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# Brazil's Constitution of 1988 with Amendments through 2014

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# Preamble

We the representatives of the Brazilian People, convened the National Constituent Assembly, to institute a democratic state destined to ensure 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, founded on social harmony and committed, in the domestic and international orders, to the peaceful solution of disputes, promulgate, under the protection of God, the following CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL.

## TITLE I

# FUNDAMENTAL PRINCIPLES

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## Art 1

The Federative Republic of Brazil, formed by the indissoluble union of States and Counties (municípios), as well as the Federal District, is a Democratic State of Law founded upon:

- I. sovereignty;
- II. citizenship;
- III. human dignity;
- IV. social values of work and free initiative;
- V. political pluralism.

## Sole Paragraph

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

## Art 2

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

## Art 3

The fundamental objectives of the Federative Republic of Brazil are:

- I. to build a free, just and unified society;
- II. to guarantee national development;
- III. to eradicate poverty and substandard living conditions and to reduce social and regional inequalities;
- IV. to promote the well-being of all, without prejudice as to origin, race, sex, color, age and any other forms of discrimination.

## Art 4

The international relations of the Federative Republic of Brazil are governed by the following principles:

- I. national independence;
- II. prevalence of human rights;
- III. self-determination of peoples;
- IV. non-intervention;
- V. equality among States;
- VI. defense of peace;
- VII. peaceful solution of conflicts;
- VIII. repudiation of terrorism and racism;
- IX. cooperation among people for the progress of humanity;
- X. concession of political asylum.

## Sole Paragraph

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

## TITLE II

# FUNDAMENTAL RIGHTS AND GUARANTEES

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## CHAPTER I: INDIVIDUAL AND COLLECTIVE RIGHTS AND DUTIES

## Art 5

Everyone is equal before the law, with no distinction whatsoever, guaranteeing to Brazilians and foreigners residing in the Country the inviolability of the rights to life, liberty, equality, security and property, on the following terms:

- I. men and women have equal rights and duties under the terms of this Constitution;
- II. no one shall be compelled to do or refrain from doing something except by force of law;
- III. no one shall be submitted to torture or to inhuman or degrading treatment;
- IV. manifestation of thought is free, but anonymity is forbidden;
- V. the right of reply is assured, in proportion to the offense, as well as compensation for pecuniary or moral damages or damages to reputation;
- VI. freedom of conscience and belief is inviolable, assuring free exercise of religious beliefs and guaranteeing, as set forth in law, protection of places of worship and their rites;

- VII. providing religious assistance at civilian and military establishments for collective confinement is assured, as provided by law;
- VIII. no one shall be deprived of any rights because of religious beliefs or philosophical or political convictions, unless invoked in order to be exempted from a legal obligation imposed upon all by one refusing to perform an alternative service established by law;
- IX. expression of intellectual, artistic, scientific, and communication activity is free, independent of any censorship or license;
- X. personal intimacy, private life, honor and reputation are inviolable, guaranteeing the right to compensation for pecuniary or moral damages resulting from the violation thereof;
- XI. the home is the individual's inviolable asylum, and no one may enter it without the dweller's consent, except in cases of flagrante delicto, disaster or rescue, or, during the day, with a court order;
- XII. secrecy of correspondence and of telegraphic, data and telephonic communications is inviolable, except, in the latter case, by court order, in the situations and manner established by law for purposes of criminal investigation or the fact-finding phase of a criminal prosecution;
- XIII. exercise of any job, trade or profession is free, observing the professional qualifications that the law establishes;
- XIV. access to information is assured to everyone, protecting the confidentiality of sources when necessary for professional activity;
- XV. movement within the national territory is free in peacetime, and any person may, as provided by law, enter, remain or leave with his or her assets;
- XVI. all persons may hold peaceful meetings, without weapons, in places open to the public, without need for authorization, so long as they do not interfere with another meeting previously called for the same place, subject only to prior notice to the proper authority;
- XVII. there is total freedom of association for lawful purposes, but any paramilitary association is prohibited;
- XVIII. creation of associations and, as set forth in law, of cooperatives, requires no authorization, prohibiting state interference in their operations;
- XIX. associations may be compulsorily dissolved or their activities suspended only by a judicial decision, which in the former case must be a final and unappealable decision (*trânsito em julgado*);
- XX. no one can be compelled to join an association or to remain in one;
- XXI. when expressly authorized, associations have standing to represent their members judicially and extrajudicially;
- XXII. the right of property is guaranteed;
- XXIII. property shall comply with its social function;
- XXIV. the law shall establish procedures for expropriation for public necessity or use, or for social interest, upon just and prior compensation in cash, with the exception of cases provided for in this Constitution;
- XXV. in the event of imminent public danger, the proper authority may use private property, assuring the owner subsequent compensation in case of damage;
- XXVI. small rural property, as defined by law, whenever worked by a family, shall not be subject to attachment for payment of debts stemming from its productive activities, and the law shall provide for ways to finance its development;
- XXVII. authors own the exclusive rights to use, publish or reproduce their own works, and such rights may be transmitted to their heirs for a period fixed by law;

- XXVIII. the following are assured, as provided by law:
- a. protection of individual participation in collective works and reproduction of human voices and images, including in sports activities;
  - b. the right of creators, performers and their respective syndicates and associations to monitor the economic utilization of works that they create or in which they participate;
- XXIX. the law shall assure inventors of industrial inventions a temporary privilege for their use, as well as the protection of industrial creations, the ownership of trademarks, company names and other distinctive signs, taking into account social interests and the technological and economic development of the Country;
- XXX. the right of inheritance is guaranteed;
- XXXI. inheritance of foreigners' assets located in the Country shall be governed by Brazilian law, for the benefit of the Brazilian spouse or children, whenever the personal law of the deceased is not more favorable to them;
- XXXII. the State shall provide for consumer protection, in accordance with the law;
- XXXIII. all persons have the right to receive from public agencies information in their private interest or of collective or general interest; such information shall be furnished within the period established by law, under penalty of liability, except for information whose secrecy is essential to the security of society and of the National Government;
- XXXIV. all persons are guaranteed, without the payment of fees:
- a. the right to petition public authorities in defense of rights or against illegality or abuse of power;
  - b. obtaining certificates from government offices for defense of rights and clarification of situations of personal interest;
- XXXV. the law may not exclude from review by the Judiciary any injury or threat to a right;
- XXXVI. no law may impair a vested right, a perfected juristic act or res judicata;
- XXXVII. there shall be no exceptional courts or tribunals;
- XXXVIII. the institution of the jury is recognized, with the organization given to it by law, assuring:
- a. full defense;
  - b. secret voting;
  - c. sovereignty of verdicts;
  - d. jurisdiction to judge willful crimes against life;
- XXXIX. there are no crimes unless defined in prior law, nor are there any penalties unless previously imposed by law;
- XL. the criminal law shall not be retroactive, except to benefit the defendant;
- XLI. the law shall punish any discrimination attacking fundamental rights and liberties;
- XLII. the practice of racism is a non-bailable crime not subject to the statute of limitations and is punishable by imprisonment, as provided by law;
- XLIII. the law shall regard as crimes not subject to bail, clemency or amnesty, the practice of torture, illicit trafficking in narcotics and similar drugs, terrorism, and those crimes defined as heinous; liable for these crimes are those giving the commands, those executing these commands, and those who, although able to avoid the crimes, fail to do so;
- XLIV. actions of civilian or military armed groups against the constitutional order and the Democratic State are non-bailable crimes for which the statute of limitations never runs;



- XLV. no punishment shall extend beyond the person convicted, but liability for damages and a decree of loss of assets may, as provided by law, extend to successors and be enforced against them up to the limit of the value of the assets transferred;
- XLVI. the law shall regulate individualization of punishment and shall adopt, inter alia the following:
- a. deprivation or restriction of liberty;
  - b. loss of property;
  - c. fine;
  - d. alternative social service;
  - e. suspension or deprivation of rights;
- XLVII. there shall be no penalties:
- a. of death, except in case of declared war, in the terms of art. 84, XIX;
  - b. of perpetual character;
  - c. of forced labor;
  - d. of banishment;
  - e. that are cruel;
- XLVIII. sentences shall be served in separate establishments, according to the nature of the offense, and age and sex of the convict;
- XLIX. prisoners are assured respect for their physical and moral integrity;
- L. female prisoners shall be assured conditions that allow them to remain with their children during the nursing period;
- LI. no Brazilian shall be extradited, except for a naturalized Brazilian for a common crime committed prior to naturalization, or proven involvement in unlawful traffic in narcotics and similar drugs, as provided by law;
- LII. no foreigner shall be extradited for a political or ideological offense;
- LIII. no one shall be tried or sentenced other than by a proper authority;
- LIV. no one shall be deprived of liberty or property without due process of law;
- LV. litigants in judicial or administrative proceedings and defendants in general are assured an adversary system and a full defense, with the measures and recourses inherent therein;
- LVI. evidence obtained through unlawful means is inadmissible in proceedings;
- LVII. no one shall be considered guilty until his criminal conviction has become final and non-appealable;
- LVIII. a civilly identified person shall not be submitted to criminal identification, except in cases provided by law;
- LIX. private prosecution for crimes subject to public prosecution (crimes de ação pública) shall be permitted if a public prosecution is not brought within the period established by law;
- LX. the law may restrict publicity of procedural acts only if required to defend privacy or the social interest;
- LXI. no one shall be arrested unless in flagrante delicto or by written and substantiated order of a competent judicial authority, except for a military offense or a specific military crime, as defined by law;
- LXII. the arrest of any person and the place where he can be found shall be communicated immediately to the proper judge and to the arrested person's family or to a person designated by him;
- LXIII. one under arrest shall be informed of his rights, including the right to remain silent, and shall be assured assistance of his family and a lawyer;
- LXIV. one under arrest has the right to identification of those responsible for his arrest or his interrogation by police;

- LXV. judicial authorities shall direct immediate release of those illegally arrested;
- LXVI. no one shall be taken to prison or held therein when the law permits provisional liberty, with or without bond;
- LXVII. there shall be no civil imprisonment for debt, except for a person who voluntarily and inexcusably defaults on a support obligation and for an unfaithful depository;
- LXVIII. habeas corpus shall be granted whenever a person suffers or is threatened with suffering violence or coercion in his freedom of movement through illegality or abuse of power;
- LXIX. a writ of security (mandado de segurança) shall be issued to protect a liquid and certain right not protected by habeas corpus or habeas data, when the party responsible for the illegality or abuse of power is a public authority or an agent of a legal entity performing governmental duties;
- LXX. a collective writ of security may be brought by:
- a. a political party represented in the National Congress;
  - b. a union, professional organization or association legally organized and operative for at least one year, to defend the interests of its members or associates;
- LXXI. a mandate of injunction (mandado de injunção) shall be issued whenever lack of regulatory provisions make exercise of constitutional rights and liberties and the prerogatives inherent in nationality, sovereignty and citizenship unfeasible;
- LXXII. habeas data shall be granted:
- a. to assure knowledge of personal information about the petitioner contained in records or data banks of government agencies or entities of a public character;
  - b. to correct data whenever the petitioner prefers not to do so through confidential judicial or administrative proceedings;
- LXXIII. any citizen has standing to bring a popular action to annul an act injurious to the public patrimony or to the patrimony of an entity in which the State participates, to administrative morality, to the environment and to historic and cultural patrimony; except in a case of proven bad faith, the plaintiff is exempt from court costs and from the burden of paying the prevailing party's attorneys' fees and costs;
- LXXIV. the State shall provide full and gratuitous legal assistance to anyone who proves that he has insufficient funds;
- LXXV. the State shall compensate anyone convicted by judicial error, as well any person who remains imprisoned for a period longer than that determined by his sentence;
- LXXVI. the following shall be free of charge for persons recognized as poor, as provided by law:
- a. civil birth certificate;
  - b. death certificate;
- LXXVII. habeas corpus and habeas data proceedings and, as provided by law, acts necessary to the exercise of citizenship, are free of charge;
- LXXVIII. everyone is assured that judicial and administrative proceedings will end within a reasonable time and the means to guarantee that they will be handled speedily.
- §1°. The rules defining fundamental rights and guarantees apply immediately.
- §2°. The rights and guarantees established in this Constitution do not exclude others derived from the regime and principles adopted by it, or from international treaties to which the Federative Republic of Brazil is a party.

§3°. International treaties and conventions on human rights approved by both houses of the National Congress, in two different voting sessions, by three-fifths votes of their respective members, shall be equivalent to Constitutional Amendments.

§4°. Brazil submits itself to the jurisdiction of the International Criminal Tribunal to whose creation it has manifested adhesion.

## CHAPTER II: SOCIAL RIGHTS

### Art 6

Education, health, nutrition, labor, housing, leisure, security, social security, protection of motherhood and childhood and assistance to the destitute, are social rights, in accordance with this Constitution.

### Art 7

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

- I. employment protected against arbitrary dismissal or dismissal without cause, as provided for by complementary law that shall establish severance pay, among other rights;
- II. unemployment insurance, in the event of involuntary unemployment;
- III. Guarantee Fund for the Length of Service (Fundo de Garantia do Tempo de Serviço);
- IV. a national uniform minimum wage, fixed by law, capable of meeting a worker's basic living needs and those of his family, for housing, nourishment, education, health, leisure, clothing, hygiene, transportation and social security, with periodic adjustments to maintain its purchasing power, prohibiting linkage to it as index for any purpose;
- V. a salary floor in proportion to the extent and complexity of the work;
- VI. irreducibility of salaries or wages, except when provided for in a collective agreement or accord;
- VII. for those receiving variable compensation, a guaranty that the salary or wage will never fall below the minimum wage;
- VIII. a thirteenth-month salary based on full pay or the amount of pension;
- IX. higher remuneration for nighttime work than for daytime work;
- X. wage protection, as provided by law, with intentional retention constituting a crime;
- XI. participation in profits or results, independent of remuneration, and, exceptionally, participation in management of the company, as defined by law;
- XII. family allowance for dependents of the low income worker, as provided by law;
- XIII. normal working hours not to exceed eight hours per day and forty-four hours per week, permitting a trade-off of work hours and reduction in the work day through an accord or a collective bargaining agreement;
- XIV. a workday of six hours for work performed in continuous shifts, unless otherwise established by collective bargaining;
- XV. paid weekly rest, preferably on Sundays;
- XVI. a pay scale for overtime at least fifty percent higher than that for normal work;
- XVII. an annual paid vacation, at a rate at least one-third higher than normal pay;

- Rights of children guaranteed
- Right to health care
- Right to rest and leisure
- Right to work/state duty to provide work
- Right to shelter
- General guarantee of social security

- XVIII. maternity leave without loss of job or wages for a period of one hundred-twenty days;
- XIX. paternity leave, as provided by law;
- XX. protection of the job market for women through specific incentives, as provided by law;
- XXI. advance notice of dismissal proportional to length of service, with a minimum of thirty days, as provided by law;
- XXII. reduction of risks inherent in the job by means of health, hygiene and safety rules;
- XXIII. additional remuneration for strenuous, unhealthy or dangerous work, as provided by law;
- XXIV. retirement pension;
- XXV. free assistance for children and dependents from birth to 5 (five) years of age in day-care centers and pre-schools;
- XXVI. recognition of collective bargaining accords and agreements;
- XXVII. protection because of automation, as provided by law;
- XXVIII. occupational accident insurance, paid for by the employer, without excluding the employer's liability for indemnity in the event of malice or fault;
- XXIX. a cause of action for amounts due from employment relationships, with a statute of limitations of five years for urban and rural workers, up to a limit of two years after termination of the labor contract;
  - a. revoked;
  - b. revoked;
- XXX. prohibition of any difference in pay 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 pay and hiring criteria for handicapped workers;
- XXXII. prohibition of any distinction among manual, technical and intellectual work or among the respective professionals;
- XXXIII. prohibition of nighttime, dangerous or unhealthy work for those under eighteen years of age, and of any work for those under the age of sixteen, except as an apprentice;
- XXXIV. equal rights for workers with a permanent employment relationship and for occasional workers.

## Sole Paragraph

The category of domestic workers is assured the rights set out in subparagraphs IV, VI, VII, VIII, X, XIII, XV, XVI, XVII, XVIII, XIX, XXI, XXII, XXIV, XXVI, XXX, XXXI and XXXIII, and taking into consideration the conditions established in law and observing the simplification of the performance of the principal and accessory tax obligations, the provisions in the subparagraphs I, II, III, IX, XII, XXV and XXVIII, as well as integration into the social security system.

## Art 8

Persons are free to form professional or syndical associations, observing the following:

- I. the law may not require State authorization for organization of a syndicate, with the exception of registration with the proper agency, prohibiting the Government from interfering and intervening in syndical organization;

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

## Sole Paragraph

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

## Art 9

The right to strike is guaranteed; it is up to the workers to decide when to exercise it and upon the interests to be defended thereby.

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

§2°. Parties responsible for commission of abuses shall be subject to the penalties of the law.

## Art 10

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

## Art 11

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

## CHAPTER III: NATIONALITY

### Art 12

Brazilians are:

- I. by birth:
  - a. those born in the Federative Republic of Brazil, even though of foreign parents, provided that they are not in the service of their country;
  - b. those born abroad of a Brazilian father or mother, so long as either is in the service of the Federative Republic of Brazil;
  - c. those born abroad of a Brazilian father or mother, so long as they are registered at a proper Brazilian governmental office, or come to reside in the Federative Republic of Brazil and opt for Brazilian nationality at any time after reaching the age of majority;
- II. by naturalization:
  - a. those who, as set forth by law, acquire Brazilian nationality; for persons whose country of origin is Portuguese-speaking, only one uninterrupted year of residence and good moral character are required;
  - b. foreigners of any nationality, resident in the Federative Republic of Brazil for more than fifteen uninterrupted years and without any criminal conviction, provided they request Brazilian nationality.

§1°. Rights inherent to Brazilians shall be attributed to Portuguese permanently resident in the Country if Brazilians are afforded reciprocal treatment, except in cases provided for in this Constitution.

§2°. The law may not establish any distinction between native born and naturalized Brazilians, except in cases provided for in this Constitution.

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

- I. President and Vice-President of the Republic;
- II. President of the Chamber of Deputies;
- III. President of the Federal Senate;
- IV. Minister of the Supreme Federal Tribunal;
- V. the diplomatic career;
- VI. officers of the Armed Forces;
- VII. the Minister of Defense.

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

- I. whose naturalization has been cancelled by judicial decision because of activity harmful to the national interest;
- II. acquires another nationality, except in the cases:
  - a. of recognition of original nationality by foreign law;
  - b. of a foreign law imposing naturalization upon a Brazilian residing in a foreign country as a condition for remaining in its territory or for exercise of civil rights.

### Art 13

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

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

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

• Official or national languages

## CHAPTER IV: POLITICAL RIGHTS

### Art 14

Popular sovereignty shall be exercised by universal suffrage, and by direct and secret vote, with equal value for all, and, as provided by law, by:

- I. plebiscite;
- II. referendum;
- III. popular initiative.

§1°. Voter registration and voting are:

- I. compulsory for persons over eighteen years of age;
- II. optional for:
  - a. the illiterate;
  - b. those over seventy years of age;
  - c. those over sixteen and under eighteen years of age.

§2°. Foreigners may not register to vote, nor may conscripts during their period of compulsory military service.

§3°. Conditions for eligibility, according to the law, are the following:

- I. Brazilian nationality;
- II. full exercise of political rights;
- III. voter registration;
- IV. electoral domicile in the district;
- V. party affiliation;
- VI. minimum age of:
  - a. thirty-five years for President and Vice-President of the Republic and Senator;
  - b. thirty years for Governor and Lieutenant Governor of a State and the Federal District;
  - c. twenty-one years for Federal, State or District Representative, Prefect (Prefeito), Vice-Prefect and justice of the peace;
  - d. eighteen years for alderman (Vereador).

§4°. Persons that cannot register to vote and illiterates are not eligible.

§5°. The President of the Republic, Governors of the States and the Federal District, Prefects and those that have succeeded or replaced them in the course of their mandates, may be reelected for a single subsequent term.

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

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

§8°. A member of the armed forces who can register to vote is eligible under the following conditions:

- I. if he has served for less than ten years, he shall be on leave from military activities;

II. if he has served for more than ten years, he shall be discharged from military duties by his superiors and, if elected, shall be automatically retired upon taking office.

§9°. Complementary law shall establish other cases of ineligibility and periods for which it shall remain in force, in order to protect administrative probity, morality for the exercise of the mandate (considering the past life of the candidate), and the normality and legitimacy of elections from the influence of economic power or abuse from holding an office, position or job in the direct or indirect Administration.

§10°. Elective mandates may be challenged in the Electoral Courts within a period of fifteen days after certification of election, substantiating the suit with evidence of abuse of economic power, corruption or fraud.

§11°. A suit challenging a mandate shall be conducted in secrecy, and the plaintiff shall be liable, as provided by law, if the suit is spurious or in bad faith.

## Art 15

Deprivation of political rights is forbidden; loss or suspension of such rights may occur only in cases of:

- I. cancellation of naturalization by a final non-appealable judgment;
- II. absolute civil incapacity;
- III. so long as the effects of a final non-appealable criminal conviction remain in force;
- IV. refusal to comply with an obligation imposed upon everyone or to perform alternative service, in accordance with art. 5, VIII;
- V. administrative impropriety, in terms of art. 37, § 4°.

## Art 16

A law altering the electoral process shall enter into force on its publication date and shall not apply to elections that occur within one year from the date it enters into force.

## CHAPTER V: POLITICAL PARTIES

### Art 17

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

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

§1°. Political parties are assured autonomy in defining their internal structure, organization and operation and in adopting criteria for choosing their regime of electoral affiliation, without requiring linkage among candidates in the national, state, district or county spheres. Party by-laws shall establish rules for party discipline and loyalty.

§2°. After they have acquired legal capacity, as provided for in civil law, political parties shall register their by-laws with the Superior Electoral Tribunal.

• Restrictions placed on political parties  
• Right to form political parties



§3°. Political parties have the right to resources from party funds and to free radio and television time, as provided by law.

§4°. Political parties are forbidden to utilize paramilitary organizations.

## TITLE III

# ORGANIZATION OF THE STATE

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## CHAPTER I: POLITICAL-ADMINISTRATIVE ORGANIZATION

### Art 18

The political and administrative organization of the Federative Republic of Brazil includes the Union, States, Federal District, and Counties, all autonomous, as provided for in this Constitution.

§1°. The federal capital is Brasília.

§2°. Federal Territories are part of the Union, and their creation, transformation into States, or re-integration into their State of origin shall be regulated by complementary law.

§3°. States may merge into each other, subdivide, or split in order to be annexed to others, or form new States or Federal Territories, with the approval of the population directly interested through a plebiscite, and the approval of the National Congress through a complementary law.

§4°. The creation, incorporation, merger and subdivision of Counties shall be done by state law, within the period determined by complementary federal law, and shall depend upon prior consultation, via plebiscite, with populations of the Counties involved, after divulging the County Feasibility Studies, presented and publicized as provided by law.

### Art 19

The Union, States, Federal District and Counties are forbidden to:

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

## CHAPTER II: THE UNION

### Art 20

The following constitute property of the Union:

- I. property presently belonging to it, as well as that which may be granted to it;

- II. unoccupied lands essential to defense of frontiers, military fortifications and constructions, federal communication and environmental preservation routes, as defined by law;
- III. lakes, rivers and any watercourses on lands that it owns; interstate waters; waters that serve as borders with other countries; waters that extend into or come from a foreign territory; as well as the bordering lands and river beaches;
- IV. islands in rivers and in lakes in zones bordering other countries, ocean beaches, islands in the ocean and offshore, excluding from the latter areas containing the County seats, with the exception of those areas affected by public service and the federal environmental unit, and the areas referred to in art. 26, II;
- V. natural resources of the continental shelf and the exclusive economic zone;
- VI. territorial seas;
- VII. tidal lands and those added by accretion;
- VIII. potential hydraulic energy sites;
- IX. mineral resources, including those in the subsoil;
- X. natural subterranean cavities and archeological and pre-historic sites;
- XI. lands traditionally occupied by Indians.

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

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

## Art 21

The Union shall have the power to:

- I. maintain relations with foreign States and participate in international organizations;
- II. declare war and make peace;
- III. assure national defense;
- IV. permit foreign forces, in cases provided for in complementary law, transit through national territory or to remain therein temporarily;
- V. decree a state of siege, state of defense and federal intervention;
- VI. authorize and supervise the production and commerce in war materials;
- VII. issue currency;
- VIII. administer the Country's foreign exchange reserves and supervise financial transactions, especially credit, exchange, and capitalization, as well as insurance and private pension plans;
- IX. prepare and execute national and regional plans for ordering the territory and for economic and social development;
- X. maintain the postal service and national air mail;
- XI. operate, either directly or through authorization, concession, or permit, telecommunication services, as set forth by a law that shall provide for the organization of the services, the creation of a regulatory agency and other institutional aspects;
- XII. operate, either directly or through authorization, concession or permit:
  - a. the services of broadcasting sound and images with sound;

- b. services and installations of electric energy and utilization of hydroelectric power, in cooperation with the States in which the potential hydroelectric sites are located;
  - c. air and aerospace navigation and airport infrastructure;
  - d. railway and waterway transportation services among Brazilian ports and national frontiers, or that cross State or Territorial boundaries;
  - e. passenger services for interstate and international highway transportation;
  - f. sea, river and lake ports;
- XIII. organize and maintain the Judiciary, Public Ministry of the Federal District and the Territories, and the Public Defender's Office of the Territories;
- XIV. organize and maintain the civil police, military police and military fire brigades of the Federal District, as well as provide financial assistance to the Federal District for performance of public services, by means of a particular fund;
- XV. organize and maintain official national statistical, geographical, geological and mapping services;
- XVI. classify, for purposes of viewer discretion, public amusements and radio and television programs;
- XVII. grant amnesty;
- XVIII. plan and promote permanent defenses against public disasters, especially droughts and floods;
- XIX. establish a national system for management of water resources and define criteria for granting rights for their use;
- XX. establish directives for urban development, including housing, basic sanitation and urban transportation;
- XXI. establish principles and directives for the national transportation system;
- XXII. operate maritime, airport and border police services;
- XXIII. operate nuclear services and installations of any nature and exercise governmental monopolies over research, mining, enrichment, reprocessing, industrialization, and commerce in nuclear ores and their by-products, in accordance with the following principles and conditions:
- a. all nuclear activity within the national territory shall be allowed for peaceful purposes and shall be subject to approval by the National Congress;
  - b. marketing and utilization of radioisotopes for research and medical, agricultural and industrial use are authorized under a permit regime;
  - c. production, marketing and utilization of radioisotopes with a half-life equal to or less than two hours are authorized under a permit regime;
  - d. civil liability for nuclear damages does not depend on the existence of fault;
- XXIV. organize, maintain and perform inspections of working conditions;
- XXV. establish the areas and conditions for conduct of prospecting and placer mining in the form of associations.

## Art 22

The Union has exclusive power to legislate with respect to:

- 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 wartime;
- IV. waters, energy, informatics, telecommunications and radio broadcasting;
- V. the postal service;

- VI. the monetary system, measuring systems and certifications and guarantees of metals;
- VII. policies of credit, foreign exchange, insurance and transfer of securities;
- VIII. foreign and interstate commerce;
- IX. directives of national transportation policy;
- X. regime of the ports and lake, river, ocean, air and aerospace navigation;
- XI. transit and transportation;
- XII. mineral deposits, mines, mineral resources and metallurgy;
- XIII. nationality, citizenship and naturalization;
- XIV. indigenous populations;
- XV. emigration, immigration, entry, extradition and expulsion of foreigners;
- XVI. organization of the national employment system and conditions for professional practice;
- XVII. organization of the Judiciary and the Public Ministry of the Federal District and of the Territories, and the Public Defender's Office of the Territories, as well as their administrative organization;
- XVIII. national systems of statistics, mapping and geology;
- XIX. systems of savings, as well as obtaining and guaranteeing popular savings;
- XX. systems of consórcios and lotteries;
- XXI. general rules of organization, personnel, war materials, guarantees, enlistment and mobilization of the military police and military fire brigades;
- XXII. jurisdiction of the federal police and the federal highway and railway police;
- XXIII. social security;
- XXIV. directives and bases for national education;
- XXV. public registries;
- XXVI. nuclear activities of any nature;
- XXVII. general rules for all types of bidding and contracting for direct public administration, autarchies and foundations of the Union, States, Federal District and Counties, obeying the provision of art. 37, XXI, and for public companies and mixed-capital companies, as provided for in art. 173, § 1º, III;
- XXVIII. territorial defense, aerospace defense, maritime defense, civil defense and national mobilization;
- XXIX. commercial advertising.

## Sole Paragraph

Complementary law may authorize the States to legislate on specific questions relating to matters covered in this article.

## Art 23

The Union, States, Federal District and Counties, shall have joint powers to:

- I. ensure that the Constitution, the laws and the democratic institutions are observed and that public patrimony is preserved;
- II. safeguard public health, public assistance, and the protection and guaranty of handicapped persons;
- III. protect documents, works, and other assets of historic, artistic, and cultural value, monuments, remarkable natural landscapes and archeological sites;
- IV. prevent the loss, destruction, or changing of the characteristics of works of art and other goods of historic, artistic or cultural value;

- V. furnish means of access to culture, education and science;
- VI. protect the environment and combat pollution in any of its forms;
- VII. preserve the forests, fauna and flora;
- VIII. promote agricultural and livestock production and organize the food supply;
- IX. promote programs for construction of housing and improvement of conditions of living and basic sanitation;
- X. combat the causes of poverty and the factors of marginalization, promoting the social integration of the underprivileged sectors;
- XI. register, monitor and supervise concessions of rights to research and exploit water and mineral resources within their territories;
- XII. establish and implement an educational policy for traffic safety.

## Sole Paragraph

Complementary laws shall establish rules for cooperation among the Union, States, Federal District and Counties, aimed at balanced development and well-being on a nation-wide basis.

## Art 24

The Union, States and Federal District shall have concurrent power to legislate on:

- I. tax, financial, penitentiary, economic and urban planning law;
- II. the budget;
- III. commercial registries;
- IV. costs of forensic services;
- V. production and consumption;
- VI. forests, hunting, fishing, fauna, preservation of nature, defense of the soil and natural resources, protection of the environment and pollution control;
- VII. protection of the historic, cultural, artistic, touristic, and scenic patrimony;
- VIII. liability for damages to the environment, consumers, property and rights of artistic, aesthetic, historic, tourist, and scenic value;
- IX. education, culture, teaching and sports;
- X. creation, operation and procedures of small claims courts;
- XI. court procedures;
- XII. social security and protection and defense of health;
- XIII. legal assistance and public defense;
- XIV. protection and social integration of handicapped persons;
- XV. protection of childhood and youth;
- XVI. organization, guarantees, rights and duties of the civil police.

§1°. Within the scope of concurrent legislation, the Union's powers shall be limited to establishing general rules.

§2°. The power of the Union to legislate with respect to general rules does not preclude supplementary powers of the States.

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

§4°. The supervision of a federal law over general rules suspends the effectiveness of a State law, to the extent that it is contrary to the Federal Law.

## CHAPTER III: THE FEDERATED STATES

### Art 25

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

§1°. Powers not forbidden to them by this Constitution are reserved to the States.

§2°. It is incumbent upon the States to operate, directly or through concessions, local services of piped gas, as provided by law. Issuance of a provisional measure for its regulation is prohibited.

§3°. The States may, by means of complementary law, create metropolitan regions, urban clusters and micro-regions, formed by grouping neighboring municipalities, in order to integrate the organization, planning and operation of public functions of common interest.

### Art 26

The property of the States includes:

- I. surface or underground waters, whether flowing, emerging or in reservoirs, with the exception, in the latter case, as provided by law, of those resulting from works carried out by the Union;
- II. ocean and coastal island areas that are under their dominion, excluding those under the dominion of the Union, counties or third parties;
- III. river and lake islands that do not belong to the Union;
- IV. vacant government lands not included among those belonging to the Union.

### Art 27

The number of Representatives in the State Legislative Assembly shall be three times the representation of the State in the Chamber of Deputies and, upon reaching thirty-six, the number shall be increased by as many Representatives as the number of Federal Deputies exceeding twelve.

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

§2°. The fixed compensation (súsidio) of State Representatives shall be set by law at the initiative of the Legislative Assembly, at a maximum of seventy-five percent of that established, in specie, for Federal Deputies, observing what has been provided for in articles 39, § 4°, 57, § 7°, 150, II, 153, III, and 153, § 2°, I.

§3°. The Legislative Assemblies have the power to determine their internal rules, police and administrative services of their secretariat, and to fill the respective offices.

§4°. The law shall provide for popular initiative in State legislative processes.

## Art 28

The election of the State Governor and Lieutenant Governor, for a mandate of four years, shall be held on the first Sunday of October for the first round, and, if there should be a second round, on the last Sunday of October of the year before the end of their predecessors' mandate, and they shall take office on January first of the subsequent year, observing as well the provisions of Article 77.

§1°. A Governor who assumes another office or position of direct or indirect public administration shall lose his office, except for offices held by virtue of a public competitive examination and observing the provisions of art. 38, I, IV and V.

§2°. The fixed compensation of the Governor, Lieutenant Governor and Secretaries of State shall be set by law at the initiative of the Legislative Assembly, observing what is provided for in articles 37, XI, 39, § 4°, 150, II, 153, III and 153, § 2°, I.

## CHAPTER IV: THE COUNTIES

### Art 29

Counties shall be governed by an organic law, voted in two rounds, with a minimum interval of ten days between each, and approved by two-thirds of the members of the county legislature, which shall promulgate it, observing the principles established in this Constitution, the respective State Constitution and the following precepts:

- I. election of the Prefect, Vice-Prefect and Aldermen, for a term of office of four years, through direct and simultaneous elections held throughout the entire Country;
- II. election of the Prefect and the Vice-Prefect held on the first Sunday of October of the year prior to the termination of their predecessors' mandate, applying the provisions of art. 77 to Counties with more than two hundred thousand voters;
- III. investiture of the Prefect and of the Vice-Prefect on January 1st of the year subsequent to the election;
- IV. in the composition of County Legislatures the following maximum limits shall be observed:
  - a. 9 (nine) Aldermen in Counties with up to 15,000 (fifteen thousand) inhabitants;
  - b. 11 (eleven) Aldermen in Counties with more than 15,000 (fifteen thousand) and up to 30,000 (thirty thousand) inhabitants;
  - c. 13 (thirteen) Aldermen in Counties with more than 30,000 (thirty thousand) and up to 50,000 (fifty thousand) inhabitants;
  - d. 15 (fifteen) Aldermen in Counties with more than 50,000 (fifty thousand) and up to 80,000 (eighty thousand) inhabitants;
  - e. 17 (seventeen) Aldermen in Counties with more than 80,000 (eighty thousand) and up to 120,000 (one hundred twenty thousand) inhabitants;
  - f. 19 (nineteen) Aldermen in Counties with more than 120,000 (one hundred and twenty thousand) and up to 160,000 (one hundred sixty thousand) inhabitants;
  - g. 21 (twenty) Aldermen in Counties with more than 160,000 (one hundred and sixty thousand) and up to 300,000 (three hundred thousand) inhabitants;
  - h. 23 (twenty-three) Aldermen in Counties with more than 300,000 (three hundred thousand) and up to 450,000 (four hundred fifty thousand) inhabitants;
  - i. 25 (twenty-five) Aldermen in Counties with more than 450,000 (four hundred and fifty thousand) and up to 600,000 (six hundred thousand) inhabitants;
  - j. 27 (twenty-seven) Aldermen in Counties with more than 600,000 (six hundred thousand) and up to 750,000 (seven hundred fifty thousand) inhabitants;

- k. 29 (twenty-nine) Aldermen in Counties with more than 750,000 (seven hundred fifty thousand) and up to 900,000 (nine hundred thousand) inhabitants;
  - l. 31 (thirty-one) Aldermen in Counties with more than 900,000 (nine hundred thousand) and up to 1,050,000 (one million fifty thousand) inhabitants;
  - m. 33 (thirty-three) Aldermen in Counties with more than 1,050,000 (one million fifty thousand) and up to 1,200,000 (one million two hundred thousand) inhabitants;
  - n. 35 (thirty-five) Aldermen in Counties with more than 1,200,000 (one million two hundred thousand) and up to 1,350,000 (one million three hundred fifty thousand) inhabitants;
  - o. 37 (thirty-seven) Aldermen in Counties with more than 1,350,000 (one million three hundred fifty thousand) and up to 1,500,000 (one million five hundred thousand) inhabitants;
  - p. 39 (thirty-nine) Aldermen in Counties with more than 1,500,000 (one million five hundred thousand) and up to 1,800,000 (one million eight hundred thousand) inhabitants;
  - q. 41 (forty-one) Aldermen in Counties with more than 1,800,000 (one million eight hundred thousand) and up to 2,400,000 (two million four hundred thousand) inhabitants;
  - r. 43 (forty-three) Aldermen in Counties with more than 2,400,000 (two million four hundred thousand) and up to 3,000,000 (three million) inhabitants;
  - s. 45 (forty-five) Aldermen in Counties with more than 3,000,000 (three million) and up to 4,000,000 (four million) inhabitants;
  - t. 47 (forty-seven) Aldermen in Counties with more than 4,000,000 (four million) and up to 5,000,000 (five million) inhabitants;
  - u. 49 (forty-nine) Aldermen in Counties with more than 5,000,000 (five million) and up to 6,000,000 (six million) inhabitants;
  - v. 51 (fifty-one) Aldermen in Counties with more than 6,000,000 (six million) and up to 7,000,000 (seven million) inhabitants;
  - w. 53 (fifty-three) Aldermen in Counties with more than 7,000,000 (seven million) and up to 8,000,000 (eight million) inhabitants;
  - x. 55 (fifty-five) Alderman in Counties with more than 8,000,000 (eight million) inhabitants.
- V. the fixed compensation of the Prefect, Vice-Prefect and Municipal Secretaries determined by law at the initiative of the County Legislature, observing the provisions of articles 37, XI, 39, § 4º, 150, II, 153, III, and 153 § 2º, I;
- VI. the fixed compensation of Aldermen shall be determined by the respective County Councils in each legislative term for the following one, observing what is provided for in this Constitution, observing the criteria established in the respective Organic Law and the following maximum limits:
- a. in Counties up to ten thousand inhabitants, the maximum fixed compensation for Aldermen shall correspond to twenty percent of the fixed compensation of State Representatives;
  - b. in Counties between ten thousand and one and fifty thousand inhabitants, the maximum fixed compensation for Aldermen shall correspond to thirty percent of the fixed compensation of State Representatives;
  - c. in Counties of fifty thousand and one to one hundred thousand inhabitants, the maximum fixed compensation for Aldermen shall correspond to forty percent of the fixed compensation of State Representatives;
  - d. in Counties of one hundred thousand and one to three hundred thousand inhabitants, the maximum fixed compensation for Aldermen shall correspond to fifty percent of the fixed compensation of State Representatives;



- e. in Counties of three hundred thousand and one to five hundred thousand inhabitants, the maximum fixed compensation for Aldermen shall correspond to sixty percent of the fixed compensation of State Representatives;
- f. in Counties of more than five hundred thousand inhabitants, the maximum fixed compensation for Aldermen shall correspond to seventy-five percent of the fixed compensation of State Representatives;
- VII. total expenses for remuneration of Aldermen may not exceed five percent of the revenues of the County;
- VIII. immunity of Aldermen for their opinions, words and votes in exercise of their mandate and within the boundaries of the county;
- IX. prohibitions and incompatibilities, while in the office of Aldermen, similar, where applicable, to the provisions of this Constitution for members of the National Congress and of the respective State Constitution for members of the Legislative Assembly;
- X. trial of the Prefect before the Tribunal of Justice;
- XI. organization of legislative and supervisory functions of the county legislature;
- XII. cooperation of representative associations in municipal planning;
- XIII. popular initiative on bills of specific interest to the county, city or districts, through manifestation of at least five percent of the electorate;
- XIV. loss of mandate of the Prefect according to art. 28, sole paragraph.

## Art 29-A

The total expenses of County Councils, including Aldermen's fixed compensation but excluding the expenses with the inactive, may not exceed the following percentages, with respect to the sum of tax receipts and transferences provided for in § 5° of art. 153 and arts. 158 and 159, effectively realized in the prior fiscal year:

- I. 7% (seven percent) for Counties with a population of up to 100,000 (one hundred thousand) inhabitants;
- II. 6% (six percent) for Counties with a population between 100,000 (one hundred thousand) and 300,000 (three hundred thousand) inhabitants;
- III. 5% (five percent) for Counties with a population between 300,001 (three hundred thousand one) and 500,000 (five hundred thousand) inhabitants;
- IV. 4.5% (four and one-half percent) for Counties with a population between 500,001 (five hundred thousand and one) and 3,000,000 (three million) inhabitants;
- V. 4% (four percent) for Counties with a population between 3,000,001 (three million and one) inhabitants and 8,000,000 (eight million) inhabitants;
- VI. 3.5% (three and one-half percent) for Counties with a population greater than 8,000,001 (eight million and one) inhabitants.

§1°. The County Council shall not spend more than seventy percent of its receipts on payrolls, including expenditures for fixed compensation of its Aldermen.

§2°. It constitutes an impeachable offense (crime de responsabilidade) for the County Prefect:

- I. to carry out transfers that exceed the limits defined in this article;
- II. to not send or transfer by the twentieth day of each month; or
- III. to send less than the proportion fixed in the Budget Law.

§3°. It constitutes an impeachable offense for the President of the County Council to disrespect § 1° of this article.

• Municipal government

## Art 30

The Counties have the power to:

- I. legislate on subjects of local interest;
- II. supplement federal and state legislation where applicable;
- III. institute and collect taxes within their jurisdiction, as well as to apply their revenues, without prejudice to the requirement that they render accounts and publish provisional balance sheets within the periods established by law;
- IV. create, organize and eliminate districts, observing state legislation;
- V. organize and perform essential public services of local interest, including collective transportation, either directly or by concession or permit;
- VI. maintain programs of pre-school and elementary education;
- VII. provide health services to the population, with the technical and financial cooperation of the Union and State;
- VIII. promote, where applicable, adequate territorial ordering through planning and control of use, subdivision and occupation of urban land;
- IX. promote protection of local historic and cultural patrimony, observing the legislation and federal and state supervisory actions.

• Municipal government

## Art 31

Supervision of the County shall be performed by the County Legislature, through outside control and by the internal control systems of the County Executive, as provided by law.

§1°. Outside control of the County Legislature shall be performed with the assistance of the State Tribunals of Accounts or Councils or County Tribunals of Accounts, where they exist.

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

§3°. Accounts of the Counties shall remain available each year to any taxpayer for sixty days for examination and evaluation, and any taxpayer may question their legitimacy, as provided by law.

§4°. Creation of County Tribunals of Accounts and accounts councils or agencies is forbidden.

## CHAPTER V: THE FEDERAL DISTRICT AND THE TERRITORIES

### SECTION I: The Federal District

## Art 32

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

§1°. The Federal District shall have the legislative powers reserved to the States and Counties.

• Subsidiary unit government

§2°. Election of the Governor and the Lieutenant Governor, observing the provisions of art. 77, and the District Representatives shall coincide with that of the State Governors and Representatives, for terms of office of the same duration.

§3°. The provisions of art. 27 apply to the District Representatives and to the Legislative Chamber.

§4°. Federal law shall provide for use of the civil and military police and the military fire brigade by the Government of the Federal District.

## SECTION II: The Territories

### Art 33

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

§1°. The Territories may be divided into Counties, which shall be subject to the provisions of Chapter IV of this Title, whenever applicable.

§2°. The accounts of a Territorial Government shall be submitted to the National Congress, with the prior opinion of the Tribunal of Accounts of the Union.

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

## CHAPTER VI: INTERVENTION

### Art 34

The Union shall not intervene in the States or in the Federal District, except to:

- I. maintain national integrity;
- II. repel a foreign invasion or invasion of one unit of the Federation into another;
- III. put an end to a serious threat to public order;
- IV. guarantee the unimpeded functioning of any of the Branches of Government in the units of the Federation;
- V. reorganize the finances of a unit of the Federation that:
  - a. suspends payment of a debt guaranteed by government instruments or securities for more than two consecutive years, except for reasons of force majeure;
  - b. fails to deliver to the counties the tax revenues established in this Constitution within the time periods established by law;
- VI. provide for enforcement of a federal law, court orders or decisions;
- VII. ensure compliance with the following constitutional principles:
  - a. republican form, representative system and democratic regime;
  - b. individual rights;
  - c. county autonomy;
  - d. rendering of accounts of direct and indirect public administration;
  - e. application of the minimum required by the receipts resulting from the state taxes, including those stemming from transfers, for maintenance and development of education and for public health activities and services.

## Art 35

A State shall not intervene in its Counties, nor the Union in the Counties located in a Federal Territory, except when:

- I. a debt guaranteed by government instruments or securities is not paid for two consecutive years, unless due to force majeure;
- II. required accounts are not rendered in the manner provided by law;
- III. the required minimum amount of county revenues has not been applied to maintenance and development of education and public health activities and services;
- IV. the Tribunal of Justice grants a representation suit to assure observance of principles set out in the State Constitution or to provide for enforcement of a law, court order or judicial decision.

## Art 36

A decree of intervention shall depend:

- I. in the case of art. 34, IV, upon a request from the coerced or impeded Legislature or Executive, or on an order from the Supreme Federal Tribunal if the coercion is exerted against the Judiciary;
- II. in the case of disobedience of a court order or decision, on an order from the Supreme Federal Tribunal, Superior Tribunal of Justice, or the Superior Electoral Tribunal;
- III. on the Supreme Federal Tribunal's granting a representation action brought by the Procurator-General of the Republic, in the case of art. 34, VII, and in the case of refusal to enforce a federal law;
- IV. revoked.

§1°. The decree of intervention, which shall specify the extent, period and conditions of enforcement and which, if applicable, shall appoint the intervenor, shall be submitted for consideration by the National Congress or the State Legislative Assembly within twenty four hours.

§2°. If the National Congress or the Legislative Assembly is not in session, a special session shall be called within the same twenty-four hour period.

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

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

## CHAPTER VII: PUBLIC ADMINISTRATION

### SECTION I: General Provisions

## Art 37

The direct or indirect public administration of any of the Branches of the Union, States, Federal District and Counties, shall obey the principles of legality, impersonality, morality, publicity and efficiency, as well as the following:

- I. public offices, jobs and positions are accessible to Brazilians who meet the requirements established by law, as well as to foreigners, as provided by law;
- II. investiture in public office or employment depends upon prior approval in public competitive examinations, or such examinations and comparison of professional credentials, in accordance with the nature and complexity of the office or job, as provided by law, except for appointment to a commission office declared by law to permit free appointment and discharge;
- III. the period of validity of a public competitive examination shall be up to two years, extendable once for a like period;
- IV. during the non-extendable period set forth in the notice of the public competition, those approved in a public competitive examination or such examination and comparison of professional credentials shall be called with priority over newly approved applicants to assume a career office or employment;
- V. positions of confidence, exercised exclusively by civil servants occupying an effective position, and commission offices, to be filled by career civil servants in the cases, conditions and minimum percentages provided for by law, are intended only for assignments of management, supervision and assessment;
- VI. civil servants are guaranteed the right of free syndical association;
- VII. the right to strike shall be exercised in the manner and within the limits defined by specific law;
- VIII. the law shall reserve a percentage of public offices and positions for handicapped persons and shall define the criteria for their hiring;
- IX. the law shall set out the circumstances for hiring personnel for a fixed period of time in order to meet a temporary need of exceptional public interest;
- X. remuneration of civil servants and the salary dealt with in § 4° of art. 39 shall be set or modified only by a specific law, observing private initiative in each case, assuring annual general revision, always on the same date and without distinction with respect to indexes;
- XI. remuneration and fixed compensation of holders of public offices, positions and employment in the direct administration, autarchies and foundations; of members of any Branches of the Union, States, Federal District and Counties; of holders of an elective office and of other political agents; and the benefits, pensions or other form of remuneration, whether or not received cumulatively, including personal advantages or those of any other nature, shall not exceed the monthly compensation, in specie, of the Ministers of the Federal Supreme Tribunal; applying as a limit in the Counties, the compensation of the Prefect; and in the States and the Federal District, in the Executive branch, the monthly compensation of the Governor; in the Legislative branch, the compensation of the State and District Legislators; and in the Judicial branch, the compensation of the justices of the Tribunal of Justice, limited to ninety and twenty-five hundredths percent of the monthly compensation, in specie, of the Ministers of the Supreme Federal Tribunal, a limit also applicable to the members of the Public Ministry, the Procurators and the Public Defenders;
- XII. compensation for positions in the Legislative and Judicial Branches may not be higher than those paid by the Executive Branch;
- XIII. linking or equating any kind of remuneration is prohibited for purposes of compensating public service personnel;
- XIV. pecuniary raises received by a government employee shall not be computed or accumulated for the purpose of granting subsequent raises;
- XV. the salary and compensation of holders of public positions and jobs are irreducible, except for the provisions of subparagraphs XI and XIV of this article and arts. 39, § 4°, 150, II, 153, III, and 153, § 2°, I;

- XVI. accumulation of paid public offices is prohibited, except, when working hours are compatible, observing in any case the provision of subparagraph XI:
- a. as to two teaching positions;
  - b. as to one teaching position with another technical or scientific position;
  - c. as two exclusive positions or employment for health professionals with regulated professions;
- XVII. the prohibition against accumulation extends to jobs and offices and includes foundations, public companies, mixed-capital companies, their subsidiaries and companies controlled, directly or indirectly, by the Government;
- XVIII. the Treasury and its inspectors shall, within their spheres of competence and jurisdiction, enjoy precedence over other administrative sectors, as provided by law;
- XIX. creation of autarchies and authorization to organize public companies, mixed-capital companies, or foundations can only be accomplished by a specific law. In the latter case, it shall be left to complementary law to define the areas of their activity;
- XX. in each case legislative authorization is required for organization of subsidiaries of the entities referred to in the preceding subparagraph, as well as participation by any of them in a private company;
- XXI. except for cases specified in law, public works, services, purchases and disposals shall be contracted through a process of public bidding that assures equal conditions to all bidders, with clauses that establish payment obligations. The effective conditions of the bid shall be maintained, as provided by law, which shall only allow requirements of technical and economic qualifications essential to secure performance of the obligations;
- XXII. the tax administrations of the Union, the States, the Federal District and the Counties, essential activities for the functioning of the State, exercised by employees with specific careers, shall have priority resources for carrying out their activities and shall act in an integrated fashion, including sharing tax rolls and fiscal information, as provided by law or agreement.
- §1°. Publicity of the acts, programs, public works, services, and campaigns of government agencies shall have an educational, informative, or social orientation character, and shall not include names, symbols or images representing the personal promotion of governmental authorities or civil servants.
- §2°. Non-compliance with the provisions of subparagraphs II and III shall result in the nullity of the act and punishment of the responsible authority, as provided by law.
- §3°. The law shall regulate the forms of user participation in direct and indirect public administration, specifically regulating:
- I. complaints relating to providing public services in general, assuring maintenance of services for attending users and periodic evaluations, both external and internal, of the quality of services;
  - II. user access to administrative registries and information about governmental acts, observing the provisions of art. 5, X and XXXIII;
  - III. regulation of representation against negligent or abusive exercise of offices, jobs or positions in public administration.
- §4°. Acts of administrative dishonesty shall result in suspension of political rights, loss of public office, freezing of assets and reimbursement to the Public Treasury, in the form and degree provided by law, without prejudice to any applicable criminal action.
- §5°. The law shall establish the period of limitations for offenses performed by any agent, whether or not a civil servant, that cause damage to the Public Treasury, without prejudice to the respective actions for damages.

§6°. Legal entities of public and private law providing public services shall be liable for the damages that their agents, acting in such capacity, cause to third parties, assuring the right to subrogation from the agent responsible in cases of intentional misconduct (dolo) or fault.

§7°. The law shall provide for requirements and restrictions on holders of offices or jobs in direct or indirect administration that permit access to privileged information.

§8°. Managerial, budgetary and financial autonomy of agencies and entities of direct or indirect administration may be amplified by contracts signed between their administrators and the government, for the purpose of fixing performance targets for agencies or entities. It is up to the law to provide for:

- I. the period of duration of the contract;
- II. controls and criteria for evaluation of performance, rights, obligations and liabilities of the directors;
- III. remuneration of personnel.

§9°. The provision of subparagraph XI applies to public companies and mixed-capital companies and their subsidiaries that receive resources from the Union, States, Federal District or Counties for payment of personnel expenses or general outlays.

§10°. Simultaneous receipt of retirement benefits stemming from art. 40 or from arts. 42 and 142 with remuneration from a public office, job or position is prohibited, except for cumulative positions, as provided by this Constitution, and elective commission positions declared by law to permit free appointment and discharge.

§11°. For the purposes of the limit on remuneration dealt with in subparagraph XI of the heading of this article, the portion that has the character of indemnification, as provided for by law, shall not be taken into account.

§12°. For the purposes of the provisions of subparagraph XI of this article, the States and the Federal District, by amendment to their respective constitutions and organic law, shall have the power to fix as a sole limit, within their own spheres, the monthly fixed compensation of the justices of their respective Tribunals of Justice, limited to ninety and twenty-five hundredths percent of the monthly fixed compensation of Ministers of the Federal Supreme Tribunal, but not applying the provisions of this paragraph to the fixed compensation of the State and District representatives and their aldermen.

## Art 38

The following provisions apply to civil servants of the direct administration, autarchies, or foundations, holding elective offices:

- I. federal, state or district elective office-holders shall be furloughed from their office, employment or position;
- II. one invested with the mandate of Prefect shall be furloughed from his or her office, employment or position, and may opt for remuneration;
- III. one invested with the mandate of Alderman, if the working hours are compatible, shall receive the benefits of his or her office, employment or position, without prejudice to remuneration for the elective office; if the hours are not compatible, the provisions of the preceding subparagraphs shall apply;
- IV. in any case requiring furlough due to exercise of an elective mandate, the period of service shall be counted for all legal purposes, except for merit promotion;
- V. in case of furlough, the amounts shall be determined as if the person had been in activity for purposes of social security benefits.

## SECTION II: Of Civil Servants

### Art 39

The Union, States, Federal District and Counties shall organize a policy council for administration and remuneration of personnel, composed of civil servants designated by the respective Branches.

§1°. Setting of standards for salaries and other components of the remuneration system shall take into account:

- I. the nature, degree of responsibility and complexity of the component offices of each career;
- II. the requirements for investiture;
- III. the peculiarities of the offices.

§2°. The Union, States and Federal District shall maintain governmental schools for formation and improvement of civil servants, with participation in the courses constituting one of the requirements for promotion in the career. For this purpose, entry into agreements or contracts among the federative entities shall be permitted.

§3°. The provisions of art. 7, IV, VII, VIII, IX, XII, XIII, XV, XVI, XVII, XVIII, XIX, XX, XXII and XXX shall apply to civil servants occupying a public office. The law may establish differential requirements for admission when the nature of the office so requires.

§4°. Members of a Branch of Government, holders of an elective office, Ministers of the Federal Government, and State and County Secretaries shall be compensated exclusively by a lump sum salary. Increasing any gratification, additional payment, bonus, premium, representation allowance or any other type of remuneration is forbidden, obeying, in any case, the provisions of art. 37, X and XI.

§5°. Laws of the Union, States, Federal District and Counties shall establish the relationship between the highest and the lowest remuneration for public servants, obeying, in any case, the provision of art. 37, XI.

§6°. The Executive, Legislative and Judicial Branches shall publish annually the amounts of the salaries and remuneration for public offices and jobs.

§7°. Laws of the Union, States, Federal District and Counties shall regulate application of budgetary resources stemming from the economy against current expenses for each agency, autarchy and foundation, for application in the development of programs of quality and productivity, training and development, modernization, re-outfitting and rationalization of public services, including those in the form of additional payments or premiums for productivity.

§8°. Remuneration of career public servants shall be determined in accordance with § 4°.

### Art 40

Civil servants holding effective positions in the Union, the States, the Federal District and the Counties, including their autarchies and foundations, are assured a contributory and joint social security regime through contributions from the respective public entity, active or inactive public servants and pensioners, observing criteria that preserve financial and actuarial equilibrium and the provisions of this article.



§1°. Civil servants included in the social security regime dealt with in this article shall be retired, calculating their benefits starting with the values determined in accordance with §§ 3° and 17°:

- I. for permanent disability, pensions are proportional to the period of contribution, except when stemming from an accident while in service, an occupational disease or a serious, contagious or incurable illness, as specified by law;
- II. compulsorily, at age seventy, with pensions proportional to the period of contribution;
- III. voluntarily, so long as they have completed a minimum period of ten years of effective public service and five years in the position from which they take retirement, observing the following conditions:
  - a. age sixty with thirty-five years of contribution, if male, and age fifty-five and thirty years of contribution, if female;
  - b. age sixty-five if male, and sixty if female, with pensions proportional to the time of contribution.

§2°. At the time they are granted, retirement benefits and pensions may not exceed the respective civil servant's remuneration in the position occupied at the time of retirement or that serves as a reference for the concession of the pension.

§3°. At the time they are granted, retirement benefits shall be calculated on the remuneration utilized as the basis for the contributions of the employee to the social security regimes dealt within this article and art. 201, as provided by law.

§4°. Adoption of differentiated requirements and criteria for concession of retirement to those included in the regime dealt with in this article is prohibited, except, in the terms defined by complementary laws, for functionaries:

- I. who are handicapped;
- II. who engage in risky activities;
- III. whose activities are carried out under special conditions that prejudice their health or physical integrity.

§5°. The requirements of age and period of contribution shall be reduced by five years, with respect to the provisions of § 1°, III, for teachers who can show that their time was spent exclusively in the effective teaching of kindergarten, primary or middle school.

§6°. Except for retirements arising from cumulative positions, as provided by this Constitution, receipt of more than one retirement benefit from the social security regime provided for in this article is prohibited.

§7°. The law shall provide for concession of death benefits, which shall be equal to:

- I. if retired at the date of death, the total value of the deceased civil servant's benefits up to the maximum limit established for benefits in the general regime of social security dealt with in art. 201, increased by seventy percent of the amount exceeding this limit; or
- II. if in active service on the date of death, the total value of the remuneration of the civil servant who held an effective position at the date of death, until the maximum limit established for benefits in the general regime of social security dealt with in art. 201, increased by seventy percent of the amount exceeding this limit.

§8°. In order to preserve permanently their real value, readjustment of benefits is assured, in accordance with criteria established by law.

§9°. The period of federal, state or county contribution shall be counted for purposes of retirement and the corresponding period of service for purposes of availability.

§10°. The law may not establish any fictitious form of counting the contribution period.

§11°. The limit fixed in art. 37, XI, applies to the total sum of benefits for inactivity, including those stemming from accumulation of public positions or employment, as well as other activities subject to contribution for the general social security regime, and to the amount resulting from addition of the benefits of inactivity to remuneration for a cumulative position, as provided by this Constitution, a commission position declared by law to permit free appointment and discharge, and an elective position.

§12°. In addition to the provisions of this article, the social security regime for public servants holding an effective position shall observe, where applicable, the requirements and criteria fixed by the general social security regime.

§13°. The general social security regime shall apply to the public servant occupying exclusively a commission position declared by law to permit free appointment and discharge, as well as any other temporary public position or employment.

§14°. So long as they institute a complementary social security regime for their respective employees holding an effective position, the Union, States, Federal District and Counties may fix the value of retirement benefits and pensions to be conceded by the regime dealt with in this article at the maximum limit established for the beneficiaries of the general social security regime dealt with in art. 201.

§15°. The complementary social security regime dealt with in § 14° shall be instituted by law on the initiative of the Executive, observing, where applicable, the provisions of art. 202 and its paragraphs, through closed entities of complementary social security, of a public nature, which shall offer to the respective participants only defined contribution benefit plans.

§16°. Only by prior and express option may the provisions of §§ 14° and 15° be applied to the civil servant who has entered public service by the publication date of the act instituting the corresponding complementary social security regime.

§17°. All remuneration values considered for calculation of the benefits provided for in § 3° shall be duly updated, as provided by law.

§18°. A contribution shall be levied on retirement benefits and pensions conceded by the regime dealt with in this article to the extent they exceed the maximum limit established for the general social security regime benefits dealt with in art. 201, at a percentage equal to that established for civil servants holding effective offices.

§19°. A civil servant dealt within this article who has completed the requirements for voluntary retirement established in § 1°, III, a, and who opts to remain active will receive a bonus for the remaining equivalent to the value of his social security contribution until he completes the requirements for compulsory retirement contained in § 1°, II.

§20°. More than one regime of social security for civil servants holding effective positions is prohibited; it is also prohibited to have more than one unit managing the respective regime in each state entity, except for the provision of art. 142, § 3°, X.

§21°. When the beneficiary has an incapacitating illness, as provided by law, the contribution provided for in § 18° of this article shall be levied only upon those portions of retirement and pension benefits that exceed twice the maximum limit established for benefits under the general regime of social security dealt with in art. 201 of this Constitution.

## **Art 41**

Civil servants appointed to effective positions by virtue of public competitive examinations acquire tenure after three years of actual service.

§1°. Tenured civil servants shall lose their positions only:

- I. by virtue of a judicial judgment that has become final and unappealable;
- II. through an administrative proceeding in which they have been assured a full defense;
- III. through a procedure of periodic evaluation of performance, in the form of complementary law, assuring a full defense.

§2°. Should dismissal of a tenured civil servant be declared invalid by a judgment of a court, the employee shall be reinstated, and any subsequent occupant of the position, if tenured, shall be reassigned to his original position, without the right to compensation, placed in another position or placed on leave with remuneration proportional to time of service.

§3°. If his position is abolished or declared unnecessary, a tenured civil servant shall be placed on leave, with remuneration proportional to time of service, until adequately placed in another position.

§4°. As a condition for acquisition of tenure, a special performance evaluation is required by a commission organized for this purpose.

## **SECTION III: Of Military Servicemen of the States, Federal District and the Territories**

### **Art 42**

Members of the Military Police and Fire Brigades, institutions organized on the basis of hierarchy and discipline, are military servicemen of the States, Federal District and Territories.

§1°. The provisions of art. 14, § 8°; art. 40, § 9°; and art. 142, §§ 2° and 3° apply to the military servicemen of the States, Federal District and Territories, in addition to what becomes determined by law. It is up to specific state law to deal with the subjects of art. 142, § 3°, subparagraph X, with the respective Governors conferring the ranks of officers.

§2°. What has been fixed by specific law in the respective state entity shall apply to military pensioners of the States, the Federal District and the Territories.

## **SECTION IV: The Regions**

### **Art 43**

For administrative purposes, the Union may coordinate its actions in the same social and geo-economic complex, seeking its development and a reduction in regional inequalities.

§1°. Complementary law shall provide for:

- I. conditions for integration of developing regions;
- II. composition of regional organizations that shall carry out, as provided by law, regional plans included in national economic and social development plans and approved simultaneously.

§2°. Regional incentives shall include, inter alia, as provided by law:

- I. equality of tariffs, freight rates, insurance and other cost and price items for which the Government is responsible;
- II. favorable interest rates for financing priority activities;

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

IV. priority in the economic and social use of rivers, reservoirs, or waters that can be dammed in low-income regions subject to periodic droughts.

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

## TITLE IV

# ORGANIZATION OF THE BRANCHES

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## CHAPTER I: THE LEGISLATIVE BRANCH

### SECTION I: The National Congress

#### Art 44

The Legislative Branch is the National Congress, which is composed of the Chamber of Deputies and the Senate.

#### Sole Paragraph

Each legislative term shall last for four years.

#### Art 45

The Chamber of Deputies is composed of representatives of the people, elected in each State, Territory and the Federal District by a proportional system.

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

§2°. Each territory shall elect four Deputies.

#### Art 46

The Federal Senate is composed of representatives of the States and the Federal District, elected by majority vote.

§1°. Each State and the Federal District shall elect three Senators for eight-year terms.

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

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

## Art 47

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

## SECTION II: Powers of the National Congress

### Art 48

The National Congress shall have the power, with the approval of the President of the Republic (not required for subjects specified in arts. 49, 51 and 52), to provide for all matters within the competence of the Union, particularly concerning:

- I. the tax system, tax collection and income distribution;
- II. multi-year plans, budgetary directives, annual budgets, credit transactions, public debt and issuance of legal tender;
- III. determination and modification of the number of troops in the Armed Forces;
- IV. national, regional and sectorial development plans and programs;
- V. national territorial boundaries, air and maritime space and property owned by the Union;
- VI. incorporation, subdivision or dismemberment of areas of Territories or States, after hearing from the respective Legislative Assemblies;
- VII. temporary transfer of the seat of the Federal Government;
- VIII. granting of amnesty;
- IX. administrative and judicial organization of the Public Ministry and the Public Defender's Office of the Union and of the Territories, and the organization of the Judiciary and the Public Ministry of the Federal District;
- X. creation, transformation and abolition of public offices, employment and positions, observing what has been established in art. 84, VI, b;
- XI. creation and abolition of Ministries and agencies of public administration;
- XII. telecommunications and radio broadcasting;
- XIII. financial matters, foreign exchange, monetary matters, financial institutions and their operations;
- XIV. money, limits on currency issuance and the amount of federal indebtedness evidenced by bonds or other securities;
- XV. determination of the fixed compensation of the Ministers of the Federal Supreme Tribunal, observing what has been provided for in arts. 39, § 4º; 150, II; 153, III; and 153, § 2º, I.

### Art 49

The National Congress shall have exclusive powers:

- I. to decide definitively on international treaties, agreements or acts that result in charges or commitments encumbering the national patrimony;
- II. to authorize the President of the Republic to declare war, make peace, permit foreign forces to pass through national territory or remain therein temporarily, with the exception of cases provided for by complementary law;
- III. to authorize the President and the Vice-President of the Republic to leave the country for more than fifteen days;
- IV. to approve a state of defense or federal intervention, authorize a state of siege or suspend any of these measures;

- V. to suspend normative acts of the Executive that exceed its regulatory authority or the limits of legislative delegation;
- VI. to transfer its seat temporarily;
- VII. to set identical fixed compensation for the Federal Deputies and Senators, observing the provisions of arts. 37, XI, 39, §4°, 150, II, 153, III, and 153, §2°, I;
- VIII. to set the fixed compensation of the President and Vice-President of the Republic and the Ministers of the Federal Government, observing the provisions of arts. 37, XI, 39, §4°, 150, II, 153, III, and 153, §2°, I;
- IX. to review each year accounts rendered by the President of the Republic and to consider reports on the execution of plans of the Government;
- X. to supervise and control, directly or through either of its Chambers, acts of the Executive, including those of indirect administration;
- XI. to safeguard preservation of its legislative authority in the face of rule-making powers of the other Branches;
- XII. to consider granting and renewing concessions for radio and television broadcasters;
- XIII. to select two-thirds of the members of the Tribunal of Accounts of the Union;
- XIV. to approve Executive initiatives referring to nuclear activities;
- XV. to authorize referenda and to call for plebiscites;
- XVI. to authorize exploitation and use of water resources, prospecting and mining of mineral wealth on indigenous lands;
- XVII. to give prior approval for the alienation or concession of public lands with an area greater than two thousand five hundred hectares.

## Art 50

The Chamber of Deputies and the Federal Senate, or any of their Committees, may summon a Minister of the Federal Government or any chief office holder in an agency directly subordinated to the Presidency of the Republic to testify in person on a pre-determined matter. Failure to appear without adequate justification shall constitute an impeachable offense (crime de responsabilidade).

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

§2°. The Executive Committees of the Chamber of Deputies and the Federal Senate may send written requests for information to Ministers of the Federal Government or any person referred to in the heading of this article. Refusal or noncompliance with such request within a period of thirty days, as well as the rendering of false information, constitutes an impeachable offense.

## SECTION III: Chamber of Deputies

### Art 51

The Chamber of Deputies has exclusive power:

- I. to authorize, by two-thirds of its members, institution of legal charges against the President and Vice-President of the Republic and the Ministers of the Federal Government;
- II. to proceed to take the accounts of the President of the Republic, when they are not submitted to the National Congress within sixty days after start of the legislative session;

- III. to draft its internal rules;
- IV. to provide for its organization; operation; police; creation, transformation or abolition of offices, jobs and positions in its services; and for initiation of laws setting their respective remuneration, observing the parameters established in the law of budgetary directives;
- V. to elect members of the Council of the Republic, in the manner set out in art. 89, VII.

## SECTION IV: The Federal Senate

### Art 52

The Federal Senate has exclusive power:

- I. to try the President and the Vice-President of the Republic for impeachable offenses, as well as Ministers of the Federal Government and the Commanders of the Navy, the Army and the Air Force for crimes of the same nature connected with them;
- II. to try for impeachable offenses, the Ministers of the Supreme Federal Tribunal, members of the National Council of Justice and the National Council of the Public Ministry, the Procurator-General of the Republic, and the Advocate-General of the Union;
- III. to give its prior approval, by secret ballot, after public hearing, on selection of:
  - a. judges, in cases established in this Constitution;
  - b. Ministers of the Tribunal of Accounts of the Union nominated by the President of the Republic;
  - c. Governors of the Territories;
  - d. president and directors of the Central Bank;
  - e. Procurator-General of the Republic;
  - f. holders of other offices, as determined by law;
- IV. to give its prior approval, by secret ballot, after closed hearing, on the selection of the heads of permanent diplomatic missions;
- V. to authorize foreign financial transactions of interest to the Union, States, Federal District, Territories and Counties;
- VI. to establish, as proposed by the President of the Republic, global limits for the amount of the public debt of the Union, States, Federal District and Counties;
- VII. to provide for global limits and conditions for foreign and domestic credit transactions of the Union, States, Federal District and Counties, their autarchies and other entities controlled by the Federal Government;
- VIII. to provide for limits and conditions on the concession of the Union's guarantee of foreign and domestic credit transactions;
- IX. to establish global limits and conditions for the amount of the debt of the States, Federal District and Counties evidenced by bonds or other securities;
- X. to suspend enforcement, in whole or in part, of laws declared unconstitutional by final decision of the Supreme Federal Tribunal;
- XI. to approve, by absolute majority and secret ballot, removal from office of the Procurator of the Republic before the end of his or her term of office;
- XII. to draft its internal rules;
- XIII. to provide for its organization; operation; police; creation, transformation or abolition of offices, jobs and positions in its services; and for initiation of laws setting their respective remuneration, observing the parameters established in the law of budgetary directives;

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

XV. periodically evaluate the functioning of the structure and components of the National Tax System, and the performance of the tax administrations of the Union, States, Federal District and Counties.

## Sole Paragraph

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

## SECTION V: Deputies and Senators

### Art 53

The Deputies and Senators shall enjoy civil and criminal immunity for any of their opinions, words and votes.

§1°. From the date of their investiture, Deputies and Senators shall be judged by the Supreme Federal Tribunal.

§2°. From the date of their investiture, members of the National Congress may not be arrested, except in flagrante delicto for a non-bailable crime. In this case, the police record shall be sent within twenty-four hours to the respective Chamber, which, by a majority vote of its members, shall decide as to imprisonment.

§3°. When an accusation has been received against a Senator or Deputy for a crime committed after investiture, the Supreme Federal Tribunal shall notify the respective Chamber, which, by initiative of a political party represented therein and by a majority vote of its members, may, until the final decision, suspend the proceedings in the case.

§4°. Upon receipt by the Executive Committee, a request for a suspension shall be acted upon by the respective Chamber during a non-extendable period of forty-five days.

§5°. A suspension shall toll the running of the limitations period for the duration of the mandate.

§6°. Deputies and Senators shall not be obliged to testify about information received or given because of exercise of their mandates, nor against those who confided in them or received information from them.

§7°. Calling of Deputies and Senators to duty in the Armed Forces, even if they are in the military and even in war time, shall depend upon the prior authorization from the respective Chamber.

§8°. Immunity of Deputies or Senators shall continue during a state of siege and may be suspended only by vote of two-thirds of the members of the respective Chamber, in cases of acts performed outside the premises of the National Congress that are incompatible with the implementation of such a measure.

- Removal procedure for cabinet
- Head of state removal procedure
- Removal of supreme and ordinary court judges

- Immunity of legislators
- Removal of individual legislators



• Outside professions of legislators

## Art 54

Deputies and Senators may not:

- I. as of the date of certification of their election:
  - a. sign or maintain a contract with a public legal entity, autarchy, state-owned company, mixed-capital company or public utility, unless the contract follows standard clauses;
  - b. accept or hold a paid office, position or job, including those that may be terminated at will, in the entities set out in the preceding subparagraph;
- II. after taking office:
  - a. be the owner, controller or director of a company that enjoys a privilege as a result of a contract with a public legal entity or occupy any paid position therein;
  - b. hold an office or position subject to termination at will in the entities referred to in subparagraph I, a;
  - c. sponsor a cause in which any of the entities referred to in subparagraph I, a, has an interest;
  - d. be the holder of more than one public elective office or mandate.

• Removal of individual legislators

## Art 55

Deputies or Senators shall lose their mandates if:

- I. they violate any prohibition established in the preceding article;
- II. their conduct is declared incompatible with parliamentary decorum;
- III. they fail to attend, during each legislative term, one-third of the ordinary sessions of the Chamber to which they belong, except when on an authorized leave of absence or mission;
- IV. their political rights are lost or suspended;
- V. whenever decreed by the Electoral Courts, in cases provided for in this Constitution;
- VI. they are criminally convicted by a judgment that has become final and non-appealable.

§1°. In addition to the cases defined in internal rules, abuse of prerogatives granted to members of the National Congress or receipt of undue benefits is incompatible with parliamentary decorum.

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

§3°. In the cases provided for in subparagraphs III to V, loss of the mandate shall be declared by the Executive Committee of the respective Chamber ex officio or upon the initiative of any of its members, or of a political party represented in the National Congress, assuring a full defense.

§4°. The effects of resignation by a legislator subject to a proceeding that seeks or could result in loss of mandate, in the terms of this article, shall be suspended until the final deliberation dealt with in §§ 2° and 3°.

## Art 56

Deputies or Senators shall not lose their mandates when:

- I. invested with the office of Minister of Federal Government, Governor of a Territory, Secretary of State, Secretary of the Federal District, or Secretary of a Territory, Prefect of the Capital or head of a temporary diplomatic mission;
- II. on leave of absence from the respective Chamber because of illness, or to pursue, without remuneration, a private matter, provided that, in the latter case, the leave does not exceed one hundred-twenty days per legislative session.

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

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

§3°. In the event of subparagraph I, the Deputy or Senator may opt for the remuneration of the elected office.

## SECTION VI: Sessions

### Art 57

The National Congress shall meet annually in the Federal Capital, from February 2nd to July 17th and from August 1st to December 22nd.

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

§2°. A legislative session shall not be interrupted without approval of the draft law of budgetary directives.

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

- I. inaugurate the legislative session;
- II. draw up common by-laws and to regulate creation of services common to both Chambers;
- III. receive the oath of office of the President and Vice-President of the Republic;
- IV. acknowledge a veto and to deliberate about it.

§4°. Each Chamber shall meet in preparatory sessions, starting on February 1st of the first year of the legislature, for seating its members and election of its respective Executive Committee for a 2 (two)-year term, prohibiting reelection to the same position in the next election.

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

§6°. Extraordinary sessions of the National Congress shall be called:

- I. by the President of the Senate, in the event a state of defense or federal intervention is decreed, 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, the Presidents of the Chamber of Deputies and Federal Senate or at the request of a majority of the members of both Chambers in the event of urgency or relevant public interest, in all cases in this subparagraph with approval by an absolute majority of each House of the National Congress.

§7°. In an extraordinary legislative session, the National Congress shall consider only matters for which it was convoked, except in the situation of § 8° of this article. Payment of a compensation for such convocation is prohibited.

§8°. If provisional measures are in force on the date of the extraordinary session of the National Congress, such measures shall automatically be included on the docket of the convocation.

## SECTION VII: Committees

### Art 58

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

§1°. In forming the Executive Committees and each Committee, proportional representation of political parties or parliamentary groups that participate in the respective Chamber shall be assured to the extent possible.

§2°. Committees, based upon subjects over which they have competence, shall have the power to:

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

§3°. Parliamentary investigative committees, which shall have the same investigative powers as judicial authorities, in addition to other powers set forth in the by-laws of their respective Chambers, shall be created by the Chamber of Deputies and the Federal Senate, either jointly or separately, upon the request of one-third of its members, to investigate certain facts for a determined period of time. If appropriate, their conclusions shall be forwarded to the Public Ministry to determine whether to pursue civil or criminal liability of the offenders.

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

## SECTION VIII: The Legislative Process

### Subsection I: General Provisions

#### Art 59

The legislative process includes preparation of:

- I. Constitutional amendments;

- II. complementary laws;
- III. ordinary laws;
- IV. delegated laws;
- V. provisional measures;
- VI. legislative decrees;
- VII. resolutions.

## Sole Paragraph

Complementary law shall provide for preparation, reduction, alteration and consolidation of laws.

## Subsection II: Amendments to the Constitution

### Art 60

Constitutional amendments may be proposed by:

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

§1°. The Constitution cannot be amended during federal intervention, state of defense or stage of siege.

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

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

§4°. No proposed constitutional amendment shall be considered that is aimed at abolishing the following:

- I. the federalist form of the National Government;
- II. direct, secret, universal and periodic suffrage;
- III. separation of powers;
- IV. individual rights and guarantees.

§5°. The subject of a defeated or prejudiced proposed Constitutional amendment may not be made the subject of another proposed amendment in the same legislative session.

## Subsection III: The Laws

### Art 61

Any member or Committee of the Chamber of Deputies or Federal Senate or National Congress, the President of the Republic, the Supreme Federal Tribunal, the Superior Tribunals, the Procurator-General of the Republic and citizens, shall have the power to initiate complementary and ordinary laws, in the manner and cases provided for in this Constitution.

• Constitution amendment procedure

• Initiation of general legislation

• Legislative committees

§1°. The President of the Republic shall have exclusive power to initiate the following laws:

- I. those that fix or modify the number of troops in the Armed Forces;
- II. laws that deal with:
  - a. creation of public offices, positions or jobs in the direct administration and autarchies, or an increase in their remuneration;
  - b. administrative and judicial organization, tax and budgetary matters, public services and administrative personnel of the Territories;
  - c. civil servants of the Union and Territories, their legal regime, appointment to positions, tenure and retirement;
  - d. organization of the Union's Public Ministry and Public Defender's Office, as well as general rules for organization of the Public Ministry and Public Defender's Office of the States and Federal District and Territories;
  - e. creation and abolition of Ministries and agencies of public administration, observing the provisions of art. 84, VI;
  - f. Armed Forces military, their legal regime, appointment to positions, promotions, tenure, compensation, reform and transference to reserves.

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

## Art 62

In relevant and urgent cases, the President of the Republic may adopt provisional measures with the force of law; such measures shall be submitted immediately to the National Congress.

§1°. Provisional measures may not be issued on matters:

- I. with respect to:
  - a. nationality, citizenship, political rights, political parties and electoral law;
  - b. criminal law, criminal procedure and civil procedure;
  - c. organization of the Judiciary and the Public Ministry, as well as the careers and guarantees of their members;
  - d. multi-year plans, budgetary directives, budget and additional and supplementary credits, except as provided for in art. 167, § 3°;
- II. that deal with detention or sequestration of property, popular savings or any other financial assets;
- III. that are reserved for complementary law;
- IV. that have already been regulated in a bill approved by the National Congress which is awaiting the approval or veto of the President of the Republic.

§2°. A provisional measure that involves institution of or an increase in taxes, except as provided for in arts. 153, I, II, IV, V, and 154, II, shall only produce effects in the following fiscal year if it has been converted into law by the last day of the [fiscal year] in which it was issued.

§3°. Except as provided for in §§ 11° and 12°, provisional measures shall lose their effectiveness as of the day of their issuance if they are not converted into law within a period of sixty days, which may be extended once, in the terms of § 7°, for an equal period. It is the responsibility of the National Congress to regulate, by legislative decree, the legal relations stemming from such measures.

• Head of state decree power

§4°. The period referred to in § 3° shall start to run from the publication of the provisional measure. The running of this period is tolled during the periods the National Congress is in recess.

§5°. The deliberation of each of the Houses of the National Congress on the merits of provisional measures shall depend upon a prior judgment as to their compliance with constitutional requirements.

§6°. If it has not been considered within forty-five days, counting from its publication date, the provisional measure shall enter a regime of urgency. Subsequently, in each of the Houses of the National Congress, all other legislative deliberations of the House to which it was presented should be suspended until it is finally voted upon.

§7°. The effectiveness of a provisional measure may be extended once for sixty days if, during the sixty-day period counting from its publication date, it has not been submitted to a final vote in the two Houses of the National Congress.

§8°. Provisional measures shall be voted on first in the Chamber of Deputies.

§9°. A mixed commission of Deputies and Senators shall have the duty to examine provisional measures and to issue an opinion about them, prior to their being considered, in separate sessions, by the full membership of each House of the National Congress.

§10°. Re-edition, in the same legislative session, of a provisional measure that has been rejected or that has lost its efficacy by the running of time, is forbidden.

§11°. If the legislative decree referred to in § 3° is not issued within sixty days after rejection or loss of efficacy of a provisional measure, the legal relations constituted under it or stemming from acts practiced during the time it was in effect shall remain in effect and shall be governed by these measures.

§12°. If a bill to convert or modify the original text of a provisional measure has been approved, the provisional measure shall be maintained integrally in force until the bill is signed or vetoed.

## Art 63

An increase in proposed expenditures shall not be permitted:

- I. in bills that are the exclusive initiative of the President of the Republic, except for the provisions of art. 166, §§ 3° and 4°;
- II. in bills on the organization of administrative services of the Chamber of Deputies, Federal Senate, Federal Tribunals and the Public Ministry.

## Art 64

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

§1°. The President of the Republic may request urgency in consideration of bills initiated by him.

§2°. In the case of § 1°, if the Chamber of Deputies and the Federal Senate fail to act on the bill successively within forty-five days, all other legislative deliberations shall be suspended in the respective House, with the exception of those that have a determined constitutional period, until the bill is finally voted upon.

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

• Reserved policy areas for first chamber

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

## Art 65

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

### Sole Paragraph

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

## Art 66

The Chamber in which voting was concluded shall send the bill to the President of the Republic, who, if he consents, shall approve it.

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

§2°. A partial veto shall only apply to the full text of an article, paragraph, subparagraph or line.

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

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

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

§6°. If the period established in § 4° lapses without a vote, the veto shall be placed on the order of the day for the immediate session, suspending all other propositions, until its final vote.

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

## Art 67

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

## Art 68

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

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

- I. organization of the Judiciary and the Public Ministry, and the careers and privileges of their members;
- II. nationality, citizenship, and individual, political and electoral rights;
- III. multi-year plans, budgetary directives and budgets.

§2°. Delegation to the President of the Republic shall be granted by National Congressional resolution specifying its contents and terms for its performance.

§3°. If the resolution determines that the bill shall be considered by the National Congress, it shall do so by a single vote, any amendment being prohibited.

## **Art 69**

Complementary laws shall be approved by an absolute majority.

## **SECTION IX: Supervision of Accounting, Finances, and Budget**

### **Art 70**

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

### **Sole Paragraph**

Accounts shall be rendered by any individual or legal entity, public or private, that uses, collects, keeps, manages or administers public funds, property and securities or those for which the Union is responsible, or that assumes obligations of pecuniary nature in the name of the Union.

### **Art 71**

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

- I. examine the accounts rendered annually by the President of the Republic, by means of a prior opinion, which shall be prepared within sixty days of receipt thereof;
- II. evaluate accounts of administrators and others responsible for public funds, assets, and securities of the direct and indirect administration, including foundations and companies organized and maintained by the Federal Government, as well as accounts of those causing a loss, misplacement, or other irregularity resulting in harm to the public treasury;



- III. examine, for registration purpose, the legality of acts in hiring personnel for any position in the direct and indirect administration, including foundations organized and maintained by the government, except for appointments to commission offices, as well as granting retirements and pensions, except for subsequent improvements that do not alter the legal basis of the act of concession;
- IV. perform, on its own initiative or that of the Chamber of Deputies, the Federal Senate, a technical committee or investigative commission, inspections and audits of an accounting, financial, budgetary, operational and patrimonial nature in the administrative units of the Legislative, Executive, and Judicial Branches and other entities referred to in subparagraph II;
- V. supervise the national accounts of supranational companies in whose capital stock the Union holds a direct or indirect interest, according to the terms established in the constitutive treaty;
- VI. supervise application of any resources transferred by the Union, under a convention, accord, arrangement or other similar instrument, to a State, the Federal District or a County;
- VII. deliver information requested by the National Congress, either of its Chambers or any of its respective committees concerning supervision of the accounting, finances, budget, operations and patrimony, and as to the results of audits and inspections made;
- VIII. in cases of illegal expenses or irregular accounts, apply to those responsible, the sanctions provided for in law, which shall establish, among other penalties, fines proportional to the damages caused to the public treasury;
- IX. if illegalities are verified, establish a period for the agency or entity to take the necessary measures for strict enforcement of the law;
- X. stay execution of a challenged act, if the challenge is not adhered to, communicating such decisions to the Chamber of Deputies and the Federal Senate;
- XI. advise the proper Branch of any determined irregularities or abuses.

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

§2°. If the National Congress or the Executive fails to take the action provided for in the preceding paragraph within ninety days, the Tribunal shall decide the matter.

§3°. Decisions of the Tribunal imposing debts or fines shall have the effect of executable judgments.

§4°. The Tribunal shall send quarterly and annual reports on its activities to the National Congress.

## Art 72

If there are signs of unauthorized expenses, even in the form of non-programmed investments or non-approved subsidies, the permanent Joint Committee referred to in art. 166, § 1°, may request that the responsible government authority provide the necessary explanations within five days.

§1°. If the explanations are not provided or are considered insufficient, the Committee shall ask the Tribunal to decide the matter conclusively within a period of thirty days.

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

## Art 73

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

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

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

§2°. Ministers of the Tribunal of Accounts of the Union shall be chosen:

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

§3°. Ministers of the Tribunal of Accounts of the Union shall have the same guarantees, prerogatives, impediments, compensation and privileges as the Ministers of the Superior Tribunal of Justice. The rules of art. 40 apply to their retirement benefits and pensions.

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

## Art 74

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

- I. evaluate attainment of targets established in the multi-year plan, implementation of governmental programs and the budgets of the Union;
- II. determine the legality and evaluate the efficacy and efficiency of budgetary, financial and patrimonial management by agencies and entities of the federal administration, as well as application of public resources by private law entities;
- III. exercise control over credit transactions, avals, and guarantees, as well as over the rights and property of the Union;
- IV. support external control in the performance of their institutional missions.

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

§2°. Any citizen, political party, association or syndicate has standing, as provided by law, to denounce irregularities or illegalities to the Tribunal of Accounts of the Union.

## Art 75

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

### Sole Paragraph

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

## CHAPTER II: THE EXECUTIVE BRANCH

### SECTION I: President and Vice-President of the Republic

#### Art 76

The powers of the Executive are exercised by the President of the Republic, assisted by the Ministers of the Federal Government.

#### Art 77

The President and the Vice-President of the Republic shall be elected simultaneously on the first Sunday of October for the first round, and if there should be a second round, on the last Sunday of October of the year prior to the termination of the mandate of the current president.

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

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

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

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

§5°. In the event of the preceding paragraphs, if more than one candidate with an equal number of votes remain in second place, the older shall qualify.

#### Art 78

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

• Name/structure of executive(s)

• Deputy executive  
• Scheduling of elections  
• Head of state selection procedure

• Oaths to abide by constitution

## Sole Paragraph

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

### Art 79

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

## Sole Paragraph

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

### Art 80

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

### Art 81

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

§1°. If the vacancy occurs during the last two years of the President's term of office, the election for both offices shall be made by the National Congress within thirty days after the last vacancy occurred, as provided by law.

§2°. In any of these cases, those elected shall complete the terms of office of their predecessors.

### Art 82

The mandate of the President of the Republic is four years and shall begin on January 1st of the year following his election.

### Art 83

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

## SECTION II: Powers of the President of the Republic

### Art 84

The President of the Republic has the exclusive powers to:

- I. appoint and dismiss Ministers of the Federal Government;

- II. exercise, with the assistance of the Ministers of the Federal Government, the upper management of the federal administration;
- III. initiate legislation, in the manner and cases provided for in this Constitution;
- IV. approve, promulgate and order publication of laws, as well as issue decrees and regulations for their faithful execution;
- V. veto bills, either in whole or in part;
- VI. to provide for by decree with respect to:
  - a. organization and functioning of the federal administration, when this does not imply an increase in expense nor the creation or abolition of public agencies;
  - b. the abolition of public positions or offices, when unoccupied;
- VII. maintain relations with foreign States and accredit their diplomatic representatives;
- VIII. conclude international treaties, conventions and acts, subject to the approval of the National Congress;
- IX. decree a state of defense or a state of siege;
- X. decree and enforce federal intervention;
- XI. send a governmental message and plan to the National Congress at the opening of the legislative session, describing the Country's situation and requesting actions he deems necessary;
- XII. grant pardons and commute sentences, after hearing, if necessary, from the agencies instituted by law;
- XIII. exercise supreme command over the Armed Forces, appoint the commanders of the Navy, the Army and the Air Force, promote their generals and appoint them to positions held exclusively by them;
- XIV. appoint, after approval by the Federal Senate, the Ministers of the Supreme Federal Tribunal and Superior Tribunals, Governors of the Territories, Procurator-General of the Republic, president and directors of the Central Bank and other civil servants, when determined by law;
- XV. appoint, observing the provisions of art. 73, the Ministers of the Tribunal of Accounts of the Union;
- XVI. appoint judges, in the cases provided for in this Constitution, and the Advocate-General of the Union;
- XVII. appoint members of the Council of the Republic, according to the terms of art. 89, VII;
- XVIII. convoke and preside over the Council of the Republic and the National Defense Council;
- XIX. declare war, in the event of foreign aggression, when authorized by the National Congress or, upon its ratification if the aggression occurs between legislative sessions, and decree full or partial national mobilization under the same conditions;
- XX. make peace, if authorized by or upon ratification by the National Congress;
- XXI. confer decorations and honorary awards;
- XXII. permit, in cases provided for by complementary law, foreign forces to pass through Brazilian territory or to remain therein temporarily;
- XXIII. submit to the National Congress the multi-year plan, the draft of the law of budgetary directives and the budget proposals provided for in this Constitution;
- XXIV. render annual accounts to the National Congress concerning the previous fiscal year, within sixty days of the opening of the legislative session;
- XXV. fill and abolish federal government offices, in accordance with the law;
- XXVI. issue provisional measures with the force of law in the terms of art. 62;
- XXVII. exercise other powers provided for in this Constitution.

## Sole Paragraph

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

## SECTION III: Liability of the President of the Republic

### Art 85

Acts of the President of the Republic that are attempts against the Federal Constitution are impeachable offenses, especially those against the:

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

## Sole Paragraph

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

### Art 86

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

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

- I. in common criminal offenses, if the accusation or criminal complaint is received by the Supreme Federal Tribunal;
- II. in impeachable offenses, after proceedings are instituted by the Federal Senate.

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

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

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

## SECTION IV: The Ministers of the Federal Government

### Art 87

• Restrictions on eligibility for cabinet

Ministers of the Federal Government shall be chosen from among Brazilians older than twenty-one and in full possession of their political rights.

## Sole Paragraph

• Powers of cabinet

A Minister of the Federal Government, in addition to other powers set out in this Constitution and in law, shall have the power to:

- I. orient, coordinate and supervise agencies and entities of the federal administration in the area of his authority and to countersign acts and decrees signed by the President of the Republic;
- II. issue instructions for the enforcement of laws, decrees and regulations;
- III. submit an annual report on his administration of the Ministry to the President of the Republic;
- IV. perform acts pertinent to the powers granted or delegated to him by the President of the Republic.

## Art 88

The law shall provide for the creation and abolition of Ministries and agencies of public administration.

## SECTION V: Council of the Republic and the National Defense Council

### Subsection I: Council of the Republic

• Advisory bodies to the head of state

## Art 89

The Council of the Republic is the higher consultative body for the President of the Republic and in which the following participate:

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

• Advisory bodies to the head of state

## Art 90

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

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

§1°. The President of the Republic may call a Minister of the Federal Government 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 shall be regulated by law.

## Subsection II: National Defense Council

### Art 91

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

- I. the Vice-President of the Republic;
- II. the President of the Chamber of Deputies;
- III. the President of the Federal Senate;
- IV. the Minister of Justice;
- V. the Minister of the State of Defense;
- VI. the Minister of Foreign Affairs;
- VII. the Minister of Planning;
- VIII. the Commanders of the Navy, the Army and the Air Force.

§1°. The National Defense Council has the authority to:

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

§2°. The organization and operation of the National Defense Council shall be regulated by law.

## CHAPTER III: THE JUDICIARY

### SECTION I: General Provisions

#### Art 92

The Judiciary consists of:

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

§1°. The Supreme Federal Tribunal, the National Council of Justice and the Superior Tribunals sit in the Federal Capital.

• Advisory bodies to the head of state

• Structure of the courts



§2°. The Supreme Federal Tribunal and the Superior Tribunals have jurisdiction over the entire national territory.

## Art 93

Complementary law, proposed by the Supreme Federal Tribunal, shall set forth the Statute of the Judicature, observing the following principles:

- I. admission into the career, with the initial office of substitute judge, through public competitive examination and comparison of professional credentials, with the participation of the Brazilian Bar Association in all phases, requiring the basic law degree and a minimum of three years of legal activity, obeying the order of classification for appointments;
- II. promotion from level to level, alternately based upon seniority and merit, observing the following rules:
  - a. promotion is mandatory for a judge who has appeared on the merit list three consecutive or five alternate times;
  - b. merit promotion requires two years of service at the respective level, and that the judge appear in the top fifth of the seniority list of such level, unless no one satisfying such requirements accepts the vacant post;
  - c. evaluation of merit according to the performance and objective criteria of productivity and efficiency in exercising jurisdiction and by frequency and approval in official courses or recognized courses for improvement;
  - d. in determining seniority, the Tribunal may reject the most senior judge only by a substantiated two-thirds vote of its members, according to a specific procedure, assuring a full defense, the ballot being repeated until the selection is determined;
  - e. judges shall not be promoted if they unjustifiably retain cases in their power beyond the legal period, and they cannot return such cases to the clerk's office without a proper order or decision;
- III. access to the intermediate appellate Tribunals shall be based upon seniority and merit, alternately, determined at the last level or only entrance level;
- IV. provisions for official courses for preparation, improvement and promotion of magistrates; participation in an official course or one recognized by a national school for the formation and improvement of magistrates is an obligatory step in the process of securing life tenure;
- V. the fixed compensation of the Ministers of the Superior Tribunals shall correspond to 95 percent of the monthly fixed compensation set for the Ministers of the Supreme Federal Tribunal and the fixed compensation of the other magistrates shall be set by law and scaled, at the Federal and State levels, in conformity with the respective categories of the national judicial structure. The difference between one career category and the next may not be greater than 10 percent or less than 5 percent, nor exceed 95 percent of the monthly fixed compensation of Ministers of the Superior Tribunals, obeying, in any case, the provisions of arts. 37, XI, and 39, §4°;
- VI. retirement benefits for judges and pensions for their dependents shall observe the provisions of art. 40;
- VII. permanent judges shall reside in their respective judicial district, except with authorization of their tribunals;
- VIII. the acts of removal, placement on paid leave and retirement of magistrates, in the public interest, must be based upon an absolute majority vote of the respective tribunal or of the National Council of Justice, assuring a full defense;
- VIII-A. transfer by request or an exchange of magistrates in a district at an equal level shall comply with the provisions in subparagraphs a, b, c and e of subparagraph II, when applicable;

- IX. all judgments of judicial bodies shall be public, and all decisions shall be substantiated, under penalty of nullity; in cases in which preservation of the right of intimacy of the interested parties in secrecy does not prejudice the public interest in information, the law may limit attendance at determined occasions to only the parties themselves and their attorneys, or only to the latter;
- X. administrative decisions of tribunals must be substantiated and [rendered] in public sessions, with disciplinary decisions adopted by an absolute majority vote of their members;
- XI. for the purpose of exercising administrative and jurisdictional powers delegated to the jurisdiction of the full court, a special body, with a minimum of eleven and a maximum of twenty-five members, may be organized in tribunals with more than twenty five judges; one-half of the positions shall be selected on the basis of seniority and the other half by election of the full court;
- XII. court functioning shall be uninterrupted, prohibiting collective vacations in the courts and second instance tribunals; on days on which there are no normal court working hours, there shall be judges on continual duty;
- XIII. the number of judges in the jurisdictional unit shall be proportional to effective judicial demand and respective population;
- XIV. performance of administrative and ministerial acts without decisional character shall be delegated to public employees;
- XV. cases shall be distributed immediately at all levels of jurisdiction.

## Art 94

One-fifth of the seats on the Federal Regional Tribunals and the Tribunals of the States, Federal District and Territories, shall be occupied by members of the Public Ministry with over ten years of service and by lawyers of notable legal knowledge and unblemished reputations, with over ten years of actual professional activity, nominated in a list of six names by the entities that represent the respective groups.

### Sole Paragraph

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

## Art 95

Judges enjoy the following guarantees:

- I. life tenure, which, for judges of the first instance, shall be acquired only after two years in office; during this period, loss of office shall be determined by the tribunal to which the judge is subject and, in other cases, by a final and unappealable judgment of a court;
- II. non-removability, except by reason of public interest, under the terms of art. 93, VIII;
- III. irreducibility of fixed compensation, except as provided in arts. 37, X and XII, 39, §4º, 150, II, 153, III, and 153, §2º, I.

### Sole Paragraph

Judges are forbidden to:

- I. hold, even when on paid leave from office, any other job or position, except as a teacher;

- II. receive, for any account or any pretext, court costs or participation in any lawsuit;
- III. engage in political or political party activities;
- IV. receive, under any title or pretext, assistance or contributions from individuals or public or private entities, except as provided by law;
- V. to practice law for three years in the court or tribunal which they have left, starting from the date they left the position by retirement or resignation.

## Art 96

The following shall have exclusive powers:

- I. the Tribunals:
  - a. to elect their directive bodies and to prepare their internal rules, observing the rules of procedure and procedural guarantees of the parties, regulating the jurisdiction and operation of the respective jurisdictional and administrative bodies;
  - b. to organize their secretariats and auxiliary services and those of the courts subordinated to them, taking care to exercise their respective supervisory activities;
  - c. to fill, in the form provided for in this Constitution, positions for career judges within their respective jurisdictions;
  - d. to propose the creation of new first instance courts;
  - e. to fill, through public competitive examinations, or examinations and comparison of professional credentials, obeying the provisions of art. 169, sole paragraph, the positions necessary for the administration of justice, with the exception of positions of confidence, as defined by law;
  - f. to grant leave, vacations and other absences to their members and to judges and employees immediately subordinated to them;
- II. the Supreme Federal Tribunal, Superior Tribunals and Tribunals of Justice, to propose to their respective Legislatures, observing the provisions of art. 169:
  - a. changes in the number of members of inferior tribunals;
  - b. creation and abolition of positions and remuneration of their auxiliary services and judges subordinate to them, as well as determination of the fixed compensation of their members and judges, including inferior tribunals, where they exist;
  - c. creation or abolition of inferior tribunals;
  - d. changes in judicial organization and division;
- III. the Tribunals of Justice, to try judges of the States, Federal District and Territories, as well as members of the Public Ministry, for common crimes and impeachable offenses, with the exception of cases within the jurisdiction of the Electoral Courts.

## Art 97

Tribunals may declare public laws or normative acts unconstitutional only by vote of an absolute majority of their members or members of their respective special body.

• Constitutional interpretation  
• Constitutionality of legislation

## Art 98

The Union shall create in the Federal District and Territories and States shall create [within their borders]:

- I. special courts, staffed by professional judges, or professional and lay judges, with the power to conciliate, to enter judgment and to execute with respect to civil suits of lesser complexity and minor criminal offenses. Proceedings shall be oral and very summary, permitting, in cases provided for by law, settlement and resolution of appeals by panels of judges of the first instance;
- II. salaried justices of the peace, consisting of citizens elected by direct, universal and secret ballot, for a term of office of four years, with jurisdiction, in accordance with the law, to perform marriages, verify qualification proceedings ex officio or after challenge, and perform conciliatory functions of a non-jurisdictional nature, in addition to other functions provided by law.

§1°. Federal law shall provide for the creation of special courts in the area of Federal Justice.

§2°. Costs and fees shall be used exclusively to finance services under the care of specific activities of Justice.

## Art 99

The Judiciary is assured administrative and financial autonomy.

§1°. The Tribunals shall prepare their budget proposals, within the limits stipulated jointly with the other Branches in the law of budgetary directives.

§2°. After hearing from other interested tribunals, the proposal shall be submitted:

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

§3°. If the bodies referred to in § 2° do not deliver their respective budgetary proposals within the period established in the law of budgetary directives, for the purposes of consolidation of the annual budgetary proposal, the Executive shall consider the amounts approved in the budgetary law in effect, adjusting them in accordance with the limits as stipulated in § 1° of this article.

§4°. If the budgetary proposals with which this article deals are delivered in disregard of the limits as stipulated in § 1°, the Executive shall make the necessary adjustments for the purposes of consolidation of the annual budgetary proposal.

§5°. During the execution of the budget for the fiscal year, there shall be no realization of expenses or assumption of obligations that exceed the limits established in the law of budgetary directives through opening supplementary or special credits, except as previously authorized.

## Art 100

Payments owed by the Federal, State, District and County Treasuries, by virtue of a court judgment, shall be made exclusively in the chronological order of submission of the precatórios and to the account of the respective credits. Designation of cases or persons in budget appropriations and the opening of additional credits for such purposes are prohibited.

§1°. Debits of a support nature include those stemming from salaries, wages, earnings, pensions and their complementary provisions; social security benefits; and indemnification for death or disability, based upon civil liability, by virtue of a final and non-appealable court judgment. These debits shall be paid in preference over all other debts, except for those referred to in § 2° of this article.

§2°. Debits of a support nature whose owners are 60 (sixty) years of age or more on the date of the issuance of the precatório, or who are suffering from a serious disease, as defined by law, shall be paid with preference over all other debts, up to a value equivalent to three times that fixed by law for the purposes of the provision in § 3° of this article. Payment of a fractional amount is permitted for this purpose, with the rest being paid in the chronological order of the presentation of the precatório.

§3°. The provision in the heading of this article with respect to the issuing of precatórios does not apply to payment of obligations defined by law as small amounts, which must be paid by the referred to Treasuries by virtue of a final non-appealable judgment.

§4°. For the purposes of the provision of § 3°, differing amounts for entities of public law may be fixed by their own laws according to different economic capabilities, with a minimum amount equal to the amount of the highest social security benefit in the general regime.

§5°. Budgets of public law entities must include funds necessary for payment of their debits stemming from final non-appealable judgments in accordance with precatórios submitted by July 1st. Payment shall be made by the end of the following fiscal year, at which time their value shall be monetarily updated.

§6°. The budgetary appropriations and the opened credits shall be consigned directly to the Judiciary. It is the duty of the President of the Tribunal rendering the decision that permits execution to determine integral payment and to authorize, at the creditor's request, attachment of the amount necessary to satisfy the debit, but only in the event of failure to respect his right of precedence or failure to make a budgetary allocation of an amount necessary to satisfy his debit.

§7°. The President of the competent Tribunal who, by an act of commission or omission, delays or tries to frustrate the regular liquidation of a precatório commits an impeachable offense and shall also be held liable before the National Council of Justice.

§8°. It is prohibited to issue a precatório complementary or supplementary to the amount paid, as well as to fractionize, divide or reduce the value of its execution, for the purpose of inclusion as part of the total to which § 3° of this article provides.

§9°. [Declared unconstitutional by the Supreme Federal Tribunal in ADI No. 4357 and ADI No. 4425, March 23, 2013.]

§10°. [Declared unconstitutional by the Supreme Federal Tribunal in ADI No. 4357 and ADI No. 4425, March 23, 2013.]

§11°. In accordance with what is established by the law of the debtor federative entity, the creditor may exchange his credits in precatórios to purchase public real assets of the respective federative entity.

§12°. [Declared unconstitutional by the Supreme Federal Tribunal in ADI No. 4357 and ADI No. 4425, March 23, 2013.]

§13°. Without need for the debtor's consent, the creditor may assign to third parties, either totally or partially, his credits in precatórios. The provisions of §§ 2° and 3° do not apply to the assignee.

§14°. The assignment of precatórios shall be effective only after communication, by means of a protocolized petition, to the tribunal of origin and to the debtor entity.

§15°. Without prejudice to the provisions of this article, a law complementary to this Federal Constitution shall establish a special regime for the payment of credit for State, Federal District and County precatórios, providing for linkages between current net receipts and the form and period for liquidation.

§16°. At its exclusive criteria and in the form of law, the Union may assume debits stemming from State, Federal District, and County precatórios, refinancing them directly.

## SECTION II: The Supreme Federal Tribunal

### Art 101

The Supreme Federal Tribunal is composed of eleven Ministers, chosen from citizens between the ages of thirty-five and sixty-five, with notable legal knowledge and unblemished reputations.

#### Sole Paragraph

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

### Art 102

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

- I. to try and to decide, as matters of original jurisdiction:
  - a. direct actions of unconstitutionality of federal or state normative acts or declaratory actions of constitutionality of federal laws or normative acts;
  - b. charges of common criminal offenses against the President of the Republic, the Vice-President, members of the National Congress, the Tribunal's own Ministers, and the Procurator-General of the Republic;
  - c. charges of common criminal offenses and impeachable offenses against Ministers of the Federal Government and the Commanders of the Navy, the Army and the Air Force, except for the provision of art. 52, I, members of the Superior Tribunals and the Tribunal of Accounts of the Union, and chiefs of permanent diplomatic missions;
  - d. habeas corpus when the constrained party is any of the persons referred to in the preceding subsections; writs of security and habeas data against acts of the President of the Republic, Executive Committees of the Chamber of Deputies and the Federal Senate, Tribunal of Accounts of the Union, Procurator-General of the Republic, and the Supreme Federal Tribunal itself;
  - e. litigation between a foreign State or international organization and the Union, State, Federal District or Territory;
  - f. cases and conflicts between the Union and States, the Union and Federal District, or between one another, including their respective entities of indirect administration;
  - g. extradition requests from foreign States;
  - h. revoked;
  - i. habeas corpus, when the constraining party is a Superior Tribunal or when the constraining party or the constrained party is an authority or functionary whose acts are directly subject to the jurisdiction of the Supreme Federal Tribunal, or in the case of a crime subject to the original jurisdiction of the Supreme Federal Tribunal;

- Minimum age of supreme court judges
- Restrictions on eligibility for supreme court judges

- Supreme court selection procedure

- Constitutional interpretation
- Structure of the courts
- Supreme court powers

- j. criminal revisions and rescissory actions from its own decisions;
- k. [there is no subsection k];
- l. claims to preserve its jurisdiction and to guarantee the authority of its decisions;
- m. execution of a judgment in cases within its original jurisdiction, it being allowed to delegate the power to perform procedural acts;
- n. actions in which all members of the Judiciary have a direct or indirect interest, and those in which more than half the members of the tribunal of origin are disqualified or have a direct or indirect interest;
- o. conflicts of jurisdiction between the Superior Tribunal of Justice and any other tribunals, between Superior Tribunals, or between the latter and any other tribunal;
- p. requests for a provisional remedy in direct actions of unconstitutionality;
- q. mandates of injunction, when drawing up the regulatory rule is the responsibility of the President of the Republic, National Congress, Chamber of Deputies, Federal Senate, Executive Committees of one of these Legislative Chambers, the Tribunal of Accounts of the Union, one of the Superior Tribunals or the Supreme Federal Tribunal itself;
- r. actions against the National Council of Justice and against the National Council of the Public Ministry;
- II. to decide, on ordinary appeal:
  - a. if denied, habeas corpus, writs of security, habeas data and mandates of injunction decided originally by the Superior Tribunals;
  - b. political crimes;
- III. to decide on extraordinary appeal, cases decided in sole or last instance, when the appealed decision:
  - a. is contrary to a provision of this Constitution;
  - b. declares a treaty or a federal law unconstitutional;
  - c. upholds a law or act of local government challenged as violative of this Constitution;
  - d. upholds a local law challenged as contrary to federal law.

§1°. Allegation of disobedience of a fundamental precept stemming from this Constitution shall be heard by the Supreme Federal Tribunal, as provided by law.

§2°. The Supreme Federal Tribunal's definitive decisions on the merits in direct actions of unconstitutionality and in declaratory actions of constitutionality shall have erga omnes effects and shall be binding with respect to the rest of the Judiciary and the federal, state and county public administration, both direct and indirect.

§3°. In the extraordinary appeal, the appellant must demonstrate the general repercussions of the constitutional questions argued in the case, as provided by law, in order for the Tribunal to examine the admissibility of the appeal, which may be rejected only by manifestation of two-thirds of its members.

## Art 103

A direct action of unconstitutionality and a declaratory action of constitutionality may be brought by:

- I. the President of the Republic;
- II. the Executive Committee of the Federal Senate;
- III. the Executive Committee of the Chamber of Deputies;
- IV. the Executive Committee of a Legislative Assembly or the Legislative Chamber of the Federal District;
- V. the Governor of a State or the Federal District;

- VI. the Procurator-General of the Republic;
- VII. the Federal Council of the Brazilian Bar Association;
- VIII. a political party represented in the National Congress;
- IX. a syndical confederation or a national class entity.

§1°. The Procurator-General of the Republic shall be heard previously in direct actions of unconstitutionality and in all cases coming within the jurisdiction of the Supreme Federal Tribunal.

§2°. Whenever there is a declaration of unconstitutionality because measures to make a constitutional rule effective are lacking, the appropriate Branch shall be notified to adopt the necessary measures, and in the case of an administrative agency, to do so within thirty days.

§3°. When it considers the unconstitutionality of a legal rule or a normative act in the abstract, the Supreme Federal Tribunal shall first summon the Advocate-General of the Union to defend the impugned act or text.

§4°. Revoked.

## Art 103-A

By decision of two-thirds of its members, after reiterated decisions on constitutional matters, the Supreme Federal Tribunal may, ex officio or upon demand, approve a *súmula* which, upon publication in the official press, shall have binding effects on the other organs of the Judiciary and the federal, state and county public administration, both direct and indirect. The Supreme Federal Tribunal may also revise or cancel [its *súmulas*] in the manner established by law.

§1°. The objective of the *súmula* shall be the validity, interpretation and efficacy of determined rules, as to which there is presently controversy among judicial bodies or between judicial bodies and the public administration, causing serious legal insecurity and corresponding multiplication of cases about identical questions.

§2°. Without prejudice to what has been established by law, approval, revision or cancellation of a *súmula* may be demanded by persons with standing to bring a direct action of unconstitutionality.

§3°. A reclamation to the Supreme Federal Tribunal will lie from an administrative act or judicial decision that is contrary to the applicable *súmula* or that improperly applies the *súmula*. Upon determination that the reclamation should be granted, the Supreme Federal Tribunal shall annul the administrative act or vacate the challenged judicial decision, and shall determine that another shall be rendered, with or without application of the *súmula*, as may be the case.

## Art 103-B

The National Council of Justice shall consist of fifteen members for a term of office of two years, with one renewal permitted, including:

- I. the President of the Supreme Federal Tribunal;
- II. a Minister of the Superior Tribunal of Justice, selected by that tribunal;
- III. a Minister of the Superior Tribunal of Labor, selected by that tribunal;
- IV. a justice of the Tribunal of Justice, selected by the Supreme Federal Tribunal;
- V. a state judge, selected by the Supreme Federal Tribunal;
- VI. a judge of the Federal Regional Tribunal, selected by the Superior Tribunal of Justice;
- VII. a federal judge, selected by the Superior Tribunal of Justice;

• Judicial council



- VIII. a judge of the Regional Labor Tribunal, selected by the Superior Labor Tribunal;
- IX. a labor judge, selected by the Superior Labor Tribunal;
- X. a member of the Public Ministry of the Union, selected by the Procurator-General of the Republic;
- XI. a member of the state Public Ministry, selected by the Procurator General of the Republic from nominations by the competent body of each state institution;
- XII. two lawyers, selected by the Federal Council of the Brazilian Bar Association;
- XIII. two citizens of notable legal knowledge and unblemished reputation, one selected by the Federal Chamber of Deputies and the other by the Federal Senate.

§1°. The President of the Supreme Federal Tribunal and in his absence or impediment, by the Vice-President of the Supreme Federal Tribunal, shall preside over the Council.

§2°. The other members of the Council shall be appointed by the President of the Republic, after approval of the nomination by an absolute majority of the Federal Senate.

§3°. If the appointments provided for in this article are not carried out within the legal period, the choice shall be made by the Supreme Federal Tribunal.

§4°. It is the responsibility of the Council to control the administrative and financial functioning of the Judiciary and performance of judges' functional duties. In addition to the powers conferred upon it by the Statute of the Judicature, the Council shall have responsibility for:

- I. preserving judicial autonomy and compliance with of the Statute of the Judicature, being able to issue regulatory acts, within the scope of its competence, or to recommend measures;
- II. safeguarding observance of art. 37 and appreciating, ex officio or upon demand, the legality of administrative acts performed by members or organs of the Judiciary, being able to vacate or revise them, or set a period in which to adopt the necessary measures for exact compliance with the law, without prejudice to the jurisdiction of the Tribunal of Accounts of the Union;
- III. receiving and hearing complaints against members or organs of the Judiciary, including against its auxiliary services, employees and agencies rendering notarial and registry services that act by delegation of public or official powers, without prejudice to the disciplinary and correctional jurisdiction of the tribunals. The Council may assume jurisdiction over ongoing disciplinary proceedings and determine removal, leave or retirement with compensation or benefits proportional to the time of service and apply other administrative sanctions, assuring a full defense;
- IV. making representations to the Public Ministry, in the case of crimes against public administration or abuse of authority;
- V. revising, ex officio or upon demand, disciplinary proceedings of judges and members of tribunals decided less than one year ago;
- VI. preparing a statistical report each semester by unit of the Federation on the cases and judgments entered by the different organs of the Judiciary;
- VII. preparing an annual report that proposes the measures it deems necessary with respect to the situation of the Judiciary in the Country and the activities of the Council. This report should be part of the message of the President of the Supreme Federal Tribunal sent to the National Congress on the occasion of the opening of the legislative session.

§5°. The Minister of the Superior Tribunal of Justice shall exercise the function of Supervising Minister and shall be excluded from distribution of the Tribunal's cases. In addition to the powers conferred upon him by the Statute of the Judicature, he is responsible for the following:

- I. receiving complaints and denunciations from any interested person with respect to magistrates and judicial services;
- II. exercising the executive functions of the Council as to general inspection and correction;
- III. requisitioning and designating magistrates, delegating powers to them, and requisitioning employees of judges or tribunals, including those of the States, Federal District, and the Territories.

§6°. The Procurator-General of the Republic and the President of the Federal Council of the Brazilian Bar Association shall officiate at the Council.

§7°. The Union, including the Federal District and its Territories, shall create judicial grievance centers with jurisdiction to receive complaints and denunciations from any interested person against members or organs of the Judiciary, or against their auxiliary services, reporting directly to the National Council of Justice.

## SECTION III: Superior Tribunal of Justice

### Art 104

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

#### Sole Paragraph

The Ministers of the Superior Tribunal of Justice shall be appointed by the President of the Republic, from Brazilians between the ages of thirty-five and sixty-five, with notable legal knowledge and unblemished reputations, upon approval by an absolute majority of the Federal Senate, with:

- I. one-third from the judges of the Federal Regional Tribunals and one-third from the justices (desembargadores) of the Tribunals of Justice, nominated in a list of three names drawn up by the Tribunal itself;
- II. one-third, in equal parts, from the lawyers and members of the Federal, State, Federal District, and Territorial Public Ministries, selected alternately, as set out in art. 94.

### Art 105

The Superior Tribunal of Justice has the power:

- I. to hear and to decide as a matter of original jurisdiction:
  - a. for common crimes, the Governors of the States and Federal District; for common crimes and impeachable offenses, justices of the Tribunals of Justice of the States and Federal District, members of Tribunals of Accounts of the States and Federal District, members of the Federal Regional Tribunals, Regional Electoral and Labor Tribunals, members of the Councils or Tribunals of Accounts of the Counties, and the members of the Public Ministry of the Union acting before the tribunals;
  - b. writs of security and habeas data against the acts of a Minister of the Federal Government, the Commanders of the Navy, the Army and the Air Force, or of the Tribunal itself;

- c. habeas corpus, when the constraining party or the constrained party is any person mentioned in subsection a, or when the constraining party is a tribunal subject to its jurisdiction, a Minister of the Federal Government, or a Commander of the Navy, the Army or the Air Force, with the exception of the jurisdiction of the Electoral Tribunals;
- d. jurisdictional conflicts between any tribunals, except as provided in art. 102, I, o, as well as between a tribunal and judges not subordinated to it, and between judges subordinated to different tribunals;
- e. criminal revisions and rescissory actions from its own decisions;
- f. claims to preserve its jurisdiction and guarantee the authority of its decisions;
- g. conflicts of authority between administrative and judicial authorities of the Union, or between judicial authorities of one State and administrative authorities of another State or the Federal District, or between those of the latter and those of the Union;
- h. mandates of injunction when preparation of the regulatory rule is the responsibility of a federal agency, entity or authority of direct or indirect administration, with the exception of cases falling under the jurisdiction of the Supreme Federal Tribunal and the organs of Military Justice, Electoral Courts, Labor Courts and Federal Courts;
- i. recognition (homologation) of foreign judgments and concession of requests for letters rogatory (exequatur);
- II. to decide on ordinary appeal:
  - a. denials of habeas corpus decided in sole or last instance by the Federal Regional Tribunals or by the tribunals of the States, Federal District, and Territories;
  - b. denials of writs of security decided originally by the Federal Regional Tribunals or by Tribunals of the States, Federal District and Territories;
  - c. cases in which the parties on one side are a foreign State or an international organization, and, on the other side, a County or a person resident or domiciled in the Country;
- III. to decide on special appeal cases decided, in sole or last instance, by the Federal Regional Tribunals or by Tribunals of the States, Federal District and Territories, when the appealed decision:
  - a. is contrary to a treaty or federal law, or denies the effectiveness thereof;
  - b. upholds an act of a local government challenged as contrary to federal law;
  - c. interprets federal law differently from another tribunal.

## Sole Paragraph

The following shall operate together with the Superior Tribunal of Justice:

- I. the National School for Formation and Improvement of Magistrates, with responsibility for, among other functions, regulating official courses for entry and promotion in the career;
- II. the Council of Federal Justice, with responsibility for exercising, as provided by law, administrative and budgetary supervision of Federal Justice in the first and second instances, as the central body in the system, with disciplinary powers, whose decisions shall have binding effects.

## SECTION IV: Federal Regional Tribunals and Federal Judges

### Art 106

The following are components of the Federal Courts:

- I. Federal Regional Tribunals;
- II. Federal Judges.

### Art 107

Federal Regional Tribunals consist of at least seven judges, recruited, whenever possible, from their respective regions and appointed by the President of the Republic from Brazilians between the ages of thirty and sixty-five, with:

- I. one-fifth from lawyers with more than ten years of actual professional activity and members of the Federal Public Ministry with more than ten years of career service;
- II. the remainder through promotion of federal judges with more than five years of service, alternating between seniority and merit.

§1°. A law shall regulate removal or transfer of judges of the Federal Regional Tribunals and determine their jurisdiction and place to sit.

§2°. The Federal Regional Tribunals shall set up itinerant courts, which shall hold hearings and other jurisdictional functions within the territorial limits of their respective jurisdictions, utilizing public and community facilities.

§3°. The Federal Regional Tribunals may function in a decentralized fashion, constituting regional Chambers, in order to assure full access to justice at all phases of judicial proceedings.

### Art 108

The Federal Regional Tribunals have power:

- I. to hear and to decide as a matter of original jurisdiction:
  - a. for common crimes and impeachable offenses, federal judges from the area of their jurisdiction, including those of the Military and Labor Courts, as well as members of the Public Ministry of the Union, except for the jurisdiction of the Electoral Courts;
  - b. criminal revisions and rescissory actions from their own decisions and from those of federal judges of the region;
  - c. writs of security and habeas data against an act of the Tribunal itself or a federal judge;
  - d. habeas corpus, when the constraining authority is a federal judge;
  - e. jurisdictional conflicts between federal judges subordinated to the Tribunal;
- II. to determine on appeal cases decided by federal judges and state judges exercising federal jurisdiction within the area of their jurisdiction.

### Art 109

The federal judges have the power to hear and to decide:

- I. cases in which the Union, an autarchy or a federal public company has an interest as plaintiffs, defendants, privies, or intervenors, except for bankruptcy,

- work-related accidents and those subject to the Electoral and Labor Courts;
- II. cases between a foreign State or international organization and a County or person domiciled or resident in Brazil;
  - III. cases based on a treaty or a contract of the Union with a foreign State or international organization;
  - IV. political crimes and criminal offenses detrimental to property, services or interests of the Union or its autarchies or public companies, excluding minor offenses (contravenções) and cases within the jurisdiction of the Military and Electoral Courts;
  - V. crimes covered in international treaties or conventions, when their commission has begun in the Country and their results have to take place or should have taken place abroad, or reciprocally;
    - V-A. cases related to human rights referred to in § 5° of this article;
  - VI. crimes against organization of labor and, in cases determined by law, against the financial system and the economic and financial order;
  - VII. writs of habeas corpus, in criminal matters subject to their jurisdiction or when the constraint stems from an authority whose acts are not directly subject to another jurisdiction;
  - VIII. writs of security and habeas data against an act of a federal authority, except for those cases subject to the jurisdiction of the federal tribunals;
  - IX. crimes committed aboard ships or aircraft, except for those subject to the jurisdiction of the Military Courts;
  - X. crimes of a foreigner's irregular entry or stay, execution of letters rogatory after exequatur, enforcement of foreign court decisions after homologation, cases relating to nationality, including the respective options and naturalization;
  - XI. disputes over indigenous rights.

§1°. Cases in which the Union is the plaintiff shall be brought in the judicial section where the other party is domiciled.

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

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

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

§5°. For the purposes of assuring compliance with obligations stemming from international human rights treaties to which Brazil is a party, the Procurator-General of the Republic shall suggest to the Superior Tribunal of Justice, at any phase of the inquiry or proceeding, removal to the jurisdiction of the Federal Courts in cases of grave violation of human rights.

## Art 110

Each State, as well as the Federal District, shall constitute a judicial section, which shall sit in the respective Capital, with courts of the first instance located as established by law.

## Sole Paragraph

In the Federal Territories, the jurisdiction and powers granted to the federal judges shall be attributed to the judges of the local courts, as provided by law.

## SECTION V: Labor Tribunals and Labor Judges

### Art 111

The Labor Court System consists of:

- I. the Superior Labor Tribunal;
- II. Regional Labor Tribunals;
- III. Labor Judges.

§1°. Revoked:

- I. revoked.
- II. revoked.

§2°. Revoked.

§3°. Revoked.

### Art 111-A

The Superior Labor Tribunal shall be composed of twenty-seven Ministers, chosen among Brazilians between the ages of thirty-five and sixty-five, appointed by the President of the Republic, after approval by an absolute majority of the Federal Senate, with:

- I. one-fifth from lawyers with more than ten years of effective professional activity and members of the Public Labor Ministry with more than ten years of effective service, observing the provision of art. 94;
- II. the remainder from career magistrates of the Regional Labor Tribunals, selected by the Superior Tribunal itself.

§1°. The law shall provide for the jurisdiction of the Superior Labor Tribunal.

§2°. The following shall function together with the Superior Labor Tribunal:

- I. the National School for the Formation and Improvement of Labor Magistrates, which, among other functions, shall be responsible for regulating official courses for entry and promotion in the career;
- II. the Superior Council of Labor Justice, as the central body of the system, which shall be responsible for performing administrative, budgetary, financial and patrimonial supervision of Labor Justice in the first and second instances, as provided by law. The Council's decisions shall have binding effects.

### Art 112

The law shall create Labor Courts. In districts not included within their jurisdiction, the law may confer this jurisdiction on state court judges, with an appeal to the respective Regional Labor Tribunal.

### Art 113

The law shall provide for the constitution, investiture, jurisdiction, guarantees and conditions for performance for the agencies of the Labor Courts.

## Art 114

The Labor Court System has the power to hear and judge:

- I. actions arising from labor relations, including those of foreign public law entities and those of direct and indirect public administration of the Union, States, Federal District and Counties;
- II. actions involving exercise of the right to strike;
- III. actions concerning syndical representation between unions, unions and workers, and unions and employers;
- IV. writs of security, habeas corpus and habeas data, when the challenged act involves matters subject to its jurisdiction;
- V. jurisdictional conflicts among bodies with labor jurisdiction, except for the provision of art. 102, I, o;
- VI. actions for indemnification for moral or patrimonial damages stemming from labor relations;
- VII. actions relating to administrative penalties imposed upon employers by bodies supervising labor relations;
- VIII. ex officio execution for social contributions provided for in art. 195, I, a, and II, and any legal increments stemming from judgments entered;
- IX. other controversies stemming from labor relations, as provided by law.

§1°. If collective bargaining negotiations are unsuccessful, the parties may appoint arbitrators.

§2°. If one party refuses collective bargaining or arbitration, the parties, by common accord, may file an economic collective labor dispute. This conflict may be decided by the Labor Courts, respecting the minimum legal provisions for protection of labor, as well as those previously agreed upon.

§3°. In case of a strike in an essential activity, with the possibility of injury to the public interest, the Public Labor Ministry shall bring a collective labor dispute, with the Labor Courts having jurisdiction to decide the conflict.

## Art 115

The Regional Labor Tribunals shall be composed of a minimum of seven judges recruited, when possible, from the respective region and appointed by the President of the Republic from Brazilians between the ages of thirty and sixty-five, with:

- I. one-fifth from lawyers with more than ten years of effective professional activity and members of the Public Labor Ministry with more than ten years of effective service, observing the provision in art. 94;
- II. the others, through promotion of labor judges, alternatively by seniority and merit.

§1°. The Regional Labor Tribunals shall install itinerant courts, which shall hold hearings and other jurisdictional functions within the territorial limits of their respective jurisdictions, utilizing public and community facilities.

§2°. The Regional Labor Tribunals may function in a decentralized manner, constituting regional Chambers to assure full jurisdictional access to justice at all phases of the proceedings.

## Art 116

Jurisdiction in the Labor Courts shall be exercised by a single judge.

## Sole Paragraph

Revoked.

## Art 117

Revoked.

## SECTION VI: Electoral Tribunals and Judges

### Art 118

The Electoral Justice System consists of:

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

### Art 119

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

- I. through election, by secret ballot, with:
  - a. three judges from among the Ministers of the Supreme Federal Tribunal;
  - b. two judges from among the Ministers of the Superior Tribunal of Justice;
- II. by appointment of the President of the Republic, two judges from six lawyers of notable legal knowledge and good moral character, indicated by the Supreme Federal Tribunal.

## Sole Paragraph

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

### Art 120

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

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

- I. through election, by secret ballot:
  - a. of two judges from the justices of the Tribunals of Justice;
  - b. of two judges from the state courts, chosen by the Tribunal of Justice;
- II. by one judge of the Federal Regional Tribunal that sits in the Capital of the State or Federal District, or in the absence thereof, by a federal judge chosen in any case by the respective Federal Regional Tribunal;
- III. by two judges appointed by the President of the Republic from six lawyers of notable legal knowledge and good moral character, nominated by the Tribunal of Justice.



§2°. The Regional Electoral Tribunal shall elect its President and Vice-President from among the justices [of the Tribunal of Justice].

## Art 121

The organization and jurisdiction of the electoral tribunals, state court judges and electoral boards shall be provided for by complementary law.

§1°. The members of the tribunals, the state court judges and the members of the electoral boards, while exercising their functions and to the extent applicable to them, shall enjoy full guarantees and shall be non-removable.

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

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

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

- I. they contravene an express provision of this Constitution or law;
- II. a divergence exists in the interpretation of a law between two or more electoral courts;
- III. they deal with ineligibility or issuance of certificates of election in federal or state elections;
- IV. they annul certificates of election or decree the loss of federal or state elective offices;
- V. they deny habeas corpus, writ of security, habeas data or a mandate of injunction.

## SECTION VII: Military Courts and Military Judges

### Art 122

The Military Justice System consists of:

- I. the Superior Military Tribunal;
- II. the Military Tribunals and Military Judges instituted by law.

### Art 123

The Superior Military Tribunal shall be composed of fifteen Ministers with life tenure, appointed by the President of the Republic after approval of their nominations by the Federal Senate, with three from admirals of the Navy, four from generals of the Army, three from generals of the Air Force, all in active service and in the highest career rank, and with five from among civilians.

### Sole Paragraph

The civilian Ministers shall be chosen by the President of the Republic from Brazilians more than thirty-five years old, with:

- I. three from lawyers of notable legal knowledge and unblemished conduct, with more than ten years of actual professional activity;

- II. two, by equal choice, from military judges and members of the Military Public Ministry.

## **Art 124**

The Military Justice System shall have jurisdiction to try and adjudicate the military crimes defined by law.

### **Sole Paragraph**

The law shall provide for the organization, operation and jurisdiction of the Military Justice System.

## **SECTION VIII: State Tribunals and Judges**

### **Art 125**

The States shall organize their Justice Systems, observing the principles established in this Constitution.

§1°. The jurisdiction of the courts shall be defined in the State Constitution, and the law of judicial organization shall be proposed by the Tribunal of Justice.

§2°. The States have the power to institute an action of unconstitutionality of state or county laws or normative acts contrary to the State Constitution, conferral of standing to act on only one agency being prohibited.

§3°. By proposal of the Tribunal of Justice, a state law may create a state Military Justice System, which shall consist at the first instance of state court judges and Councils of Justice, and at the second instance of the Tribunal of Justice itself, or a Tribunal of a Military Justice in those States in which the effective military is greater than twenty thousand members.

§4°. The State Military Justice shall have jurisdiction to charge and to try members of the State military for military crimes defined by law and in judicial actions against acts of military discipline, preserving the jurisdiction of the jury when the victim is a civilian. It shall be the responsibility of the appropriate court to decide on the loss of post, loss of rank for officers and loss of grade for servicemen.

§5°. The state court judges in the military courts shall have jurisdiction to charge and to judge by themselves military crimes committed against civilians and judicial actions against acts of military discipline. It is the responsibility of the Council of Justice, under the presidency of a state court judge, to charge and to judge other military crimes.

§6°. The Tribunal of Justice shall operate in a decentralized fashion, constituting regional Chambers, in order to assure full access to justice at all phases of the proceedings.

§7°. The Tribunal of Justice shall install itinerant courts, which shall hold hearings and other jurisdictional functions within the territorial limits of their respective jurisdiction, utilizing public and community facilities.

### **Art 126**

In order to decide rural land conflicts, the Tribunal of Justice shall propose creation of specialized courts, with exclusive jurisdiction over agrarian questions.

## Sole Paragraph

Whenever necessary to exercise jurisdiction efficiently, the judge shall go personally to the site of the legal controversy.

## CHAPTER IV: POSITIONS ESSENTIAL TO JUSTICE

### SECTION I: The Public Ministry

#### Art 127

The Public Ministry is a permanent institution, essential to the jurisdictional function of the State, with responsibility for defending the legal order, the democratic regime and indispensable social and individual interests.

§1°. Unity, indivisibility and functional independence are institutional principles of the Public Ministry.

§2°. The Public Ministry is assured functional and administrative autonomy, and it may, observing provisions of art. 169, propose to the Legislature creation and abolition of its positions and auxiliary services, filling them through competitive public examinations, or such examinations and comparison of professional credentials; remuneration policy; and career plans. The law shall provide for its organization and operation.

§3°. The Public Ministry shall draw up its budgetary proposal within the limits established in the law of budgetary directives.

§4°. If the Public Ministry does not deliver its respective budgetary proposal within the period established in the law of budgetary directives, the Executive shall consider, for purposes of consolidation of the annual budgetary proposal, the amounts approved in the current budgetary law, adjusted in accordance with the limits set forth in the form of § 3°.

§5°. If the budgetary proposal dealt with in this article is delivered in disregard of the limits set forth in § 3°, the Executive shall proceed with the necessary adjustments in order to consolidate the annual budgetary proposal.

§6°. During execution of the budget for the current fiscal year, there shall be no realization of expenses or assumption of obligations that exceed the limits established in the law of budgetary directives through opening supplemental or special credits, unless previously authorized.

#### Art 128

The Public Ministry includes:

- I. the Public Ministry of the Union, which consists of:
  - a. the Federal Public Ministry;
  - b. the Labor Public Ministry;
  - c. the Military Public Ministry;
  - d. the Public Ministry of the Federal District and Territories;
- II. the Public Ministries of the States.

§1°. The head of the Public Ministry of the Federal Government is the Procurator-General of the Republic, appointed by the President of the Republic from career members over thirty-five years of age, after approval by an absolute majority of the members of the Federal Senate, for a term of office of two years, re-appointment being permitted.

§2°. The Procurator-General of the Republic can be removed from office, on the initiative of the President of the Republic, subject to prior authorization of an absolute majority of the Federal Senate.

§3°. The Public Ministry of the States, Federal District and Territories shall make up a list of three names from career members, in the form of the respective law, for selection of their Procurators-General, who shall be appointed by Heads of the Executive Branch for a term of office of two years, permitting one reappointment.

§4°. The Procurators-General of the States and of the Federal District and Territories may be removed from office by an absolute majority of the Legislature, under the terms of a respective complementary law.

§5°. Complementary laws of the Union and States, which may be proposed by the respective Procurators-General, shall establish the organization, powers and by-laws of each Public Ministry, observing with respect to their members:

- I. the following guarantees:
  - a. life tenure after two years in office, capable of losing their positions only by a court judgment that has become final and unappealable;
  - b. non-transferability, except by reason of public interest, through a decision of the appropriate collegiate body of the Public Ministry, by an absolute majority vote of its members, assuring a full defense;
  - c. irreducibility of fixed compensation, set in the form of art. 39, § 4°, and except as provided for in arts. 37, X and XI, 150, II, 153, III, 153, § 2°, I;
- II. the following prohibitions:
  - a. receiving, on any account and under any pretext, fees, percentages or court costs;
  - b. practicing law;
  - c. participating in a commercial company, as provided by law;
  - d. performing, even when on leave, any other public function except teaching;
  - e. engaging in political party activities;
  - f. under any title or pretext, receiving assistance or contributions from individuals or public or private entities, except as provided by law.

§6°. The provision of art. 95, sole paragraph, V applies to members of the Public Ministry.

## Art 129

The institutional functions of the Public Ministry are:

- I. the exclusive power to bring public criminal prosecutions, as provided by law;
- II. to safeguard effective respect by the Government and services of public relevance for rights protected by this Constitution, taking the necessary action to guarantee such rights;
- III. to institute civil investigations and public civil actions to protect the public and social patrimony, the environment and other diffuse and collective interests;
- IV. to institute direct actions of unconstitutionality or representation for purposes of intervention by the Union and States, in cases set out in this Constitution;
- V. to defend judicially the rights and interests of indigenous populations;

- VI. to issue notices in administrative procedures under its jurisdiction, requesting information and documents to guide them, as provided by the respective complementary law;
- VII. to exercise external control over police activities, as provided by the complementary law mentioned in the preceding article;
- VIII. to request investigations and institution of police investigations, indicating the legal basis for its procedural acts;
- IX. to perform other functions conferred upon it, so long as they are compatible with its purpose, prohibiting judicial representation and legal advice to public entities.

§1°. The standing of the Public Ministry to bring civil actions provided for in this article shall not preclude standing of third parties in the same cases, as provided in this Constitution and by law.

§2°. Functions of the Public Ministry may be performed only by career personnel, who must reside in the judicial district of their respective assignments, except with the authorization of the head of the institution.

§3°. Entry into the career of the Public Ministry shall be through public competitive examinations and comparison of professional credentials, assuring participation of the Brazilian Bar Association in such competition, and shall require a law degree and a minimum of three years of legal activities, observing the order of classification for appointments.

§4°. Where appropriate, the provisions of art. 93 apply to the Public Ministry.

§5°. The distribution of cases in the Public Ministry shall be immediate.

## **Art 130**

Provisions of this section relating to rights, prohibitions and form of investiture apply to members of the Public Ministry attached to Tribunals of Accounts.

## **Art 130-A**

The National Council of the Public Ministry shall consist of fourteen members appointed by the President of the Republic, after approval by an absolute majority of the Federal Senate, for a mandate of two years, permitting one additional term. It consists of:

- I. the Procurator-General of the Republic, who shall preside;
- II. four members of the Public Ministry of the Union, assuring representation to each of its careers;
- III. three members of the Public Ministry of the States;
- IV. two judges, one selected by the Supreme Federal Tribunal and the other by the Superior Tribunal of Justice;
- V. two lawyers selected by the Federal Council of the Brazilian Bar Association;
- VI. two citizens of notable legal knowledge and unblemished reputation, one selected by the Federal Chamber of Deputies and the other by the Federal Senate.

§1°. The members of the Council coming from the Public Ministry shall be selected by the respective Public Ministries, as provided by law.

§2°. The National Council of the Public Ministry shall be responsible for control of the administrative and financial functioning of the Public Ministry and performance of the functional duties of its members. It is responsible for:

- I. preserving the functional and administrative autonomy of the Public Ministry, being able to issue regulatory acts in its area of jurisdiction, or to recommend measures;
- II. observing art. 37 and appreciating, ex officio or upon demand, the legality of administrative acts practiced by members or bodies of the Public Ministry of the Union and of the States. The National Council can vacate or revise these acts, or fix a period in which necessary measures for the precise performance of the law shall be adopted, without prejudice to the jurisdiction of the Tribunals of Accounts;
- III. receiving and hearing complaints against members or organs of the Public Ministry of the Union and the States, including against their auxiliary services, without prejudice to the disciplinary and correctional jurisdiction of the institution. The National Council may assume jurisdiction over ongoing disciplinary proceedings to determine removal, leave or retirement with salary or benefits proportional to the time of the service and to apply other administrative sanctions, assuring a full defense;
- IV. revising, ex officio or by demand, disciplinary proceedings of members of the Public Ministry of the Union or the States decided less than one year ago;
- V. preparing an annual report proposing measures that it deems necessary with respect to the situation of the Public Ministry in the Country and the activities of the Council, which shall be part of the message provided for in art. 84, XI.

§3°. By secret ballot the Council shall choose a National Supervisor from among the members of the Public Ministry to which it is a part. Reelection is prohibited. The National Supervisor shall have the following responsibilities, in addition to the powers conferred upon her or him by law:

- I. to receive complaints and denunciations, from any interested person, with respect to the members of the Public Ministry and its auxiliary services;
- II. to perform the executive functions of the Council with respect to general inspection supervision;
- III. to requisition and designate members of the Public Ministry, delegating powers to them, and to requisition employees of the organs of the Public Ministry.

§4°. The President of the Federal Council of the Brazilian Bar Association shall officiate at the Council.

§5°. State and Federal laws shall create grievance centers for the Public Ministry, competent to hear complaints and denunciations by any interested person against members or organs of the Public Ministry, including against their auxiliary services, presenting them directly to the National Council of the Public Ministry.

## SECTION II: Public Advocacy

### Art 131

The Advocacy-General of the Union is the institution that, either directly or through a subordinated agency, represents the Union, both judicially and extra-judicially. Under the terms of a complementary law providing for its organization and operations, it is responsible for the activities of legal consultation and counseling 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 from among citizens over thirty-five years of age, of notable legal knowledge and unblemished reputation.

§2°. Entry into initial phases of the career of the institution dealt with in this article shall be by competitive public examinations and comparison of professional credentials.

§3°. The Procurator-General of the National Treasury is responsible for representing the Union with respect to execution on unpaid taxes owed to it, as provided by law.

## Art 132

The Procurators of the States and the Federal District, career positions into which admission depends upon public competitive examinations and professional credentials, with participation by the Brazilian Bar Association in all phases, shall provide judicial representation and legal counseling to their respective federative units.

### Sole paragraph

Procurators referred to in this article are assured tenure after three years of actual service, via performance evaluation by their own agencies, after a corroborating report from the supervising judges.

## SECTION III: The Practice of Law and the Public Defender's Office

### Art 133

Lawyers are indispensable to the administration of justice, and they are immune for their acts and manifestations in the practice of their profession, within the limits of the law.

### Art 134

The Public Defender's Office is an institution essential to the State's jurisdictional function, and it shall be responsible for providing legal advice to the needy and defending them at all levels, as set out in art. 5, LXXIV.

§1°. A complementary law shall organize the Public Defender's Office of the Union and of the Federal District and Territories and prescribe general rules for its organization in the States, with career positions, filled at the entry level through public competitive examinations and comparison of professional credentials, assuring its members the guarantee of non-transferability and prohibiting practice of law outside their institutional duties.

§2°. State Public Defenders are assured functional and administrative autonomy and the right to initiate their budget proposal within the limits established in the law of budgetary directives, subject to the provisions of art. 99, § 2°.

§3°. The provisions of § 2° apply to the Public Defenders of the Union and the Federal District.

### Art 135

The civil servants that form part of the careers regulated in Sections II and III of this Chapter shall be compensated in the form of art. 39, §4°.

## TITLE V

# DEFENSE OF THE STATE AND DEMOCRATIC INSTITUTIONS

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## CHAPTER I: STATE OF DEFENSE AND STATE OF SIEGE

### SECTION I: State of Defense

#### Art 136

After hearing from the Council of the Republic and the National Defense Council, the President of the Republic may decree a state of defense in specific restricted locations to preserve or promptly re-establish public order or social peace threatened by grave and imminent institutional instability or affected by large scale natural calamities.

§1°. The decree instituting a state of defense shall determine the period of its duration, specify the areas affected and indicate, within the terms and limits of the law, which of the following coercive measures will be in force:

- I. restrictions on rights of:
  - a. assembly, even when held within associations;
  - b. secrecy of correspondence;
  - c. secrecy of telegraph and telephone communication;
- II. occupation and temporary use of public property and services in the event of a public calamity, with the Union being liable for the resulting damages and costs.

§2°. The state of defense may not exceed thirty days, and it may be extended once for an identical period if the reasons justifying the respective decree persist.

§3°. When a state of defense is in force:

- I. imprisonment for a crime against the State, determined by the party executing the measure, shall be communicated immediately by such party to the proper judge, who shall release the prisoner if the imprisonment is illegal; the prisoner may request examination of the corpus delicti from the police authority;
- II. the communication shall be accompanied by a statement by the authority as to the physical and mental state of the detainee at the time of arrest;
- III. no person shall be imprisoned or detained for more than ten days, unless authorized by the Judiciary;
- IV. maintaining a prisoner incommunicado is prohibited.

§4°. When a state of defense has been decreed or extended, the President of the Republic shall submit the act with its respective justification within twenty-four hours to the National Congress, which shall decide on it by absolute majority.

§5°. If in recess, the National Congress shall be convoked extraordinarily within five days.

§6°. The National Congress shall examine the decree within ten days of its receipt, and shall continue functioning while the state of defense is in force.

§7°. If the decree is rejected, the state of defense shall cease immediately.



## SECTION II: State of Siege

### Art 137

After having heard from the Council of the Republic and the National Defense Council, the President of the Republic may request authorization from the National Congress to decree a state of siege in the event of:

- I. a serious disturbance with national effects or occurrence of events that show the ineffectiveness of a measure taken during the state of defense;
- II. declaration of state of war or response to foreign armed aggression.

### Sole Paragraph

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

### Art 138

The decree of a state of siege shall indicate the period of its duration, the rules required to implement it and the constitutional guarantees that are to be suspended. After publication, the President of the Republic shall designate the executor of the specific measures and the affected areas.

§1°. In the case of art. 137, I, a state of siege may not be decreed for more than thirty days, nor may each prolongation exceed a like period; in the case of subparagraph II, a state of siege may be decreed for the entire period of war or foreign aggression.

§2°. If authorization to decree a state of siege is requested during a legislative recess, the President of the Federal Senate shall immediately convoke the National Congress to meet within five days in extraordinary session in order to consider the act.

§3°. The National Congress shall remain in session until the end of the coercive measures.

### Art 139

When a state of siege decreed under art. 137, I, is in effect, only the following measures may be taken against individuals:

- I. obligation to remain in a determined place;
- II. detention in a building not destined for persons accused or convicted of common crimes;
- III. restrictions regarding inviolability of correspondence, secrecy of communications, providing information and freedom of press, radio broadcasting and television, as provided by law;
- IV. suspension of freedom of assembly;
- V. search and seizure in one's domicile;
- VI. intervention in public utility companies;
- VII. requisitioning of property.

## Sole Paragraph

Broadcasting pronouncements made by legislators in their Legislative Chambers, if authorized by the respective Executive Committee, is not included in the restrictions of subparagraph III.

## SECTION III: General Provisions

### Art 140

After hearing from party leaders, the Executive Committee of the National Congress shall designate a Committee composed of five of its members to monitor and supervise implementation of measures concerning a state of defense and state of siege.

### Art 141

When the state of defense or state of siege ceases, its effects shall also cease, without prejudice to liability for unlawful acts committed by its executors or agents.

## Sole Paragraph

As soon as the state of defense or state of siege ceases, the measures applied during the period it was in force shall be reported by the President of the Republic in a message to the National Congress, specifying and justifying the actions taken, listing the names of those affected and indicating the restrictions applied.

## CHAPTER II: ARMED FORCES

### Art 142

The Armed Forces, made up of the Navy, Army and Air Force, are permanent and regular national institutions, organized on the basis of hierarchy and discipline, under the supreme authority of the President of the Republic, and intended to defend the Nation, guarantee the constitutional branches of government and, on the initiative of any of these branches, law and order.

§1°. A complementary law shall set out the general rules to be adopted for the organization, training and use of the Armed Forces.

§2°. Habeas corpus does not lie for military disciplinary punishments.

§3°. Members of the Armed Forces are called the military, applying to them, as well as what comes to be provided by law, the following provisions:

- I. ranks with the prerogatives, rights and duties inherent to them, are conferred by the President of the Republic and assured fully to active, reserve or retired officers, who shall have exclusive rights to military titles, posts, and jointly with other members, use of the uniforms of the Armed Forces;
- II. a member of the military in active service who accepts a permanent civil service position or employment, except for the possibility provided for in art. 37, subparagraph XVI, line "c", shall be transferred to the reserves, as provided by law;

- III. a member of the military in active service who, as provided by law, assumes a temporary non-elective public office, employment, or position, even in the indirect administration, except for possibility provided for in art. 37, subparagraph XVI, line "c", shall remain part of his respective staff. So long as he remains in this situation, he may be promoted only through seniority, and his period of service shall be counted only for that promotion and transfer to the reserves. After two years away from active service, whether continuous or not, he shall be transferred to the reserves, as provided by law;
- IV. military servicemen are prohibited from forming unions and striking;
- V. while in active service, military servicemen may not be affiliated with political parties;
- VI. an officer shall lose his position and rank only if adjudged unworthy or incompatible with being an officer, by a decision of a permanent military tribunal in peacetime or a special tribunal in wartime;
- VII. an officer convicted in the ordinary or military courts and sentenced to imprisonment for more than two years by a final and non-appealable decision shall be submitted to the adjudication provided for in the preceding paragraph;
- VIII. the provisions of art. 7, subparagraphs VIII, XII, XVII, XVIII, XIX and XXV and of art. 37, subparagraphs XI, XIII, XIV and XV, apply to military servicemen, as provided by law, and with prevalence of military activity under art. 37, subparagraph XVI, line "c";
- IX. revoked;
- X. the law shall provide for entry into the Armed Services, age limits, tenure and other conditions for transfer of servicemen into inactivity, rights, responsibilities, compensation, prerogatives and other special situations of the military, considering the peculiarities of their activity, including those performed by force of international agreements and war.

## Art 143

Military service is compulsory as provided by law.

§1°. The Armed Forces shall have the power, as provided by law, to assign alternative service in peacetime to those who, after enlistment, allege that they are conscientious objectors, understood as having objections based on religious beliefs and philosophical or political convictions for exemption from activities of an essentially military character.

§2°. Women and the clergy are exempt from compulsory military service in peacetime but are subject to other duties that may be assigned to them by law.

## CHAPTER III: PUBLIC SECURITY

### Art 144

Public security, the duty of the State and the right and responsibility of all, is exercised for preservation of public order and security of persons and property, by means of the following agencies:

- I. federal police;
- II. federal highway police;
- III. federal railway police;
- IV. civilian police;
- V. military police and military fire brigades.

§1°. The federal police, created by law as a permanent body, organized and maintained by the Union, structured into a career, is designed:

- I. to detect criminal offenses against the political and social order or detrimental to property, services and interests of the Union, its autarchies and its public enterprises, as well as other offenses with interstate or international repercussions, requiring uniform repression according to law;
- II. to prevent and repress illegal traffic in narcotics and similar drugs, contraband and smuggling, without prejudice to action by the treasury and other government agencies in their respective areas of jurisdiction;
- III. to perform the functions of maritime, airport and border police;
- IV. to perform exclusively the functions of judicial police of the Union.

§2°. The federal highway police is a permanent body, organized and maintained by the Union, structured into a career and designed to patrol the federal highways ostensibly, as provided by law.

§3°. The federal railway police, a permanent body, organized and maintained by the Union, structured into a career and designed to patrol the federal railways ostensibly, as provided by law.

§4°. Excluding the jurisdiction of the Union, the civil police, directed by career police chiefs, has the duty to act as judicial police and to investigate criminal offenses, with the exception of military offenses.

§5°. The military police is responsible for ostensibly policing and preserving public order; the military firemen, in addition to the duties defined by law, are responsible for carrying out activities of civil defense.

§6°. The military police and firemen, auxiliary forces and the Army reserves, together with the civilian police, are under the control of the Governors of the State, Federal District and Territories.

§7°. The law shall regulate the organization and operation of the agencies responsible for public security in such manner as to guarantee the efficiency of their activities.

§8°. The Counties may organize county guards in order to protect county property, services and facilities, as provided by law.

§9°. The remuneration of police civil servants that form part of the agencies set out in this article shall be fixed in accordance with § 4° of art. 39.

## TITLE VI

# TAXATION AND BUDGET

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## CHAPTER I: NATIONAL TRIBUTARY SYSTEM

### SECTION I: General Principles

#### Art 145

The Union, States, Federal District and Counties may levy the following tributes:

- I. taxes;
- II. fees, by virtue of exercise of police power or for effective or potential use of specific and divisible public services provided to taxpayers or made available to them;
- III. assessments for public works.

§1°. Whenever possible, taxes shall be personal and shall vary with the economic capacity of the taxpayer. To make these objectives effective, the tax administration may identify the patrimony, income and economic activities of the taxpayer, respecting individual rights, as provided by law.

§2°. Fees may not be calculated on the same basis as taxes.

## Art 146

A complementary law shall:

- I. deal with conflicts of taxing power among the Union, States, Federal District and Counties;
- II. regulate the constitutional limitations on the taxing power;
- III. establish general rules for tax legislation, particularly as to:
  - a. definition of tributes and their types, as well as, with respect to taxes specified in this Constitution, the definition of the respective taxable events, basis for calculation and taxpayers;
  - b. tax liability, assessment, credit, limitations periods and laches;
  - c. adequate tax treatment for the cooperative acts performed by cooperative entities;
  - d. definition of differentiated and favored treatment for micro-firms and small firms, including special or simplified regimes for the tax provided for in art. 155, II; the contributions provided for in art. 195, I and §§ 12° and 13°; and the contribution referred to in art. 239.

## Sole paragraph

The complementary law dealt with in subparagraph III, d, shall also institute a unified regime for collection of taxes and contributions of the Union, States, Federal District and Counties, observing that:

- I. it shall be optional for the taxpayer;
- II. a state may establish conditions for differentiated enrollment;
- III. collection shall be unified and centralized, and the distribution of the portion of the funds belonging to the respective federative entities shall be immediate, prohibiting any retention or conditioning;
- IV. collection, supervision and levying may be divided by the federative entities, adapting a unified national roll of taxpayers.

## Art 146-A

In order to prevent disequilibria from competition, a complementary law may establish special criteria for taxation, without prejudice to the jurisdiction of the Union to establish by law rules for the same purpose.

## Art 147

In federal territories, the Union has the power to levy state taxes and, if the territory is not divided into counties, county taxes as well. The Federal District has the power to impose county taxes.

## Art 148

The Union, through a complementary law, may impose compulsory loans:

- I. to defray extraordinary expenses resulting from public calamity, foreign war or imminence thereof;
- II. in the event of a public investment of urgent character and relevant national interest, observing the provisions of art. 150, III, b.

## Sole Paragraph

Applications of the funds derived from a compulsory loan shall be tied to the expense that was the basis for its imposition.

## Art 149

The Union has the exclusive power to institute social contributions, contributions for the intervention in the economic domain, and contributions in the interest of professional or economic categories, as instruments of its activity in the respective areas, observing the provisions of arts. 146, III, and 150, I and III, and without prejudice to the provisions of art. 195, § 6º, with respect to the contributions mentioned in that provision.

§1º. The States, the Federal District, and Counties may institute a contribution, collected from their employees, for funding their social security regime dealt with in art. 40, at a rate not less than the contribution of civil servants holding effective positions in the Union.

§2º. The social contributions and the contribution for the intervention in the economic domain dealt with in the heading of this article:

- I. shall not be levied on export proceeds;
- II. shall also be levied on the importation of foreign products or services;
- III. the rates may be:
  - a. ad valorem, based upon the invoice, gross receipts or the value of the transaction and, in the case of imports, the customs value;
  - b. specific, based upon the unit of measure adopted.

§3º. An individual importer may be treated as the equivalent of a legal entity, as provided by law.

§4º. The law shall define the situations in which contributions shall be incurred only once.

## Art 149-A

The Counties and the Federal District may institute a contribution, as prescribed by their respective laws, for financing the service of public illumination, observing the provisions of art. 150, I and III.

## Sole Paragraph

The contribution referred to in the heading may be assessed on the bill for the consumption of electric energy.

## SECTION II: Limitations on the Taxing Power

### Art 150

Without prejudice to other guarantees assured the taxpayer, the Union, States, Federal District and Counties are prohibited from:

- I. imposing or increasing a tax without a law that does so;
- II. instituting unequal treatment among taxpayers that are similarly situated, it being prohibited to make any distinction because of professional occupation or job performed by them, regardless of the legal denomination of income, securities or rights;
- III. collecting taxes:
  - a. for taxable events that occurred before the law that instituted or increased them went into force;
  - b. in the same fiscal year in which the law that instituted or increased them was published;
  - c. prior to the expiration of ninety days from the date on which the law that institutes or increases them has been published, observing the provision in line b;
- IV. using taxes for purposes of confiscation;
- V. establishing limitations on movement of persons or goods by means of interstate or inter-county taxes, except for collection of tolls for use of highways maintained by the Government;
- VI. levying taxes on:
  - a. patrimony, income or services of one another;
  - b. temples of any religion;
  - c. patrimony, income or services of political parties, including their foundations, labor unions and non-profit educational and social assistance institutions, observing the requirements of the law;
  - d. books, newspapers, periodicals and paper intended for the printing thereof.
  - e. musical phonograms and video phonograms produced in Brazil containing musical or literary musical works by Brazilian authors and/or general works interpreted by Brazilian artists, as well as supporting materials or digital archives which contain them, except in the phase of industrial replication of optical media for leisure reading.

§1°. The prohibition of subparagraph III, b, does not apply to the taxes provided for in arts. 148, I; 153, I, II, IV and V; and 154, II; and the prohibition of subparagraph III, c, does not apply to the taxes provided for in arts. 148, I; 153, I, II, III and V; and 154, II, nor to the fixing of the basis of calculation for the taxes provided for in arts. 115, III; and 156, I.

§2°. The prohibition contained in subparagraph VI, a, extends to autarchies and foundations instituted and maintained by the Government with respect to the patrimony, income and services connected with their essential purposes.

§3°. The prohibitions contained in subparagraph VI, a, and in the preceding paragraph do not apply to the patrimony, income and services connected with the exploitation of economic activities governed by the rules that apply to private ventures or to ventures in which users provide a counter performance or pay prices or tariffs, nor exempt one who has agreed to buy property from the obligation to pay the tax thereon.

§4°. The prohibitions contained in subparagraph VI, subsections b and c, encompass only the patrimony, income and services connected with the essential purpose of the entities mentioned therein.

§5°. The law shall determine measures for consumer clarification about taxes levied on goods and services.

§6°. Any subsidy or exemption, reduction in the basis of calculation, concession of a presumed credit, amnesty or remission involving taxes, fees or contributions, may be granted only through a specific federal, state or county law that exclusively regulates the above enumerated matters or corresponding tax or assessment, without prejudice to the provisions of art. 155, § 2°, XII, g.

§7°. A law may impose liability upon the taxpayer for payment of a tax or assessment whose taxable event may occur afterwards, assuring the immediate and preferential restitution of the amount paid should the presumed taxable event not occur.

## Art 151

The Union is forbidden:

- I. to levy taxes that are not uniform throughout the entire national territory or that imply a distinction or preference in relation to a State, Federal District or County, to the detriment of another; however, fiscal incentives may be granted to promote balance in socio-economic development among different regions of the Country;
- II. to tax income from public debt obligations of the States, Federal District and Counties, as well as the remuneration and benefits of the respective public agents, at higher levels than those fixed for its own obligations and agents;
- III. to grant exemptions from taxes within the jurisdiction of the States, Federal District or Counties.

## Art 152

The States, the Federal District and the Counties are prohibited from establishing a tax differential between goods and services of any nature because of their origin or destination.

## SECTION III: Taxes of the Union

### Art 153

The Union has the power to levy taxes on:

- I. importation of foreign products;
- II. exportation to other countries of national or nationalized products;
- III. income and earnings of any nature;
- IV. industrialized products;
- V. credit transactions, foreign exchange operations, insurance or transactions relating to negotiable instruments or securities;



- VI. rural property;
- VII. large fortunes, as provided in a complementary law.

§1°. The Executive may, with due regard for the conditions and limits established by law, change the rates on the taxes set out in subparagraphs I, II, IV and V.

§2°. The tax provided for in subparagraph III:

- I. shall be based on criteria of generality, universality and progressiveness, as provided by law;
- II. revoked.

§3°. The tax provided for in subparagraph IV:

- I. shall be selective, based on the essentiality of the product;
- II. shall be noncumulative, with an offset against the tax owed on each transaction of the amount charged on previous transactions;
- III. shall not be imposed on industrialized products destined for export;
- IV. shall have a reduced impact on the acquisition of capital goods by the taxpayer, as provided by law.

§4°. The tax provided for in subparagraph VI of the heading:

- I. shall be progressive and its rates shall be fixed in a manner that is a disincentive to the maintenance of unproductive properties;
- II. shall not be levied on small rural properties, as defined by law, when worked by the owner if he owns no other real property;
- III. shall be inspected and collected by the Counties that opt to do so, as provided by law, so long as this does not imply a reduction in the tax or any other form of fiscal waiver.

§5°. Gold, when defined by law as a financial asset or instrument of foreign exchange, shall be subject exclusively to the tax mentioned in subparagraph V of the heading of this article, which shall be owed on the original transaction; the minimum rate shall be one percent, ensuring transference of the amount collected in the following terms:

- I. thirty percent to the State, Federal District or Territory, depending on the origin;
- II. seventy percent to the County of origin.

## Art 154

The Union may impose:

- I. by means of a complementary law, taxes not listed in the preceding article, provide they are noncumulative and have a specific taxable event or basis of assessment other than those specified in this Constitution;
- II. in the case of foreign war or its imminent threat, extraordinary taxes, whether or not included in its taxing power, which shall be gradually repealed when the causes for their creation cease.

## SECTION IV: State and Federal District Taxes

### Art 155

The States and the Federal District have the power to impose taxes on:

- I. transfers causa mortis and donations of any property or rights;

- II. transactions relating to circulation of goods and the performance of services of interstate and inter-county transportation and communications, even when the transactions and performance begin abroad;
- III. ownership of automotive vehicles.

§1°. The tax provided for in subparagraph I:

- I. can be imposed, with respect to real property and its respective rights, by the State or Federal District where the property is located;
- II. can be imposed, with respect to personalty, securities and credit instruments, by the State or Federal District where the inventory or schedule is probated, or the domicile of the donor;
- III. shall have its jurisdiction regulated by a complementary law:
  - a. if the donor is domiciled or resident abroad;
  - b. if the deceased was a foreign resident or domiciliary, owned property abroad or had an inventory probated abroad;
- IV. shall have its maximum rates fixed by the Federal Senate.

§2°. The tax provided for in subparagraph II shall conform to the following:

- I. it shall be noncumulative, with an offset against the tax owed on each transaction of circulation of goods or performance of services by the amount charged on the previous ones by the same State, by another State or by the Federal District;
- II. exemption or non-incidence, unless the contrary is determined in legislation:
  - a. shall not imply a credit to offset the amount due on subsequent transactions or performances;
  - b. shall carry with it annulment of credits for prior transactions;
- III. may be selective, depending upon the essentiality of the merchandise or services;
- IV. a resolution of the Federal Senate, on the initiative of the President of the Republic or of one-third of the Senators, approved by an absolute majority of its members, shall set the rates applicable to interstate and export transactions and performances;
- V. the Federal Senate may:
  - a. set minimum rates for internal transactions, by resolution on the initiative of one-third and approved by an absolute majority of its members;
  - b. fix maximum rates for the same transactions to resolve specific conflicts involving interests of States, by a resolution on the initiative of an absolute majority and approved by two-thirds of its members;
- VI. unless there is a decision to the contrary by the States and the Federal District, in the terms of subparagraph XII, g, the intrastate rates on circulation of goods and performing of services may not be lower than those established for interstate transactions;
- VII. for transactions and performances with respect to goods and services destined for final consumers located in another State, the following shall be adopted:
  - a. the interstate rate, when the recipient is the taxpayer;
  - b. the intrastate rate, when the recipient is not the taxpayer;
- VIII. in the situation in subsection a of the preceding subparagraph, the tax corresponding to the difference between the intrastate rate and the interstate rate shall be allocated to the State where the recipient is located;

- IX. shall also be imposed:
- a. on the entry of goods or merchandise imported from abroad by an individual or a legal entity, even though not a habitual taxpayer, regardless of purpose, as well as on services performed abroad, the tax being allocated to the State where the domicile [of the person] or establishment receiving the merchandise, goods or services is located;
  - b. on the total value of the transaction, when merchandise is furnished with services not included in the taxing power of the counties;
- X. shall not be imposed:
- a. on transactions transferring merchandise abroad, nor on services rendered to those abroad, assuring maintenance and utilization of the amount of tax collected in prior transactions and services;
  - b. on transactions transferring to other States petroleum, including lubricants, petroleum-derived liquid and gaseous fuels and electric energy;
  - c. on gold, in the situation defined in art. 153, § 5°;
  - d. on performing communication services in the forms of broadcasting sounds and images with sound for free and gratuitous reception;
- XI. shall not include in its assessment basis the amount of the tax on industrialized products, when the transaction between taxpayers involves a product destined for industrialization or commercialization and constitutes the taxable event for both taxes;
- XII. a complementary law shall:
- a. define its taxpayers;
  - b. deal with tax substitution;
  - c. regulate the regime for offsetting taxes;
  - d. establish the location of transactions of circulation of goods and performance of services for purposes of collection of the tax and definition of the establishment responsible;
  - e. in exports abroad exclude from incidence of the tax services and products other than those mentioned in subparagraph X, a;
  - f. provide for maintenance of a credit for services and merchandise sent to other States and exported abroad;
  - g. regulate the way fiscal exemptions, incentives and benefits shall be granted and revoked by resolutions of the States and the Federal District;
  - h. define fuels and lubricants on which the tax shall be imposed only once, regardless of end use, in which case the provision in subparagraph X, b, shall not apply;
  - i. fix the basis for calculation so that the tax falls on the entire amount, as well as upon the importation from abroad of the good, merchandise or service.
- §3°. Except for the taxes dealt with in subparagraph II of the heading of this article and in art. 153, I and II, no other tax shall be imposed on transactions involving electric energy, telecommunication services, petroleum by-products, fuels, and minerals of the Country.
- §4°. In the case of subparagraph XII, h, the following shall be observed:
- I. in transactions involving lubricants and fuels derived from petroleum, the tax shall be allocated to the State where the consumption occurs;
  - II. in interstate operations, between taxpayers, involving natural gas and its by-products and lubricants and fuels not included in subparagraph I of this paragraph, the tax shall be divided between the States of origin and destination, maintaining the same proportion that occurs in transactions involving other merchandise;

III. in interstate transactions involving natural gas and its by-products, and lubricants and fuels not included in subparagraph I of this paragraph, and destined to the non-taxpayer, the tax shall belong to the State of origin;

IV. the rates of the tax shall be defined by determination of the States and the Federal District, in accordance with § 2°, XII, g, observing the following:

- a. they shall be uniform in all national territory, but may be differentiated by product;
- b. they may be specific by unit of measure adopted or ad valorem, levied on the value of the transaction or on the price for the product or its similar in freely competitive sales;
- c. they may be reduced and re-established, the provision of art. 150, III, b, being inapplicable.

§5°. The rules necessary for application of the provisions of § 4°, including those relating to the ascertainment and destination of the tax, shall be established by determination of the States and the Federal District in accordance with § 2°, XII, g.

§6°. The tax provided for in subparagraph III:

- I. shall have minimum rates fixed by the Federal Senate;
- II. shall have differentiated rates in accordance with type and utilization.

## SECTION V: County Taxes

### Art 156

The Counties shall have the power to levy taxes on:

- I. urban buildings and land;
- II. non-gratuitous inter vivos transfers of real property, by whatever instrument, whether by natural or by physical accession, and any in rem rights to real property, except for guarantees, as well as the assignment of rights for its acquisition;
- III. services of any nature not included in art. 155, II, as defined in a complementary law;
- IV. revoked.

§1°. Without prejudice to the progressivity in time to which art. 182, § 4°, subparagraph II refers, the tax provided for in subparagraph I may:

- I. be progressive in accordance with the value of the real property; and
- II. have different rates in accordance with the location and use of the real property.

§2°. The tax provided for in subparagraph II:

- I. shall not be imposed on the transfer of property or rights incorporated into the patrimony of a legal entity to pay up its capital, nor upon the transfer of property or rights stemming from merger, incorporation, spin-off or dissolution of a legal entity, unless, in such cases, the preponderant activity of the acquiring party is the purchase and sale of such property or rights, the leasing of real property or commercial leasing;
- II. goes to the County where the property is located.

§3°. With respect to the tax provided for in subparagraph II of the heading of this article, a complementary law shall:

- I. set maximum and minimum rates;
- II. exclude from its application exports of services;
- III. regulate the form and conditions as well as fiscal exemptions, incentives and benefits that shall be granted and revoked.

§4°. Revoked.

## SECTION VI: Division of Tax Revenues

### Art 157

The following shall be allocated to the States and Federal District:

- I. proceeds from collection of the federal tax on income and earnings of any nature, withheld from income paid, by whatever instrument, by them, their autarchies and by foundations they institute and maintain;
- II. twenty percent of the proceeds from the collection of the tax that the Union institutes in the exercise of the power conferred on to it by art. 154, I.

### Art 158

The following shall be allocated to the Counties:

- I. the proceeds from the collection of the federal tax on income and earnings of any nature, withheld from income paid, by whatever instrument, by them, their autarchies and by foundations they institute and maintain;
- II. fifty percent of the proceeds from collection of the federal tax on rural property, relative to the real property situated therein, or the entire proceeds in the event [the Counties] elect the option referred to in art. 153, § 4°, III;
- III. fifty percent of the proceeds from the collection of the state tax on ownership of automotive vehicles licensed in their territory;
- IV. twenty-five percent of the proceeds from the collection of the state tax on transactions of circulation of goods and on performance of services of interstate and inter-county transportation and communication.

### Sole Paragraph

The revenue portions belonging to the Counties as mentioned in subparagraph IV shall be credited according the following criteria:

- I. at least three-fourths, in proportion to the value added in transactions of circulation of merchandise and performing services carried out in their territories;
- II. up to one-fourth, as established by state law or, in the case of the Territories, by federal law.

### Art 159

The Union shall turn over:

- I. forty-eight percent of the proceeds from the collection of taxes on income and earnings of any nature and on industrialized products, in the following manner:
  - a. twenty-one and one-half percent to the Revenue Sharing Fund of the States and the Federal District;
  - b. twenty-two and one-half percent to the Revenue Sharing Fund of the Counties;
  - c. three percent, for application in programs to finance the productive sectors of the North, Northeast and Center-West Regions, through their regional financial institutions, in accordance with regional development plans, with the semi-arid area of the Northeast being assured half the funds intended for the Region, as provided by the law;

- d. one percent to the Revenue Sharing Fund of the Counties, which shall be delivered during the first 10 days of the month of December of each year.
- II. ten percent of the proceeds from the collection of the tax on industrialized products to the States and Federal District, in proportion to the value of respective exports of industrialized products;
- III. twenty-nine percent of the proceeds from collection of the contribution for intervention in the economic domain provided for in art. 177, § 4°, to the States and the Federal District, distributed as provided by law, observing the destination referred to in subparagraph II, c, of [art. 177, § 4°].

§1°. For purposes of calculating the amount to be turned over under subparagraph I, the portion of the collection of the tax on income and earnings of any nature belonging to the States, Federal District and Counties according to arts. 157, I, and 158, I, shall be excluded.

§2°. No unit of the federation may be allocated a share in excess of twenty percent of the amount referred to in subparagraph II, and any excess shall be distributed among the other participants, maintaining the apportionment criteria established therein.

§3°. The States shall turn over to the respective Counties twenty-five percent of the funds they receive under the terms of subparagraph II, observing the criteria established in art. 158, sole paragraph, I and II.

§4°. Twenty-five percent of the amount of resources dealt with in subparagraph III that belong to each State shall be destined for the Counties, as provided by the law referred to in the mentioned subparagraph.

## Art 160

Retention or any restriction on remittance and use of the funds allocated under this section to the States, Federal District and Counties, including any tax additions and increases, is prohibited.

### Sole Paragraph

This prohibition does not prevent the Union and the States from conditioning delivery of funds:

- I. upon payment of their loans, including those of their autarchies;
- II. upon compliance with the provision of art. 198, § 2°, subparagraphs II and III.

## Art 161

A complementary law shall:

- I. define the value added for purposes of art. 158, sole paragraph, I;
- II. establish rules for remittance of funds dealt with in art. 159, especially the criteria for apportionment of funds provided for in its subparagraph I, seeking to maintain socio-economic balance between States and Counties;
- III. provide for monitoring by the beneficiaries of the calculation of the quotas and release of the shares provided for in arts. 157, 158 and 159.

### Sole Paragraph

The Tribunal of Accounts of the Union shall calculate the quotas referring to the participation funds mentioned in subparagraph II.

## Art 162

The Union, the States, the Federal District and the Counties shall announce, by the last day of month following collection, the amounts of each of the taxes collected, the funds received, the value of the taxes remitted and to be remitted, and the numerical expression of the apportionment criteria.

## Sole Paragraph

The data disclosed by the Union shall be broken down by State and County, and those of the States, by County.

## CHAPTER II: PUBLIC FINANCE

### SECTION I: General Rules

## Art 163

A complementary law shall provide for:

- I. public finances;
- II. the public debt, both foreign and domestic, including the debt of the autarchies, foundations and other entities controlled by the Government;
- III. concession of guarantees by governmental entities;
- IV. issuance and redemption of government bonds;
- V. financial supervision of the direct and indirect public administration;
- VI. foreign exchange transactions carried out by agencies and entities of the Union, States, Federal District and the Counties;
- VII. compatibility of functions of the official credit institutions of the Union, safeguarding the full characteristics and operating conditions of those intended for regional development.

## Art 164

The power of the Union to issue currency shall be exercised exclusively through the Central Bank.

§1°. The Central Bank is prohibited from directly or indirectly granting loans to the National Treasury and to any agency or entity that is not a financial institution.

§2°. In order to regulate the money supply or interest rates, the Central Bank may purchase and sell securities issued by the National Treasury.

§3°. The cash balances of the Union shall be deposited in the Central Bank; the cash balances of the States, Federal District, Counties, governmental agencies or entities and companies controlled by the Government shall be deposited in official financial institutions, except for cases established by law.

### SECTION II: Budgets

## Art 165

Laws initiated by the Executive shall establish:

- I. the multi-year plan;
- II. the budgetary directives;
- III. the annual budgets.

§1°. The law that institutes the multi-year plan shall establish, on a regional basis, the directives, objectives and targets of the federal public administration for capital expenditures and other expenses resulting therefrom and for those regarding continuing programs.

§2°. The law of budgetary directives shall contain the targets and priorities of the federal public administration, including the capital expenses for the following fiscal year, shall guide preparation of the annual budget law, shall provide for changes in tax legislation and shall establish the investment policies for official developmental financing agencies.

§3°. The Executive shall publish, within thirty days after the closing of each two-month period, a report summarizing its implementation of the budget.

§4°. The national, regional and sectorial plans and programs provided for in this Constitution shall be prepared in accordance with the multi-year plan and shall be examined by the National Congress.

§5°. The annual budget law shall include:

- I. the fiscal budget for the Branches of the Union, their funds, agencies, and entities of direct and indirect administration, including foundations instituted and maintained by the Government;
- II. the investment budget for companies in which the Union 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 bill shall be accompanied by a regionalized demonstration of the effect on revenues and expenses resulting from exemption, amnesties, remissions, subsidies and benefits of a financial, tax and credit nature.

§7°. The budgets established in § 5°, I and II, of this article, compatible with the multiyear plan, shall include among their functions reducing interregional inequalities according to population criteria.

§8°. The annual budget law shall not contain any extraneous provisions that do not represent a forecast of revenues and establishment of expenses, but such prohibition does not include authorization to create supplementary appropriations and borrow money, even by anticipating revenues, as provided by law.

§9°. A complementary law shall:

- I. determine the effectiveness and terms of the fiscal year, preparation and organization of the multi-year plan, the law of budgetary directives and the annual budget law;
- II. establish rules of financial and property management by the direct and indirect administration, as well as conditions for the institution and operation of funds.

## Art 166

Bills regarding the multi-year plan, budgetary directives, annual budgets and additional credits shall be examined by both Chambers of the National Congress in accordance with their common internal rules.



§1°. A permanent Joint Committee of Senators and Deputies shall be responsible for:

- I. examining and issuing its opinion on the bills referred to in this article and on annual accounts submitted by the President of the Republic;
- II. examining and issuing its opinion on the national, regional and sectorial plans and programs provided for in this Constitution, and monitoring and supervising the budget, without prejudice to the activity of the other committees of the National Congress and of its Chambers, created in accordance with art. 58.

§2°. Amendments shall be submitted to the Joint Committee, which shall issue its opinion on them, and shall be examined, in accordance with internal rules, by the Plenary Session of the two Chambers of the National Congress.

§3°. Amendments to the annual budget bill or to bills that modify it may only be approved if:

- I. they are compatible with the multi-year plan and with the law of budgetary directives;
- II. they specify the necessary funds, which may only stem from elimination of expenditures, excluding those that deal with:
  - a. appropriations for personnel and their indirect costs;
  - b. debt servicing;
  - c. constitutional tax transfers to the States, Counties and Federal District; or
- III. they are related:
  - a. to the correction of errors or omissions; or
  - b. to the provisions in the text of the bill.

§4°. Amendments to the budgetary directives bill may not be approved if they are incompatible with the multi-year plan.

§5°. The President of the Republic may send a message to the National Congress proposing modification of the bills referred to in this article so long as the Joint Committee has not started to vote on the part for which a change is proposed.

§6°. Bills on the multi-year plan, budgetary directives and annual budget shall be submitted by the President of the Republic to the National Congress in accordance with the complementary law referred to in art. 165, § 9°.

§7°. So long as they do not conflict with the provisions of this section, the other rules on legislative procedure apply to the bills mentioned in this article.

§8°. Any funds which, as a result of a veto, amendment or rejection of the annual budget bill, have no corresponding expenditure, may be used, as the case may be, through special or supplemental appropriations, with prior and specific legislative authorization.

## Art 167

It is prohibited to:

- I. begin programs or projects not included in the annual budget law;
- II. expend funds or assume direct obligations that exceed the budgetary or additional appropriations;
- III. borrow funds in excess of the amount of capital expenses unless authorized through supplemental or special appropriations for a precise purpose, approved by an absolute majority of the Legislature;

- IV. bind receipt of tax revenues to an agency, fund or expenditure, except for apportionment of the proceeds from the collection of taxes referred to in arts. 158 and 159, allocation of funds for public health activities and services, for maintenance and development of education and for carrying out tax administration activities, as determined respectively in arts. 198, § 2°, 212, and 37, XXII, and guaranteeing loans by anticipating revenues provided for in art. 165, § 8°, as well as the provision of § 4° of this article;
- V. open a supplemental or special appropriation without prior legislative authorization and without indication of the respective funds;
- VI. reclassify, reallocate or transfer funds from one programming category to another or from one agency to another without prior legislative authorization;
- VII. grant or utilize unlimited appropriations;
- VIII. utilize, without specific legislative authorization, funds from the fiscal and social security budgets to satisfy a need or cover a deficit of companies, foundations and funds, including those mentioned in art. 165, § 5°;
- IX. institute funds of any nature without prior legislative authorization;
- X. transfer resources voluntarily and concede loans, including by anticipation of revenues, by the Federal and State Governments and their financial institutions, for payment of the expenses of active, inactive and retired personnel of the States, Federal District and Counties;
- XI. utilization of the resources stemming from social contributions dealt with in art. 195, I, a, and II for payment of expenses other than payment of benefits for the general social security regime dealt with in art. 201.

§1°. No investment whose execution extends beyond a fiscal year may be started without prior inclusion in the multi-year plan or without a law authorizing such inclusion, under penalty of an impeachable offense.

§2°. Special and extraordinary appropriations shall be in force in the fiscal year in which they are authorized, unless the act authorizing them is promulgated during the last four months of that fiscal year, in which case, the limits of their balances being reopened, they shall be incorporated into the budget of the subsequent fiscal year.

§3°. Opening of extraordinary appropriations shall only be permitted to meet unforeseeable and urgent expenses, such as those resulting from war, internal commotion or public calamity, observing the provisions of art. 62.

§4°. Binding one's own receipts generated by the taxes referred to in arts. 155 and 156, and of the resources dealt with in arts. 157, 158 and 159, I, a and b, and II, is permitted as a guarantee or counter-guarantee to the Union and for payment of debts owed to it.

## Art 168

One-twelfth of the funds corresponding to budgetary appropriations, including supplemental and special appropriations, destined for agencies of the Legislature, Judiciary, Public Ministry and the Public Defenders, shall be delivered to them by the twentieth day of each month, as provided for by the complementary law referred to in art. 165, § 9°.

## Art 169

Expenditures for active and inactive personnel of the Union, States, Federal District and Counties may not exceed the limits established by complementary law.

§1°. Granting any advantage or increase in remuneration, creation of offices, jobs and positions or changes in career structures, as well as the admission or contracting of personnel of whatever title, by agencies and entities of direct or indirect administration, including government-created and maintained foundations, may only be accomplished:

- I. if there is a prior budgetary appropriation sufficient to cover the estimated personnel expenditures and the increases resulting therefrom;
- II. if there is a specific authorization in the law of budgetary directives, with the exception of public companies and mixed-capital companies.

§2°. Once the period established in the complementary law referred to in this article for adoption of the parameters provided herein has run, all remittances of federal or state funds to the States, Federal District and Counties that do not observe the referred to limits shall be immediately suspended.

§3°. For compliance with the limits established as the basis of this article, during the period fixed in the complementary law referred to in the heading, the Union, States, Federal District and Counties shall adopt the following measures:

- I. reduction by at least 20 percent in expenses with commission offices and positions of confidence;
- II. dismissal of non-tenured civil servants.

§4°. If the measures adopted on the basis of the prior paragraph are insufficient to assure compliance with the determinations of the complementary law referred to in this article, tenured civil servants may lose their office, so long as the motivating normative act of each one of the Branches specifies the functional activity or administrative agency or unit that is the object of the reduction in personnel.

§5°. A civil servant who loses his office in accordance with the prior paragraph shall have a right to just compensation corresponding to one month of remuneration for each year of service.

§6°. Offices that are eliminated in accordance with the prior paragraphs shall be considered extinct. Creation of offices, jobs or positions with equal or similar powers is prohibited for a period of four years.

§7°. Federal law shall provide for general rules to be obeyed for carrying out the provisions of § 4°.

## TITLE VII

# ECONOMIC AND FINANCIAL ORDER

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## CHAPTER I: GENERAL PRINCIPLES OF ECONOMIC ACTIVITY

### Art 170

The economic order, founded on the appreciation of the value of human labor and free enterprise, is intended to assure everyone a dignified existence, according to the dictates of social justice, observing the following principles:

- I. national sovereignty;

• Right to reasonable standard of living

- II. private property;
- III. social function of property;
- IV. free competition;
- V. consumer protection;
- VI. environmental protection, including through differentiated treatment in accordance with the environmental impact of the products and services and the processes by which they are elaborated and rendered;
- VII. reduction in regional and social inequalities;
- VIII. pursuit of full employment;
- IX. preferential treatment for small-scale firms organized under Brazilian law with their headquarters and management in the Country.

## Sole Paragraph

Free exercise of any economic activity is assured for all, without need for any governmental authorization, except as provided by law.

### Art 171

Revoked.

### Art 172

The law shall regulate, on the basis of national interest, foreign capital investment, granting incentives for reinvestment and regulating remittance of profits.

### Art 173

With the exception of the cases provided for in this Constitution, direct exploitation of an economic activity by the State shall only be permitted when necessary for the imperatives of national security or a relevant collective interest, as defined by law.

§1°. The law shall establish the legal regime of public companies, mixed-capital companies and their subsidiaries that engage in the economic activities of production or marketing of goods or services, dealing with:

- I. their social functions and the forms of supervision by the State and by society;
- II. subjection to the same legal regime as private enterprises, including their civil, commercial, labor and tax rights and obligations;
- III. competitive bidding and contracting of works, services, purchases and transfers, observing the principles of public administration;
- IV. organization and functioning of boards of directors and supervisory councils, with participation of minority shareholders;
- V. the offices, evaluation of performance and liability of administrators.

§2°. Public companies and mixed-capital companies may not enjoy fiscal privileges that are not extended to private sector companies.

§3°. The law shall regulate the relationship of public companies with the State and with society.

§4°. The law shall repress abuse of economic power seeking to dominate markets, to eliminate competition and to increase profits arbitrarily.

§5°. Without prejudice to the personal liability of the officers of a legal entity, the law shall establish the liability of the latter, subjecting it to penalties compatible with its nature for acts that contravene the economic and financial order and the popular economy.

## Art 174

As the normative and regulatory agent of economic activity, the State, as provided by law, shall perform the functions of supervision, incentive-promotion and planning, the latter being binding for the public sector and advisory for the private sector.

§1°. The law shall establish directives and bases for planning balanced national development, which shall incorporate and make compatible national and regional development plans.

§2°. The law shall support and stimulate cooperative activity and other forms of association.

§3°. The State shall favor organization of cooperatives for prospecting and placer-mining activity, taking into account protection of the environment and the socio-economic promotion of the prospectors and miners.

§4°. The cooperatives referred to in the preceding paragraph shall have priority in obtaining authorizations or concessions for prospecting and mining mineral resources and deposits in areas where they are operating and in those fixed in accordance with art. 21, XXV, as provided by law.

## Art 175

The Government is responsible for providing public utility services, either directly or under regimes of concessions or permits, always through public bidding, as provided by law.

### Sole Paragraph

The law shall provide for:

- I. the regime for companies that have concessions or permits to provide public utility services, the special character of their contracts and the extension thereof and conditions for lapse, supervision and termination of concessions or permits;
- II. rights of users;
- III. rate policy;
- IV. obligation to maintain adequate service.

## Art 176

Mineral deposits, whether being worked or not, and other mineral resources and hydraulic energy sites constitute property distinct from the soil for the effects of exploitation or use, and belong to the Union, guaranteeing to the concessionaire ownership of the output of the deposit.

§1°. Prospecting and mining of mineral resources and use of hydraulic sites referred to in the heading of this article may only take place through authorization or concession by the Union, in the national interest, by Brazilians or by companies organized under Brazilian law and that have their headquarters and management in the Country, as provided by law, which shall establish specific conditions when these activities take place in frontier areas or on indigenous lands.

§2°. The owner of the soil is assured a share in the results of working the deposit, in the form and in the value provided for by law.

§3°. Prospecting authorization shall always be for a limited period, and the authorizations and concessions provided for in this article may not be assigned or transferred, either in whole or in part, without prior legal consent from the granting authority.

§4°. Utilization of renewable energy sites of small capacity does not require an authorization or concession.

## Art 177

The Union has a monopoly on the following:

- I. prospecting and exploitation of deposits of petroleum, natural gas and other fluid hydrocarbons;
- II. refining domestic or foreign petroleum;
- III. importation or exportation of products and basic by-products resulting from the activities set forth in the prior subparagraphs;
- IV. maritime transportation of crude oil of domestic origin or of basic petroleum by-products produced in the Country, as well as the pipeline transportation of crude oil, its by-products and natural gas of whatever origin;
- V. prospecting, mining, enrichment, reprocessing, industrialization or commerce in ores and nuclear minerals and their by-products, with the exception of radioisotopes whose production, marketing and utilization may be authorized under a permit regime, in accordance with subparts b and c of subparagraph XXIII of the heading of art. 21 of this Federal Constitution.

§1°. The Union may contract with state or private firms to perform the activities provided for in subparagraphs I to IV of this article, observing the conditions established by law.

§2°. The law referred to in §1° shall provide for:

- I. guarantee of furnishing petroleum by-products in the entire national territory;
- II. the conditions of contracting;
- III. the structure and powers of the agency regulating the monopoly of the Union.

§3°. The law shall provide for the transportation and use of radioactive materials within the national territory.

§4°. The law that institutes a contribution on the intervention in the economic domain relating to the activities of importation or marketing of petroleum and its by-products, natural gas and its by-products and fuel alcohol shall obey the following requirements:

- I. the rate of the contribution may be:
  - a. differentiated by product or use;
  - b. reduced and re-established by act of the Executive, without the provision of art. 150, III, b, being applicable;
- II. the resources collected shall be destined for:
  - a. payment of subsidies for the prices or transportation of fuel alcohol, natural gas and its by-products and petroleum by-products;
  - b. financing of environmental projects related to the petroleum and gas industries;
  - c. financing programs of infrastructure in transportation.

## Art 178

The law shall provide for the regulation of air, water, and land transportation, and shall observe the agreements signed by the Union as to the organization of international transportation, in accordance with the principle of reciprocity.

## Sole Paragraph

In regulating water transportation, the law shall establish conditions under which transportation of merchandise in the coastal trade and in internal navigation may be done by foreign vessels.

## Art 179

The Union, States, Federal District and Counties shall afford micro-enterprises and other small firms, as defined by law, differentiated legal treatment, seeking to stimulate them through simplification, elimination or reduction of their administrative, tax, social security and credit obligations, by means of law.

## Art 180

The Union, States, Federal District and Counties shall promote and grant incentives to tourism as a factor of social and economic development.

## Art 181

Compliance with a request 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 the Country, requires authorization from the proper governmental authority.

## CHAPTER II: URBAN POLICY

### Art 182

The urban development policy carried out by the County Governments, according to general guidelines fixed by law, is intended to order the full development of the social functions of cities and to guarantee the well-being of their inhabitants.

§1°. The master plan, approved by the County Legislature, which is compulsory for cities of over twenty thousand inhabitants, is the basic policy instrument of urban development and expansion.

§2°. Urban property performs its social function when it conforms to the fundamental requirements for the city's ordering expressed in the master plan.

§3°. Expropriation of urban property shall be made with prior and just compensation in cash.

§4°. County Governments may, by means of a specific law for areas included in the master plan, require that the owner of non-built, under-used or unused urban land provide for adequate use of such land, under penalty, successively, of:

- I. compulsory subdivision or construction;
- II. building and urban property tax rates that increase over time;

- III. expropriation with payment in public bonds, from an issue previously approved by the Federal Senate, redeemable in up to ten years, in equal and successive annual installments, ensuring the real value of the compensation and legal interest.

## Art 183

An individual who possesses as his own an urban area of up to two hundred and fifty square meters, for five years without interruption or opposition, using it as his or as his family's residence, shall acquire title to such property, provided that he does not own any other urban or rural property.

§1°. The deed of title and concession of use shall be granted to the man or woman, or both, regardless of their marital status.

§2°. This right shall not be recognized more than once for the same holder.

§3°. Public lands may not be acquired by usucapio.

## CHAPTER III: AGRICULTURAL LAND POLICY AND AGRARIAN REFORM

### Art 184

The Union has the power to expropriate for social interest, for purposes of agrarian reform, rural property that is not fulfilling its social function, upon prior and just compensation in agrarian debt bonds, with a clause for preservation of real value, redeemable in up to twenty years, starting from the second year after issue, and whose utilization shall be defined in law.

§1°. Useful and necessary improvements shall be compensated in cash.

§2°. The decree declaring property as being of social interest for agrarian reform purposes authorizes the Union to file the expropriation action.

§3°. Complementary law shall establish a special summary adversary procedure for expropriation actions.

§4°. The budget shall determine each year the total volume of agrarian debt bonds, as well as the amount of funds allocated to the agrarian reform program in the fiscal year.

§5°. Transfers of property expropriated for agrarian reform purposes are exempt from federal, state and municipal taxes.

### Art 185

The following shall not be subject to expropriation for agrarian reform purposes:

- I. small and medium-sized rural property, as defined by law, so long as its owner does not own other property;
- II. productive property.

### Sole Paragraph

The law shall guarantee special treatment for productive property and set rules for compliance with requirements for its social function.



## Art 186

The social function is met when rural property simultaneously complies with the following requirements, in accordance with the criteria and standards prescribed by law:

- I. rational and adequate use;
- II. adequate use of available natural resources and preservation of the environment;
- III. observance of provisions regulating labor relations;
- IV. exploitation that favors the well-being of owners and workers.

## Art 187

Agricultural policy shall be planned and executed as provided by law, with the effective participation of the productive sector, consisting of producers and rural workers, as well as the sectors of marketing, storage and transportation, particularly taking into account:

- I. credit and fiscal instruments;
- II. prices compatible with production costs and marketing guarantees;
- III. incentives for research and technology;
- IV. technical assistance and rural extension;
- V. agricultural insurance;
- VI. cooperative activity;
- VII. rural electricity and irrigation systems;
- VIII. housing for rural workers.

§1°. Agricultural planning includes the activities of agro-industry, livestock, fishing and forestry.

§2°. Agricultural policy actions shall be made compatible with agrarian reform actions.

## Art 188

The use to which public and vacant lands are put shall be made compatible with agricultural policy and the national agrarian reform plan.

§1°. The alienation or concession, by whatever manner, of public lands with an area of more than two thousand and five hundred hectares to an individual or legal entity, even through an intermediary, needs prior approval of the National Congress.

§2°. Alienations or concessions of public lands for agrarian reform purposes are excluded from the provision of the prior paragraph.

## Art 189

Beneficiaries of distribution of rural land under the agrarian reform shall receive deeds of title or concessions of use that are nonnegotiable for a period of ten years.

## Sole Paragraph

Deeds of title and concessions of use shall be granted to the man or woman, or to both, irrespective of their marital status, pursuant to the terms and conditions provided for by law.

## Art 190

The law shall regulate and limit acquisition or leasing of rural land by foreign individuals or legal entities and shall determine which cases shall require authorization from the National Congress.

## Art 191

Anyone who is not the owner of rural or urban property but possesses as his own for five uninterrupted years, without opposition, an area of land not exceeding fifty hectares in a rural zone and with his labor or that of his family makes the land productive and resides thereon, shall acquire ownership of the land.

## Sole Paragraph

Real public property may not be acquired by usucapio.

## CHAPTER IV: THE NATIONAL FINANCIAL SYSTEM

### Art 192

The national financial system, structured to promote the balanced development of the country and to serve collective interests, in all its component parts, including credit cooperatives, shall be regulated by complementary laws that shall provide for, including, participation of foreign capital in the institutions of which [the national financial system] is composed.

I, II, III (a) and (b), IV, V, VI, VII, VIII; § 1º, § 2º, and § 3º. -Revoked.

## TITLE VIII

## THE SOCIAL ORDER

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### CHAPTER I: GENERAL PROVISIONS

### Art 193

The social order shall be founded on the primacy of labor and aimed at social well-being and justice.

## CHAPTER II: SOCIAL SECURITY

### SECTION I: General Provisions

#### Art 194

Social security consists of an integrated group of actions initiated by the Government and society, designed to assure rights relating to health, social security and social assistance.

#### Sole Paragraph

It is the responsibility of the Government, as provided by law, to organize social security, based on the following objectives:

- I. universality of coverage and attendance;
- II. uniformity and equivalence of benefits and services for urban and rural populations;
- III. selectivity and distribution in the provision of benefits and services;
- IV. irreducibility of the value of the benefits;
- V. equitable participation in funding;
- VI. diversity in the basis of financing;
- VII. democratic and decentralized character of administration, through four-part management, with participation of workers, employers, retirees and the Government through its collegial agencies.

#### Art 195

Social security shall be financed by the entire society, directly and indirectly, as provided by law, through funds derived from the budgets of the Union, States, Federal District, and Counties and from the following social contributions:

- I. from employers, firms and equivalent entities, as provided by law, incident upon:
  - a. payrolls for wages and other earnings from work paid or credited, in whatever form, to individuals who render services to them, regardless of whether there is an employment link;
  - b. receipts or invoices;
  - c. profits;
- II. from workers, and other persons insured by social security, but not imposed upon the contribution for retirement benefits and pensions conceded under the general social security regime dealt with in art. 201;
- III. from lottery revenues;
- IV. from the importer of foreign goods and services, or from a person whom the law deems equivalent thereto.

§1°. The revenues of the States, Federal District and Counties intended for social security shall be included in their respective budgets and shall not be part of the Union's budget.

§2°. The proposal for the social security budget shall be prepared jointly by the agencies responsible for health, social security and social assistance, taking into account goals and priorities established in the law of budgetary directives, assuring each area management of its funds.

§3°. A legal entity owing money to the social security system, as established by law, may not contract with the Government nor receive benefits or fiscal or credit incentives therefrom.

§4°. The law may institute other sources in order to guarantee maintenance or expansion of social security, observing the provisions of art. 154, I.

§5°. No social security benefit or service may be created, increased or extended without a corresponding source of full funding.

§6°. The social contributions dealt with in this article may be collected only ninety days after the publication date of the law that instituted or modified them, and the provisions of art. 150, III, b shall not apply to them.

§7°. Charitable entities of social assistance complying with the requirements established by law are exempt from social security contributions.

§8°. Rural producers, joint venturers, sharecroppers, and self-employed fishermen, as well as their respective spouses, who conduct their activities as a family enterprise, without permanent employees, shall contribute to social security by applying a rate to the proceeds from marketing their production and shall be entitled to benefits, as provided by law.

§9°. The social contributions provided for in subparagraph I of the heading of this article may have differentiated rates or bases of calculation in accordance with economic activity, intensive utilization of manpower, the size of the firm or the structural condition of the labor market.

§10°. The law shall define the criteria for transference of resources for the unified system of health and social assistance actions of the Union for the States, Federal District and Counties, and of States for Counties, observing the respective counterparts of the resources.

§11°. Concession of remission or amnesty for social contributions dealt with in subparagraphs I, a, and II of this article is prohibited for debts in amounts greater than that fixed by complementary law.

§12°. The law shall define sectors of economic activity so that the contributions levied in subparagraphs I, b; and IV of the heading shall be non-cumulative.

§13°. The provision of § 12° applies in the event of gradual, total or partial substitution, of the contribution levied in the form of subparagraph I, a, upon receipt or [issuance of an] invoice.

## SECTION II: Health

### Art 196

Health is the right of all and the duty of the National Government and shall be guaranteed by social and economic policies aimed at reducing the risk of illness and other maladies and by universal and equal access to all activities and services for its promotion, protection and recovery.

### Art 197

Health activities and services are of public importance, and it is the Government's responsibility to provide, in accordance with the law, for their regulation, supervision and control. Such activities and services shall be carried out directly or through third parties and also by individuals or legal entities of private law.

## Art 198

Public health activities and services are part of a regionalized and hierarchical network and constitute a unified system, organized in accordance with the following directives:

- I. decentralization, with a single management in each sphere of government;
- II. full service, giving priority to preventive activities, without prejudice to treatment services;
- III. community participation.

§1°. The unified health system shall be financed, in the terms of art. 195, with funds from the social security budget of the Union, States, Federal District and Counties, as well as other sources.

§2°. The Union, States, Federal District and Counties shall apply annually in public health activities and services a minimum of the funds derived from the application of percentages calculated on:

- I. in the case of the Union, in the manner defined by the terms of the complementary law provided for in § 3°;
- II. in the case of the States and the Federal District, the amount of tax collections referred to in art. 155 and the funds dealt with in arts. 157 and 159, subparagraph I, a, and subparagraph II, deducting the amounts transferred to the respective Counties;
- III. in the case of the Counties and the Federal District, the amount of tax collections referred to in art. 156 and the funds dealt with in arts. 158 and 159, subparagraph I, b, and § 3°.

§3°. Complementary law, which shall be reevaluated at least every five years, shall establish:

- I. the percentages dealt with in § 2°;
- II. the criteria for allocating the resources of the Union linked to health destined for the States, Federal District and the Counties, and from the States destined to their respective Counties, with the goal of progressive reduction in regional disparities;
- III. the rules for supervision, evaluation and control of health expenses in the federal, state, district and county spheres;
- IV. the rules for calculation of the amounts to be applied by the Union.

§4°. Local managers of the unified health system shall admit community health agents and agents for combat of endemic diseases through a public selection procedure, in accordance with the nature and complexity of their powers and specific requirements for their functioning.

§5°. Federal law shall provide for the legal regime, national professional minimum salary, directives for the Career Plans and regulation of the activities of community health agents and agents for endemic disease control, with the Union, in accordance with the law, rendering complementary financial assistance to the States, the Federal District, and the Counties, for performance of the referred to minimum salary.

§6°. In addition to the cases provided for in §1° of art. 41 and §4° of art. 169 of the Federal Constitution, employees who exercise functions equivalent to community health agents or agents for combat of endemic diseases may lose their posts for noncompliance with specific requirements, fixed by law, for such exercise.

## Art 199

Health care is open to private enterprise.

§1°. Private institutions may participate on a supplementary basis in the unified health system, according to its directives, by means of contracts or agreements of public law, with a preference for philanthropic and non-profit entities.

§2°. Allocation of public funds to aid or to subsidize for-profit private institutions is prohibited.

§3°. Direct or indirect participation of foreign firms or capital in health assistance in the Country is prohibited, except for cases provided by law.

§4°. The law shall provide for the conditions and requirements to facilitate removal of human organs, tissues, and substances for transplants, research and treatment, as well as collection, processing and transfusion of blood and its by-products, forbidding all types of commercialization.

## Art 200

The unified health system, in addition to other duties, as provided by law, shall:

- I. control and supervise procedures, products and substances of interest to health and participate in production of medicines, equipment, immuno-biological products, blood by-products and other inputs;
- II. perform supervisory sanitary and epidemiological supervisory activities, as well as those relating to workers' health;
- III. organize training of human resources in the health area;
- IV. participate in the formulation of basic sanitation policy and performance of activities relating thereto;
- V. increase scientific and technological development within its sphere of action;
- VI. supervise and inspect foodstuffs, including control of their nutritional contents, as well as drinks and water for human consumption;
- VII. participate in the control and inspection of production, transportation, storage and use of psychoactive, toxic and radioactive substances and products;
- VIII. collaborate in environmental protection, including that of the work place.

## SECTION III: Social Security

### Art 201

Social security shall be organized in the form of a general regime, characterized by contributions and mandatory affiliation, observing the criteria that preserve the financial and actuarial equilibrium, and shall provide for, as defined by law:

- I. coverage of the events of illness, disability, death and advanced age;
- II. maternity protection, especially for pregnant women;
- III. protection for the involuntarily unemployed;
- IV. family allowance and confinement aid for dependents of insured persons with low incomes;
- V. a pension for the death of an insured man or woman, for the spouse or companion, and dependents, obeying the provision of § 2°.

§1°. Adoption of differentiated requirements and criteria for the concession of retirement benefits in the general regime of social security is prohibited, except for activities under special conditions that prejudice health or physical integrity and for insureds who are handicapped, as defined by complementary law.

§2°. No benefit that replaces the contribution salary or earnings from labor of the insured shall have a monthly value lower than the minimum wage.

• General guarantee of social security

§3°. All contribution salaries included in the calculation of benefits shall be duly updated, as provided by law.

§4°. Readjustment of benefits to maintain their real value permanently is assured according to criteria defined by law.

§5°. A person participating in his or her own social security regime is prohibited from affiliating with the general social security regime as an optional insured.

§6°. The Christmas bonus of retirees and pensioners shall be based on the value of earnings in the month of December of each year.

§7°. Retirement in the general social security regime is assured, as provided by law, obeying the following conditions:

- I. Contributions for thirty-five years if male, and thirty years, if female;
- II. Age sixty-five, if male, and age sixty, if female, this age limit being reduced by five years for rural workers of both sexes and for those who perform their economic activities with their family, including rural producers, placer miners and self-employed fishermen.

§8°. The requirements referred to in subparagraph I of the prior paragraph shall be reduced by five years for teachers who dedicated themselves exclusively to the effective performance of teaching functions in pre-elementary, elementary and secondary education.

§9°. For retirement purposes, one is assured that periods of contribution in public administration and in private activity, both rural and urban, shall be taken into account on a reciprocal basis, in which case the various social security systems shall financially compensate themselves, according to criteria established by law.

§10°. The law shall regulate covering of risks of work accidents, which shall be provided for concurrently by the general social security regime and by the private sector.

§11°. Habitual earnings of the employee, of whatever nature, shall be included in salary for the purposes of social security contributions and consequent repercussion on benefits, in the cases and manner provided by law.

§12°. A law shall provide for a special system for including in social security low-income workers and those with no income of their own who dedicate themselves exclusively to domestic work within their homes, provided that they are members of low-income families, guaranteeing them access to benefits equal to one minimum wage.

§13°. The special system for including in social security dealt with in § 12° of this article shall have lower rates and forfeitures than those prevailing for others insured by the general regime of social security.

## **Art 202**

The private social security regime, in a supplementary manner and organized autonomously from the general social security regime, shall be optional, based upon the constitution of reserves that guarantee the contracted benefits, and regulated by a complementary law.

§1°. The complementary law dealt with in this article shall assure participants in private social security entities full access to information relating to management of their respective plans.

§2°. Employer contributions, benefits and contractual conditions provided for in the bylaws, regulations and benefit plans of private social security entities shall not be integrated into the participants' labor contracts, nor shall they be integrated into the participants' remuneration, with the exception of conceded benefits, as provided by law.

§3°. The funding of private social security entities by the Union, States, Federal District and Counties, their autarchies, foundations, public firms, mixed-capital companies and other public entities is prohibited, except in their capacity as a sponsor. In such situation, in no case may its normal contribution exceed that of the insured.

§4°. A complementary law shall regulate the relationships among the Union, States, Federal District or Counties, including their autarchies, foundations, mixed-capital companies and firms controlled directly or indirectly, when sponsors of closed private social security entities and their respective closed social security entities.

§5°. A complementary law dealing with the prior paragraph shall be applied, when proper, to private firms holding permits or concessions for providing public services, when sponsors of closed social security entities.

§6°. The complementary law referred to in § 4 of this article shall establish the requirements for designation of officers of closed private social security entities and shall regulate the enrollment of participants in collegial groups and instances of decision in which their interests are the objects of discussion and deliberation.

## **SECTION IV: Social Assistance**

### **Art 203**

Social assistance shall be provided to those who need it, regardless of contributions to social security, and shall have the following objectives:

- I. protection of the family, maternity, childhood, adolescence and old age;
- II. support of needy children and adolescents;
- III. promotion of integration into the labor force;
- IV. training and rehabilitation of the handicapped and promotion of their integration into the community;
- V. guarantee of a monthly benefit of one minimum wage to the handicapped and elderly who prove that they are without means to provide for their own support or having it provided by their family, as provided by law.

### **Art 204**

Government actions in the social assistance area shall be implemented with funds from the social security budget, as provided for in art. 195, along with other sources, and shall be organized on the basis of the following directives:

- I. political and administrative decentralization, with responsibility for coordination and general rules falling within the federal sphere and coordination and execution of respective programs falling within the state and county spheres, as well as upon charitable and social assistance entities;
- II. participation of the population, by means of representative organizations, in the formulation of policies and in the control of actions taken at all levels.



## Sole paragraph

States and the Federal District may bind up to five-tenths of one percent of net tax receipts for support of the program for social inclusion and promotion, but these resources may not be used for payment of:

- I. the expenses of personnel and social charges;
- II. debt service;
- III. any other current expense not linked directly to the supported investments or actions.

## CHAPTER III: EDUCATION, CULTURE AND SPORTS

### SECTION I: Education

#### Art 205

Education, which is the right of all and the duty of the National Government and family, shall be promoted and encouraged with societal collaboration, seeking the full development of the individual, preparation for the exercise of citizenship and qualification for work.

#### Art 206

Teaching shall be provided on the basis of the following principles:

- I. equality of conditions for access to and remaining in school;
- II. freedom to learn, teach, research and express thoughts, art and knowledge;
- III. pluralism of ideas and pedagogical concepts, and the coexistence of public and private teaching institutions;
- IV. free public education in official establishments;
- V. valorization of teaching professionals, guaranteeing, as provided by law, career plans, with admittance of public school teachers exclusively by public competitive examinations and professional credentials;
- VI. democratic administration of public teaching, as provided by law;
- VII. guarantee of standards of quality.
- VIII. a national professional base salary for public school professionals, in accordance with federal law.

## Sole paragraph

The law shall provide for the categories of workers considered elementary education professionals and for determination of the period for establishment or conformity of their career plans for the Union, States, Federal District and Counties.

#### Art 207

Universities enjoy autonomy with respect to didactic, scientific and administrative matters, as well as autonomy in financial and patrimonial management, and shall comply with the principle of the inseparability of teaching, research and extension.

§1°. Universities are permitted to hire foreign professors, technicians and scientists as provided by law.

• Right to development of personality

• Right to academic freedom  
• References to science or sciences

§2°. The provisions of this article shall apply to institutions of scientific and technological research.

## Art 208

The National Government's duty towards education shall be effectuated through the guarantees of:

- I. free, compulsory elementary education from 4 (four) to 17 (seventeen) years, including assurance that it will be offered gratuitously for all who did not have access to it at the proper age;
- II. progressive universalization of gratuitous secondary school education;
- III. special educational assistance for the handicapped, preferably within the regular school system;
- IV. early education in nurseries and pre-school for children up to 5 (five) years of age;
- V. access to higher levels of education, research and artistic creation, according to individual capacity;
- VI. provision of regular night courses adequate to the student's condition;
- VII. educational assistance in all stages of basic education by means of supplemental programs of school books, teaching materials, transportation, nutrition and health care.

§1°. Access to compulsory and free education is a subjective public right.

§2°. The Government's failure to offer compulsory education or offering it irregularly implies liability on the part of the competent authority.

§3°. The Government has the responsibility to conduct a census of elementary school students, to take attendance, and to make sure, jointly with parents or guardians, that students attend school.

## Art 209

Education is open to private enterprise, observing the following conditions:

- I. compliance with the general rules of national education;
- II. authorization and evaluation of quality by the Government.

## Art 210

Minimum curricula shall be established for elementary education so as to assure a common basic education and respect for national and regional cultural and artistic values.

§1°. Religious education shall be an optional course during normal school hours in public elementary schools.

§2°. Regular elementary education shall be given in the Portuguese language, also assuring to indigenous communities the use of their native languages and their own learning procedures.

## Art 211

The Union, States, Federal District and Counties shall collaborate in organizing their educational systems.

§1°. The Union shall organize the federal education system and that of the Territories, shall finance the institutions of federal public education, and shall exercise a redistributive and supplementary function in educational matters, so as to guarantee equalization of educational opportunities and a minimum standard of educational quality through technical and financial assistance to the States, Federal District, and Counties.

§2°. The Counties shall act on a priority basis in elementary and pre-elementary education.

§3°. The States and Federal District shall act on a priority basis in elementary and secondary education.

§4°. In the organization of their educational systems, the Union, States, Federal District, and Counties shall define forms of collaboration, in order to assure the universality of compulsory education.

§5°. Elementary public education shall give priority to regular teaching.

## Art 212

The Union shall apply annually not less than eighteen percent of its tax revenues, and the States, Federal District and Counties at least twenty-five percent of their tax revenues, including revenues resulting from transfers, for maintenance and development of education.

§1°. For the purposes of the calculation provided for in this article, the share of tax revenues transferred from the Union to the States, Federal District and Counties, or from the States to their respective Counties, shall not be considered as revenues of the government making the transfer.

§2°. For purposes of complying with the heading of this article, the federal, state and county educational systems and funds employed pursuant to art. 213 shall be taken into account.

§3°. In the distribution of public funds, priority shall be assured to meeting the needs of compulsory education, where it refers to universality, a guarantee of the standard of quality and equity, in the terms of the national educational plan.

§4°. The supplemental food and health assistance programs provided for in art. 208, VII, shall be financed with funds derived from social contributions and other budgetary funds.

§5°. Basic public education shall have as an additional source of financing the educational salary assessment, collected from companies, as provided by law.

§6°. State and municipal shares from collection of the educational salary assessment shall be distributed in proportion to the number of students matriculated in basic education in their respective systems of public education.

## Art 213

Public funds shall be allocated to public schools, and may be directed to community, religious and philanthropic schools, as defined by law, that:

- I. prove that they are non-profit and apply their surplus funds in education;
- II. ensure that their patrimony will be transferred to another community, philanthropic or religious school, or to the Government, in the event they cease their activities.

§1°. The funds dealt with in this article may be used for elementary and secondary school scholarships, as provided by law, for those who show that they have insufficient funds, whenever there are no places or regular courses in the public school system in the locale where the student resides, placing the Government under an obligation to invest, on a priority basis, in expansion of the public school system in that locale.

§2°. University research and extension activities may receive financial support from the Government.

## Art 214

The law shall establish a national educational plan, with a ten year duration, designed to articulate a national educational system in a regime of collaboration and to define the directives, objectives, goals and strategies for implementation in order to assure the maintenance and development of teaching at various levels, stages and modalities by means of integrated actions by the public powers of the different federative spheres in which it is conducted:

- I. eradication of illiteracy;
- II. universal school attendance;
- III. improvement of the quality of teaching;
- IV. vocational training;
- V. humanistic, scientific and technological promotion of the Country.
- VI. establishment of a goal for application of public resources in education as a percentage of gross domestic product.

## SECTION II: Culture

### Art 215

The National Government shall guarantee to all full exercise of cultural rights and access to sources of national culture, and shall support and grant incentives for appreciation and diffusion of cultural expression.

§1°. The National Government shall protect expressions of popular, indigenous and Afro-Brazilian cultures and those of other participant groups in the process of national civilization.

§2°. The law shall provide for establishing highly significant commemorative dates for various national ethnic segments.

§3°. The law shall establish a National Cultural Plan, of multi-year duration, seeking the cultural development of the country and the integration of public actions that lead to:

- I. defense and valorization of Brazilian cultural patrimony;
- II. the production, promotion and diffusion of cultural goods;
- III. formation of qualified personnel for the multiple dimensions of cultural management;
- IV. democratization of access to cultural goods;
- V. valorization of ethnic and regional diversity.

- Right to culture
- Integration of ethnic communities

## Art 216

Brazilian cultural heritage includes material and immaterial goods, taken either individually or as a whole, that refer to the identity, action and memory of the various groups that form Brazilian society, including:

- I. forms of expression;
- II. modes of creating, making and living;
- III. scientific, artistic and technological creations;
- IV. works, objects, documents, buildings and other spaces intended for artistic-cultural manifestations;
- V. urban complexes and sites with historical, landscape, artistic, archeological, paleontological, ecological and scientific value.

§1°. The Government, with the collaboration of the community, shall promote and protect Brazilian cultural heritage by inventories, registries, surveillance, monument protection decrees, expropriation and other forms of precaution and preservation.

§2°. It is the responsibility of public administration, as provided by law, to maintain governmental documents and take measures to make them available for consultation by those that need to do so.

§3°. The law shall establish incentives for production and knowledge of cultural property and values.

§4°. Damages and threats to the cultural patrimony shall be punished, as provided by law.

§5°. All documents and sites bearing historical reminiscences of the old hideouts for fugitive slaves are declared to be historical monuments.

§6°. States and the Federal District may bind up to five-tenths of one percent of their net tax receipts from the state fund for cultural development for financing cultural programs and projects, but these resources may not be used for payment of:

- I. personnel expenses and social charges;
- II. debt service;
- III. any other current expense not linked directly to the supported investments or actions.

## Art 216-A

The National System of Culture, organized as a collaborative regime, in a decentralized and participative form, institutes a process of joint development and promotion of public policies of culture. These democratic and permanent policies, agreed to among the entities of the Federation and society, have the objective of promoting human, social and economic development with full exercise of cultural rights.

§1°. The National System of Culture is based upon a national policy of culture and its directives, set out in the National Plan of Culture, and shall be governed by the following principles:

- I. diversity of cultural expressions;
- II. universality of access to cultural goods and services;
- III. encouragement of the production, diffusion and circulation of cultural knowledge and goods;
- IV. cooperation between the federated entities and the public and private actors operating in the cultural area;

- V. integration and interaction in the execution of developed policies, programs, projects and actions;
- VI. complementation of the roles of cultural actors;
- VII. transversality in cultural policies;
- VIII. autonomy of federated entities and the institutions of civil society;
- IX. transparency and sharing of information;
- X. democratization of the decision-making process with social participation and control;
- XI. articulated and agreed to decentralization in administration, resources, and actions;
- XII. progressive increasing of the resources contained in public budgets for culture.

§2°. The structure of the National System of Culture, in the respective spheres of the Federation, consists of:

- I. administrative organs of culture;
- II. councils of cultural policy;
- III. cultural conferences;
- IV. inter-administrative committees;
- V. cultural plans;
- VI. cultural financial systems;
- VII. systems of cultural information and culture indicators;
- VIII. formative programs in the cultural area;
- IX. cultural sectorial systems.

§3°. Federal law shall provide for the regulations for the National System of Culture, as well as for its articulation with respect to the other national systems or sectorial policies of the government.

§4°. The States, the Federal District, and the Counties shall organize their respective systems of culture in their own laws.

## **SECTION III: Sports**

### **Art 217**

It is the duty of the State to foster formal and informal sporting activities as each individual's right, observing:

- I. autonomy, as to their organization and operation, of entities and associations controlling sports;
- II. allocation of public funds for promotion, on a priority basis, of educational sports and, in specific cases, high return sports;
- III. differentiated treatment for professional and non-professional sports;
- IV. protection of and granting incentives to nationally created sports.

§1°. The Judiciary shall only hear legal actions relating to sports regulation and competitions after exhaustion of remedies in sports tribunals, as regulated by the law.

§2°. The sports tribunals shall render final decisions within a maximum period of sixty days from the date of filing the action.

§3°. The Government shall encourage leisure as a means of social promotion.

## CHAPTER IV: SCIENCE AND TECHNOLOGY

### Art 218

The State shall promote and foster scientific development, research and technological training.

§1°. Basic scientific research shall receive priority treatment from the State, taking into account public well-being and scientific progress.

§2°. Technological research shall be oriented principally towards solution of Brazilian problems and towards development of national and regional productive systems.

§3°. The State shall support human resources training in the areas of science, research and technology and shall offer those engaged in such activities special means and conditions of work.

§4°. The law shall support and foster firms that invest in research, in creation of technology appropriate for the Country, and in training and improvement of their human resources and that adopt compensation systems that assure employees, apart from their salary, participation in the economic gains resulting from the productivity of their labor.

§5°. The States and Federal District may allocate part of their budgetary receipts to public entities for promotion of education and scientific and technological research.

### Art 219

The domestic market comprises part of the national patrimony and shall be encouraged to make viable cultural and socio-economic development, the well-being of the population and the technological autonomy of Brazil, as provided by federal law.

## CHAPTER V: SOCIAL COMMUNICATION

### Art 220

The expression of thoughts, creation, speech and information, through whatever form, process or vehicle, shall not be subject to any restrictions, observing the provisions of this Constitution.

§1°. No law shall contain any provision that may constitute an impediment to full freedom of the press, in any medium of social communication, observing the provisions of art. 5°, IV, V, X, XIII and XIV.

§2°. Any and all censorship of a political, ideological and artistic nature is forbidden.

§3°. It is the province of Federal law to:

- I. regulate public entertainment and shows, and it is the responsibility of the Government to advise about their nature, the ages for which they are not recommended and the locales and times unsuitable for their exhibition;
- II. establish legal measures that afford individuals and families the opportunity to defend themselves against radio and television programs or schedules that contravene the provisions of art. 221, as well as against commercials for products, practices and services that may be harmful to health and the environment.

- References to science or sciences
- Right to enjoy the benefits of science

- Freedom of expression

§4°. Commercial advertising of tobacco, alcoholic beverages, pesticides, medicine and therapies shall be subject to legal restrictions, in the terms of subparagraph II of the preceding paragraph, and shall contain, whenever necessary, warnings about harms caused by their use.

§5°. The media of social communication may not, directly or indirectly, be subject to monopoly or oligopoly.

§6°. Publication of printed means of communication shall not require a license from any authority.

## Art 221

Production and programming by radio and television stations shall comply with the following principles:

- I. preference for educational, artistic, cultural and informational purposes;
- II. promotion of national and regional culture and fostering any independent production aimed at its dissemination;
- III. regionalization of cultural, artistic and journalistic production, according to percentages established by law;
- IV. respect for ethical and social values of the individual and family.

## Art 222

Ownership of firms of journalism and broadcasting of sounds and images with sounds is restricted to native-born Brazilians or those naturalized for more than ten years, or to legal entities organized under Brazilian law and having their headquarters in the Country.

§1°. In either case, at least seventy percent of the total capital and voting capital of firms of journalism and broadcasting of sounds and images with sounds must be owned, directly or indirectly, by native-born Brazilians or those naturalized for more than ten years, who must manage the activities and determine the programming content.

§2°. In any means of social communication, editorial responsibility and the activities of selecting and directing programming are restricted to native-born Brazilians or those naturalized for more than ten years.

§3°. Irrespective of the technology utilized for rendering the service, electronic means of social communication shall observe the principles enunciated in art. 221, in the form of a specific law, that shall also guarantee the priority of Brazilian professionals in the execution of national productions.

§4°. Participation of foreign capital in the firms dealt with in § 1° shall be regulated by law.

§5°. Changes in controlling shareholders in the firms dealt with in § 1° shall be communicated to the National Congress.

## Art 223

The Executive has the power to grant and renew concessions, permits and authorizations for the services of broadcasting sounds and images with sounds, observing the principle of the complementary roles of private, public and state systems.

§1°. The National Congress shall consider such acts within the time period of art. 64, §§ 2° and 4°, starting from the date of receipt of the message.

- Mention of radio
- Mention of television

- Mention of radio
- Mention of television

- State operation of the media
- Mention of radio
- Mention of television



§2°. Non-renewal of concessions or permits requires approval by at least a two-fifths nominal vote of the National Congress.

§3°. Grants or renewals shall be legally effective only after consideration by the National Congress, in accordance with the preceding paragraphs.

§4°. Cancellation of a concession or permit prior to its expiration date requires a judicial decision.

§5°. The term of a concession or permit shall be ten years for radio stations and fifteen years for television stations.

## Art 224

For the purposes of the provisions of this chapter, the National Congress shall institute, as an auxiliary agency, the Social Communications Council, as provided by law.

## CHAPTER VI: THE ENVIRONMENT

### Art 225

Everyone has the right to an ecologically balanced environment, which is a public good for the people's use and is essential for a healthy life. The Government and the community have a duty to defend and to preserve the environment for present and future generations.

§1°. To assure the effectiveness of this right, it is the responsibility of the Government to:

- I. preserve and restore essential ecological processes and provide for ecological management of species and ecosystems;
- II. preserve the diversity and integrity of the Country's genetic patrimony and to supervise entities dedicated to research and manipulation of genetic material;
- III. define, in all units of the Federation, territorial spaces and their components that are to be specially protected, with any change or suppression permitted only through law, prohibiting any use that compromises the integrity of the characteristics that justify their protection;
- IV. require, as provided by law, a prior environmental impact study, which shall be made public, for installation of works or activities that may cause significant degradation of the environment;
- V. control production, commercialization and employment of techniques, methods and substances that carry a risk to life, the quality of life and the environment;
- VI. promote environmental education at all levels of teaching and public awareness of the need to preserve the environment;
- VII. protect the fauna and the flora, prohibiting, as provided by law, all practices that jeopardize their ecological functions, cause extinction of species or subject animals to cruelty.

§2°. Those who exploit mineral resources are obligated to restore any environmental degradation, in accordance with technical solutions required by the proper governmental agencies, as provided by law.

§3°. Conduct and activities considered harmful to the environment shall subject the violators, be they individuals or legal entities, to criminal and administrative sanctions, irrespective of the obligation to repair the damages caused.

§4°. The Brazilian Amazonian Forest, the Atlantic Forest, the Serra do Mar, the Pantanal of Mato Grosso, and the Coastal Zone are part of the national patrimony, and they shall be utilized, as provided by law, under conditions assuring preservation of the environment, including use of natural resources.

§5°. Lands necessary to protect natural ecosystems, which are vacant or which have reverted to the States through discriminatory actions, are inalienable.

§6°. Power plants with nuclear reactors shall be located as defined in federal law and may not be installed otherwise.

## CHAPTER VII: FAMILY, CHILDREN, ADOLESCENTS, YOUTHS, AND ELDERLY

### Art 226

The family, which is the foundation of society, shall enjoy special protection from the State.

§1°. Marriage is civil, and the marriage ceremony is free of charge.

§2°. Religious marriage has civil effects, as provided by law.

§3°. For purposes of State protection, a stable union between a man and a woman is recognized as a family unit, and the law shall facilitate conversion of such unions into marriage.

§4°. The community formed by either parent and his or her descendants is also considered a family unit.

§5°. The rights and duties of the conjugal society shall be exercised equally by men and women.

§6°. A civil marriage may be dissolved by divorce.

§7°. Based upon the principles of human dignity and responsible parenthood, couples are free to decide on family planning; it is incumbent upon the State to provide educational and scientific resources for the exercise of this right, prohibiting any coercion on the part of official or private institutions.

§8°. The State shall assure assistance to the family in the person of each of its members and shall create mechanisms to suppress violence within the family.

### Art 227

It is the duty of the family, the society and the Government to assure children, adolescents, and youths, with absolute priority, the rights to life, health, nourishment, education, leisure, professional training, culture, dignity, respect, liberty and family and community harmony, in addition to safeguarding them against all forms of negligence, discrimination, exploitation, violence, cruelty and oppression.

§1°. The Government shall promote full health assistance programs for children, adolescents, and youths, permitting participation by non-governmental entities and obeying the following precepts:

- I. allocation of a percentage of public health funds to assist mothers and infants;
- II. creation of preventive and specialized care programs for the physically, sensorially or mentally handicapped, as well as programs of social integration for handicapped adolescents or youths, through job training and community living, and facilitation of access to public facilities and services by eliminating prejudices and architectural obstacles.

• Right to marry

• Rights of children guaranteed  
• State support for children

§2°. The law shall provide standards for construction of public sites and buildings and manufacturing of public transportation vehicles in ways that guarantee appropriate access to the handicapped.

§3°. The right to special protection shall encompass the following aspects:

- I. a minimum age of fourteen years to be allowed to work, observing the provisions of art. 7°, XXXIII;
- II. guarantee of social security and labor rights;
- III. guarantee of access to school for the adolescent and youth worker;
- IV. guarantee of full and formal understanding of the charges of an infraction, equality with respect to the procedural phase and technical defenses by qualified professionals, according to the provisions of specific protective legislation;
- V. compliance with the principles of brevity, exceptionality and respect for the particular condition of being a developing individual when applying any liberty-depriving measure;
- VI. Government encouragement, through legal assistance, fiscal incentives and subsidies, as provided by law, for protection through guardianship of orphaned or abandoned children or adolescents;
- VII. prevention and specialized treatment programs for children, adolescents, and youths addicted to narcotics and related drugs.

§4°. The law shall severely punish abuse of, violence towards, and sexual exploitation of children and adolescents.

§5°. Adoption shall be assisted by the Government, as provided by law, which shall establish the cases and conditions under which foreigners may adopt.

§6°. Regardless of whether born in or out of wedlock or adopted, children shall have the same rights and qualifications, prohibiting any discrimination with respect to filiation.

§7°. In attending to the rights of children and adolescents, the provisions of art. 204 shall be taken into consideration.

§8°. The law shall establish:

- I. the statute of youth, designed to regulate the rights of youths;
- II. the national youth plan for a ten-year period, seeking the articulation of various spheres of governmental power for the execution of public policies.

## Art 228

Minors under eighteen years of age are not criminally responsible, subject to rules of special legislation.

## Art 229

Parents have a duty to assist, raise and educate their minor children, and children of age have a duty to help and support their parents in old age, need or sickness.

## Art 230

The family, society and the State have a duty to assist the elderly, assuring their participation in the community, defending their dignity and well-being, and guaranteeing their right to life.

§1°. Support programs for the elderly shall be carried out preferably in their homes.

• Special privileges for juveniles in criminal process

• State support for the elderly

§2°. Those over sixty-five years of age are guaranteed free urban public transportation.

## CHAPTER VIII: INDIANS

### Art 231

The social organization, customs, languages, creeds and traditions of Indians are recognized, as well as their original rights to the lands they traditionally occupy. The Union has the responsibility to delineate these lands and to 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 indispensable for the preservation of environmental resources necessary 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 destined for their permanent possession, and they shall be entitled to the exclusive usufruct of the riches of the soil, rivers and lakes existing thereon.

§3°. Utilization of water resources, including their energy potential, and prospecting and mining of mineral wealth on indigenous lands may only be done with the authorization of the National Congress, after hearing from the communities involved, which shall be assured of participation in the results of the mining, as provided by law.

§4°. The lands dealt with in this article are inalienable and nontransferable, and the statute of limitations does not run against rights thereto.

§5°. Removal of indigenous groups from their lands is prohibited except by referendum of the National Congress, in the event of a catastrophe or epidemic that places the population at risk or in the interest of national sovereignty, after deliberation of the National Congress, guaranteeing, under all circumstances, immediate return as soon as the risk ceases.

§6°. Acts aimed at the occupation, dominion and possession of the lands referred to in this article, or at exploitation of the natural wealth of the soil, rivers and lakes existing thereon, are null and void, producing no legal effects, except in the case of important public interest of the Union, according to the provisions of a complementary law; such nullity and extinction of acts shall not give rise to a right to compensation or to sue the Union, except, as provided by law, for improvements resulting from occupation in good faith.

§7°. The provisions of art. 174, §§ 3° and 4° do not apply to indigenous lands.

### Art 232

Indians, their communities and their organizations have standing to sue to defend their rights and interests, with the Public Ministry intervening at all stages of the proceedings.

## TITLE IX

# GENERAL CONSTITUTIONAL PROVISIONS

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### Art 233

Revoked.

### Art 234

The Union is prohibited from assuming, directly or indirectly, as a result of creation of a State, charges related to expenses with inactive personnel and charges and amortization of domestic and foreign debts of the public administration, including the indirect administration.

### Art 235

During the first ten years after creation of a State, the following basic rules shall be observed:

- I. the Legislative Assembly shall be made up of seventeen Deputies if the population of the State is less than six hundred thousand inhabitants, and of twenty-four Representatives, if the population is equal to or greater than this number, up to one million and five hundred thousand inhabitants;
- II. the Government shall have no more than ten Departments;
- III. the Tribunal of Accounts shall have three members, appointed by the elected Governor, from among Brazilians of proven good reputation and notable knowledge;
- IV. the Tribunal of Justice shall have seven Justices;
- V. the first Justices shall be appointed by the elected Governor, chosen in the following manner:
  - a. five from among judges more than thirty-five years old, presiding within the area of the new State or of the State which gave rise to the new State;
  - b. two from among public prosecutors, under the same conditions, and attorneys of proven good reputation and legal knowledge, with at least ten years of professional practice, obeying the procedures set out in the Constitution;
- VI. in the case of a State created from a Federal Territory, the first five Justices may be chosen from among professional judges from any part of the Country;
- VII. the initial state court judges, public prosecutors, and public defenders in each Judicial District shall be appointed by the elected Governor after public competitive examinations and comparison of professional credentials;
- VIII. until promulgation of the State Constitution, positions in the State's Procuracy-General, Advocacy-General, and Defender-General's Office, shall be held by lawyers of notable knowledge, at least thirty-five years of age, appointed by the elected Governor and removable at will;
- IX. if the new State results from transformation of a Federal Territory, transfer of financial charges from the Union for payment of opting civil servants who belonged to the Federal Administration shall take the following form:
  - a. in the sixth year after its creation, the State shall assume twenty percent of the financial charges of paying the civil servants, with the balance remaining the responsibility of the Union;

• Subsidiary unit government

- b. in the seventh year, the State shall assume another thirty percent, and, in the eighth year, the remaining fifty percent;
- X. the appointments subsequent to the first appointments for the offices referred to in this article shall be regulated by the State Constitution;
- XI. budgetary expenses for personnel may not exceed fifty percent of the State's revenues.

## Art 236

Notarial and registry services shall be exercised by privately upon delegation from the Government.

§1°. The law shall regulate the activities, discipline the civil and criminal liability of notaries, registrars and their agents and define supervision of their acts by the Judiciary.

§2°. Federal law shall establish general rules for fixing fees for notarial and registration services.

§3°. Becoming a notary public or registrar depends on public competitive examinations and comparison of professional credentials. No office may remain vacant for more than six months without opening a public competition to fill it, either by approval of a new entrant or a transferee.

## Art 237

The Finance Ministry shall exercise the supervision and control over foreign trade, which is essential to the defense of national fiscal interests.

## Art 238

The law shall organize the sale and resale of petroleum fuels, fuel alcohol and other fuels derived from renewable raw materials, respecting the principles of this Constitution.

## Art 239

The revenues from contributions to the Program of Social Integration created by Complementary Law N°. 7 of September 7, 1970, and to the Program for the Formation of the Patrimony of Civil Servants created by Complementary Law N°. 8 of December 3, 1970, shall finance the unemployment insurance program and the bonus referred to in § 3° of this article, starting from the date of the promulgation of this Constitution.

§1°. At least forty percent of the funds referred to in the heading of this article shall be allocated to finance economic development programs through the National Bank of Economic and Social Development (BNDES), with criteria for remuneration that preserve their value.

§2°. The assets accumulated in the Program of Social Integration and the Program for the Formation of Patrimony of Civil Servants shall be preserved, maintaining the criteria for withdrawal in the situations provided for in specific laws, with the exception of withdrawal because of marriage, prohibiting distribution of the revenues referred to in the heading of this article for deposit in the individual accounts of participants.

§3°. Employees who receive monthly compensation of up to two minimum wages from employers contributing to the Program of Social Integration or to the Program for the Formation of Patrimony of Civil Servants are assured payment of one annual minimum wage, which shall include the income from the individual accounts, in the case of those who have already participated in such programs before the date of promulgation of this Constitution.

§4°. Funding for the unemployment insurance program shall receive an additional contribution from any company whose labor force turnover exceeds the average turnover rate of the sector, as provided by law.

## **Art 240**

The present compulsory contributions by employers on their payrolls, destined for private entities of social service and professional training linked to the syndicalist system, are excluded from the provisions of art. 195.

## **Art 241**

The Union, States, Federal District and Counties shall regulate by law public consortiums and cooperation agreements among the federative entities, authorizing the associated management of public services, as well as the total or partial transference of duties, services, personnel and goods essential to the continuity of the transferred services.

## **Art 242**

The principle of art. 206, IV, does not apply to official educational institutions created by state or county law, in existence on the date of promulgation of this Constitution, and that are not totally or preponderantly maintained with public funds.

§1°. Teaching of Brazilian history shall take into account the contribution of different cultures and ethnic groups in the formation of the Brazilian people.

§2°. The School of Pedro II, located in the city of Rio de Janeiro, shall be maintained in the federal sphere.

## **Art 243**

Plots of land in any region of Brazil on which illegal cultivations of psychotropic plants are found shall be expropriated immediately and used specifically for settlement of tenant farmers and for cultivation of food and medicinal products, without any compensation to the owner and without prejudice to other sanctions provided for by law.

## **Sole Paragraph**

Any and all goods of economic value seized as a result of illegal traffic in narcotics and similar drugs shall be confiscated and shall revert to the benefit of institutions and personnel specialized in the treatment and recovery of addicts and in equipping and funding the activities of supervision, control, prevention and repression of the crime of trafficking in such substances.

## Art 244

The law shall provide for adaptation of public sites and buildings and of existing public transportation vehicles, so as to ensure adequate access to the handicapped, pursuant to the provisions of art. 227, § 2°.

## Art 245

The law shall provide for circumstances and conditions under which the Government shall assist needy heirs and dependents of victims of intentional crimes, without prejudice to the civil liability of the perpetrator of the unlawful act.

## Art 246

No provisional measure may be adopted to regulate an article of the Constitution whose wording has been altered by means of a constitutional amendment promulgated between January 1, 1995, and the promulgation of this amendment [September 11, 2001].

## Art 247

The laws provided for in subparagraph III of § 1° of art. 41 and in § 7° of art. 169 shall establish special criteria and guarantees for loss of positions of tenured civil servants, who, as a result of the powers of their actual offices, perform exclusive activities of the State.

## Sole paragraph

In cases of inadequate performance, loss of the office shall only occur through an administrative proceeding in which the civil servant is assured the adversary system and a full defense.

## Art 248

Benefits paid, for whatever reason, by the agency responsible for the general social security regime, even at the expense of the National Treasury, and not subject to the maximum limit of the value fixed for benefits conceded by this regime, shall observe the limits fixed in art. 37, XI.

## Art 249

To assure funds for payment of retirement and pension benefits conceded to respective civil servants and their dependents, in addition to the resources of their respective treasuries, the Union, States, Federal District and Counties may constitute funds, made up of resources from contributions and by property, rights, and assets of any nature, through a law that provides for the nature and administration of these funds.

## Art 250

To assure funds for payment of benefits conceded by the general social security regime, in addition to funds from collections, the Union may constitute a fund, made up of property, rights and assets of any nature, through a law that provides for the nature and administration of this fund.



# THE TRANSITIONAL CONSTITUTIONAL PROVISIONS ACT 1988

• Oaths to abide by constitution

## Art 1

At the time of its promulgation, the President of the Republic, President of the Supreme Federal Tribunal, and members of the National Congress shall take an oath to maintain, defend and comply with the Constitution.

## Art 2

On September 7, 1993, through a plebiscite, the electorate shall define the form of government (republic or constitutional monarchy) and the system of government (parliamentary or presidential) that shall prevail in the Country.

§1°. Widespread dissemination of these forms and systems through means of mass communication shall be assured free of charge from concessionaires of public services.

§2°. Upon promulgation of the Constitution, the Superior Electoral Tribunal shall issue rules regulating this article.

## Art 3

This Constitution shall be revised after five years, counting from its promulgation, by vote of an absolute majority of members of the National Congress in a unicameral session.

## Art 4

The mandate of the present President of the Republic shall end on March 15, 1990.

§1°. The first election for President of the Republic after promulgation of the Constitution shall be held on November 15, 1989, without applying the provisions of art. 16 of the Constitution.

§2°. The irreducibility of the present representation of the States and Federal District in the Chamber of Deputies is assured.

§3°. Mandates of the Governors and Lieutenant Governors elected on November 15, 1986, shall end on March 15, 1991.

§4°. Mandates of the present Prefects, Vice-Prefects and County Legislators shall end on January 1, 1989, when those elected shall take office.

## Art 5

The provisions of art. 16 and the rules of art. 77 of the Constitution shall not apply to elections scheduled for November 15, 1988.

§1°. For the elections on November 15, 1988, electoral domicile in the district at least four months prior to the election shall be required, and candidates who meet such requirement and satisfy the other legal requisites may register with the Electoral Courts after promulgation of the Constitution.

§2°. In the absence of a specific legal provision, it shall be up to the Superior Electoral Tribunal to issue the rules required to hold the 1988 elections, respecting current law.

§3°. Current members of the Federal and State Legislatures elected as Vice-Prefects shall not lose their parliamentary mandates if called to serve as Prefects.

§4°. For the representation to be elected in 1988, the number of county legislators per county shall be determined by the respective Regional Electoral Tribunal, respecting the limits set out in art. 29, IV, of the Constitution.

§5°. In the elections to be held on November 15, 1988, except for those who already hold an elective mandate, spouses and relatives by blood, or marriage or adoption, up to the second degree, of the President of the Republic, a State Governor, the Governor of the Federal District and Prefects who have served more than half of their mandate, are ineligible for any office within the jurisdiction of the office holder.

## Art 6

In the six months following promulgation of the Constitution, groups of at least thirty Federal Congressmen may request that the Superior Electoral Tribunal register a new political party; their petition is to be accompanied by the manifest, by-laws and program, duly signed by the petitioners.

§1°. Provisional registration, which is to be granted forthwith by the Superior Electoral Tribunal pursuant to this article, gives to the new party all the rights, duties and prerogatives of existing parties, including the right to participate, under its own name, in elections held during the twelve months following its formation.

§2°. The new party automatically loses its provisional registration if, within twenty-four months of its formation, it does not obtain definitive registration from the Superior Electoral Tribunal, as provided by law.

## Art 7

Brazil shall strive for creation of an international human rights tribunal.

## Art 8

Amnesty is granted to those who, during the period from September 18, 1946, to the date of promulgation of the Constitution, were affected, for exclusively political reasons, by exceptional acts, either institutional or complementary, to those encompassed by Legislative Decree N°. 18 of December 15, 1961, and to those affected by Decree-Law N°. 864 of September 12, 1969, assuring during their inactivity, the promotions to the offices, positions or ranks to which they would be entitled had they been in active service, obeying the periods for remaining in positions provided for in the laws and regulations in force, respecting the characteristics and peculiarities of the careers of public civil servants and the military, observing their respective legal regimes.

§1°. The provisions of this article shall cause financial effects only after promulgation of the Constitution, prohibiting any kind of retroactive compensation.

§2°. The benefits established in this article are assured to private sector workers, and officers and representatives of syndicates who, for exclusively political reasons, were punished, dismissed or compelled to leave the remunerated activities they had performed, as well as to those who were prevented from carrying out their professional activities by ostensive pressures or secret official procedures.

§3°. Economic reparations shall be granted, in accordance with a law initiated by the National Congress and that shall enter in force within twelve months after promulgation of the Constitution, to all citizens who were prevented from carrying out specific professional activities in civil life because of Reserved Ordinances N°. S-50-GM5 of June 19, 1964, and N°. S-285GM5 of the Aeronautics Ministry.

§4°. Those who, by the force of institutional acts, have gratuitously served in the elective office of county legislators shall be entitled to computation of these respective periods for purposes of civil service retirement and social security.

§5°. The amnesty granted in the terms of this article applies to civil servants and to employees at all levels of government or in governmental foundations, state companies or mixed-capital companies under state control, except for military ministries, who have been punished or dismissed because of professional activities interrupted by decision of their workers, as well as because of Decree-Law No. 1.632 of August 4, 1978, or for exclusively political reasons, ensuring readmission of those affected as of 1979, observing the provisions of § 1°.

## Art 9

Those who, for exclusively political reasons, had their mandates quashed or their political rights suspended during the period from July 15 to December 31, 1969, by acts of the then President of the Republic, may request that the Supreme Federal Tribunal recognize the rights and advantages interrupted by these punitive acts, provided that they prove that such acts were grossly flawed.

## Sole Paragraph

The Supreme Federal Tribunal shall render its decision within one hundred-twenty days from the interested party's request.

## Art 10

Until such time as the complementary law referred to in art. 7, I, of this Constitution is enacted:

- I. the protection referred to therein is limited to a fourfold increase in the percentages provided for in the heading of art. 6, and § 1° of Law No. 5.107 of September 13, 1966;
- II. arbitrary dismissal or dismissal without just cause is prohibited:
  - a. for an employee elected to the position of a director of an internal accident prevention committee, from the date of registration as a candidate until one year after the end of his mandate;
  - b. for a pregnant employee, from the date the pregnancy is confirmed until five months after birth.

§1°. Until the law regulates the provisions of art. 7, XIX, of the Constitution, the period of paternity leave referred to in the subparagraph shall be five days.

§2°. Until further legal provisions, the contributions to fund the activities of rural syndicates shall be collected together with the rural property tax by the same collecting agency.

§3°. After the promulgation of the Constitution, upon initial proof of compliance with labor obligations by rural employers, pursuant to art. 233, the regularity of the contract and the updating of labor obligations for the entire period shall be certified before the Labor Courts.

## Art 11

Each State Legislative Assembly with constituent powers shall draft the State Constitution within one year of the promulgation of the Federal Constitution, obeying the principles of the Federal Constitution.

### Sole Paragraph

After a State Constitution has been promulgated, it shall be the responsibility of the County Legislatures to vote on their respective Organic Laws within six months, in two terms of discussion and voting, respecting the provisions of the Federal and State Constitutions.

## Art 12

Within ninety days of the promulgation of the Constitution, a Committee on Territorial Studies shall be created, with ten members appointed by the National Congress and five by the Executive, for the purpose of submitting studies concerning the national territory and draft bills on new territorial units, notably in the Legal Amazonian Region and in areas awaiting solutions.

§1°. Within one year the Committee shall submit the results of its studies to the National Congress so that such studies may be examined during the next twelve months, in the terms of the Constitution, with the Committee dissolving shortly thereafter.

§2°. Within three years of the enactment of the Constitution, the States and Counties by agreement or arbitration shall demarcate their borders presently in litigation, and for such purpose they may alter and compensate areas because of natural phenomena, historical criteria, administrative convenience and convenience of the bordering populations.

§3°. At the request of interested States and Counties, the Union may assume the task of demarcation.

§4°. If within three years after promulgation of the Constitution, the demarcation task has not been concluded, the Union shall determine the boundaries of the disputed areas.

§5°. The current borders of the State of Acre with the States of Amazonas and Rondônia are recognized and confirmed, in conformity with the cartographic and geodesic surveys conducted by the Tripartite Commission composed of representatives of the States and of the specialized technical services of the Brazilian Institute of Geography and Statistics.

## Art 13

The State of Tocantins is created by carving it out of the area described in this article, and its admission shall occur on the forty-sixth day after the elections provided for in § 3°, but not before January 1, 1989.

§1°. The State of Tocantins is part of the Northern Region and is bounded by the State of Goiás along the northern boundaries of the Counties of São Miguel do Araguaia, Porangatu, Formoso, Minaçu, Cavalcante, Monte Alegre de Goiás and Campos Belos, maintaining the current eastern, northern and western borders of Goiás with the States of Bahia, Piauí, Maranhão, Pará and Mato Grosso.

§2°. The Executive shall designate one of the cities of the State as its provisional Capital until approval of the definitive seat of government by the Constituent Assembly.

§3°. The Governor, Lieutenant Governor, Senators, Federal Deputies, and State Representatives shall be elected, in a single round, within seventy-five days after promulgation of the Constitution, but not before November 15, 1988, at the discretion of the Superior Electoral Tribunal, obeying, inter alia, the following rules:

- I. the period for party affiliation of the candidates shall end seventy-five days prior to the date of the election;
- II. the dates for the regional party conventions to decide upon coalitions and choice of candidates, for the presentation of the request to register the candidates chosen and for other legal procedures shall be determined on a special calendar by the Electoral Courts;
- III. occupants of state or county offices that have not definitively resigned such offices by seventy-five days prior to the date of the elections provided for in this paragraph are ineligible;
- IV. the current regional directors of the political parties of the State of Goiás are maintained, with the national executive committees being responsible for designating provisional committees for the State of Tocantins, under the terms and for the purposes provided for by law.

§4°. The mandates of Governor, Lieutenant Governor and Federal and State Representatives elected in accordance with the preceding paragraph shall end concurrently with those of the other units of the Federation; the mandate of the Senator elected with the fewest votes shall end at the same time, and the mandates of the other two Senators shall end at the same time as those Senators elected in 1986 in the other States.

§5°. The State Constituent Assembly shall be installed on the forty-sixth day after election of its members, but not before January 1, 1989, under the presidency of the President of the Regional Electoral Tribunal of the State of Goiás and shall inaugurate the elected Governor and Lieutenant Governor on the same date.

§6°. The legal rules regulating division of the State of Mato Grosso shall apply, where appropriate, to the creation and admission of the State of Tocantins, observing the provisions of art. 234 of the Constitution.

§7°. The State of Goiás is released from debts and charges resulting from undertakings within the territory of the new State, and the Union is authorized to assume such debts under at its discretion.

## Art 14

The Federal Territories of Roraima and of Amapá are transformed into Federated States, maintaining their current geographic borders.

§1°. The admission of the States shall occur upon inauguration of their governors elected in 1990.

§2°. The rules and criteria adopted for the creation of the State of Rondônia apply to the transformation and admission of the States of Roraima and Amapá, respecting the provisions of the Constitution and of this Act.

§3°. Within forty-five days after promulgation of the Constitution, the President of the Republic shall submit to the Federal Senate for consideration the names of governors of the States of Roraima and Amapá, who shall exercise the powers of the Executive until the new States are admitted with the inauguration of their elected governors.

§4°. So long as their transformation into States remains uncompleted in the terms of this article, the Federal Territories of Roraima and Amapá shall enjoy the benefits from the transfer of funds provided for in arts. 159, I, a, of the Constitution and 34, § 2°, II of this Act.

## Art 15

The Federal Territory of Fernando de Noronha is abolished and its area is reincorporated into the State of Pernambuco.

## Art 16

Until the provisions of art. 32, § 2º, of the Constitution become effective, the President of the Republic, with the approval of the Federal Senate, shall be responsible for appointing the Governor and Lieutenant Governor of the Federal District.

§1º. Until the Federal District's Legislature is installed, its powers shall be exercised by the Federal Senate.

§2º. Until the Legislative Chamber is installed, supervision of the accounting, finances, budgets, operations and patrimony of the Federal District shall be done by the Federal Senate through external control, with the assistance of the Tribunal of Accounts of the Federal District, observing the provisions of art. 72 of the Constitution.

§3º. The property of the Federal District shall include the assets that come to be attributed to it by the Union, as provided by law.

## Art 17

Earnings, remuneration, advantages and additional pay, as well as retirement benefits being received inconsistently with this Constitution, shall be reduced immediately to the limits arising therefrom, not permitting invocation of vested rights nor allowing receipt of excess sums on any account.

§1º. Cumulative holding of two positions or jobs exclusively for doctors by one person is assured if held by a military physician in the direct or indirect public administration.

§2º. Cumulative holding of two positions or jobs exclusively for health professionals by one person is assured if held in the direct or indirect public administration.

## Art 18

Any legislative or administrative act, issued after installation of the National Constituent Assembly, whose objective is to grant tenure to a public servant admitted without a public competitive examination to the direct or indirect administration, including foundations instituted and maintained by the Government, is null and without legal effect.

## Art 19

Civil public servants of the Union, States, Federal District and Counties, in the direct administration, autarchies and public foundations, who, on the date of promulgation of the Constitution, have held their positions for at least five continuous years, without having been admitted in the manner regulated by art. 37 of the Constitution, are deemed to have tenure in the public service.

§1º. The period of service of the civil servants referred to in this article shall be counted as a credential when they take a competitive examination for the purpose of effectuating their admission, as provided by law.

§2°. The provisions of this article do not apply to the holders of confidential or commission positions, offices or jobs, nor to those who by law can be freely discharged. The period of service of these persons shall not be computed for the purposes of the heading of this article, unless they are civil servants.

§3°. The provisions of this article do not apply to professors of higher education, as provided by law.

## **Art 20**

Within one hundred and eighty days, the rights of inactive civil servants and pensioners shall be revised, and the income and pensions owed them shall be updated so as to adjust them to the provisions of the Constitution.

## **Art 21**

Professional judges with a limited term of office who have been admitted by means of public competitive examinations and professional credentials and who are in office on the date this Constitution is promulgated, acquire tenure, observing the probationary period, and they shall constitute a group being phased out, maintaining the jurisdiction, prerogatives and restrictions of the laws to which they have been subjected, except for those inherent to the transitory nature of their investiture.

### **Sole Paragraph**

Retirement of the judges referred to in this article shall be regulated by the rules established for other state judges.

## **Art 22**

Public defenders holding office by the date of installation of the National Constituent Assembly are assured the right to opt for the career, observing the guarantees and prohibitions provided for in art. 134, sole paragraph, of the Constitution.

## **Art 23**

Until art. 21, XVI, of the Constitution is regulated, those presently holding the positions of federal censor shall continue to exercise functions compatible with such office in the Federal Police Department, observing the constitutional provisions.

### **Sole Paragraph**

The law referred to shall provide for the utilization of the Federal Censors, in the terms of this article.

## **Art 24**

Within eighteen months of promulgation of the Constitution, the Union, States, Federal District and Counties shall issue laws establishing criteria for making their personnel compatible with the provisions of art. 39 of the Constitution and with the administrative reform resulting therefrom.

## Art 25

One hundred and eighty days after promulgation of the Constitution, such period being subject to extension by law, all legal provisions conferring or delegating to an agency of the Executive, powers assigned by the Constitution to the National Congress, shall be revoked, especially with respect to:

- I. normative actions;
- II. allocations or transfers of funds of any kind.

§1°. The effects of decree-laws sent to the National Congress and not evaluated by it when the Constitution is promulgated shall be regulated in the following manner:

- I. if issued by September 2, 1988, they shall be evaluated by the National Congress within a period of up to one hundred and eighty days from the date of promulgation of the Constitution, not counting legislative recess;
- II. if the time period defined in the preceding subparagraph elapses without evaluation of the decree-laws mentioned therein, they shall be deemed rejected;
- III. in the situations defined in subparagraphs I and II, acts performed when the respective decree-laws were in effect shall be fully valid; if necessary, the National Congress may legislate on their remaining effects.

§2°. Decree-laws issued between September 3, 1988, and the promulgation of the Constitution shall, on the latter date, be converted into provisional measures, applying the rules established in art. 62, sole paragraph.

## Art 26

Within one year of the promulgation of the Constitution, the National Congress shall sponsor, through a Joint Committee, an analytical and expert examination of the acts and facts that produced Brazil's foreign debt.

§1°. The Committee shall have the legal authority of a parliamentary investigative committee for purposes of requisitions and calling witnesses, and shall act with the assistance of the Tribunal of Accounts of the Union.

§2°. If irregularities are found, the National Congress shall propose that the Executive declare the acts null and void and shall send the process to the Federal Public Ministry, which shall take appropriate action within sixty days.

## Art 27

The Superior Tribunal of Justice shall be installed under the Presidency of the Supreme Federal Tribunal.

§1°. Until the Superior Tribunal of Justice is installed, the Supreme Federal Tribunal shall exercise the powers and jurisdiction defined in the prior constitutional regime.

§2°. The initial composition of the Superior Tribunal of Justice shall be made up:

- I. by utilization of the Ministers of the Federal Tribunal of Appeals;
- II. by appointment of the Ministers needed to complete the number established in the Constitution.

§3°. For the purposes of the Constitutional provision, the present Ministers of the Federal Tribunal of Appeals shall be deemed to belong to the class they came from at the time of their appointment.

§4°. After the Tribunal has been installed, retired Ministers of the Federal Tribunal of Appeals automatically become retired Ministers of the Superior Tribunal of Justice.



§5°. The Ministers referred to in §2°, II, shall be indicated in a list of three by the Federal Tribunal of Appeals, observing the provisions of art. 104, sole paragraph, of the Constitution.

§6°. Five Federal Regional Tribunals are created, to be installed within six months from promulgation of the Constitution; their jurisdiction and place of sitting are to be determined by the Federal Tribunal of Appeals, taking into account the number of cases and their geographical location.

§7°. Until the Federal Regional Tribunals are installed, the Federal Tribunal of Appeals shall exercise the jurisdiction attributed to the Federal Regional Tribunals throughout the National territory. The Federal Tribunal of Appeals shall also provide for their installation and indicate candidates for all initial offices by means of a list of three that may include federal judges of any region, observing the provisions of § 9°.

§8°. After promulgation of the Constitution, filling vacant positions for Ministers of the Federal Tribunal of Appeals is prohibited.

§9°. If there are no federal judges with the minimum period of service provided for in art. 107, II, of the Constitution, promotions may be granted to judges with fewer than five years in office.

§10°. The Federal Courts shall have the power to adjudicate the cases filed therein until promulgation of the Constitution, and the Federal Regional Tribunals, as well as the Superior Tribunal of Justice, shall decide rescissory actions against decisions rendered until then by the Federal Courts, including those involving matters for which jurisdiction has been transferred to another branch of the Judiciary.

§11°. The following Federal Regional Tribunals are now created: the 6th Region, with its seat in Curitiba, State of Paraná, with jurisdiction in the States of Paraná, Santa Catarina, and Mato Grosso do Sul; the 7th Region, with its seat in Belo Horizonte, State of Minas Gerais, with jurisdiction in the State of Minas Gerais; the 8th Region, with its seat in Salvador, State of Bahia, with jurisdiction in the States of Bahia and Sergipe; and the 9th Region, with its seat in Manaus, State of Amazonas, with jurisdiction in the States of Amazonas, Acre, Rodônia, and Roraima.

## Art 28

The federal judges referred to in art. 123, § 2°, of the Constitution of 1967, with the wording given by Constitutional Amendment No. 7 of 1977, shall be vested in office in courts of the judicial section for which they were appointed or designated; if there are no vacancies, the existing courts shall be divided.

### Sole Paragraph

For purposes of promotion by seniority, the period of service of such judges shall be computed from the day they took office.

## Art 29

Until such time as the complementary laws related to the Public Ministry and to the Advocate-General of the Union are approved, the Federal Public Ministry, Office of the Procurator of the National Treasury, Legal Advisory Offices of the Ministries, Procuracies and Legal Departments of federal autarchies with their own representation and members of the procuracies of universities that are public foundations shall continue to conduct their activities within their respective powers.

§1°. Within one hundred and twenty days, the President of the Republic shall send to the National Congress a draft of a complementary law providing for the organization and operations of the Advocacy-General of the Union.

§2°. The present Procurators of the Republic, in accordance with the complementary law, shall be given the irrevocable option between careers in the Federal Public Ministry and in the Advocacy-General of the Union.

§3°. A member of the Public Ministry admitted prior to the promulgation of the Constitution may opt for the previous regime with respect to guarantees and advantages, with due regard, as to prohibitions, for the legal situation on the date of promulgation.

§4°. The present members of the supplementary staff of the Public Ministries of Labor and the Military who have acquired tenure in these positions become integral members of the staff of their respective careers.

§5°. It is the responsibility of the current Procuracy General of the National Treasury, directly or by delegation, which may be made to the State Public Ministry, to represent the Union legally in court in tax cases, in their respective spheres of authority, until such time as the complementary laws provided for in this article are enacted.

### **Art 30**

The legislation that creates the justices of the peace shall maintain the present judges of peace until the new justices take office, assuring them the rights and powers conferred upon the latter, and shall determine the date for the election provided for in art. 98, II, of the Constitution.

### **Art 31**

The clerks of the law courts, as defined by law, shall be taken over by the States, respecting the rights of the present clerks.

### **Art 32**

The provisions of art. 236 do not apply to notarial and registry services that have already been made official by the Government, respecting the rights of their employees.

### **Art 33**

Except for support payments, the value of pending court orders for payment of judgments against the government on the date of the promulgation of the Constitution, including remaining interest and monetary correction, may be paid in the currency of the day, with updating, in equal and successive annual installments, over a maximum period of eight years from July 1, 1989, by Executive decision issued within one hundred and eighty days from promulgation of the Constitution.

### **Sole Paragraph**

To comply with the provisions of this article, the debtor entities may each year issue, in the exact amount of the payment, public bonds, which shall not be computed for purposes of determining the aggregate limit of indebtedness.

## Art 34

The national tax system shall go into effect on the first day of the fifth month following promulgation of the Constitution; until then the system of the 1967 Constitution, with the wording given by Amendment No. 1 of 1969 and subsequent amendments, is retained.

§1°. When the Constitution is promulgated, arts. 148, 149, 150, 154, I, 156, III, and 159, I, c, shall go into force, revoking all provisions to the contrary in the 1967 Constitution and the Amendments that modified it, especially its art. 25, III.

§2°. The Fund for the Participation of the States and of the Federal District and Fund for the Participation of the Counties shall obey the following determinations:

- I. starting with the promulgation of the Constitution, the percentages shall be eighteen and twenty percent, respectively, calculated on the revenues from collection of the taxes referred to in art. 153, III and IV, maintaining the present criteria for apportionment until entry into force of the complementary law referred to in art. 161, II;
- II. one percentage point shall be added to the percentage of the Fund for the Participation of the States and the Federal District in fiscal year 1989; starting in and including 1990, one-half of one percent per fiscal year shall be added up to and including 1992, reaching in 1993 the percentage established in art. 159, I, a;
- III. the percentage for the Fund for the Participation of the Counties shall be raised at the rate of one-half of one percent per fiscal year, starting in and including 1989, until it reaches the limit established in art. 159, I, b.

§3°. When the Constitution has been promulgated, the Union, States, Federal District and Counties may issue the laws necessary to apply the national tax system therein provided for.

§4°. The laws issued in accordance with the preceding paragraph shall take effect as soon as the national tax system provided for in this Constitution enters into force.

§5°. Once the new national tax system is in force, application of the preexisting legislation is assured to the extent that it is not incompatible with the new national tax system and with the legislation referred to in §§ 3° and 4°.

§6°. Until December 31, 1989, the provisions of art. 150, III, b, do not apply to the taxes dealt with in arts. 155, I, a and b, and 156, II and III, which may be collected thirty days after publication of the law that instituted or increased such taxes.

§7°. Until fixed in a complementary law, the maximum rates for the county tax on retail sales of liquid and gaseous fuels shall not exceed three percent.

§8°. If, within sixty days of promulgation of this Constitution, the complementary law necessary for the institution of the tax dealt with in art. 155, I, b, has not been issued, the States and the Federal District shall determine the rules to regulate the matter provisionally by means of a compact entered into in accordance with Complementary Law No. 24, of January 7, 1975.

§9°. Until a complementary law deals with the matter, firms distributing electric power, shall be responsible for the payment of the tax on the circulation of merchandise levied on electric power from production or importation up to the last operation, either as taxpayers or taxpayer substitutes, at the time the product leaves their establishments, even if the destination is another unit of the Federation. The tax is calculated on the price charged on the final sale, assuring payment of such tax to the State or to the Federal District, depending on the place where such sale occurs.

§10°. So long as the law provided for in art. 159, I, c, which is to be enacted by December 31, 1989, is not in force, the funds dealt with in that provision shall be allocated in the following manner:

- I. six-tenths of one percent to the Northern Region, through Banco da Amazonia S.A.;
- II. one and eight-tenths percent to the Northeastern Region, through Banco do Nordeste do Brasil S.A.;
- III. six-tenths of one percent to the Central Western Region, through Banco do Brasil S.A.

§11°. The Development Bank of the Central-West is hereby created, as provided by law, so as to comply with the provisions of arts. 159, I, c and 192, § 2°, of the Constitution in that region.

§12°. The urgency provided for in art. 148, II, shall not adversely affect collection of the compulsory loan created for the benefit of Centrais Elétricas Brasileiras S.A. (Eletrobrás) by Law No. 4.156 of November 28, 1962, as subsequently amended.

## Art 35

The provisions of art. 165, § 7° shall be complied with progressively over a period of up to ten years, distributing the funds among the macro-economic regions in proportion to their population, based on the situation determined for the 1986-87 biennium.

§1°. In applying the criteria dealt with in this article, the total expenses shall exclude expenses for:

- I. projects considered priorities in the multi-year plan;
- II. national security and defense;
- III. maintenance of the federal agencies in the Federal District;
- IV. the National Congress, the Tribunal of Accounts of the Union and the Judiciary;
- V. servicing the debt of the direct and indirect administration of the Union, including foundations instituted and maintained by the Federal Government.

§2°. Until such time as the complementary law referred to in art. 165, § 9°, I and II, comes into force, the following rules shall be obeyed:

- I. the proposed multi-year plan that is to be in effect until the end of the first fiscal year of the subsequent presidential mandate shall be submitted not less than four months before the end of the first fiscal year and returned for presidential approval by the end of the legislative term;
- II. the draft of the law on budgetary directives shall be submitted not less than eight-and-one half months before the end of the fiscal year and returned for presidential approval by the end of the first period of the legislative term;
- III. the draft of the budget law of the Union shall be submitted not less than four months before the end of the fiscal year and returned for presidential approval by the end of the legislative term.

## Art 36

Funds in existence on the date the Constitution is promulgated, except for those resulting from tax exemptions that become private property and those of interest to national defense, shall be eliminated if they are not ratified by the National Congress within two years.

## Art 37

Adaptation to what is established in art. 167, III, shall be done within five years, reducing the excess at the rate of at least one-fifth per year.

## Art 38

Until enactment of the complementary law referred to in art. 169, the Union, States, Federal District and Counties shall not spend more than sixty-five percent of the amount of their respective current revenues on personnel.

## Sole Paragraph

When the respective expenditures with personnel exceed the limit provided for in this article, the Union, States, Federal District and Counties shall return to such limit by reducing the excess percentage at the rate of one-fifth per year.

## Art 39

After promulgation of the Constitution, for purposes of compliance with the constitutional provisions that involve variations of expenses and receipts of the Union, the Executive shall prepare and the Legislature shall consider a bill revising the budget law of fiscal year 1989.

## Sole Paragraph

The National Congress shall vote on the complementary law provided for in art. 161, II, within twelve months.

## Art 40

The Free Trade Zone of Manaus, with its characteristics of a free trade area, export and import and fiscal incentives, shall be maintained for a period of twenty-five years from promulgation of the Constitution.

## Sole Paragraph

The criteria that regulate or which come to regulate approval of projects in the Free Trade Zone of Manaus may be modified only by federal law.

## Art 41

The Executive Branches of the Union, States, Federal District and Counties shall reevaluate all sectorial tax incentives now in force and shall propose the appropriate measures to their respective Legislative Branches.

§1°. Those incentives not confirmed by law within two years for the date of the promulgation of the Constitution shall be considered revoked.

§2°. Revocation shall not prejudice any rights that have vested before such date, with respect to incentives granted conditionally and for limited periods of time.

§3°. Incentives granted by interstate compacts in accordance with art. 23, § 6° of the 1967 Constitution, with the wording of Amendment No. 1 of October 17, 1969, shall also be reevaluated and reconfirmed within the time limits of this article.

## Art 42

For twenty-five years, the Union shall allocate from the funds destined for irrigation:

- I. twenty percent to the Central-Western Region;
- II. fifty percent to the Northeastern Region, preferentially in the semi-arid region.

## Art 43

On the date of the promulgation of the law regulating the prospecting and mining of mineral resources and deposits, or within one year from the date of the promulgation of this Constitution, the authorizations, concessions and other instruments conferring mineral rights shall lose their effects if one cannot prove that the prospecting or mining has been started within the legal time limits or if they have become inactive.

## Art 44

Brazilian firms presently owning prospecting authorizations, concessions for the working of mineral resources, and concessions for using hydraulic energy sites shall have four years, starting from the promulgation of the Constitution, to comply with the requirements of art. 176, §1°.

§1°. Except for provisions of national interest set out in the constitutional text, Brazilian firms shall be excused from compliance with the provisions of art. 176, §1°, so long as, during the period of four years from the date of promulgation of the Constitution, the product of their mines and processing is destined for industrialization within the national territory in their own establishments or in industrial firms controlled by or controlling them.

§2°. Brazilian firms owning hydraulic energy concessions for use in their industrialization processes are excused from compliance with the provisions of art. 176, §1°.

§3°. The Brazilian firms referred to in §1° may only have prospecting authorizations or permits to mine or exploit hydraulic energy sites so long as the energy and the products of the mines are utilized in their respective industrial processes.

## Art 45

Refineries operating in the Country under the aegis of art. 43 and under the conditions of art. 45 of Law N° 2.004 of October 3, 1953, are excluded from the monopoly established in art. 177, subparagraph II, of the Constitution.

## Sole Paragraph

Risk contracts made with Petróleo Brasileiro S.A. (Petrobrás) for the exploration of petroleum that are in force on the date of the promulgation of the Constitution are exempt from the prohibition of art. 177, §1°.

## Art 46

Credits with entities under intervention or extra-judicial liquidation, even when such proceedings are converted into bankruptcy, are subject to monetary correction from the date of maturity until the date of actual payment, without interruption or suspension.

## Sole Paragraph

The provisions of this article shall also apply:

- I. to transactions carried out after the proceedings referred to in the heading of this article have been decreed;
- II. to loans, financing, refinancing, financial assistance for liquidity purposes, assignments or subrogation of mortgages or mortgage bonds, fulfillment of guarantees of deposits by the public or purchases of liabilities, including those carried out with resources from funds intended for such purposes;
- III. to credits existing prior to the promulgation of this Constitution;
- IV. to credits held by governmental administrative entities prior to promulgation of this Constitution and not liquidated by January 1, 1988.

## Art 47

Liquidation of debts, including subsequent renegotiations and settlements thereof, even when adjudicated, arising from any loans granted by banks and by financial institutions, shall be without monetary correction provided the loan was granted:

- I. to micro- and small-businessmen or to their establishments in the period from February 28, 1986, to February 28, 1987;
- II. to mini, small, or medium rural producers in the period from February 28, 1986, to December 31, 1987, so long as it relates to rural credit.

§1°. For the purposes of this article, micro-firms are legal entities and proprietorships with annual incomes of up to ten thousand National Treasury Bonds (OTNs), and small firms are legal entities and proprietorships with annual incomes of up to twenty-five thousand National Treasury Bonds (OTNs).

§2°. Classification as a mini, small, and medium rural producers shall be made in accordance with the rural credit rules in force at the time of the contract.

§3°. The exemption from monetary correction referred to in this article shall only be granted in the following cases:

- I. if the initial debt, plus legal interest and judicial fees, is liquidated within ninety days of promulgation of this Constitution;
- II. if the application of the funds is not contrary to the propose of the financing, with the burden of proof placed upon the creditor institution;
- III. if the creditor institution fails to demonstrate that the borrower has the means to pay his debt, excluding from such means the borrower's establishment, the house in which he lives, and his instruments for work and production;
- IV. if the initial financing does exceed the limit of 5,000 Readjustable Treasury Bonds (ORTNs);
- V. if the beneficiary does not own more than five rural modules.

§4°. The benefits dealt with in this article do not apply to debts already paid nor to debtors who are members of the Constituent Assembly.

§5°. For debts maturing after this deadline for liquidation of the debt, banks and financial institutions shall provide, by a separate instrument, for amendment of the original contractual conditions so as to adjust them to this benefit if the borrower is interested in doing so.

§6°. Under no circumstances shall the granting of this benefit by private commercial banks bring with it a burden for the Government, not even through refinancing and repassing of funds through the Central Bank.

§7°. In the case of repassing to official financing agents or credit cooperatives, the burden shall fall upon the original source of funds.

## Art 48

Within one hundred-twenty days of the promulgation of this Constitution, the National Congress shall elaborate a consumer protection code.

## Art 49

The law shall regulate the institution of emphyteusis in urban real property, the tenants having the option, in the event of extinction, to redeem the emphyteusis, by acquisition of direct title in accordance with the provisions contained in the respective contracts.

§1°. In the absence of a contractual clause, the criteria and bases currently in force in special federal legislation on real property shall be adopted.

§2°. The rights of presently registered occupants shall be assured by application of another type of contract.

§3°. Emphyteusis shall continue to be applied to tidelands and areas added thereto by accretion, located within the security strip along the coast line.

§4°. After redemption of the emphyteusis, the former holder of direct title shall, within ninety days, under penalty of liability, entrust all documents related to such title to the custody of the proper real estate registry.

## Art 50

An agricultural law, to be enacted within one year, shall set out, in the terms of this Constitution, the objectives and instruments of agricultural policy, priorities, crop planning, marketing, internal supply, foreign markets and agrarian credit institutions.

## Art 51

All donations, sales and concessions of public lands of areas greater than three thousand hectares, made in the period from January 1, 1962, to December 31, 1987, shall be reviewed by the National Congress, within the three years after promulgation of the Constitution.

§1°. Review of sales shall be based exclusively on the criterion of legality of the transaction.

§2°. Review of concessions and donations shall be based on the criteria of legality and convenience to the public interest.

§3°. In the cases provided for in the preceding paragraphs, if illegality is proven, or if it is in the public interest, the lands shall revert to the patrimony of the Union, States, Federal District or Counties.

## Art 52

Until the conditions of Art. 192 are determined, the following shall be prohibited:

- I. installation of new agencies of foreign domiciled financial institutions in the Country;
- II. increases in the percentage of participation by individuals and legal entities resident or domiciled abroad in the capital of financial institutions headquartered in the Country.



## Sole Paragraph

The prohibition referred to in this article does not apply to authorizations resulting from international accords, reciprocal agreements or agreements of interest to the Brazilian government.

## Art 53

Former combatants who actually participated in war operations during the Second World War, in the terms of Law No. 5.315 of September 12, 1967, shall be assured the following rights:

- I. admission to public service with tenure, without having to undergo competitive examinations;
- II. a special pension corresponding to that left by a second lieutenant of the Armed Forces, which may be applied for at any time and may not be accumulated with any other income received from the public coffers, except for social security benefits, reserving the right to choose;
- III. in the event of death, a proportional pension for the widow or companion or dependent, in an amount equal to that of the prior subparagraph;
- IV. free medical, hospital and educational assistance, including dependents;
- V. retirement at full pay after twenty-five years of actual service under any legal regime;
- VI. priority in the acquisition of one's own home for those who do not own one, or for their widows or companions.

## Sole Paragraph

Granting the special pension referred to in subparagraph II replaces, for all legal effects, any other pension already granted to an ex-combatant.

## Art 54

When without resources, rubber-tappers recruited pursuant to Decree-Law No. 5.813 of September 14, 1943, and protected by Decree-Law No. 9.882 of September 16, 1946, shall receive a monthly pension for life in the amount of two minimum wages.

§1°. The benefit extends to rubber-tappers who, at the request of the Brazilian Government, contributed to the war effort by working in rubber production in Amazon Region during the Second World War.

§2°. The benefits established in this article may be transferred to dependents who are recognizably in need.

§3°. The benefit shall be granted according to a law to be proposed by the Executive within one hundred and fifty days after promulgation of the Constitution.

## Art 55

Until the law of budgetary directives is approved, at least thirty percent of the social security budget, excluding unemployment insurance, shall be allocated to the health sector.

## Art 56

Until a law regulates art. 195, I, the revenues resulting from at least five of the six-tenths of one percent corresponding to the rate of the contribution referred to in Decree-Law No. 1.940 of May 25, 1982, as amended by Decree-Law No. 2.049 of August 1, 1983, by Decree No. 91.236 of May 8, 1985, and by Law No. 7.611 of July 8, 1987, shall be integrated with social security revenues, except for commitments assumed for ongoing programs and projects exclusively during fiscal year 1988.

## Art 57

The debts of the States and Counties for social security contributions up to June 30, 1988, shall be liquidated, with monetary correction, in one hundred and twenty monthly installments, eliminating interest and penalties applicable thereto, as long as the debtors request installment payments and begin such payments within one hundred and eighty days from promulgation of this Constitution.

§1°. The amount to be paid in each of the first two years shall not be less than five percent of the total consolidated and updated debt, with the balance being divided into equal monthly installments.

§2°. Liquidation may include payments in the form of assignments of assets and providing services, in accordance with Law No. 7.578 of December 23, 1986.

§3°. As security for payment of the installments, the States and Counties shall each year in their respective budgets make the appropriations required for payment of their debts.

§4°. If any of the conditions established for permitting installment payments are not satisfied, the total debt shall be considered past due, and default interest shall be payable on it; in such event, the portion of the funds corresponding to the Revenue Sharing Funds that has been allocated to the debtor States and Counties shall be blocked and transferred to social security for payment of their debts.

## Art 58

Benefits paid on a continuous basis and maintained by social security on the date the Constitution is promulgated shall have their values revised in order to restore their purchasing power, expressed in multiples of the minimum wage they represented on the date when they were granted, obeying this criterion for updating until implantation of the plan of funding and benefits referred to in the following article.

### Sole Paragraph

The monthly benefit payments, updated in accordance with this article, shall be due and payable from the seventh month after promulgation of the Constitution.

## Art 59

Not more than six months after the promulgation of the Constitution, bills relating to organization of social security and for the plans for funding and benefits shall be submitted to the National Congress, which shall have six months in which to examine them.

### Sole Paragraph

Upon approval by the National Congress, the plans shall be implemented progressively in the following eighteen months.

## Art 60

Until the 14th (fourteenth) year from the promulgation of this Constitutional Amendment, the States, Federal District and Counties shall apply part of the funds referred to in the heading of art. 212 of the Federal Constitution to maintenance and development of basic education and to adequate remuneration of those working in education, respecting the following provisions:

- I. distribution of resources and responsibilities among the Federal District, States and Counties is assured through creation, within the province of each State and the Federal District, of a Fund for the Maintenance and Development of Basic Education and Valorization of the Teaching Profession – FUNDEB, that will be accounting in nature;
- II. the Funds referred to in the preceding paragraph of this article shall be constituted by 20% (twenty percent) of the funds referred to in subparagraphs I, II and III of art. 155; subparagraph II of the heading of art. 157; subparagraphs II, III and IV of the heading of art. 158; and subparts a and b of subparagraph I and subparagraph II of the heading of art. 159 of the Federal Constitution, and distributed among each State and its Counties in proportion to the number of students in the various stages and modalities of basic education matriculated in their respective systems, in the respective provinces of priority functioning established in §§ 2° and 3° of art. 211 of the Federal Constitution;
- III. observing the guarantees established in subparagraphs I, II, III and IV of the heading of art. 208 of the Federal Constitution and the goal of universality of basic education established in the National Education Plan, the law shall provide for:
  - a. organization of the Funds, proportional distribution of their resources, differences and weights as to the annual amount per student among the various stages and modalities of basic education and the type of teaching establishments;
  - b. manner of calculation of the annual minimum amount per student;
  - c. maximum percentages for appropriation of resources from the Funds for the diverse stages and modalities of basic education, observing arts. 208 and 214 of the Federal Constitution, as well as the goals of the National Education Plan;
  - d. supervision and control of the Funds;
  - e. period for fixing, by specific law, the national professional base salary for those in the profession of teaching basic education;
- IV. resources received on account of the Funds instituted in the terms of subparagraph I of the heading of this article shall be applied by the States and Counties exclusively in the respective spheres of priority functioning, in conformity with what has been established in §§ 2° and 3° of art. 211 of the Federal Constitution;
- V. the Union shall supplement the resources of the Funds referred to in subparagraph II of the heading of this article whenever the cost per student in the Federal District and in each State does not reach the nationally defined minimum, determined in accordance with the provision of subparagraph VII of the heading of this article, prohibiting utilization of the funds referred to in § 5° of art. 212 of the Federal Constitution;
- VI. up to 10% (ten percent) of the Union's supplemental contribution provided for in subparagraph V of the heading of this article may be distributed by the Funds through programs directed toward improvement in the quality of education, as provided for by the law referred to in subparagraph III of the heading of this article;

- VII. the Union's supplemental contribution referred to in subparagraph V of the heading of this article shall be a minimum of:
- a. R\$ 2,000,000,000 (two billion reais), in the first year these Funds are in operation;
  - b. R\$ 3,000,000,000 (three billion reais), in the second year these Funds are in operation;
  - c. R\$ 4,500,000,000 (four billion five million reais), in the third year these Funds are in operation;
  - d. 10% (ten percent) of the total funds referred to in subparagraph II of the heading of this article, starting with the fourth year of the life of these Funds;
- VIII. linking the funds to maintenance and development of education established in art. 212 of the Federal Constitution shall support, at a maximum, 30% (thirty percent) of the Union's supplemental contribution, considered for the purposes of this article as the sums provided for in subparagraph VII of heading of this article;
- IX. the sums referred to in subparts a, b, and c of subparagraph VII of the heading of this article shall be updated annually, starting with the promulgation of this Constitutional Amendment, in a manner that will preserve permanently the real value of the Union's supplemental contribution;
- X. the provisions of art. 160 of the Federal Constitution shall apply to the Union's supplemental contribution;
- XI. failure to comply with the provisions of subparagraphs V and VII of the heading of this article shall imply a crime of responsibility by the competent authority;
- XII. not less than 60% (sixty percent) of each Fund referred to in subparagraph I of the heading of this article shall be destined for payment of members of the basic education teaching profession actively engaged in the profession.

§1°. In financing basic education, the Union, States, Federal District and Counties shall assure improvement in the quality of teaching, so as to guarantee the nationally defined minimum standard.

§2°. The cost per student of basic teaching in the Fund of each State and the Federal District shall not be less than practiced in the sphere of the Fund for the Maintenance and Development of Elementary Education and the Valorization of the Teaching Profession – FUNDEF, in the year prior to the entry into force of this Constitutional Amendment.

§3°. The annual minimum cost per student for basic education in the sphere of the Funds for the Maintenance and Development of Basic Education and the Valorization of Educational Professionals – FUNDEB, shall not be less than the nationally fixed minimum cost for the prior year and that at the entering into force of this Constitutional Amendment.

§4°. For the purposes of distribution of the resources of the Funds referred to in subparagraph I of the heading of this article, one shall take into account the total number of persons enrolled in elementary education and shall consider for purposes of pre-school education and for middle school and the education of adolescents and adults, 1/3 (one-third) of the enrollments in the first year, 2/3 (two-thirds) in the second year and the entire amount starting with the third year.

§5°. The percentage of resources to constitute the Funds, in accordance with subparagraph II of the heading of this article, shall be reached gradually in the first 3 (three) years that these Funds are in operation, in the following manner:

- I. in the case of the taxes and tranferences set out in subparagraph II of the heading of art. 155; subparagraph IV of the heading of art. 158; subparts a and b of subparagraph I and of subparagraph II of the heading of art. 159 of the Federal Constitution:
  - a. 16.66% (sixteen and sixty-six hundredths percent) in the first year;

- b. 18.33% (eighteen and thirty-three hundredths percent) in the second year;
- c. 20% (twenty percent) starting with the third year.
- II. in the cases of taxes and transferences set out in subparagraphs I and III of the heading of art. 155; of subparagraph II of the heading of art. 157; and of subparagraph II and III of the heading of art. 158 of the Federal Constitution:
  - a. 6.66% (six and sixty-six one-hundredths percent), in the first year;
  - b. 13.33% (thirteen and thirty-three hundredths percent), in the second year;
  - c. 20% (twenty percent) in the third year.

§6°. Repealed.

§7°. Repealed.

## Art 61

The educational entities referred to in art. 213, as well as the educational and research foundations whose creation has been authorized by law, which satisfy the requirements of subparagraphs I and II of this article and which during the last three years have received public funds, may continue to receive such funds, unless otherwise provided by law.

## Art 62

The law shall create the National Rural Apprenticeship Service (SENAR), modeled on the legislation for the National Industrial Apprenticeship Service (SENAI) and the National Commercial Apprenticeship Service (SENAC), without prejudice to the powers of the governmental agencies that act in the area.

## Art 63

A Committee composed of nine members, three from the Legislature, three from the Judiciary and three from the Executive, is created to promote commemoration of the centennial of the proclamation of the Republic and of promulgation of the first republican constitution in the Country, provided that such Committee may, at its discretion, be subdivided into as many subcommittees as may be necessary.

## Sole Paragraph

In carrying out its duties, the Committee shall promote studies, debates and assessments of the political, social, economic and cultural development of the Country, and may join efforts with state and county governments and with public and private institutions desiring to take part in the events.

## Art 64

The National Press and other printing departments of the Union, States, Federal District and Counties, of direct or indirect administration, including foundations instituted and maintained by the Government, shall provide a popular edition of the full text of the Constitution, that shall be made available, free of charge, to schools, public registry offices, syndicates, barracks, churches and other representative community organizations, so that each Brazilian citizen may receive from the Government a copy of the Brazilian Constitution.

## Art 65

The Legislature shall regulate art. 220, § 4° within twelve months.

## Art 66

The concessions of public telecommunication services presently in force are maintained, as provided by law.

## Art 67

The Union shall conclude the demarcation of indigenous lands within five years after promulgation of the Constitution.

## Art 68

Final title shall be recognized for the remaining members of the former fugitive slave communities who are occupying their lands, and the State shall grant them the respective deeds.

## Art 69

The States shall be allowed to maintain legal advisory offices independent from their Procuracy-Generals or Advocacy-Generals, provided that they have separate agencies for their respective functions on the date of enactment of this Constitution.

## Art 70

The present jurisdiction of the state courts is maintained until defined in the State Constitutions, pursuant to art. 125, § 1° of this Constitution.

## Art 71

For the purposes of financial restoration of the Federal Treasury and economic stabilization, the Emergency Social Fund shall be instituted in fiscal years 1994 and 1995, as well as in the periods from January 1, 1996 to June 30, 1997 and July 1, 1997 to December 31, 1999. Its resources shall be applied by giving priority to funding actions of the systems of health and education (including complementing the resources dealt with in § 3 of art. 60 of the Transitional Constitutional Provisions Act), social security benefits and continued assistance benefits, including liquidation of the social security deficit, and the budgetary expenses associated with programs of relevant economic and social interest.

§1°. The provisions in the final part of subparagraph II of § 9° of art. 165 of the Constitution shall not apply to the Fund created by this article.

§2°. The Fund created by this article shall be called the Fund of Fiscal Stabilization, starting with the beginning of the fiscal year 1996.

§3°. The Executive shall publish a schedule of budgetary execution, on a bimonthly basis, in which the sources and uses of the Fund created by this article are set forth.

## Art 72

The Emergency Social Fund shall be made up of:

- I. proceeds from collection of the Tax on Income and Benefits of Any Nature withheld at the source on any type of payments made by the Union, including its autarchies and foundations;
- II. the portion of the proceeds from collection of the Tax on Income and Benefits of Any Nature and the Tax on Credit Transactions, Foreign Exchange Operations, Insurance, and Transactions Relating to Negotiable Instruments and Securities, stemming from the changes produced by Law No. 8.894 of June 21, 1994, and by Laws Nos. 8.849 and 8.848 both of January 28, 1994, and later modifications;
- III. the portion of the proceeds from collection of the increased social contribution rate on taxpayers' profits referred to in §1 of art. 22 of Law N° 8.212 of July 24, 1991, which, during fiscal years 1994 and 1995, as well as the period from January 1, 1996 to June 30, 1997, becomes thirty percent, subject to alteration by ordinary law, maintaining the other rules of Law N° 7.689 of December 15, 1988;
- IV. twenty percent of the proceeds collected from all taxes and assessments of the Union, already instituted or to be created, except those provided for in subparagraphs I, II, III, observing provisions of §§ 3° and 4°;
- V. the portion of the proceeds from collection of the assessment dealt with in Complementary Law N° 7 of September 7, 1970, owed by legal entities referred to in subparagraph III of this article, which shall be calculated, during fiscal years 1994 and 1995, as well as in the period from January 1, 1996 to June 30, 1997, by application of a rate of seventy-five hundredths of one percent, subject to alteration by ordinary law, on operational gross receipts, as defined in the legislation on the Tax on Income and Benefits of Any Nature;
- VI. other receipts provided for by specific law.

§1°. The rates and the basis of calculation provided in subparagraphs III and V shall apply starting from the first day of the month, ninety days after promulgation of this Amendment.

§2°. The portions that subparagraphs I, II, III and V deal with shall be previously deducted from the basis of calculation of any constitutional or legal link or participation, not applying to them the provisions of arts. 159, 212 and 239 of the Constitution.

§3°. The portion that subparagraph IV deals with shall be previously deducted from the basis of calculation of the constitutional link or participation provided for in arts. 153, § 5°, 157, II, and 239 of the Constitution.

§4°. The provision of the prior paragraph shall not apply to the resources provided for in arts. 158, II, and 159 of the Constitution.

§5°. The portion of the resources stemming from the Tax on Income and Benefits of Any Nature, destined for the Emergency Social Fund, in the terms of subparagraph II of this article, shall not exceed five and six-tenths percent of the total amount collected.

## Art 73

The instrument provided for in subparagraph V of art. 59 of the Constitution may not be utilized in regulating the Emergency Social Fund.

## Art 74

The Union may institute a provisional assessment on the movement or transfer of securities, credits or rights of a financial nature.

§1°. The rate of the assessment dealt with in this article shall not exceed twenty-five hundredths of one percent, with the Executive having the power to reduce it or reestablish it, in whole or in part, under the conditions and limits fixed by law.

§2°. The provisions of arts. 153, §5° and 154, I, of the Constitution do not apply to the assessment dealt with in this article.

§3°. The proceeds from the collection of the assessment dealt with in this article shall be entirely destined for the National Health Fund for the financing of health activities and services.

§4°. Exaction of the assessment dealt with in this article shall be subordinated to the provisions of art. 195, § 6° of the Constitution and may not be imposed for a period longer than two years.

## Art 75

Collection of the provisional assessment on the movement or transfer of securities, credits or rights of a financial nature dealt with in art. 74 is extended for thirty-six months. This assessment was instituted by Law No. 9.311 of October 24, 1996, as amended by Law No. 9.539 of December 12, 1997, whose duration is also extended for an identical period.

§1°. Observing the provisions of § 6° of art. 195 of the Federal Constitution, the rate of the assessment shall be thirty-eighth hundredths of one percent in the first twelve months and thirty hundredths in the following months. The Executive may reduce the rate totally or partially within the limits here defined.

§2°. The results of the increase in tax collections stemming from the change in fiscal years 1999, 2000 and 2001 shall be earmarked for the funding of social security.

§3°. The Union is authorized to issue domestic bonds, whose resources shall be earmarked for the funding of health and social security in an amount equivalent to the amount of the collection of the assessment provided for and not realized in 1999.

## Art 76

Twenty percent (20%) of the Union's collection of taxes, social assessments and assessment for intervention in the economic domain, already instituted or that are created by the referred to date, as well as their surcharges and respective legal increments, are unlinked from the agency, fund or expense until December 31, 2015.

§1°. The provision in this article's heading shall not reduce the basis for calculating transferes to the States, Federal District, and Counties, as provided for in arts. 153 § 5°; art. 157, I; 158, I and II; and 159, I, a, b and d, and II, nor the basis for calculating the applications referred to in art. 159, I, c, of the Constitution.

§2°. Collection of the educational salary assessment referred to in art. 212, § 5° of the Constitution, shall be excepted from the unlinking referred to in the heading of this article.

§3°. For the purpose of calculation of the resources for maintenance and development of teaching dealt with in art. 212 of the Constitution, the percentage referred to in the heading of this article shall be zero.



## Art 77

Until the fiscal year 2004, the minimum resources applied in public health activities and services shall be equivalent to:

- I. in the case of the Union:
  - a. in the year 2000, the amount employed in public health activities and services in fiscal year 1999, increased by a minimum of five percent;
  - b. in the years 2001 to 2004, the value determined for the prior year, corrected by the nominal variation in the Gross Internal Product (PIB);
- II. in the cases of the States and the Federal District, twelve percent of the amount of the tax collections referred to in art. 155 and the resources dealt with in arts. 157 and 159, subparagraph I, a, and subparagraph II, deducting the amounts transferred to the respective Counties; and
- III. in the case of the Counties and the Federal District, fifteen percent of the amount of the tax collections referred to in art. 156 and the resources dealt with in arts. 158 and 159, subparagraph I, b, and § 3°.

§1°. States, the Federal District and Counties applying lesser percentages than those fixed in subparagraphs II and III must gradually elevate these percentages by fiscal year 2004, reducing the difference by at least by one-fifth annually, so that starting in 2000, their applications shall be at least seven percent.

§2°. From the resources of the Union determined in accordance with this article, a minimum of fifteen percent shall be applied to basic health activities and services in the Counties according to population, as provided by law.

§3°. The resources of States, the Federal District and Counties destined for public health activities and services and those transferred by the Union for the same purpose shall be applied by means of the Health Fund, which shall be accompanied and supervised by the Health Council, without prejudice to the provisions of art. 74 of the Federal Constitution.

§4°. In the absence of the complementary law referred to in art. 198, § 3°, starting in fiscal year 2005, the Union, States, Federal District and Counties shall apply the provisions of this article.

## Art 78

Except for the credits defined by law as small amounts, those of a support nature, those dealt with in art. 33 of the Transitional Constitutional Provisions Act and their complementary provisions, and those that have had their respective funds liberated or deposited with the court, the judicial orders of payment pending on the date of the promulgation of this Amendment and those stemming from initial actions adjudicated by December 31st, 1999, shall be liquidated in currency at their real value, plus legal interest, in annual equal and successive installments over a maximum period of ten years. These credits may be assigned.

§1°. At the discretion of the creditor, the installment may be broken down into parts.

§2°. If not liquidated by the end of the referred to fiscal year, the annual installments referred to in the heading of this article may be used for payment of the debtor entity's taxes.

§3°. The period referred to in the heading of this article shall be reduced by two years in cases of judicial orders of payment arising from expropriation of the creditor's residential real property, provided that this was duly proven to be the condemnee's only property at the time of turning over possession.

§4°. At the request of the creditor, the President of the competent Tribunal shall require or determine the attachment of financial resources of the entity against which execution has been made, in an amount sufficient to satisfy the installment, whenever the period has past, or if there is an omission in the budget or a failure to respect the right of precedence.

## Art 79

The Fund for the Combat and Eradication of Poverty is created within the sphere of the Federal Executive, effective until the year 2010\* [extended indefinitely by Amendment No. 67 of Dec. 22, 2010]. The Fund is to be regulated by a complementary law whose purpose is to make it viable for all Brazilians to have access to dignified levels of subsistence. The Fund's resources shall be applied to supplement nutrition, housing, education, health, reinforcement of family income and other social interest programs designed to improve the quality of life.

## Sole Paragraph

The Fund provided for in this article shall have an Accompanying Consultative Council with participation by representatives of civil society, as provided for by law.

## Art 80

The Fund for the Combat and Eradication of Poverty shall consist of:

- I. a portion of the product of tax receipts corresponding to a surtax of eight hundredths of one percent, applicable from June 18, 2000 to June 17, 2002, on the social contribution rate set out in art. 75 of the Transitional Constitutional Provisions Act;
- II. the part of the product of tax receipts corresponding to a surtax of five percentage points on the Tax on Industrialized Products (IPI) rate, or any tax that may replace it, incident upon superfluous products and applicable until the extinction of the Fund;
- III. the product of the receipts of the tax set out in art. 153, subparagraph VII of the Constitution;
- IV. budgetary appropriations;
- V. donations of whatever nature from individuals or legal entities, national or foreign;
- VI. other receipts to be defined in the regulations of this Fund.

§1°. The provisions of arts. 159 and 167, subparagraph IV of the Constitution, as well as any other unlinking of budgetary resources, do not apply to the resources that make up the Fund dealt with in this article.

§2°. During the period between June 18, 2000 and the entry into force of the complementary law referred to in art. 79, the receipts stemming from the provisions of subparagraph I of this article shall be totally repassed to the Fund, preserving its real value in federal public securities, progressively redeemable after June 18, 2000, as provided for by law.

## Art 81

A Fund is created, constituted with the resources received by the Union from privatization of mixed-capital companies or firms controlled, either directly or indirectly, by the State, when the operation involves alienation of respective shareholder control to a person or entity that is not a part of the public administration, or the shareholder participation remaining after alienation. Starting on June 18, 2002, the earnings generated by this Fund shall revert to the Fund for the Combat and Eradication of Poverty.

§1°. In case the amount actually provided for in the earnings transferred to the Fund for the Combat and Eradication of Poverty, in accordance with this article, is less than four billion reais, the difference shall be completed in the form of art. 80, subparagraph IV, of the Transitional Constitutional Provisions Act.

§2°. Without prejudice to the provision of § 1°, the Executive shall earmark for the Fund referred to in this article other receipts stemming from alienation of property of the Union.

§3°. Organization of the Fund referred to in the heading, transference of resources to the Fund for the Combat and Eradication of Poverty, and the other provisions referring to § 1° of this article shall be regulated by law. The provision of art. 165, § 9°, subparagraph II of the Constitution shall not be applied.

## Art 82

The States, the Federal District, and the Counties shall institute Funds for the Combat of Poverty, with the resources dealt with in this article and others that shall come to be earmarked for them. These Funds shall be managed by entities in which civil society participates.

§1°. For financing of State and District Funds, a surcharge of up to two percentage points may be created on the rate for the Tax on the Circulation of Merchandise and Services (ICMS) on superfluous products and services and in the conditions defined in the complementary law dealt with in art. 155, § 2°, XII, of the Constitution. The provision of art. 158, IV of the Constitution does not apply to this percentage.

§2°. For financing of County Funds, a surcharge may be created of up to one-half of one percent on the rate of the Tax on Services, or the tax that may replace it, on superfluous services.

## Art 83

Federal law shall define the superfluous products and services referred to in arts. 80, II, and 82, § 2°.

## Art 84

The provisional assessment on transactions or transference of securities, credits or rights of a financial nature, provided for in arts. 74, 75 and 80, I, of this Transitional Constitutional Provisions Act, shall be collected until December 31, 2004.

§1°. The efficacy of Law No. 9.311 of October 24, 1996, as modified, shall be extended until the date referred to in the heading of this article.

§2°. The proceeds from the collection of the social assessment dealt with in this article shall be destined, in corresponding part, at the rate of:

- I. twenty one-hundredths of one percent to the National Health Fund for the financing of health activities and services;

- II. ten one-hundredths of one percent to funding social security;
- III. eight one-hundredths of one percent to the Fund for the Combat and Eradication of Poverty dealt with in arts. 80 and 81 of this Transitional Constitutional Provisions Act.

§3°. The rate of the assessment dealt with in this article shall be:

- I. thirty-eighth one-hundredths of one percent in the fiscal years 2002 and 2003;
- II. revoked.

## Art 85

As of the thirtieth day from the publication date of this Constitutional Amendment, the assessment referred to in art. 84 of this Transitional Constitutional Provisions Act shall not be imposed on these transactions:

- I. On current deposit accounts, specially opened and exclusively utilized for transactions of:
  - a. clearing houses and those rendering services of clearing and liquidation dealt with in the sole paragraph of art. 2 of Law No. 10.214 of March 27, 2001;
  - b. securitization companies dealt with by Law No. 9.514 of November 20, 1997;
  - c. stock corporations with the exclusive purpose of acquisition of credits from financial market transactions;
- II. deposits to checking accounts relating to:
  - a. transactions for the purchase or sale of shares, performed in places or systems of negotiation on stock markets or on the organized over-the-counter market;
  - b. contracts tied to shares or share indexes, in their diverse modalities, negotiated on stock markets, for merchandise or for futures;
- III. foreign investors' accounts relating to entry into the Country and remittances abroad of financial resources employed exclusively in transactions and contracts referred to in subparagraph II of this article.

§1°. The Executive shall regulate the provisions of this article in a period of thirty days from the publication date of this Constitutional Amendment.

§2°. The provisions of subparagraph I of this article shall apply only to transactions set out in an act of the Executive from among those that constitute the social object of the referred to entities.

§3°. The provisions in subparagraph II of this article shall apply only to operations and contracts carried out by means of financial institutions, securities brokers or distributors, and commodities' brokers.

## Art 86

Debts of the federal, state, district or county treasuries stemming from final non-appealable judgments shall be paid in accordance with the provisions of art. 100 of the Federal Constitution. The rule of installment payments established in the heading of art. 78 of this Transitional Constitutional Provisions Act shall not apply to them if they cumulatively meet the following conditions:

- I. Judicial orders of payment have been issued for them;
- II. They meet the definition of small value in the law dealing with § 3° of art. 100 of the Federal Constitution or by art. 87 of this Transitional Constitutional Provisions Act;
- III. they are awaiting payment, totally or partially, on the publication date of this Constitutional Amendment.

§1°. The debts referred to in the heading of this article, or their respective balances, shall be paid in the chronological order of presentation of their respective judicial orders of payment with precedence given to those of the greatest value.

§2°. The debts referred to in the heading of this article that have still not been partially paid in the terms of art. 78 of this Transitional Constitutional Provisions Act may be paid in two annual installments if the law so provides.

§3°. Observing the chronological order of presentation, the debts of a support nature provided for in this article shall have precedence for payment over all others.

## Art 87

Until the official publication of the respective definitive laws by entities of the Federation, for the purposes of § 3° of art. 100 of the Federal Constitution and art. 78 of this Transitional Constitutional Provisions Act, observing the provisions of § 4° of art. 100 of the Federal Constitution, debts or obligations consigned in a judicial order of payment shall be considered of small value when they have a value equal or inferior to:

- I. forty minimum wages, if against the Treasury of the States and the Federal District;
- II. thirty minimum wages, if against the Treasury of the Counties.

## Sole Paragraph

If the value of the execution exceeds what has been established in this article, payment shall always be made by means of a judicial order of payment, but the party seeking execution has the option of waiving credit for the value in excess thereof in order to opt for payment of the balance without a judicial order of payment in the manner provided for in § 3° of art. 100.

## Art 88

So long as a complementary law does not regulate the provisions of subparagraphs I and III of § 3° of art. 156 of the Federal Constitution, the tax referred to in subparagraph III of the heading of the same article:

- I. shall have a minimum rate of two percent except for services referred to items 32, 33 and 34 of the List of Services attached to Decree Law No. 406 of December 31, 1968;
- II. shall not be subject to concession of exemptions, incentives or benefits that result, directly or indirectly, in reduction of the minimum rate established in subparagraph I.

## Art 89

Career members of the military police and municipal employees of the ex-Federal Territory of Rondônia, who duly prove that in the regular exercise of their functions they performed services in that ex-Territory on the date it was transformed into a State, as well as the employees and Military Police covered by the provisions of art. 36 of Complementary Law No. 41 of December 22, 1981, and those regularly admitted into the personnel of the State of Rondônia prior to the date of the taking of office by the first elected Governor, on March 15, 1987, shall constitute, via option, terminated personnel of the federal administration, assuring the rights and advantages inherent therein, prohibiting payment in any respect for remuneratory differences.

§1°. The members of the Military Police shall continue to perform services to the State of Rondônia, in the condition of assignees, submitted to the Military Police corporations, observing the powers of their functions compatible with their degree in the hierarchy.

§2°. The employees referred to in the heading shall continue performing services to the State of Rondônia in the condition of assignees, until their approval by an organ or entity of the direct federal administration, autarchy or foundation.

## Art 90

The period provided for in the heading of art. 84 of this Transitional Constitutional Provisions Act shall be extended until December 31, 2007.

§1°. The period in which Law 9.311 of October 24, 1996, as modified, is in force shall be extended until the date referred to in this article's heading.

§2°. Until the date referred to in this article's heading, the rate of the contribution dealt with in art. 84 of this Transitional Constitutional Provisions Act shall be thirty-eight one-hundredths of one percent.

## Art 91

The Union shall turn over to the States and the Federal District the amount defined in a complementary law, in accordance with the criteria, periods and conditions determined therein, being able to consider primary and semi-manufactured product exports, the relation between exports and imports, the credits stemming from purchases destined for fixed assets and the effect of maintenance and approval of a credit for the tax referred to in art. 155, § 2°, X, a.

§1°. From the amount of resources allocated to each State, seventy-five percent belongs to the State itself, and twenty-five percent to its Counties, distributed in accordance with the criteria referred to in art. 158, sole paragraph, of the Constitution.

§2°. Delivery of the resources provided for in this article shall continue, in accordance with the definitions of a complementary law, until at least eighty percent of the proceeds of the tax referred to in art. 155, II, is destined for the State where the consumption of the merchandise, goods or services occurs.

§3°. Until the complementary law dealt with in the heading is enacted, in substitution for the resource allocation system provided therein, the resource allocation system provided for in art. 31 in the annex of the Complementary Law No. 87 of September 13, 1996, with the wording given to it by Complementary Law No. 115 of December 26, 2002, shall remain in force.

§4°. The States and the Federal District shall present to the Union, in accordance with instructions issued by the Ministry of the Treasury, information relating to the tax dealt with in art. 155, II, declared by taxpayers that carry out transactions or perform services destined for abroad.

## Art 92

The period fixed in art. 40 of this Transitional Constitutional Provisions Act shall be increased by ten years.

## Art 93

The provisions of art. 159, III, and § 4° shall go into force only after enactment of the law dealing with the referred to subparagraph III.

## Art 94

The special regimes for taxation of micro-firms and small firms belonging to the Union, States, Federal District and Counties shall cease upon the entry into force of the regime provided for in art. 146, III, d, of the Constitution.

## Art 95

Those born abroad between June 7, 1994, and the date of promulgation of this Constitutional Amendment, who are children of a Brazilian father or mother, may be registered at the appropriate Brazilian embassy or consulate or, if they come to reside in the Federative Republic of Brazil, at a registry office.

## Art 96

The acts of creation, merger, incorporation and dismantling of Counties whose laws have been published by December 31, 2006, are validated, taking into account the requirements established in the respective State legislation at the time of their creation.

## Art 97

Until the complementary law dealt with in § 15° of art. 100 of the Federal Constitution is enacted, the States, Federal District and Counties that, on the date of the publication of this Constitutional Amendment, have failed to pay past due precatórios with respect to their direct and indirect administration, including those issued during the period of the special regime instituted by this article, shall make these payments in accordance with the norms that are established below. The provisions in art. 100 of this Federal Constitution are inapplicable except for §§ 2°, 3°, 9°, 10°, 11°, 12°, 13° and 14°, without prejudice to agreements from conciliatory transactions already formalized on the date of the promulgation of this Constitutional Amendment.

§1°. By an Executive Act, the States, Federal District and Counties subject to the special regime with which this article deals may opt:

- I. for deposit in a special account the amount referred to in § 2° of this article; or
- II. for adoption of a special regime for a period of up to (15) fifteen years, in which case the percentage to be deposited in this special account referred to in § 2° of this article shall correspond annually to the total amount of the precatórios owed, increased by the official index for basic remuneration in the savings accounts and simple interest at the same percentage rate as interest paid on savings account for the purposes of compensation for delay, excluding the incidence of compensatory interest, diminished by the amortizations and divided by the number of years remaining in the special regime of payment.

§2°. In order to pay off the precatórios, whether past due or coming due, by the special regime, the States, Federal District and Counties that owe them shall deposit monthly, in a special account created for such purpose, 1/12 (one-twelfth) of the amount calculated in percentage terms of their respective current liquid receipts, determined in the second month prior to the month of payment. This percentage, calculated at the moment of option for the regime and maintained fixed until the final period to which § 14° of this article refers, shall be:

- I. for the States and for the Federal District:
  - a. a minimum 1.5% (one and one-half percent), for States in the regions of the North, Northeast and the Center-West, as well as the Federal District, or for those States whose stock of pending precatórios for their direct and indirect administrations amounts to up to 35% (thirty-five) percent of current net receipts;
  - b. a minimum of 2% (two percent) for States in the regions of the South and Southeast whose stock of pending precatórios for their direct and indirect administrations amounts to more than 35% (thirty-five percent) of their total current net receipts.
- II. for the Counties:
  - a. a minimum 1% (one percent) for Counties in the regions of the North, Northeast and Center-West or whose stock of pending precatórios of their direct and indirect administrations amounts to more than 35% (thirty-five percent) of current net receipts;
  - b. a minimum 1.5% (one and one-half percent) for the Counties of the regions of the South and Southeast whose stock of pending precatórios for their direct and indirect administration amounts to more than 35% (thirty-five percent) of their current net receipts.

§3°. For the purposes of this article, current net receipts shall be understood as the sum of receipts from taxes, patrimony, industry, fish farming, contributions and services, current transfers and other current receipts, including those stemming from § 1° of art. 20 of the Federal Constitution, verified in the period including the reference month and the 11 (eleven) prior months, excluding duplications, and deducting:

- I. for States, payments delivered to the Counties by constitutional determination;
- II. for States, Federal District and Counties, the contribution for their employees to funding their system of social security and social assistance, and receipts stemming from financial compensation referred to in § 9° of art. 201 of the Federal Constitution.

§4°. The special accounts dealt with in §§ 1° and 2° shall be administered by the local Tribunal of Justice for payment of precatórios issued by the tribunals.

§5°. The resources deposited in the special accounts dealt with in §§ 1° and 2° of this article may not be returned to the debtor States, Federal District and Counties.

§6°. At least 50% (fifty percent) of the resources dealt with in §§ 1° and 2° of this article shall be utilized for the payment precatórios in the chronological order of presentation, respecting the preferences defined in § 1°, for requisitions from the same year and in § 2° of art. 100, for requisitions for all years.

§7°. In cases in which one cannot establish the chronological precedence between two precatórios, the precatório of lesser value shall be paid first.

§8°. Application of the remaining resources shall depend upon the option exercised by Executive Act by the debtor States, Federal District and Counties, obeying the following form, which may be applied in isolation or simultaneously:

- I. destined for payment of precatórios by auction;



- II. destined for the payment on sight of precatórios that were not paid in the form of § 6° and subparagraph I, in the sole order of the increasing value of the precatório;
- III. destined for payment in direct agreement with the creditors in the form established by the debtor entity's own law, which may provide for the creation and form of functioning of a chamber of conciliation.

§9°. The auctions referred to in subparagraph I of § 8° of this article:

- I. shall be realized by means of an electronic system by an entity authorized by the Securities and Exchange Commission or by the Central Bank of Brazil;
- II. shall permit proof of precatórios, or part of each precatório indicated by its owner, with respect to which there is not pending in the Judiciary an appeal or challenge of any nature, permitted by initiative of the Executive for compensation of liquid and certain debts, whether inscribed or not in the active debt and constituted against the original debtor by the debtor's Public Treasury until the date of the expedition of the precatório, except for those whose execution is suspended in the terms of legislation, or which has been discounted in the terms of § 9° of art. 100 of the Federal Constitution;
- III. shall occur by means of a public offer to all creditors qualified by the respective debtor federative entity;
- IV. considered automatically qualified by the creditor who satisfies or is included in subparagraph II;
- V. shall be realized as many times as necessary in function of the amount available;
- VI. competition for the part of the total value shall occur at the criterion of the creditor, as a discount on its value;
- VII. the type of discount may be associated with the highest volume offered cumulatively or not with the highest percentage discount; a maximum value may be fixed by the creditor, or by other criteria to be defined in the invitation to bid;
- VIII. the mechanism for the formation of price shall be set out in the invitation to bid published for each auction;
- IX. partial payment a precatório shall be confirmed by the respective Tribunal that issued it.

§10°. In the case of the failure to liberate the resources dealt with in subparagraph II of § 1°, and §§ 2° and 6° of this article in a timely fashion;

- I. an amount in the accounts of the debtor States, Federal District and Counties shall be attached by order of the President of the Tribunal referred to in § 4° up to the limit of the value that was not liberated;
- II. alternatively, there may be constituted, by order of the President of the requested Tribunal, in favor of the creditors of the precatórios and against the owing States, Federal District and Counties, a liquid and certain right, that may be applied automatically and independent of regulation, to compensate automatically liquid debts levied by the latter against the former; if there is a balance in favor of the creditor, the value shall be automatically utilized to satisfy payment of taxes of the owing State, Federal District and Counties, until they are compensated;
- III. the head of the Executive shall respond in the form of the legislation for fiscal liability and improper administration;
- IV. so long as the omission continues, the debtor entity;
  - a. may not contract a foreign or domestic loan;
  - b. shall be impeded from receiving voluntary tranferences;

V. the Union shall retain the amounts it is to transfer with respect to the Fund of Participation of the States and the Federal District and the Fund of Participation of the Counties, and shall deposit those amounts in special accounts referred to in § 1°; utilization shall obey what has been provided for in § 5°, both sections refer to this article.

§11°. In the case of precatórios relating to several creditors suing jointly, apportioning of the amount is permitted by the Tribunal that issued the precatório and shall award the creditor the portion of the total value to which he has a right, not applying in the case the rule of § 3° of art. 100 of the Federal Constitution.

§12°. If the law to which § 4° of art.100 refers is not published within 180 (one hundred and eighty) days, counting from the date of publication of this Constitutional Amendment, for the referred to purposes, with respect to the debtor States, Federal District and Counties, the omitted regulatory value shall be considered as:

- I. 40 (forty) minimum wages for the States and for the Federal District;
- II. 30 (thirty) minimum wages for the Counties.

§13°. When debtor States, Federal District and Counties are paying off precatórios under the special regime, they are immune from attachment except in the case of failure to liberate in a timely fashion the resources referred to in subparagraph II of §§ 1° and 2° of this article.

§14°. The special regime for paying precatórios provided for in subparagraph I of § 1° shall be in force so long as the value of the precatórios owed is superior to the value of the resources linked under the terms of § 2°, both in this article, or for a fixed period of up to 15 (fifteen) years, in the case of the option provided for in subparagraph II of § 1°.

§15°. The precatórios that are being paid in installments in the form of art. 33 or of art. 78 of this Transitional Constitutional Provisions Act and are still pending for payment shall enter the special regime with an updated value of the unpaid installments relative to each precatório, as well as the balance of the judicial and extra-judicial accords.

§16°. Starting with the promulgation of this Constitutional Amendment, updating the requisitioned amounts, until the date of effective payment, regardless of their nature, shall be made by the official index for basic remuneration in savings accounts, and for the purposes of compensation for delay, shall bear simple interest at the same percentage as interest paid by savings accounts. Compensatory interest shall be excluded.

§17°. The amount that exceeds the limit provided for in § 2° of art. 100 of the Federal Constitution shall be paid, during the period the special regime is in force, in the manner provided for in §§ 6° and 7° or in subparagraphs I, II and III of § 8° of this article. The amounts spent to comply with the provisions of § 2° of art. 100 of the Federal Constitution shall be computed for the effects of § 6° of this article.

§18°. While the special regime to which this article refers is in force, original holders of precatórios who are older than 60 (sixty) years on the date of the promulgation of this Amendment shall also have the preference referred to in § 6°.

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