act before courts; b) writs of mandamus and habeas data against an act of a Minister of State or of the Court itself; c) habeas corpus, when



the constraining party or the petitioner is any of the persons mentioned in Subsection a), or when the constraining party is a Minister of State, except for the jurisdiction of the Electoral Courts; d) conflicts of jurisdiction between any courts, except for the provisions of Article 102 I o), as well as between a court and judges not subordinated to it, and between judges subordinated to different courts;

e) criminal reviews of and the rescissory actions for its decisions;

f) claims for the preservation of its jurisdiction and guarantee of the authority of its decisions;

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

h) writs of injunction, when the preparation of the regulation is the responsibility of a federal body, entity or authority, of direct or indirect administration, with the exception of cases coming under the jurisdiction of the Federal Supreme Court and of the bodies of the Military Courts, or the Electoral Courts, of the Labor Courts and of the Federal Courts;

II. to adjudicate, at ordinary appeal level: a) habeas corpus decided in a sole instance or last instance by the Federal Regional Courts or by the courts of the States, of the Federal District and Territories, when the decision denies it; b) writs of mandamus decided in a sole instance by the Federal Regional Courts or by the courts of the States, of the Federal District and of the Territories, when the decision denies it;

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

III. to adjudicate, at special appeal level, cases decided, in a sole instance or last instance, by the Federal Regional Courts or by the courts of the States, of the Federal District and Territories, when the appealed decision:

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

b) considers valid a law or act of a local government, contested in view of a federal law;

c) confers upon a federal law an interpretation different from that which has been conferred upon it by another court.

(1) A Council of Federal Justice operates together with the Superior Court of Justice, and it shall, as set forth in the law, exercise administrative and budgetary supervision over the Federal Courts of first and second instances.

## Section IV Federal Regional Courts and Federal Judges

### Article 106 [Federal Courts in the States]

The following are bodies of the Federal Courts:

I. the Federal Regional Courts;

## II. the Federal Judges;

### Article 107 [Composition, Nomination, Seat]

(0) The Federal Regional Courts are formed by at least seven judges, selected, whenever possible, in their respective regions and appointed by the President of the Republic among Brazilians over thirty and under sixty-five years of age, of which:

I. one fifth among lawyers with over ten years of actual professional activity and members of the Federal Attorney

General's Office, with more than ten years of service;

II. the others, through promotion of federal judges with over five years of service, based on seniority and merit, alternately.

(1) A law regulates the removal or exchange of Federal Regional Court judges and determines their jurisdiction and seat.

### Article 108 [Functions of Federal Regional Court]

It is incumbent upon the Federal Regional Courts to:

I. process and adjudicate, originally:

a) federal judges of the area of their jurisdiction, including those of the Military Courts and of the Labor Courts, in common crimes and in criminal malversion, and the members of the Federal Attorney General's Office, except for the jurisdiction of the Electoral Courts;

b) criminal review of and the rescissory action for their decisions or those of the federal judges of the region; c) writs of mandamus and habeas data against an act of the Court itself or of a federal judge; d) habeas corpus, when the constraining authority is a federal judge; e) conflicts of jurisdiction between federal judges subordinated to the Court;

II. adjudicate at appeal level, cases decided by federal judges and by state judges exercising federal authority in the area of their jurisdiction.

Article 109 [Federal Judges' Functions] (0) It is incumbent upon the federal judges to process and adjudicate:

I. cases in which the Republic, an autonomous government entity or a federal public company have an interest as plaintiffs, defendants, assistants or opponents, except for those relating to bankruptcy, to labor accidents and those subject to the Electoral Courts and the Labor Courts;

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

III. cases based on a treaty or a contract of the Republic with a foreign State or international organization;

IV. political crimes and criminal offenses against property, services or interests of the Republic or of its autonomous government entities or public companies, excluding misdemeanour and excepting the jurisdiction of Military Courts and Electoral Courts;

V. crimes set forth in an international treaty or conventions, when,

prosecution having commenced in Brazil, the result has taken place or should have taken place abroad, or reciprocally;

VI. crimes against the organization of labor and, in the cases determined by law, against the financial system and the financial economic order; VII. habeas corpus, in criminal matters under their jurisdiction or when the constraint originates from an authority whose acts are not directly subject to another jurisdiction; VIII. writs of mandamus and habeas data against an act of a federal authority, except for those cases coming under the jurisdiction of the higher federal courts; IX. crimes committed abroad ships or aircraft, except for the jurisdiction of the Military Courts; X. crimes of irregular entry or stay of a foreigner, execution of letters rogatory after exequatur, and of foreign court decision after homologation, cases referring to nationality, including the respective options, and to naturalization; XI. disputes over the rights of indians.

(1) Cases in which the Republic is the plaintiff are instituted in the judicial section where the other party is domiciled.

(2) Cases filed against the Republic may be instituted in the judicial section in which the plaintiff is domiciled, in what where the act or fact given rise to the suit took place, or where the item is located, or, further, in the Federal District.

(3) Cases in which the parties are a social security institution and its beneficiary shall be processed and adjudicated in the state Courts, in the forum domicile of the beneficiary, whenever the judicial district is not the seat of a federal court; in such a situation, the law may permit other cases to be processed and adjudicated in the state Courts.

(4) In the event of the preceding paragraph, the proper appeal shall always lie with the Federal Regional Court in the jurisdictional area of the judge of first instance.

**Article 110 [Regional Courts]** (0) Each State, as well as the Federal District, is a judicial section, which has its seat in the respective Capital, and courts located as set forth in the law.

(1) In the Federal Territories, the jurisdiction and duties vested in the federal judges are incumbent upon the judges of the local courts, according to the law.

## Section V Labor Courts and Labor Judges

### **Article 111 [Labour Justice]**

The following are bodies of the Labor Courts:

- I. the Superior Court of Labor;
- II. the Regional Labor Courts;
- III. the Conciliation and Judgement Commission.

(1) The Superior Labor Court is formed by twenty-seven Justices, chosen among Brazilians over thirty-five years and under sixty-five ears of age, appointed

by the President of the Republic after approval by the Federal Senate, of which:

I. seventeen qualified judges with life tenure, out of which eleven chosen among career labor judges, three among lawyers and three among members of the Labor Attorney General's Office;

II. ten temporary group judges, with equal representation of workers and employers.

(2) The Court forwards to the President of the Republic lists with three names, with due regard, for the vacancies intended for lawyer and for members of the Attorney General's Office, for the provision of Article 94, and, for the temporary group judges, for the result of indication by an electoral college formed by the boards of directors of the national confederations of workers or employers, as the case may be; the list of three names for filling the office intended for career labor judges shall be prepared by life tenured qualified Justices.

(3) The jurisdiction of the Superior Labor Court is established by law.

#### Article 112 [Regional Labour Court]

There has to be at least one Regional Labor Court in each State and in the Federal District, and the law institutes the Conciliation and Judgment Commissions. In those counties in which they are not instituted, the law may ascribe their jurisdiction to the court judges.

#### Article 113 [Group Judges]

The law provides for the constitution, investiture, jurisdiction, authority, guarantees, and conditions for performance of the bodies of the Labor Courts, ensuring equal representation of workers and employers.

#### Article 114 [Labor Courts]

(0) It is incumbent upon the Labor Courts 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 Municipalities, of the Federal District, of the States and of the Republic and, according to the law, other controversies resulting from labor relationships, as well as litigation which originates from compliance with their own decisions, including those of a collective nature.

(1) If collective negotiations are unsuccessful, the parties may elect arbitrators.

(2) If any of the parts refuses negotiation or arbitration, the respective unions and syndicates may institute collective bargaining proceedings, and the Labor Courts may establish rules and conditions respecting the minimum conventional and legal provisions for the protection of labor.

#### Article 115 [Composition of Regional Courts]



(0) The Regional Labor Court are formed by judges appointed by the President of the Republic, two thirds of which to be life tenured qualified judges and one third of which temporary group judges, observing, with respect to the qualified judges, the proportion established in Article 111 (1) I.

(1) The judges of the Regional Labor Courts shall be:

- I. labor judges chosen by promotion, based alternately on seniority and merit;
- II. lawyers and members of the Labor Attorney General's Office, complying with the provisions of Article 92;
- III. group judges indicated in lists with three names by the boards of the federations and labor unions with their territorial base in the region.

#### Article 116 [Conciliation and Judgement]

(0) A Conciliation and Judgement Commission shall be formed by one labor judge, who presides over it, and two temporary group judges representing the workers and the employers.

(1) The temporary group judges of the Conciliation and Judgment Commission are appointed by the President of the Regional Labor Court, according to the law, and one reappointment is permitted.

#### Article 117 [Term of Temporary Judges]

(0) The term of office of the temporary judges in all instances is three years.

(1) The temporary group judges have alternates.

### Section VI Electoral Courts and Electoral Judges

#### Article 118 [Electoral Court Bodies]

The following are bodies of the Electoral Courts:

- I. the Superior Electoral Court;
- II. the Regional Electoral Courts;
- III. the Electoral Boards.

#### Article 119 [Membership]

(0) The Superior Electoral Courts is formed by at least seven members chosen:

- I. through election, by secret ballot:
  - a) three judges among the Justices of the Federal Supreme Court;
  - b) two judges among the Justices of the Superior Court of Justice;
- II. by appointment of the President of the Republic, two judges among six lawyers of notorious legal knowledge and good moral reputation, indicated by the Federal Supreme Court.

(1) The Superior Electoral Court shall select its Chief Justice and Deputy Chief Justice from the Justices of the Federal Supreme Court, and the Electoral Inspector General from the Justices of the Superior Court of Justice.

#### Article 120 [Regional Courts]

(0) There has to be a Regional Electoral Court in the Capital of each State and in the Federal District.

(1) The Regional Electoral Courts is formed:

I. through election, by secret ballot:

a) by two judges among the justices of the Court of Appeals;

b) by two judges, among court judges, chosen by the Court of Appeals;

II. by one judge of the Federal Regional Court with its seat 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 Court;

III. by appointment by the President of the Republic of two judges among six lawyers or notorious legal knowledge and good moral repute, indicated by the Court of Appeals.

(2) The Regional Electoral Court shall elect its Chief Justice and Deputy Chief Justice among the justices.

**Article 121 [Powers, functions, organization]** (0) A supplement law provides for the organization and jurisdiction of the electoral courts, judges and boards.

(1) The members of the courts, the judges and the members of the electoral boards, while in office and to the extent applicable to them, enjoy full guarantees and are irremovable.

(2) The judges of the electoral courts, save for a justified reason, serve for two years at least and never for more than two consecutive two year periods, and their substitutes are chosen at the same time and through the same procedure, in equal numbers for each category.

(3) The decisions of the Superior Electoral Court are unappealable, with the exception of those which contravene this Constitution and those denying habeas corpus or a writ of mandamus.

(4) Decisions of the Regional Electoral Courts may only be appealed when:

I. they are rendered against an express provision of this Constitution or of a law;

II. there is a divergence in the interpretation of a law among two or more electoral courts;

III. they deal with the 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, writs of mandamus, habeas data or writs of injunction.

## **Section VII Military Courts and Military Judges**

### **Article 122 [Bodies]**

The following are bodies of the Military Courts:

I. the Superior Military Court;

II. the Military Courts and Judges instituted by law.

#### Article 123 [Superior Military Court]

(0) The Superior Military Court is formed by fifteen life tenured Justices appointed by the President of the Republic after approval of their indication by the Federal Senate, three of which among admirals of the Navy, four among generals of the Army, three among generals of the Air Force, all of them in active service and in the highest rank of their career, and five among civilians.

(1) The civilian Justices are chosen by the President of the Republic among Brazilians over thirty-five years of age, of which:

I. three among lawyers of notorious legal knowledge and unblemished conduct, with over ten years of actual professional activity;

II. two, by equal choice, among military judges and members of the Military Attorney General's Office.

#### Article 124 [Functions]

(0) It shall be incumbent upon the Military Courts to process and adjudicate the military crimes defined by law.

(1) The law provides for the organization, operation, and jurisdiction of the Military Courts.

### Section VIII Courts and Judges of the States

#### Article 125 [Guidelines]

(0) The States organize their Courts, observing the principles established in this Constitution.

(1) The jurisdiction of the courts is defined in the Constitution of the State, and the law of judicial organization is the initiative of the Court of Appeals.

(2) It is incumbent upon the States to institute actions of unconstitutionality of state or municipal laws or normative acts in view of the State Constitution, and it is forbidden to ascribe standing to act to only one simple body.

(3) By proposal of the Court of Appeals, a state law may create state Military Courts, which are formed at first instance by the Councils of Justice and at second instance by the Court of Appeals itself or by a Military Court of Appeals in those States in which the state troops are more than twenty thousand members.

(4) It is incumbent upon the state Military Courts to process and try members of the state troops and of the military fire brigade for the military crimes defined by law, and it is incumbent upon the appropriate court to decide on the loss of post and rank of officers and of the grade of servicemen.

#### Article 126 [Rural Propriety Deputies]

(0) For resolving conflicts relating to rural property, the Court of Appeals designates special level judges with exclusive jurisdiction for agrarian matters.

(1) Whenever required for efficient jurisdictional service, the judges go personally to the site of the conflict.

## Chapter IV Functions Essential to Justice

### Section I Attorney General's Office

#### Article 127 [Attorney General's Office]

(0) The Attorney General's Office is a permanent institution, essential to the jurisdiction function of the State, and it is incumbent upon it to defend the juridical order, the democratic regime and indisposable social and individual interests.

(1) Unity, indivisibility, and functions independence are institutional principles of the Attorney General's Office.

(2) The Attorney General's Office is assured of functional and administrative autonomy, and it may, with due regard for the provisions of Article 169, propose to the Legislative the creation and extinction of its offices and ancillary services, filling them through a public competitive examination of tests or of tests and titles; the law shall provide for its organization and operation.

(3) The Attorney General's Office draws up its budgetary proposal within the limits established in the budget directives law.

#### Article 128 [Composition]

(0) The Attorney General's Office includes:

I. the Attorney General's Office of the Republic, which comprises:

- a) the Federal Attorney General's Office;
- b) the Labor Attorney General's Office;
- c) the Military Attorney General's Office';
- d) the Attorney General's Office of the Federal District and of the Territories;

II. the Attorney General's Offices of the States.

(1) The head of the Attorney General's Office of the Republic is the Attorney General of the Republic, appointed by the President of the Republic among career members over thirty-five years of age, after approval of his name by an absolute majority of the members of the Federal Senate, for a term of office of two years, re-appointment being permitted.

(2) Removal of the Attorney General of the Republic from office, on the initiative of the President of the Republic, is subject to prior authorization by an absolute majority of the Federal Senate.

(3) The Attorney General's Office of the State and of the Federal District and



of the Territories form a list of three names from career members, as set forth in the respective law, for the choice of their Attorney General, who is appointed by the Head of the Executive Branch for a term of office of two years, re-appointment being permitted.

(4) The Attorneys General of the States and of the Federal District and the Territories may be removed from office by a resolution of an absolute majority of the Legislative Branch, as set forth in the respective supplement law.

(5) Supplement laws of the Republic and of the States, which may be proposed by the respective Attorney General, shall establish the organization, the duties, and the bylaws of each Attorney General's Office, observing, as regards their members:

I. the following guarantees:

- a) life tenure, after two years in office, and loss of office only by a final and unappealable court decision;
- b) irremovability, except by reason of public interest, through a decision of the appropriate collegiate body of the Attorney General's Office, by the vote of two thirds of its members, ensuring ample defense;
- c) irreducibility of earnings, observing, with respect to compensation, the provisions of Articles 37 XI, 150 II, 153 III, 153 (2) I;

II. the following prohibitions:

- a) receiving, on any account and under any pretence, fees, percentages or court costs;
- b) having a law practice;
- c) participating in a commercial company, in accordance with the law;
- d) performing, even when suspended from office, any other public function, except for teaching;
- e) carrying out political party activities, save for the exceptions set forth in the law.

#### Article 129 [Functions]

(0) The following are institutional functions of the Attorney General's Office;

I. to institute, with exclusivity, public criminal action, as set forth in the law;

II. to ensure effective respect by the Government Branches and by the services of public relevance for the rights ensured under this Constitution, taking the action required to guarantee such rights;

III. to institute civil investigation and public civil action to protect public and social property, the environment, and other diffuse and collective interests;

IV. to institute unconstitutionality action or suit for purpose of intervention by the Republic and by the States, in the cases set forth in this Constitution;

V. to defend in court the rights and interest of the Indian populations;

VI. to issue notices in administrative procedures under its jurisdiction,

requesting information and documents to support same according to the respective supplemental law;

VII. to exercise external control over police activities, according to the supplemental law mentioned in the preceding article;

VIII. to request investigation procedures and the institution of police investigations, indicating the legal grounds of its procedural acts;

IX. to perform other functions which may be conferred upon it, provided that they are compatible with its objectives, with the prohibition of judicial representation and legal consultancy for public entities.

(1) The standing of the Attorney General's Office to institute the civil actions set forth in this article does not preclude the standing of third parties in the same cases, according to the provisions of this Constituting and of the law.

(2) The functions of the Attorney General's Office may only be performed by career members, who must reside in the judicial district of their respective assignment.

(3) Admission into the career take place by means of a public competitive examination of tests and titles, ensuring participation of the Brazilian Bar in such examination and observing, for appointment, the order of classification.

(4) The provisions of Article 93 II and VI apply to the Attorney General's Office, where appropriate.

#### Article 130 [Application for Audit Courts]

The provisions of this section regarding rights, prohibitions, and form of investiture apply to members of the Attorney General's Office before the Audit Courts.

### Section II Advocacy General of the Republic

#### Article 131 [Advocacy General of the Union]

(0) The Advocacy General of the Union is the institution which, either directly or through a connected body, represents the Republic in and out of Court, and it is responsible, according to the supplemental law which provides for its organization and operation, for the activities of legal consultancy and assistance to the Executive.

(1) The head of the Advocacy General of the Union is the Advocate General of the Union, freely appointed by the President of the Republic among citizens over thirty-five years of age, of notorious legal knowledge and unblemished reputation.

(2) Admission into the initial classes of the careers of the institution dealt with in this article takes place through a public competitive examination of tests and titles.

(3) In execution of tax debts owed by the Republic, the Republic is represented by the Office of the Procurator General of the National Treasury,

with due regard for the provisions of the law.

#### Article 132 [States]

The Attorney of the States and of the Federal District perform judicial representation and legal counselling for their respective federated units, organized into a career, admission into which depends on a public competitive examination of tests and titles, with due regard for the provisions of Article 135.

### Section III Advocacy and Public Defender's Office

#### Article 133 [Lawyers]

The lawyer is indispensable to the administration of justice, and he is inviolable for his acts and statements in the practice of his profession, within the limits of the law.

#### Article 134 [Public Defender's Office]

(0) The Public Defender's Office is an institution essential to the State's jurisdictional function and responsible for legal advice to and defense of the needy at all instances, set forth in Article 5 LXXIV.

(1) A supplemental law organizes the Public Defender's Office of the Republic and of the Federal District and of the Territories, and prescribes general rules for its organization in the States, into career offices, filed, in the initial level, through a public competitive examination of tests and titles, ensuring its members guaranteed irremovability and prohibiting the practice of law outside their institutional duties.

#### Article 135 [Submission to Principles]

The careers regulated under this Title are subject to the principles of Articles 37 XII and 39 (1).

## Title V Defense of the State and of the Democratic Institutions

### Chapter I State of Defense and State of Siege

#### Section I State of Defense

Article 136 [State of Defense] (0) The President of the Republic may, after hearing the Council of the Republic and the Council of National Defense, decree a state of defense to preserve or to promptly re-establish, in certain and restricted locations, public order or social peace whenever threatened by serious and imminent institutional instability or affected by major natural calamities.

(1) The decree instituting a state of defense determines the period of its duration, specifies the areas to be encompassed and indicates, within the terms and limitations of the law, the coercive measures to be put into force

out of the following:

I. restrictions to the rights of:

- a) meeting, even within associations;
- b) secrecy of correspondence;
- c) secrecy of telegraph and telephone communication;

II. occupation and temporary use of public or private property, workforce, and services in the event of a public calamity, the Republic being liable for the resulting damages and costs.

(2) A state of defense may not last for longer than thirty days and it may be extended once for an identical period if the reasons justifying the respective decree persist.

(3) During the period in which a state of defense is in force:

I. arrest for a crime against the State, determined by the party executing the measure, are immediately communicated by such party to the proper judge, who remits it if it is illegal, provided that the arrested person may request examination of corpus delict from the police authority;

II. the communication has to be accompanied by a statement by the authority as to the physical and mental state of the arrested person at the time of his or her arrest;

III. no person may be imprisoned or detained for more than ten days, unless authorized by the Judiciary branch;

IV. incommunicability of the arrested person is forbidden.

(4) Upon decree of state of defense or extension thereof, the President of the Republic shall within twenty-four hours submit the act with the respective justification to Congress, which decides by absolute majority.

(5) If Congress is in recess, it is called extraordinarily within five days.

(6) Congress examines the decree within ten days as from receipt thereof, and remains in operation as long as the state of defense is in force.

(7) If the decree is rejected, the state of defense ceases immediately.

## Section II State of Siege

### Article 137 [Martial State]

(0) The President of the Republic may, after hearing the Council of the Republic and the Council of National Defense, request Congress to authorize a decree of state of siege in the event of:

I. serious disturbance with national effects or occurrence of facts that evidence the ineffectiveness of a measure taken during the state of defense.

II. declaration of state of war or reaction to foreign armed aggression.

(1) The President of the Republic shall, on requesting authorization to decree a state of siege or extend it, submit the reasons for such request, and Congress shall decide by absolute majority.

### Article 138 [State of Siege Decree]



(0) The decree of a state of siege shall specify the period of its duration, the rules required to implement it and the constitutional guarantees that are to be suspended and, after publication, the President of the Republic designates the person who is to execute the specific measures and the areas encompassed.

(1) In the event of Article 137 I, state of siege may not be decreed for more than thirty days and each extension may not exceed thirty days; in the event of Item II, it may be decreed for the entire period of the war or foreign aggression.

(2) If authorization to decree a state of siege is requested during parliamentary recess, the President of the Federal Senate immediately calls Congress extraordinarily to convene within five days in order to examine the act.

(3) Congress remains in operation until the end of the coercive measures.

#### Article 139 [Restrictions]

(0) During the effectiveness of a state of siege decreed under Article 137 I, only the following measures may be taken against persons:

I. obligation to remain in a given place;

II. detention in a building not intended for persons accused of or convicted for 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, according to the law;

IV. suspension of freedom to meet;

V. intervention in public utility companies;

VI. requisitioning of property.

(1) Not included in the restrictions of Item III is the broadcasting of statements made by members of Parliament in their Legislative Houses, if authorized by the respective Presiding Board.

### Section III General Provisions

#### Article 140 [Special Standing Committee]

The Presiding Board of Congress shall, after hearing the party leaders, designate a Committee made up of five of its members to monitor and supervise the implementation of measures of state of defense and state of siege.

#### Article 141 [Termination]

(0) When the state of defense or state of siege ceases, its effects also cease, without prejudice to liability for unlawful acts performed by the

executors or agents thereof.

(1) As soon as the state of defense or state of siege ceases, the measures applied during the effectiveness thereof are reported by the President of the Republic in a message to Congress, specifying and justifying the action taken, listing the names of those affected and indicating the restrictions applied.

## Chapter II Armed Forces

### Article 142 [The Armed Forces, Defence]

(0) 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. They are intended to defend the Nation, guarantee the constitutional branches, and, on the initiative of any of them, law and order.

(1) A supplemental law establishes the general rules to be adopted for the organization, training, and employment of the Armed Forces.

(2) Habeas corpus does not apply to military disciplinary punishments.

### Article 143 [Military Service]

(0) Military service is compulsory according to the law.

(1) It is incumbent upon the Armed forces, according to the law, to assign an alternative service to those who, in times of peace, after being enlisted, allege reasons of conscience, which shall be understood as reasons based on religious creed and philosophical or political belief for exemption from essentially military activities.

(2) Women and clergymen are exempted from compulsory military service in times of peace but are subject to other duties that may be attributed to them by law.

## Chapter III Public Security

### Article 144 [Public Security]

(0) Public security, which is the duty of the State and the right and responsibility of all, is exercised to preserve public order and the invulnerability of persons and property, by means of the following bodies:

I. federal police;

II. federal highway police;

III. federal railway police;

IV. state polices and military fire brigades.

(1) The federal police, instituted by law as a permanent body and structured into a career, is intended:

I. to determine criminal offenses against the political and social order or to the detriment of property, services, and interests of the Republic and of its autonomous government entities and state companies, as well as other offenses with interstate or international effects and requiring uniform repression according to the law;

II. to hinder and repress illegal traffic of narcotics and like drugs, smuggling and contraband, without prejudice to action by the treasury and other government agencies in their respective jurisdiction;

III. to exercise the functions of maritime, air and frontier police;

IV. to exercise, with exclusivity, the functions of judicial police of the Republic.

(2) The federal highway police is a permanent body structured into a career and intended, according to the law, to ostensibly patrol the federal highways.

(3) The federal railway police is a permanent body structured into a career and intended, according to the law, to ostensibly patrol the federal railways.

(4) It is incumbent upon the civilian police, directed by career police officers and excepting the authority of the Republic, to exercise the functions of judicial police and to determine criminal offenses, except for military ones.

(5) It is incumbent upon the state troops to carry out the functions of ostensive police and to preserve the public order; it is incumbent upon the military fire brigades, in addition to the duties defined by law, to carry out activities of civil defense.

(6) The state troops and military fire brigades, ancillary forces, and reserve of the Army are subject, together within the civilian police, to the Governors of the State, of the Federal District and of the Territories.

(7) The law regulates the organization and operation of the bodies responsible for public security in such a manner as to guarantee the efficiency of their activities.

(8) The Municipalities may organize municipal guards to protect their property, services, and facilities, according to the law.

## **Title VI Taxation and Budget**

### **Chapter I National Tributary System**

#### **Section I General Principles**

##### **Article 145 [Taxation]**

The Republic, the States, the Federal District, and the Municipalities may institute the following tributes:

I. taxes;

II. fees, by virtue of the exercise of police power or for the actual or potential use of specific and divisible public services rendered to taxpayers

or made available to them.

III. assessments, by virtue of public works.

(1) Whenever possible, taxes shall be personal and graded according to the economic capacity of the taxpayer, and the tax administration may, especially to make these objectives effective and respecting individual rights and the terms of the law, identify the property, income, and economic activities of the taxpayer.

(2) Fees may not have the assessment basis reserved for taxes.

#### Article 146 [Supplemental Law on Taxes]

A supplemental law shall:

I. deal with conflicts of taxing power among the Republic, the States, the Federal District, and the Municipalities;

II. regulate the constitutional limits to taxing power;

III. establish general rules for tax legislation, particularly regarding:

a) the definition of tributes and their kinds, and, as regards the taxes specified in this Constitution, the definition of the respective taxable events, assessment bases, and taxpayers;

b) tax liability, assessment, credit, statute of limitations, and laches;

c) adequate tax treatment for the cooperative acts performed by cooperative entities.

#### Article 147 [Taxation in Territories]

In a Federal Territory, state taxes are within the taxing power of the Republic and, if the Territory is not divided into Municipalities, also municipal taxes; municipal taxes are within the taxing power of the Federal District.

#### Article 148 [Compulsory Loans]

The Republic may, by means of a supplemental law, institute compulsory loans:

I. to defray extraordinary expenses resulting from public calamity, foreign war or imminence thereof;

II. in the event of a public investment that is urgent or of relevant national interest, with due regard for the provisions of Article 150 III b).

(1) Applications of the funds derived from a compulsory loan shall be linked to the expense that justified the institution thereof.

#### Article 149 [Social and Economic Taxes]

(0) It is exclusively incumbent upon the Republic to institute social contributions, contributions regarding intervention in the economic domain, and contributions in the interest of the professional or economic categories, as an instrument of activity in the respective areas, with due regard for the provisions of Articles 146 III and 150 I and III, and without prejudice to the provisions of Article 195 (6), for the contributions mentioned in the provision.



(1) The States, the Federal District, and the Municipalities may institute a contribution payable by their servants to fund a social assistance and security system to their benefit.

## Section II Limitations to Taxing Powers

### Article 150 [Main Limits]

(0) Without prejudice to any other guarantees ensured to the taxpayer, it is forbidden for the Republic, the States, the Federal District, and the Municipalities:

- I. to claim or increase a tax without a law establishing such claim or increase;
- II. to institute unequal treatment for taxpayers that are in an equivalent situation, it being forbidden to make any distinction by virtue of the professional occupation or function performed by them, regardless of the legal designation of the income, instruments or rights;
- III. to collect tributes:
  - a) for taxable events that occurred before the effectiveness of the law that instituted or increased them;
  - b) in the same fiscal year in which the law that instituted or increased them was published;
- IV. to use tributes for purposes of confiscation;
- V. to establish limitations to the traffic of persons or goods by means of interstate or intermunicipal tributes, except for the collection of toll fees for the use of highways maintained by the Government;
- VI. to institute taxes on:
  - a) property, income, or services of one by another;
  - b) temples of any cult;
  - c) property, income, or services of political parties, including their foundations, of worker unions, and of non-profit educational and social assistance institutions, with due regard for the requirements of the law;
  - d) books, newspapers, periodicals, and paper intended for the printing thereof;
  - e) The prohibition contained in Item III b) does not apply to the taxes set forth in Articles 153 I, II, IV, and V, and 154 II.

(2) The prohibition contained in Item VI a) extends to autonomous government entities and foundations instituted and maintained by the Government as regards the property, income

and services connected with their essential purposes or resulting therefrom.

(3) The prohibitions contained in Item VI a) and in the preceding paragraph do not apply to property, income, and services connected with the exploitation of economic activities governed by the rules that apply to private undertakings

or to undertakings in which users pay consideration or prices or tariffs, not exempt the party who agreed to buy real property from the obligation to pay tax there on.

(4) The prohibitions contained in Item VI b) and c) encompass only the property, income, and services connected with the essential purpose of the entities mentioned therein.

(5) The law determines measures for consumers to obtain information regarding the taxes levied on goods and services.

(6) Any subsidy or exemption, reduction of assessment basis, concession of presumed credit, amnesty or remission, related to taxes, fees or contributions, may only be granted by means of a specific federal, state or municipal law, which provides exclusively for the above-enumerated matters or the corresponding tax, fee or contribution, without prejudice to the provisions of Article 155 (2) XII g.

(7) The law may impose upon the taxpayer the burden of the payment of a tax or contribution, whose taxable event will occur later, the immediate and preferential restitution of the amount paid being ensured, in case the presumed taxable event does not occur.

#### Article 151 [Limits to the Republic]

It is forbidden for the Republic:

I. to institute taxes that are not uniform throughout the entire national territory or that imply a distinction or preference regarding a State, the Federal District, or a Municipality to the detriment of another, provided that tax incentives may be granted to balance social economic development among the various regions of Brazil;

II. to tax income from public debt bonds of the States, of the Federal District, and of the Municipalities, as well as the compensation and earnings of the respective public agents, at levels above those established for its own bonds and agents;

III. to institute exemptions from taxes within the jurisdiction of the States, the Federal District, or the Municipalities.

#### Article 152 [Forbidden to Divisions]

It is forbidden for the States, the Federal District and the Municipalities to establish a tax difference between goods and services of any nature by virtue of their origin or destination.

### Section III Federal Taxes

#### Article 153 [Taxes of the Federation]

(0) It is incumbent upon the Republic to institute taxes on:

I. imports of foreign products;

- II. exports to other countries of national or nationalized products;
- III. income and earnings of any nature;
- IV. industrialized products;
- V. transactions of credit, foreign exchange, and insurance, or transactions with instruments and securities;
- VI. rural property;
- VII. large fortunes, according to a supplemental law.

(1) The executive Branch may, with due regard for the conditions and limits established in the law, alter the rates of the taxes listed in Items I, II, IV, and V.

(2) The tax established in Item III:

I. shall be based on criteria of generality, universality, and progressiveness according to the law;

II. shall not be levied, according to the terms and limits established in the law, on income derived from retirement and pension paid by the social security system of the Republic, of the States, of Federal District, and of the Municipalities to a person with over sixty-five years of age and whose total income consists exclusively of work pay.

(3) The tax set forth in Item IV:

I. shall be selective, based on the essentiality of the product;

II. shall be non-cumulative, and the tax due for each transaction shall be offset by the amount charged at the previous transactions;

III. shall not be levied on industrialized products intended for export.

(4) The tax set forth in Item VI shall have its rates established in such a manner as to discourage the maintenance of unproductive real property and shall not be levied on small rural areas, as defined by law, when they are explored by himself or with his family, by an owner who has no other real property.

(5) Gold, when defined by law as a financial asset or negotiable instrument, is subject exclusively to the tax mentioned in item V of the main provision of this article, which is due on the original transaction; the minimum rate is one per cent, ensuring the transfer of the collected amount on 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 Municipality of origin.

#### **Article 154 [National Taxes]**

The Republic may institute:

I. by means of a supplemental law, taxes not listed in the preceding article, provided they are non-cumulative and have a specific taxable event or assessment basis other than those specified in this Constitution;

II. upon the imminence or in the case of foreign war, extraordinary taxes, whether or not included in its taxing power, which shall be gradually suppressed when the causes for their creation ceased.

## Section IV State and Federal District Taxes

### Article 155 [State and Federal District]

(0) The states and the Federal District shall have the power to institute taxes on:

- I. transfer by death and donation of any property or rights;
- II. transactions relating to the circulation of goods and to the rendering of interstate and intermunicipal transportation services and services of communication, even when such transactions and renderings begin abroad;
- III. ownership of automotive vehicles.

(1) The tax established in item I:

- I. for real property and respective rights is within the jurisdiction of the Federal District or of the State where the property is located;
- II. for assets, instruments, and credits is within the jurisdiction of the Federal District or of the State where the probate or enrolment is processed, or where the donor has his or her domicile;
- III. shall have its authority regulated by a supplemental law:
  - a) if the donor is domiciled or resident abroad;
  - b) if the deceased owned property, was resident or domiciled or had his or her probate processed abroad;
- IV. shall have its maximum rates established by the Federal Senate.

(2) The tax established in item II shall observe the following:

- I. it shall be non-cumulative and the tax due on each transaction of circulation of goods or rendering of services shall be offset by the amount charged at the previous ones by the same or by another State or by the Federal District;
- II. exemption or non-levy, except as otherwise determined in the law:
  - a) shall not imply a credit for offset against the amount due on the following transactions or rendering or services;
  - b) shall cause the annulment of the credit for the previous transactions;
- III. may be selective, according to the essentiality of the goods 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, establishes the rates that are to apply to interstate and export transactions and rendering of services;
- V. the Federal Senate may:
  - a) establish minimum rates for internal transactions, by a resolution on the initiative of one third and approved by an absolute majority of its members;
  - b) establish maximum rates for the same transactions to resolve a specific conflict involving interests of States, by a resolution on the initiative of an absolute majority and approved by two thirds of its members;
- VI. unless otherwise determined by the States and the Federal District, according to Item VII g), the internal rates for transactions of circulation



of goods and of rendering of services may not be lower than those established for interstate transactions;

VII. the following shall be adopted for transactions and for rendering of goods and services to end consumers located in another State:

- a) an interstate rate, when the recipient is a taxpayer;
- b) an internal rate, when the recipient is not a taxpayer;

VIII. in the event of Subitem a) of the preceding item, the tax corresponding to the difference between the internal rate and the interstate rate shall be attributable to the State where the recipient is located;

IX. shall also be levied:

- a) on the entry of goods imported from abroad, even in the case of goods intended for consumption or for the fixed assets of the establishment, as well as on services rendered abroad, the tax being attributable to the State where the establishment receiving the goods or services is located;
- b) on the total value of the transaction, when goods are supplied with services not included in the taxing power of the Municipalities;

X. shall not be levied:

- a) on transactions transferring industrialized products abroad, excluding semi-processed products as defined in a supplemental law;
- b) on transactions transferring oil, including lubricants, liquid and gaseous fuels derived there from and electric energy to other States;
- c) on gold, in the events defined in Article 153 (5);

XI. shall not include in its assessment basis the amount of the tax on industrialized products, when the transaction made between taxpayers and involving a products intended for industrialization or sale, represents a taxable event for both taxes;

XII. a supplemental law shall:

- a) define the taxpayers;
- b) deal with tax substitution;
- c) regulate the system for offsetting the tax;
- d) establish, for purposes of collection of the tax and definition of the liable establishment, the location of transactions of circulation of goods and of rendering of services;
- e) exclude from levy of the tax, in export to other countries, services and products other than those mentioned in Item X a);
- f) provide for the maintenance of a credit for services and goods remitted to another State and exported to other countries;
- g) regulate the manner in which, by resolution of the States and the Federal District, tax exemptions, incentives and benefits shall be granted and revoked.

(3) With the exception of the taxes mentioned in item II of the caption of the present article, and Article 153 I and II, no other tribute may be levied on transactions concerning electric energy, telecommunications services, petroleum by-products, fuels and minerals of the country.

## Section V Municipal Taxes

### Article 156 [Municipal Taxes]

- (0) It is incumbent upon the Municipalities to institute taxes on:
- I. urban real property;
  - II. transfer of propriety among alive persons, on any account and for consideration, of real property by nature or physical accession and of any in rem rights to real property, except for collateral, as well as the assignment of rights to the purchase thereof;
  - III. services of any nature not included in Article 155 II, as defined in a supplementary law.
  - IV. services of any nature not included in Article 155 I b), as defined in a supplemental law.
- (1) The tax set forth in Item I may be progressive, according to a municipal law, in order to ensure achievement of the social function of the property.
- (2) The tax set forth in Item II:
- I. shall not be levied on the transfer of property or rights incorporated into the assets of a legal entity to pay up its capital, nor on the transfer of property or rights as a result of consolidation, merger, spin off of extinction of a legal entity, unless, in the latter cases, the preponderant activity of the purchaser is the purchase and sale of such property or rights, the lease of real property or leasing;
  - II. is attributable to the Municipality where the property is located.
- (3) As regards the tax established in item III, a supplementary law shall:
- I. establish its maximum rates;
  - II. exclude exportations of services to other countries from levy of the said tax.
- (4) A supplemental law shall:
- I. establish the maximum rates for the taxes set forth in Items III and IV;
  - II. exclude exports of services abroad from levy of the tax set forth in item IV.

## Section VI Apportionment of Tributary Revenues

### Article 157 [Attributions for the States]

- (0) The following shall be attributed 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 at source from income paid on any account by them, their autonomous government entities, and by the foundations they institute and maintain;

II. twenty per cent of the proceeds from the collection of the tax that the Republic may institute in exercising the authority conferred in by Article 154 I.

**Article 158 [Attribution to the Municipalities]**

(0) The following is attributed to the Municipalities:

I. the proceeds from the collection of the federal tax on income and earnings of any nature withheld at source from income paid on any account by them, their autonomous government entities and by foundations instituted or maintained by them;

II. fifty per cent of the proceeds from the collection of the Federal tax on rural property for property located in the Municipalities;

III. fifty per cent of the proceeds from the collection of the State tax on the ownership of automotive vehicles licensed in their territories;

IV. twenty-five per cent of the proceeds from the collection of the State tax on transactions of distribution of goods and on rendering of services of interstate and intermunicipal transportation and of communication services.

(1) The revenue portions attributed to the Municipalities as mentioned in Item IV shall be credit according to the following criteria:

I. at least three quarters, in proportion to the value added in the transactions of distribution of goods and rendering of 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.

**Article 159 [Delivery]**

(0) The Republic shall deliver:

I. of the proceeds from the collection of taxes on income and earnings of any nature and non-manufactured products, forty-seven per cent in the following manner:

a) twenty-one wholes and five tenths per cent to the Participation Fund of the States and of the Federal District;

b) twenty-two wholes and five tenths per cent to the Participation Fund of the Municipalities;

c) three per cent, for allocation to programs to finance the productive sector of the North, Northeast, and Center West Regions, through their regional financial institutions, according

to regional development plans, the semi-arid area of the Northeast being assured of half the funds intended for the Region as established in the law;

II. of the proceeds from the collection of the tax on industrialized products, ten per cent to the States and to the Federal District, in proportion to the value of respective exports of industrialized products.

(1) For purposes of calculating the amount to be delivered under Item 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 Municipalities

according to Article 157 I, and 158 I shall be excluded.

(2) No federated unit may be allocated an amount in excess of twenty per cent of the amount referred to in Item II, and any excess shall be distributed among the other participants, maintaining the apportionment criterion established therein for the latter.

(3) It is forbidden to make any retention or restriction regarding the delivery and employment of the funds attributed under this section to the States, the Federal District, and the Municipalities, including any tax additions and increase.

#### Article 160 [Prohibition]

The prohibition mentioned in the present article does not prevent the Union and the states from remitting the funds on condition of payment of their credits, including those of the autonomous government agencies.

#### Article 161 [Supplemental Law]

(0) A supplemental law shall:

- I. define the added value for the purposes of Article 158 (1) I;
- II. establish rules for the delivery of the funds dealt with in Article 159, especially the criteria for apportionment of the funds mentioned in its Item I, seeking to maintain social and economic balance among States and among Municipalities;
- III. deal with the monitoring, by the beneficiaries, of the calculation of the quotas and release of the participations set forth in Articles 157, 158, and 159.

(1) The Audit Tribunal of the Union calculates the quotas referring to the participation funds mentioned in Item II.

#### Article 162 [Amount Publication]

(0) The Republic, the States, the Federal District, and the Municipalities shall announce, on or before the last day of the month following the month of collection, the amounts of each of the taxes collected, the funds received, the tax sums delivered and to be delivered and the numerical expression of the apportionment criteria.

(1) The data disclosed by the Republic shall be discriminated by State and by Municipality; those of the States by Municipality.

## Chapter II Government Finances

### Section I General Rules

#### Article 163 [Public Finances Law]

A supplemental law deals with:

- I. government finances;
- II. foreign and domestic government debt, including the debt of the autonomous



government entities, foundations, and other entities controlled by the Government;

III. rendering of guarantees by government entities;

IV. issuance and redemption of government debt bonds;

V. supervision of financial institutions;

VI. foreign exchange transactions carried out by agencies and entities of the Republic, of the States, of the Federal District, and of the Municipalities;

VII. compatibility of the functions of the official credit institutions of the Republic, safeguarding all the characteristics and operating conditions of those intended for regional development.

#### Article 164 [Coin Money, Central Bank, Control]

(0) The authority of the Republic to issue money is exercised exclusively by the Central Bank.

(1) It is forbidden for the Central Bank to directly grant loans to the National Treasury and to any agency or entity which is not a financial institution.

(2) The Central Bank may purchase and sell instruments issued by the National Treasury in order to regulate the money supply of the interest rate.

(3) The available cash of the Republic has to be deposited at the Central Bank; that of the States, of the Federal District, of the Municipalities, and of the agencies or entities of the Government and of the companies controlled by the Government, at official financial institutions, excepting the cases established in the law.

## Section II Budgets

#### Article 165 [Budget Plan & Legislation]

(0) Laws in the initiative of the Executive Branch establish:

I. the pluriannual plan;

II. the budget directives;

III. the annual budgets.

(1) The law that institutes the pluriannual plan establishes, by region, the directives, objectives, and targets of the Federal Government for the capital expenses and other expenses resulting therefrom and for those regarding continuous programs.

(2) The budget directives law contains the targets and priorities of the Federal Government, including the capital expenses for the following fiscal year, guides the preparation of the annual budget law, deals with changes in tax legislation, and establishes the investment policy for official promotion financing agencies.

(3) The Executive Branch, within thirty days of the end of each two month period, publishes a summarized report on budget implementation.

(4) The national, regional, and sectorial plans and programs set forth in this Constitution are prepared in accordance with the pluriannual plan and examined

by Congress.

(5) The annual budget law comprises:

- I. the tax budget for the Branches of the Republic, their funds, agencies, and entities of direct and indirect administration, including foundations instituted and maintained by the Government;
- II. the investment budget of the companies in which the Republic directly or indirectly holds the majority of the voting capital;
- III. the social security budget, covering all entities and agencies of direct or indirect administration connected with social security, as well as funds and foundations instituted and maintained by the Government.

(6) The budget law bill is accompanied by a regionalized statement on the effect on revenues and expenses as a result of financial, tax and credit exemptions, amnesties, remissions, subsidies, and benefits.

(7) The functions of the budgets established in Paragraph (5) I and II made compatible with the pluriannual plan, include the function of reducing interregional differences according to populational criteria.

(8) The annual budget law may not contain any provision that does not represent a forecast of revenues, according to the law.

(10) A supplemental law:

- I. deals with the fiscal year, effectiveness, terms, preparation, and organization of the pluriannual plan, of the budget directives law, and of the annual budget law;
- II. establishes rules of financial and property management by the direct and indirect administration, as well as conditions for the institution and operation of funds.

#### Article 166 [Bills, Drafts]

(0) The bills of law regarding the pluriannual plan, the budget directives, the annual budget, and the additional credits are examined by the two Houses of Congress under the common regulations.

(1) A permanent mixed Committee of Senators and Representatives shall

- I. examine and issue its opinion on the bills referred to in this article and on the accounts submitted each year by the President of the Republic;
- II. examine and issue its opinion on the national, regional, and sectorial plans and programs established in this Constitution and exercise budgetary monitoring and supervision, without prejudice to the activity of the other committees of Congress and of its Houses, created under Article 58.

(2) Amendments shall be submitted to the mixed Committee, which shall issue its opinion on them, and shall be examined, according to the regulations, by the Plenary Session of the two Houses of Congress.

(3) Amendments to the bill of the annual budget law or to bills that modify it may only be approved if:

- I. they are compatible with the pluriannual plan and with the budget directives law;

II. they specify the necessary funds, allowing only those resulting from the annulment of an expense and excluding those that apply to:

- a) appropriations for personnel and their charges;
- b) debt servicing;
- c) constitutional tax transfers to the States, Municipalities and Federal District; or

III. they are related:

- a) to the correction of errors or omissions; or
- b) to the provisions of the text of the bill.

(4) Amendments to the bill of the budget directives law may not be approved if they are incompatible with the pluriannual plan.

(5) The President of the Republic may send a message to Congress to propose the modification of the bills referred to in this article as long as the mixed Committee has not started to vote on the part for which an alteration is being proposed.

(6) The bills of the pluriannual plan law, budget directives law and annual budget law are submitted by the President of the Republic to Congress according to the supplemental act referred to in Article 165 (9).

(7) To the extent that they do not conflict with the provisions of this section, the other rules regarding legislative procedure shall apply to the bills mentioned in this article.

(8) Those funds which, by virtue of a veto, amendment or rejection of the bill of the annual budget law, have no corresponding expenses, may be used, as the case may be, means of special or supplemental credits with prior and specific legislative authorization.

#### Article 167 [Forbidden]

The following is forbidden:

I. to commence programs or projects not included in the annual budget law;

II. to incur expenses or assume direct obligations that exceed the budgetary or additional credits;

III. to carry out credit transactions that exceed the amount of capital expenses, excepting those authorized by means of supplemental or special credits for a precise purpose and approved by an absolute majority of the Legislative Branch;

IV. to bind tax revenues to an agency, fund or expense, excepting the sharing of the proceeds from the collection of the taxes referred to in Articles 158 and 159, the allocation of funds for the maintenance and development of education, as determined in Article 212, and the granting of guarantees on credit transactions by advance of revenues, as established in Article 165 (8) as well as in Paragraph (4) of the present article;

V. to open a supplemental or special credit without prior legislative authorization and without specification of the respective funds;

VI. to reclassify, reallocate, or transfer funds from one programming category to another or from one agency to another without prior legislative authorization;

- VII. to grant or use unlimited credits;
- VIII. to use, 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 Article 165 (5);
- IX. to institute funds of any nature without prior legislative authorization.
- (1) No investment implemented over more than one fiscal year may be commenced without prior inclusion in the pluriannual plan or without a law authorizing such inclusion, subject to criminal malversion.
- (2) Special and extraordinary credits shall be effective 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 event, the limits of their balances being reopened, they shall be incorporated into the budget of the subsequent fiscal year.
- (3) Opening of extraordinary credit shall only be allowed to cover unforeseeable and urgent expenses, such as those resulting from war, internal commotion of public calamity, with due regard for the provisions of Article 62.
- (4) It is permitted to bind proper revenues generated by the taxes referred to in Articles 155 and 156, and the funds mentioned in Articles 157, 158 and 159 I a and b, to the granting of a guarantee or a counterguarantee to the Union, and to the payment of debits owed to the same.

#### **Article 168 [Judicial Branch Funds]**

The funds corresponding to budgetary appropriation, including supplementary and special credits, intended for agencies of the Legislative and Judiciary Branches and of the Public Attorneys Office, are delivered to them by the twentieth day of each month, as set forth in the supplemental act referred to in Article 165 (9).

**Article 169 [Expenditures]** (0) Expenditures with Republic, State, Federal District, and Municipality staff, in activity and pensioned, may not exceed the limits established in a supplemental act.

- (1) Granting of any advantage or increase in compensation, creation of jobs or alteration in career structures, as well as hiring of personnel in any way, by agencies and entities of the direct or indirect administration, including foundations instituted and maintained by the Government, may only be effected:
- I. if there is a prior budgetary appropriation sufficient to cover the estimated personnel expenditures and the accretions resulting therefrom;
  - II. if there is specific authorization in the budget directives law, except for public companies and mixed capital companies.

## **Title VII Economic and Financial Order**

### **Chapter I General Principles of Economic Activity**

#### **Article 170 [Economic Order, Market System, Social and Democratic Basis]**



#### Article 170 [Economic Order, Market System, Social and Democratic Basis]

(0) The economic order, founded on the appreciation of human work and on free enterprise, is intended to ensure everyone a life with dignity, according to the dictates of social justice, with due regard for 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 differences;

VIII. achievement of full employment;

IX. preferential treatment for small enterprises organized under Brazilian laws and having their head-office and management in Brazil.

(1) Free exercise of any economic activity is ensured to everyone, regardless of any government authorization, except in the cases set forth by law.

#### Article 171 [Concepts]

{ Revoked by Constitutional Amendment No. 6/1995 of 15 Aug 1995 }

#### Article 172 [Investments]

The law regulates foreign capital investments, according to national interests, encourages reinvestments, and regulates the remittance of profits.

#### Article 173 [Public Companies]

(0) With the exception of the cases set forth in this Constitution, the direct exploitation of an economic activity by the State is only allowed whenever it is necessary to national security or to a relevant collective interest, as defined in the law.

(1) Public companies, mixed capital companies, and other entities engaged in economic activities are subject to the specific legal regimes governing private companies, including with respect to labor and tax liabilities.

(2) Public companies and mixed capital companies may not enjoy fiscal privileges which are not extended to companies of the private sector.

(3) The law regulates the relationships of public companies with the State and with society.

(4) The law represses abuse of economic power aiming at domination of markets, elimination of competition, and arbitrary increase of profits.

(5) The law, without prejudice to the individual liability of the officers of a legal entity, establishes the liability of the latter, subjecting it to penalties compatible with its nature, for acts that contravene the economic and financial order and the economy of the people.

#### Article 174 [State and Economy]

(0) As the normative and regulating agent of economic activity, the State, in the manner set forth by law, performs the functions of supervision, incentive, and planning, the latter being binding for the public sector and indicative for the private sector.

(1) The law establishes the guidelines and bases for planning balanced national development, which embody national and regional development plans and make them compatible.

(2) The law supports and encourages cooperativism and other forms of association.

(3) The State favors the organization of cooperatives for mineral prospecting and mining activities, taking into account the protection of the environment and the social economic promotion of the prospectors and miners.

(4) The cooperatives referred to in the preceding paragraph have priority in obtaining authorization or grants for prospecting and mining of mineral resources and deposits in the areas where they are operating and in those established in accordance with Article 21 XXV, in the manner set forth in the law.

#### Article 175 [Public Utility Services]

(0) In the manner set forth in the law the Government is responsible for providing public utility services either directly or by grant or permit, which will always be through public bidding.

(1) The law provides for:

I. the regime for public utility companies, the special nature of their contract, and of extension thereof, and the conditions of forfeiture, control, and termination of the grant or permit;

II. the rights of users;

III. tariff policy;

IV. the obligation of maintaining adequate services.

#### Article 176 [Monopolies]

(0) Mineral deposits, whether being exploited or not, and other mineral resources and hydraulic energy potential represent property separate from the soil, for purposes of exploitation or use, and belong to the Republic, the grant holder being guaranteed ownership of the mined product.

(1) The prospecting and mining of mineral resources and the utilization of the potentials mentioned in the caption of this article may only take place with authorization or concession by the Union, in the national interest, by Brazilians or by a company organized under Brazilian laws and having its head-office and management in Brazil, in the manner set forth by law, which law shall establish specific conditions when such activities are to be conducted in the boundary zone or on Indian lands.

(2) The owner of the soil is assured of participation in the results of the mining work, in the manner and amount provided for by law.

(3) Authorization for prospecting shall always be granted for a limited period

of time and the authorizations and grants set forth in this article may not be assigned or transferred, either in full or in part, without the prior consent of the granting authority.

(4) Exploitation of a renewable energy potential of small capacity does not require an authorization or grant.

#### Article 177 [Monopoly of Some Activities]

(0) The following are the monopoly of the Republic:

I. prospecting and exploitation of deposits of oil and natural gas or other fluid hydrocarbons;

II. refining of national or foreign oil;

III. imports and exports of the products and basic by-products resulting from the activities set forth in the preceding items;

IV. ocean transportation of crude oil of national origin or of basic oil by products produced in Brazil, as well as pipeline transportation of crude oil, its by products and natural gas of any origin;

V. prospecting, mining, enrichment, reprocessing, industrialization, and trading of nuclear mineral ores and minerals and their by products.

(1) The monopoly established in this article includes the risks and results deriving from the activities mentioned therein, and the Republic is forbidden to assign or grant any kind of participation, either in kind or in legal tender, in the exploitation of oil or natural gas deposits, excepting the provisions of Article 20 (1).

(2) The law shall provide for the transportation and use of radioactive materials within the Brazilian territory.

#### Article 178 [Transportation]

(0) The law shall provide for the regulation of air, water and ground transportation, and it shall, in respect to the regulation of international transportation, comply with the agreements entered into by the Union, with due regard to the principle of reciprocity.

(1) In regulating water transportation, the law shall set forth the conditions in which the transportation of goods in coastal and internal navigation will be permitted to foreign vessels.

#### Article 179 [Small Companies Help]

The Republic, the States, the Federal District, and the Municipalities afford micro companies and small companies, as defined by law, differentiated legal treatment, seeking to further them through simplification of their administrative, social security, and credit obligations or through elimination or reduction thereof by means of a law.

#### Article 180 [Tourism]

The Republic, the States, the Federal District, and the Municipalities promote and further tourism as a factor of social and economic development.

**Article 181 [Response to Foreign Authority]** Response to a requisition for a document or for information of a commercial nature, made by a foreign administrative or judicial authority to an individual or legal entity residing or domiciled in Brazil require authorization from the proper Authority.

## Chapter II Urban Policy

### **Article 182 [Municipal Urbanization]**

(0) The urban development policy carried out by the Municipal Government, according to general guidelines set forth in the law, is aimed at organizing the full development of the city's social functions and ensuring the well being of its inhabitants.

(1) The master plan, approved by the City Council, which is compulsory for cities of over twenty thousand inhabitants, is the basic tool of the urban development and expansion on policy.

(2) Urban property performs its social function when it meets the fundamental requirements for the city's organization as set forth in the master plan.

(3) Expropriation of urban property is made against prior and fair compensation in cash.

(4) The Municipal Government may, by means of a specific law, in relation to areas included in the master plan, demand, according to federal law, that the owner of unbuilt, underused, or unused urban soil provide for adequate use thereof, subject, successively, to:

I. compulsory subdivision or construction;

II. rates of urban property and land tax that are progressive in time;

III. expropriation with payment in public debt bonds issued with the prior approval of the Federal Senate, redeemable within up to ten years, in equal and successive annual instalments, ensuring the real value of the compensation and legal interest.

### **Article 183 [Usurpation]**

An individual who holds 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 home, acquires title to such property, provided that he does not own any other urban or rural property.

(1) The deed of title and authorization of use is granted to the man or woman, or both, regardless of their marital status.

(2) Such right shall not be recognized for the same holder more than once.

(3) Public real property shall not be acquired by usurpation.

## Chapter III Agricultural and Land Policy and Agrarian Reform



#### Article 184 [Agrarian Reform]

(0) It is incumbent upon the Republic to expropriate for social interest, for purposes of agrarian reform, rural property which is not performing its social function, against prior and fair compensation in agrarian debt bonds with a clause providing for maintenance of real value and redeemable within a period of up to twenty years as from the second year of issue, and the use of which shall be defined in the law.

(1) Useful and necessary improvements are compensated in cash.

(3) A supplemental act establishes special summary adversary proceedings for expropriation action.

(4) The budget each year determines the total volume of agrarian debt bonds, as well as the amount of funds for the agrarian reform program in the fiscal year.

(5) Transactions of transfer of property expropriated for agrarian reform purposes are exempt from federal, state, and municipal taxes.

#### Article 185 [Limits of Agrarian Reform]

(0) The following shall not be subject to expropriation for agrarian reform purposes:

I. small and medium sized rural property, as defined in the law, provided its owner does not own other property;

II. productive property.

(1) The law ensures special treatment for productive property and establishes rules for the fulfilment of the requirements for its social function.

#### Article 186 [Social Function, Limits]

The social function is performed when rural property simultaneously meets, according to the criteria and standards prescribed in the law, the following requirements:

I. rational and adequate use;

II. adequate use of available natural resources and preservation of the environment;

III. compliance with the provisions which regulate labor relations;

IV. exploitation which favors the well-being of the owners and workers.

#### Article 187 [Policy]

The agricultural policy is planned and carried out pursuant to the law, with the actual participation of the production sector comprising producers and rural workers, as well as the marketing, storage, and transportation sectors, with special consideration for:

I. credit and fiscal mechanisms;

II. prices compatible with production cost and marketing guarantees;

III. research and technology incentives;

IV. technical assistance and rural extensions;

V. agricultural insurance;

VI. cooperativism;

VII. rural electricity and irrigation systems;

VIII. housing for rural workers.

(1) Agricultural planning includes agroindustrial, stock raising, fishing, and forestry activities.

(2) Agricultural policy action is rendered compatible with agrarian reform action.

#### Article 188 [Public Vacant Lands]

(0) The destination given to public and vacant lands is to be compatible with the agricultural policy and the national agrarian reform plan.

(1) The disposal or granting in any way 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, shall require the prior approval of Congress.

(2) Disposals or grants of public lands for agrarian reform purposes are excluded from the provisions of the preceding paragraph.

#### Article 189 [Propriety Title]

(0) The beneficiaries of distribution of rural land under the agrarian reform receive deeds of title or authorization of use which may not be transacted for a period of ten years.

(1) The deed of title and authorization of use is granted to the man or the woman, or to both, irrespective of their marital status, pursuant to the terms and conditions set forth in the law.

#### Article 190 [Restrictions]

The law regulates and restricts the acquisition or lease of rural property by a foreign individual or legal entity, and determines the cases subject to authorization from Congress.

#### Article 191 [Usurpation]

(0) The individual who, not being the owner of rural or urban property, holds as his own, for five years, without interruption or opposition, an area of land on the rural zone not exceeding fifty hectares and with his labor and that of his family makes the land productive and dwells thereon, shall acquire ownership of the land.

(1) Public property shall not be acquired by usurpation.

## Chapter IV National Financial System

Article 192 [Financial System] (0) The national financial system, structured to promote the balanced development of Brazil and serve the collective interests, is regulated by a supplemental law which also provides for:

I. authorization for the operation of financial institutions, ensuring

official and private banks access to all instruments of the banking financial market, such institutions being prohibited from engaging in activities not foreseen in the authorization mentioned in this item;

II. authorization and operation of insurance, social security, and capitalization companies, as well as of the official supervisory agency and of the official reinsurance agency;

III. conditions for the participation of foreign capital in the institutions referred to in the preceding items, considering especially:

a) national interests;

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 public economy, guaranteeing credits, investments, and deposits up to a certain amount, the participation of federal funds being forbidden;

VII. criteria restricting the transfer of savings from regions with income below the national average to more developed regions;

VIII. operation of credit cooperatives and requirements for them to operate and have the structure inherent to financial institutions.

(1) The authorization referred to in Items I and II are non-negotiable and non-transferable, transfer of control of the authorized legal entity being allowed, and is granted free of charge, according to the national financial system law, to a legal entity whose directors are technically qualified and of unblemished reputation and which proves that its economic capacity is compatible with the undertaking.

(2) The funds for regional programs and projects under the responsibility of the Republic are deposited at their regional credit institutions and invested by them.

(3) Real interest rates, including commission and any other consideration directly or indirectly related to the extension of credit, shall not exceed twelve percent per annum; interest charged above this limit shall be considered as a usury crime and shall be punished in all of its forms as the law shall determine.

## **Title VIII Social Order**

### **Chapter I General Provision**

#### **Article 193 [Work, Social Justice]**

The social order is founded on the primacy of work and aimed at social well-being and justice.

### **Chapter II Social Security**

#### **Section I General Provision**

#### Article 194 [Social Security and Assistance]

(0) Social security comprises an integrated set of initiatives by the Branches of Government and by Society, aimed at ensuring the rights to health, social security, and social assistance.

(1) It is incumbent upon the Government, pursuant to the law, to organize social security based on the following objectives:

- I. universality of coverage and service;
- II. uniformity and equivalence of benefits and services for urban and rural populations;
- III. selectivity and distributivity in the provision of benefits and services;
- IV. irreducibility of the value of the benefits;
- V. diversity of financing basis;
- VII. democratic and decentralized character of administrative management, with the participation of the community and particularly of workers, businessmen and the retired.

#### Article 195 [Financial System]

(0) Social security is financed by all of society, either directly or indirectly, pursuant to the law, with funds derived from the budgets of the Republic, States, Federal District, and Municipalities and from the following social contributions:

- I. by employers, assessed on the payroll, billings, and profits;
- II. by workers;
- III. on revenues from prognostic lotteries.

(1) The revenues of the States, Federal District, and Municipalities intended for social security shall be included in the respective budgets and shall not be part of the federal budget.

(2) The proposal for the social security budget shall be prepared jointly by the health, social security, and social assistance agencies, taking into account the targets and priorities set forth in the budget directives law, ensuring each area the management of its funds.

(3) A legal entity indebted to the social security system, as foreseen in the law, may not contract with the Government nor receive benefits or fiscal or credit incentives from the Government.

(4) The law may institute other sources in order to ensure maintenance or expansion of social security, with due regard for the provisions of Article 154 I.

(5) No social security benefit or service may be created, increased, or extended without having a corresponding source of full funding.

(6) The social contributions mentioned in this article may only be charged ninety days after the publication of the law which instituted or modified them, and the provisions of Article 150 III b) shall not apply thereto.

(7) Social assistance charity institutions, which meet the requirements set



forth in the law, are exempted from contribution to social security.

(8) Rural producers, partners, half and half sharecroppers and tenant farmers, mineral prospectors, and miners and unqualified fishermen, as well as their respective spouses, contribute to social security by applying a rate to the proceeds from the sale of their production and are entitled to the benefits pursuant to the law.

## Section II Health

### Article 196 [Health, Right of Assistance]

Health is the right of all persons and the duty of the State and is guaranteed by means of social and economic policies aimed at reducing the risk of illness and other hazards and at universal and equal access to all actions and services for the promotion, protection and recovery of health.

### Article 197 [Public System, Private Nets]

Health actions and services are of public relevance and it is incumbent upon the Government to provide, pursuant to the law, for their regulation, supervision and control. Such actions and services are to be carried out directly or through third parties and also by means of individuals or legal entities of private law.

### Article 198 [Public Healthcare Guidelines]

(0) Public health actions and services are part of a regionalized and hierarchical network and constitute a single system organized according to the following guidelines:

- I. decentralization with a single management in each government sphere;
- II. full service, priority being given to preventive activities, without prejudice to assistance services;
- III. participation of the community;

(1) The single health system is financed, pursuant to Article 195, with funds from the social security budget of the Republic, the States, the Federal District, and the Municipalities, in addition to other sources.

### Article 199 [Private Enterprise]

(0) Health assistance is open to private enterprise.

(1) Private institutions may participate on a supplementary basis in the single health system, according to guidelines set forth by the latter, by means of public law contracts or agreements, preference being given to philanthropic and non-profit entities.

(2) The allocation of public funds to aid or subsidize private profit seeking institutions is forbidden.

(3) Direct or indirect participation of foreign companies or capital in Brazil's health assistance is forbidden, except in the cases foreseen in the law.

(4) The law establishes the conditions and requirements to allow the removal of human organs, tissues, and substances intended for transplantation, research, and treatment, as well as the collection, processing, and transfusion of blood and its by products, all kinds of sale being forbidden.

#### Article 200 [Single Health System]

The single health system shall, in addition to other duties pursuant to the law;

- I. control and supervise procedures, products and substances of interest to health and participate in the production of drugs, equipment, immunobiological products, hemoproducts, and other inputs;
- II. carry out sanitary and epidemiological supervision actions and those concerning the health of workers;
- III. organize the training of human resources in the health area;
- IV. participate in the formulation of the policy and execution of action of basic sanitation;
- V. foster scientific and technological development in its sphere of action;
- VI. inspect and supervise foodstuffs and control their nutritional contents, as well drinks and water for human consumption;
- VII. participate in the control and inspection of production, transportation, storage, and use of psychoactive, toxic, and radioactive substance and products;
- VIII. cooperate in the preservation of the environment, including that of the work place.

### Section III Social Benefits

#### Article 201 [Social Security Plans]

(0) The social security plans shall, upon contribution, pursuant to the law, provide:

- I. coverage for the events of illness, disability, death, including those resulting from work accidents, old age, and confinement;
- II. aid for the support of the dependents of low income insured;
- III. protection for maternity, especially for pregnant women;
- IV. protection for workers who are involuntarily unemployed;
- V. pension for death of an insured man or woman, for the spouse or companion and dependents, with due regard for the provisions of 202 (5).

(1) Any person may receive social security benefits upon contribution according to the social security plans.

(2) Adjustment of the benefits is ensured so as to permanently maintain their real value, according to criteria defined in the law.

(3) All contribution salaries taken into account in the calculation of a benefit shall suffer monetary correction.

(4) The amounts habitually earned by an employee on any account shall be

incorporated into his or her salary for purposes of social security contribution and consequent effects on benefits, in cases established in and according to the law.

(5) No benefit which replaces the contribution salary or work earnings of the insured shall have a monthly value lower than the minimum wage.

(6) The Christmas bonus for the retired and pensioners shall be based on the amount of earnings in the month of December of each year.

(7) Social security shall maintain supplementary and optional collective insurance funded by additional contributions.

(8) Any subsidy or aid by the Government to private profit seeking pension entities is forbidden.

#### Article 202 [Retirement, Welfare benefit]

(0) Retirement is ensured pursuant to the law, the benefit being calculated on the average of the last thirty-six contribution salaries, monetarily corrected month by month and upon evidence that the adjustments to the contribution salaries to maintain their real values were regular and upon satisfaction of 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 activities with their family, these including rural producers, mineral prospectors, and miners and unqualified fishermen;

II. after thirty-five years of work for men and after thirty years for women, or sooner if subject to work under special conditions, which are detrimental to the health or physical integrity, as defined in the law;

III. after thirty years for male teachers and after twenty-five years for female teachers, for actual performance of a teaching function.

(1) Proportional retirement is allowed after thirty years of work for men and twenty five for women.

(2) For retirement purposes, reciprocal computation is ensured of the period of contribution in the public administration and in private rural and urban activity, in which case the various social security systems shall be financially compensated, according to criteria determined in the law.

### Section IV Social Assistance

#### Article 203 [Social Assistance]

Social assistance shall be rendered to whomever may need it, regardless of contribution to social security, and shall have the following objectives:

I. to protect the family, maternity, childhood, adolescence, and old age;

II. to assist needy children and adolescents;

III. to promote integration into the employment market;

- IV. to habilitate and rehabilitate the handicapped and provide for their integration into the community;
- V. to guarantee a monthly benefit of one minimum wage to the handicapped and the elderly who prove that they are incapable of providing for their own support or to have their family provide for their support, as established in the law.

#### Article 204 [Government Action]

Government action in the area of social assistance shall be carried out with funds from the social security budget set forth in Article 195, in addition to other sources, and shall be organized on the basis of the following guidelines:

- I. political and administrative decentralization, the coordination and general rules being within the federal sphere, and the coordination and execution of respective programs being with the state and municipal spheres, as well as charity and social assistance entities;
- II. participation of the population, by means of class 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

#### Article 205 [Education, Duty and Right]

Education, which is the right of all persons and the duty of the State and of the family, shall be promoted and encouraged with the cooperation of society, aiming at full development of the individual, his or her preparation to exercise citizenship, and his or her qualification for work.

#### Article 206 [Fundamental Principles]

Education shall be provided on the basis of the following principles:

- I. equal conditions for access to and remaining in school;
- II. freedom to learn, teach, research, and express thoughts, art, and knowledge;
- III. pluralism of ideas and of pedagogical concepts and coexistence of public and private teaching institutions;
- IV. free public education in official schools;
- V. appreciation of teaching professionals, guaranteeing, pursuant to the law, a career plan for public teachers, with a professional minimum salary and admittance exclusively by means of a public competitive examination of tests and titles, and ensuring a single legal regime for all institutions maintained by the Republic;
- VI. democratic administration of public education, pursuant to the law;
- VII. guarantee of good quality.



#### Article 207 [Universities, Autonomy]

Universities enjoy didactic, scientific, administrative, and financial and equity management autonomy and shall comply with the principle of indivisibility of teaching, research, and extension.

#### Article 208 [State Duty]

(0) The State's duty concerning education shall be discharged by ensuring the following:

- I. compulsory and free elementary education, including for those who did not have access to school at the proper age;
- II. progressive extension of compulsory and free education to secondary school;
- III. special classes for the handicapped, preferably in the ordinary school network;
- IV. assistance to children of zero 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 conditions;
- VII. assistance to elementary school students through supplementary programs providing school supplies and material, transportation, food, and health assistance.

(1) Access to compulsory and free education is a subjective public right.

(2) The proper authority are liable for the Government's failure to provide compulsory education or providing it irregularly.

(3) It is incumbent upon the Government to conduct a census of elementary school students, to call them for enrolment and see, jointly with their parents or guardians, that they attend school.

#### Article 209 [Private enterprises allowed]

Teaching is open to private enterprise, provided that the following conditions are met:

- I. compliance with the general rules of Brazilian education;
- II. authorization and assessment of quality by the Government.

#### Article 210 [Elementary and Basic Curricula]

(0) Minimum curricula shall be established for elementary school in order to ensure a common basic education and respect for national and regional cultural and artistic values.

(1) Religious education is optional and shall be given during the regular school hours of public elementary schools.

(2) Regular elementary education shall be given in the Portuguese language, the Indian communities also being ensured the use of their native languages

and specific learning procedures.

#### Article 211 [Education Systems]

(0) The Republic, the States, the Federal District, and the Municipalities cooperate in the organization of their educational systems.

(1) The Republic organizes and finances the federal educational system and that of the Territories and renders technical and financial assistance to the States, to the Federal District, and to the Municipalities for the development of their education systems and provision of compulsory schooling on a priority basis.

(2) Municipalities act on a priority basis in elementary and pre-school education.

#### Article 212 [Budget]

(0) The Republic shall each year apply not less than eighteen percent, and the States, the Federal District, and the Municipalities at least twenty-five percent of the tax revenues, including revenues resulting from transfers, in the maintenance and development of education.

(1) The share of tax revenues transferred from the Republic to the States, Federal District, and Municipalities or from the States to the respective Municipalities shall not be considered, for purposes of the calculation provided for in this article, as revenues of the government making such transfers.

(2) For purposes of complying with the main provision of this article, the federal, state, and municipal education systems and the funds employed pursuant to Article 213 shall be taken into consideration.

(3) In the distribution of public funds, priority shall be given to meeting the needs of compulsory education pursuant to the national education plan.

(4) The supplementary food and health assistance programs foreseen in Article 208 VII shall be financed with funds derived from social contributions and other budgetary funds.

(5) An additional source of funds for public elementary education shall be the education salary contribution paid, pursuant to the law, by companies, which may deduct from it the funds invested in elementary education for their employees and dependents.

#### Article 213 [Public Funds]

(0) Public funds are allocated to public schools, and may be channelled to community, religious, or philanthropic schools, as defined in the law, which:

- I. prove that they do not seek a profit and invest their surplus funds in education;
- II. ensure that their equity is assigned to another community, philanthropic, or religious school or to the Government in the event they cease their activities.

(1) The funds referred to in this article may be allocated to elementary and secondary school scholarships, pursuant to the law, for those who prove that they do not have sufficient funds, whenever there are not vacancies or regular courses in the public school system of the place where the student lives, the Government being required to invest, on a priority basis, in the expansion of its network in that place.

(2) Research and extension activities at university level may receive financial support from the Government.

#### Article 214 [National Plan]

The law shall lay down the pluriannual national education plan aimed at coordination and development of education at its various levels and at integration of Government action leading to:

- I. eradication of illiteracy;
- II. universalization of school assistance;
- III. improvement of teaching quality;
- IV. professional training;
- V. humanistic, scientific and technological development of Brazil.

## Section II Culture

#### Article 215 [Culture, Right to access]

(0) The State ensures a person full exercise of their cultural rights and access to sources of national culture and supports and encourages the appreciation and diffusion of cultural manifestations.

(1) The State protects manifestations of popular, Indian, and Afro-Brazilian cultures and those of other groups participating in the Brazilian civilization process.

(2) The law rules the determination of highly significant commemorative dates for the various national ethnic segments.

#### Article 216 [Cultural Heritage]

(0) The Brazilian cultural heritage consists of assets of material and immaterial nature, considered either individually or as a whole, which bear reference to the identity, action, and memory of the various groups of Brazilian society, which include:

- I. forms of expression;
- II. forms of creating, doing, and living;
- III. scientific, artistic, and technological creations;
- IV. works, objects, documents, constructions, and other spaces intended for artistic and cultural manifestations;
- V. urban complexes and sites of historical, natural, artistic, archaeological, paleontological, ecological, and scientific value.

(1) The Government shall, with the community's cooperation, promote and protect Brazilian cultural heritage by means of inventories, records, surveillance, monument decrees, expropriation, and other forms of precaution and preservation.

(2) It is incumbent upon the Government, pursuant to the law, to take care of governmental documents and to take action to make them available for consultation by whomever may need to do so.

(3) The law shall establish incentives for the production and knowledge of cultural assets and values.

(4) Damages and threats to cultural heritage shall be punished according to the law.

(5) All documents and sites bearing historical reminiscences of the old "quilombos" (hiding place of fugitive black slaves) are preserved as historical assets and monuments.

### Section III Sports

#### Article 217 [Sports, Practice, Associations]

(0) It is the duty of the State to foster the practice of formal and informal sports, as each individual's right, with due regard for:

I. the autonomy of controlling sports entities and associations as to their organization and operation;

II. the allocation of public funds in order to promote, on a priority basis, educational sports and, in specific cases, high income sports;

III. differentiated treatment for professional and non-professional sports;

IV. the protection and encouragement of national sports events.

(1) The Judiciary only hears legal actions related to sports discipline and competitions after the instances of the sports courts, as regulated by the law, have been exhausted.

(2) The sports court renders final judgment within at most sixty days as from the date of filing of the action.

(3) The Government shall encourage leisure as a means of social promotion.

### Chapter IV Science and Technology

#### Article 218 [Science and Technology]

(0) The State promotes and encourages scientific development, research, and technological expertise.

(1) Basic scientific research receive preferential treatment from the State, taking into consideration the public good and the progress of science.

(2) Technological research shall be addressed mainly towards the solution of



Brazilian problems and to the development of the national and regional productive system.

(3) The State supports human resources training in the fields of science, research, and technology and affords special working means and conditions to those engaged in such activities.

(4) The law supports and encourages companies which invest in research, in creation of technology appropriate for Brazil, and in training and improvement of their human resources and which adopt compensation systems which ensure employees a share of the economic earnings resulting from the productivity of their work, apart from their salary.

(5) The States and the Federal District may allocate part of their budgetary revenues to public entities that foster education and scientific and technological research.

#### Article 219 [Autonomy]

The domestic market is part of the national wealth and shall be encouraged so as to permit cultural and social and economic development, well being of the people and technological autonomy of Brazil, pursuant to a federal law.

### Chapter V Social Communication

#### Article 220 [Freedom of Communication ways]

(0) Expression of thought, creation, speech, and information, in any of their forms, processes or media, shall not be subject to any restriction, with due regard for the provisions of this Constitution.

(1) No law shall contain any provision which may represent an impediment to full freedom of press information in any social communication medium, with due regard for the provisions of Article 5 IV, V, X, XII, and XIV.

(2) Any and all censorship of a political, ideological, and artistic nature shall be forbidden.

(3) Federal law shall:

I. regulate public entertainments and shows, it being incumbent upon the Government to advise about their nature, the age limits they are not recommended for, and places and times unsuitable for exhibition;

II. determine the legal remedies which afford individuals and families the possibility of defending themselves against radio and television programs or schedules which contravene the provisions of Article 221, as well as against publicity of products, practices, and services which may be harmful to the health and environment.

(4) Commercial advertising of tobacco, alcoholic beverages, pesticides, medicines, and therapies shall be subject to legal restrictions pursuant to Item II of the preceding paragraph and shall contain, whenever necessary, a warning concerning the damages caused by the use thereof.

(5) Social communication media may not, directly or indirectly, be subject to

monopoly or oligopoly.

(6) The publication of printed communication media shall not require any official license.

#### Article 221 [Principles]

The production and programming of radio stations and television channels shall comply with the following principles:

- I. preference to educational, artistic, cultural, and information purposes;
- II. promotion of national and regional culture and encouragement of any independent production aimed at diffusion thereof;
- III. regional characters of cultural, artistic, and journalistic production according to percentages established in the law;
- IV. respect for the ethical and social values of the individual and of the family.

#### Article 222 [Broadcasting]

(0) Newspaper and sound and image broadcasting companies shall be owned exclusively by native Brazilians or those naturalized for more than ten years, who shall be responsible for the management and intellectual guidance thereof.

(1) Legal entities shall not participate in the capital stock of journalistic or radio broadcasting companies, except for political parties and for corporations, the capital of which is exclusively and nominally owned by Brazilians.

(2) The participation referred to in the preceding paragraph may only take place through non-voting capital and shall not exceed thirty percent of the capital stock.

#### Article 223 [Executive Branch]

(0) It is incumbent upon the Executive Branch to grant and renew concessions, permissions, and authorization for radio broadcasting and sound and image broadcasting services, with due regard for the principle of supplementation of private, public and state systems.

(1) Congress shall examine such act within the time limit set forth in Article 64 (2) and (4) as from the date of receipt of the message.

(2) Non renewal of a concession or permission shall depend upon approval by at least two fifths of Congress in an open ballot.

(3) The act of granting or renewal shall only be legally effective after approval by Congress pursuant to the preceding paragraphs.

(4) Cancellation of a concession or permission prior to its expiry date shall depend upon a court decision.

(5) The term of a concession or permission shall be ten years for radio stations and fifteen years for television channels,

#### Article 224 [Agency]

For the purposes of the provisions contained in this chapter, Congress shall

institute, as its ancillary agency, the Social Communication Council pursuant to the law.

## Chapter VI Environment

### Article 225 [Environment Protection]

(0) All persons are entitled to an ecologically balanced environment, which is an asset for the people's common use and is essential to healthy life, it being the duty of the Government and of the community to defend and preserve it for present and future generations.

(1) In order to ensure the effectiveness of this right, it is incumbent upon the Government to:

I. preserve and restore essential ecological processes and provide ecological handling of the species and ecosystems;

II. preserve the variety and integrity of Brazil's genetic wealth and supervise entities engaged in research and handling of genetic material;

III. determine, in all units of the Federation, territorial spaces and components which are to receive special protection, any alteration and suppression only being allowed by means of a law, and any use which adversely affects the integrity of the attributes which justify their protection being forbidden;

IV. demand, according to the law, for the installation of works or activities which may cause significant degradation of the environment, a prior environment impact study, which shall be made public;

V. control the production, marketing, and use of techniques, methods, and substances which represent a risk to life, to the quality of life, and to the environment;

VI. promote environmental education at all school levels and public awareness of the need to preserve the environment;

VII. protect the fauna and the flora, all practices which jeopardize their ecological function, cause the extinction of species or subject animals to cruelty being forbidden according to the law.

(2) Those who explore mineral resources shall be required to restore the degraded environment according to the technical solution required by the proper government agency, according to the law.

(3) Conduct and activities considered harmful to the environment shall subject the individual or corporate wrongdoers to penal and administrative sanctions, in addition to the obligation to repair the damages caused.

(4) The Brazilian Amazon Forest, the Atlantic Woodlands, the "Serra do Mar", the "Pantanal Mato Grossense" and the Coastline are part of the national wealth, and they shall be used, according to the law, under conditions which ensure preservation of the environment, including the use of natural resources.

(5) Vacant governmental lands or lands seized by the States through

discriminatory actions, which are necessary to protect natural ecosystems, are inalienable.

(6) Power plants operated by nuclear reactor shall have their location defined in a federal law and may otherwise not be installed.

## Chapter VII Family, Children, Adolescents, and Elderly

### Article 226 [Family]

(0) The family, the foundation of society, enjoys special protection from the state.

(1) Marriage is civil and the marriage ceremony is free of charge.

(2) Church marriage has civil effects according to the law.

(3) For purposes of State protection, a stable union between a man and a woman as a family unit shall be recognized and the law shall facilitate conversion of such unions into marriage.

(4) The community formed by any parent and his/her descendants is also considered a family unit.

(5) The rights and duties of matrimonial society shall be exercised equally by men and women.

(6) Civil marriage may be dissolved by divorce, after legal separation for more than one year in the cases foreseen in the law, or after "de facto" separation for more than two years.

(7) Based upon the principles of human dignity and responsible parenthood, family planning is a free option of the couple, it being incumbent upon the State to provide educational and scientific resources for the exercise of such right and any coercion on the part of official or private institutions being forbidden.

(8) The State shall ensure assistance the family in the person of each of its members and shall create mechanisms to suppress violence in family relationships.

### Article 227 [Children and Teenagers]

(0) It is the duty of the family, of society, and of the State to ensure children and adolescents, with absolute priority, the right to life, health, food, education, leisure, professional training, culture, dignity, respect, freedom, and family and community life, in addition to safe guarding them against all forms of negligence, discrimination, exploitation, violence, cruelty, and oppression.

(1) The State shall provide full health assistance programs for children and adolescents, allowing the participation of non-governmental entities and complying with the following precepts:

I. allocation of a percentage of public funds to mother and child health assistance;



II. creation of preventive and specialized care programs for the physically, sensorially, or mentally handicapped, as well as programs for the social integration of the handicapped adolescent by means of training for a profession and communal life, and providing of access to public facilities and services by eliminating prejudices and architectonic obstacles.

(2) The law shall provide standards for the construction of public sites and buildings and the manufacturing of public transportation vehicles so as to ensure appropriate access to the handicapped.

(3) The right to special protection shall encompass the following aspects:

I. minimum age of fourteen years to be admitted to work, with due regard for the provisions of Article 7 XXXIII;

II. guarantee of social security and labor rights;

III. guarantee of access to school for the adolescent worker;

IV. guarantee of full and formal knowledge of the determination of an offense, equal rights in procedural relationships and technical defense by a qualified professional, according to the provisions of specific protection legislation;

V. compliance with the principles of brevity, exceptionality, and respect for the specific condition of developing individuals when applying any measure that restrains freedom;

VI. Government encouragement, through legal assistance, tax incentives and subsidies, according to the law, of the protection of orphaned or abandoned children or adolescents through guardianship;

VII. preventive and specialized treatment programs for children and adolescents addicted to narcotics and related drugs.

(4) The law shall severely punish abuse, violence, and sexual exploitation of children and adolescents.

(5) Adoption shall be assisted by the Government, according to the law, which shall determine the cases and conditions for adoption by foreigners.

(6) Children born inside or outside wedlock or adopted shall have the same rights and qualifications and any discriminatory designation regarding their parents shall be forbidden.

(7) In attending to the rights of children and adolescents, the provisions of Article 204 shall be taken into consideration.

#### **Article 228 [Liability of minors]**

Minors under eighteen years of age may not be held criminally liable, subject to the rules of special legislation.

#### **Article 229. [Duty of Parents]**

It is the duty of parents to assist, raise, and educate their minor children, and it is the duty of children of age to help and assist their parents in old age, need or sickness.

#### **Article 230 [Duty of Society, State, and Family]**

(0) The family, society, and the State have the duty to assist the elderly, ensuring their participation in the community, defending their dignity and well being, and guaranteeing their right to life.

(1) Assistance programs for the elderly shall be carried out preferably in their homes.

(2) Those over sixty five years of age are guaranteed free urban public transportation.

## Chapter VIII Indians

### Article 231 [Native Populations and Lands]

(0) Indians shall have their social organization, customs, languages, creeds, and traditions recognized, as well as their native rights to the lands they traditionally occupy, it being incumbent upon the Republic to demarcate them and protect and ensure respect for all their property.

(1) Lands traditionally occupied by Indians are those on which they live on a permanent basis, those used for their productive activities, those which are indispensable to preserve the environmental resources required for their well being and those necessary for their physical and cultural reproduction, according to their uses, customs, and traditions.

(2) The lands traditionally occupied by Indians are intended for their permanent possession, and they shall be entitled to exclusive use of the riches of the soil, rivers, and lakes existing thereon.

(3) Hydric resources, including energy potential, may only be exploited and mineral riches in Indians lands may only be prospected and mined with the authorization of Congress, after hearing the communities involved, which shall be assured of participation in the mining results in accordance with the law.

(4) The lands referred to in this article are inalienable and indisposable and the rights thereto are not subject to the statute of limitations.

(5) It is forbidden to remove Indian groups from their lands except, "ad referendum" of Congress, in the event of epidemic which represents a risk for their population or in the interest of Brazilian sovereignty, after resolution by Congress, provided that immediate return as soon as the risk ceases shall be ensured under all circumstances.

(6) Acts aiming at occupation, domain and possession of the lands referred to in this article, or at exploitation of the natural riches of the soil, rivers, and lakes existing thereon, are null and void and of no legal effect, except in the case of relevant public interest of the Republic, according to a supplemental act; such nullity and voidness shall not create a right to indemnity or to sue the Republic, except as to improvements derived from occupation in good faith in accordance with the law.

(7) The provisions of Article 174 (3) and (4) shall not apply to Indian lands.

#### Article 232 [Righth of Indians]

Indians, their communities, and organizations have standing to sue to defend their rights and interests, the Public Attorney's Office intervening in all the procedural acts.

### Title IX General Constitution Provisions

#### Article 233 [Duty of Employers]

(0) For the purposes of Article 7 XXXIX, the rural employers shall every five years produce evidence before the Labor Courts that they have performed their labor obligations toward rural employees, in the presence of the latter and of their union representatives.

(1) Upon evidence that the obligations mentioned in this article have been performed, the employer shall be exempt from any encumbrances deriving from such obligations in the respective period. If the employee and his representative do not agree with the employer's evidence, the dispute shall be resolved by the Labor Courts.

(2) The employee shall in any case have the right to claim in court the credits which he believes he is entitled to for the last five years.

(3) The evidence mentioned in this article may be provided at intervals of less than five years, at the discretion of the employer.

#### Article 234 [Forbidden to the Republic]

It is forbidden for the Republic to assume, directly or indirectly, as a result of the creation of a State, burdens related to expenses with inactive personnel and with charges and repayments of domestic and foreign debts of the Government, including the indirect administration.

#### Article 235 [New States special provision]

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 Representatives, 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 may not have more than ten Departments;

III. the Audit Court shall have three members appointed by the elected Governor from among Brazilians of proven good repute and notorious knowledge;

IV. the Higher Court of Justice shall have seven judges;

V. the first judges shall be appointed by the elected Governor, chosen in the following manner:

a) five of them from among judges with more than thirty-five years of age and acting within the are of a new State or of the State which gave origin to the

new States;

b) two of them from among public prosecutors, under the same conditions, and attorneys of proven good repute and legal knowledge with at least ten years of professional practice, complying with the procedure set forth in the Constitution;

VI. in the case of a State which was originally a Federal Territory, the first five judges may be chosen from among law judges from any part of Brazil;

VII. in each Judicial District, the first Judge, the first Public Prosecutor, and the first Public Defender shall be appointed by the elected Governor after taking a public competitive examination of tests and titles;

VIII. until the enactment of the State Constitution, the offices of State Attorney General, Advocate General, and Defender General shall be held by lawyers of notorious knowledge, with at least thirty-five years of age, appointed by the elected Governor and removable "ad nutum";

IX. if the new State results from the transformation of a Federal Territory, the transfer of financial charges from the Republic for payment of opting civil servants who belonged to the Federal Administration shall take place as follows:

a) in the sixth year after its creation, the State shall assume twenty percent of the financial charges in order to pay the civil servants, the remainder continuing as the liability of the Republic;

b) in the seventh year, thirty percent shall be added to the State's charges and, in the eighth year, the remaining fifty percent;

X. the appointments made after the first appointments for the offices referred to in this article shall be regulated by the State Constitution;

XI. budgetary personnel expenses shall not exceed fifty percent of the State's revenues.

#### Article 236 [Registration and Notes]

(0) Notary and registration services shall be provided by private entities, by Government delegation.

(1) A law shall regulate the activities, discipline the civil and criminal liability of notaries, or registrars and of their agents, and shall define the supervision of their acts by the Judiciary.

(2) A federal law shall establish the general rules for fixing the fees for the acts performed by notary and registration services.

(3) The commissioning of a notary public and registrar shall depend on a public competitive examination of tests and titles and no office may remain vacant for more than six months without opening a public examination to fill or reallocate such office.

#### Article 237 [Ministry of Finance, Trade]

Supervision and control of foreign trade, which are essential to the defense of national interests, shall be exercised by the Ministry of Finance.

#### Article 238 [Supplemental Law, Oil]



The law shall organize the sale and resale of oil and carburetant alcohol fuels and of other fuels derived from renewable raw materials, with due regard for the principles of this Constitution.

**Article 239 [Change of old Acts]**

(0) The revenues from contributions to the Social Integration Program created by Supplemental Act No. 7 of September 7, 1970 and to the Civil Servants Fund created by Supplemental Act No. 8 of December 3, 1970, shall, as from the enactment of this Constitution, as established by the law, fund the unemployment insurance program and the bonus referred to in Paragraph (3) of this article.

(1) 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 Economic and Social Development Bank, with consideration criteria which preserve their value.

(2) The accrued assets of the Social Integration Program and the Civil Servants Fund shall be preserved, maintaining the criteria for withdrawal in the situations set forth in specific laws, except for withdrawal by reason of marriage, the distribution of the revenues referred to in the main provision of this article for deposit in the individual accounts of participants being forbidden.

(3) Employees who receive monthly compensation of up to two minimum wages from employers who contribute to the Social Integration Program or to the Civil Servants Fund are ensured annual payment of a minimum wage, which shall include the income on the individual accounts, in the case of those who already participated in such programs before the date of enactment of this Constitution.

(4) Funding of the unemployment insurance program shall receive an additional contribution from any company in which employee turnover exceeds the average turnover rate of the sector, as established in the law.

**Article 240 [Exclusion Provision]**

The present compulsory contribution by employers on the payroll, which are intended for private social service and professional training entities linked to the labor union system, are excluded from the provisions of Article 195.

**Article 241 [Application of some principle]**

The principle of Article 39 (1) corresponding to the careers regulated by Article 135 of this Constitution, shall apply to career police officers.

**Article 242 [Education Provisions]**

(0) The principle of Article 206 IV does not apply to official educational institutions created by state or municipal law and in existence on the date of enactment of this Constitution and which are not totally or preponderantly

maintained with public funds.

(1) The teaching of Brazilian History shall take into account the contribution of the different cultures and ethnic groups to the formation of the Brazilian people.

(2) The "Pedro II School" located in the city of Rio de Janeiro, shall be maintained in the federal sphere.

#### Article 243 [Drug plantations desapropriation]

(0) Land areas in any region of Brazil where illegal plantations of psychotropic plants are found shall be expropriated immediately and used specifically for the settlement of tenant farmers and for the plantation of food and medicinal products, with no indemnity to the owner and without prejudice to other sanctions set forth in the law.

(1) Any and all good of economic value seized as a result of illegal traffic of narcotics and similar drugs shall be confiscated and reverted to the benefit of institutions and persons specialized in the treatment and recovery of addicts and in equipping and funding activities of supervision, control, prevention, and repression of drug traffic crime.

#### Article 244 [Transportation]

The law shall provide on the adaptation of public sites and buildings and of existing public transportation vehicles, in order to ensure adequate access to the handicapped, pursuant to the provisions of Article 227 (2).

#### Article 245 [International Crimes]

The law shall provide for the circumstances and conditions under which the Government shall give assistance to the needy heirs and dependents of victims of intentional crimes, without prejudice to the civil liability of the perpetrator of the offense.

#### Article 246 [Prohibition of Provisional Measures]

The adoption of any provisional measure for the regulation of any article of the Constitution the wording of which has been altered by means of an amendment enacted as of 1995 is forbidden.