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**DIGEST OF THE
1988 BRAZILIAN CONSTITUTION**

CANADIAN EMBASSY
BRASILIA, BRAZIL
DECEMBER 1988

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- Emergency State
- State of Siege
- State of Siege

DIGEST OF THE
1988 BRAZILIAN CONSTITUTION

The following collection of briefs prepared by the Canadian Embassy in Brasilia is a digest of the 1988 Brazilian constitution. This digest does not attempt to translate or summarize the entire 193 page document. Instead, it paraphrases in language understandable to Canadian readers the major provisions of Brazil's new constitution. Given the detail of this document, this digest can serve as a basic political science primer on the structure of the current Brazilian political system. For a more exact legal reading of the constitution's provisions, readers should consult the original document.

The briefs are organized under the following headings which cut across the chapter divisions of the actual constitution. For a concordance between these briefs and the chapters of the constitution see Brief 14.

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BRIEF 1

THE DRAFTING OF THE 1988 BRAZILIAN CONSTITUTION

The new constitution promulgated on October 5th 1988, is the eighth in Brazilian history, since the country declared its independence in 1822. The first constitution in 1824 established Brazil as a monarchy, under an emperor. The second, formalized Brazil's transition to a republic in 1891. The third, and fourth dispensed with the loose federal oligarchy that ruled Brazil from 1891 to 1930 and were imposed on Brazil by the dictator Getulio Vargas in 1934 and 1937. The fifth re-established a modern liberal republican structure for Brazil in 1946, following the overthrow of Vargas by the Brazilian army at the end of the Second World War. The sixth was imposed by the military in 1967, following their seizure of power three years before; and it was substantially modified in a seventh document after the military closed the Congress in 1969. The latest constitution, the eighth, is a reversion to the liberal republican spirit of the 1946 constitution, but is updated in its sections dealings with civil liberties, economic rights and social values to reflect the modernization of Brazilian society in the 1970s and 1980s.

The promulgation of the new constitution consolidates the "New Republic" which came into being on March 15th 1985, when Brazil's last military president left office after twenty one years of military rule. One of the first important decisions of the Sarney government was that a Constituent Assembly would be convened, comprised of all sitting members of the Senate and Chamber of Deputies, following the first Congressional elections under the New Republic in November 1986. In those elections, the leading opposition party under the military, the Brazilian Democratic Movement Party, known as the PMDB, won 301 of the 558 seats in the Senate and the Chamber of Deputies. The chairman of this party, veteran opposition leader Ulysses Guimaraes was elected as the President of the Constituent Assembly, which began its work in February 1987.

A nineteen month drafting process ensued from February 1987 until September 1988. The first two months were spent in determining the rules of procedure for the Assembly. Twenty-four substantive sub-commissions were then formed to prepare draft chapters of the document, which in turn reported to eight commissions. Their reports were referred to a rapporteur, Bernardo Cabral, who prepared a complete draft,

BRIEF 1 cont.

which in turn was examined in detail by a 97 member Systematization Commission. The Commission's report was then reviewed article by article and substantially modified in a full plenary session which lasted from February until June 1988. After a re-editing job by Cabral in July, the plenary went through the text again in August and finally finished their work on September 1st. The final version of the text was approved on September 22nd by an overwhelming majority of Congress members and was promulgated in a final session of the Assembly in Brasilia on October 5th, 1988.

In the tradition of Latin American constitutions, the new Brazilian constitution covers far more topics than the distribution of powers between levels and branches of government and the rights of the individual vis-a-vis society and the state - which is the essence of the 1982 Canadian constitution, and others designed within an Anglo-American political tradition. In its 245 articles and 76 "transitional clauses" (one-time provisions, largely dealing the implementation of the new document), the Brazilian constitution covers such diverse subjects as family law, communications policy, indian land claims, interest rates, and environmental protection. The new Brazilian constitution is better thought of as a constitution in the classic Anglo-American sense, combined with a package of omnibus social and economic legislation.

There are two reasons for the length and complexity of the document. First, as Brazilians will readily admit, the historic instability of legislative and judicial institutions in Brazil prompts Brazilians desire to entrench any and every important social and economic principle in the fundamental law of the land. Second, as a result of twenty-one years of military rule the Constituent Assembly was populated by democrats in a hurry, who were not prepared to wait to pass ordinary legislation to carry out the social changes they believed had been suppressed under the military regime. Furthermore, since every political faction from the extreme left to the extreme right had reforms they wished to introduce, no-one was prepared to let their opponents dictate the constitutional principles that would set the context for ordinary legislation. As a result every major social, economic and political problem confronting the New Republic was at least debated, if not resolved, by the Constituent Assembly.

This lengthy drafting process taxed the patience of professional politicians, and exceeded the patience of the general public - but it did serve the essential purpose of ensuring that every political tendency was given ample

opportunity to see whether it could mobilize majority support for its favorite issues. In the end, the final document represented an elaborate set of trade-offs which fully pleased no-one but which offered something to every faction. As the balance of forces in Congress changes through subsequent elections, there will be new pressures to change the text. Nevertheless, the document represents a triumph of practical democracy and is considered by all Brazilians to be an improvement over the more authoritarian constitution the civilian government inherited from the military in 1985.

The document will likely remain in its current form for at least five years, while Congress passes the complementary legislation required by many articles of the text in order to define and implement certain constitutional provisions. In October 1993, both the Senate and the Chamber of Deputies will sit in a joint session. A simple majority vote at this session will be sufficient to re-open the Constitution to further revisions. Until then, any article of the constitution can be amended by a secret vote of 60% of the membership of both Chambers of Congress.

- Brief 3: Elimination of the President's power to issue laws by decree.
- Brief 1: Full Congressional powers to review and amend the budget.
- Brief 3: Congressional powers to review major sources of Presidential patronage, including appointments to major offices, awards of radio and television licenses and transfers of public lands.
- Brief 3: Senate powers of review over all foreign debt operations.
- Brief 3: Congressional power to over-ride a Presidential veto, through a simple majority vote.
- Brief 3: Separation of the offices of the Advocate-General, who represents the federal government, and the Attorney-General, who represents society's interests against the state.
- Brief 4: A phased increase in tax transfers from 33% to 47% of the federal government's total from income and industrial product taxes, to state and municipal government.
- Brief 4: The creation of three new states.
- Brief 5: A five year mandate for the President.
- Brief 8: A two round run-off electoral system for the President, state governors and the mayors of major cities.
- Brief 8: Extending the franchise to 18 year olds and illiterates.

BRIEF 2

INNOVATIONS OF THE 1988 CONSTITUTION

Brazil's new Constitution retains the federal system and the Presidential system of government, modeled after the United States, that Brazil has had since 1891. During the drafting process the two most fundamental political reforms proposed - establishing single member constituencies and the office of a Prime Minister accountable to Congress - were rejected by substantial majorities. The result is a document that reverses the authoritarian provisions of the two preceding military constitutions, without proposing a major break from Brazil's republican traditions. Many of the constitution's economic, social and human rights provisions already exist in Brazilian law; the new document simply gives them constitutional protection. Nevertheless, the new constitution breaks new ground in many areas. The following is our list of its most important innovations and the attached briefs in which they are described.

- Brief 3: Elimination of the President's power to issue laws by decree.
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- Brief 4: The creation of three new states.
- Brief 5: A five year mandate for the President.
- Brief 5: A two round run-off electoral system for the President, state governors and the mayors of major cities.
- Brief 5: Extending the franchise to 16 year olds and illiterates.

BRIEF 2 cont.

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- Brief 6: Creating a new Council of the Republic, which includes non-government representatives, to advise the President on the use of his emergency powers.
- Brief 6: Adding Congressional leaders to the membership of the National Defence Council (formerly known as the National Security Council)
- Brief 7: Broad constitutional entrenchment of many civil liberties.
- Brief 7: Granting individuals the rights to obtain their government files.
- Brief 8: Reserving majority ownership in all mining ventures to Brazilian companies with majority Brazilian capital.
- Brief 8: Setting a 12 percent ceiling on real interest rates.
- Brief 9: Guaranteeing the right to strike for all workers.
- Brief 9: Prohibiting government intervention in labour unions.
- Brief 9: Giving Congress the power to set the minimum salary.
- Brief 9: Guaranteeing one minimum salary to all workers eligible for unemployment insurance, social welfare and retirement benefits.
- Brief 10: Exempting productive land from land reforms measures.
- Brief 11: Defining the government's requirements to protect the environment.
- Brief 12: Providing full legal, political and land rights for Indians.
- Brief 13: Declaring that Brazil will pursue Latin American integration as an aim of its foreign policy.

CONGRESS:

- To send a "State of the Union" message to Congress at the start of each annual legislative session regarding the government's plans;
- To submit to Congress the government's budget and multi-year investment plan;
- To send the government's accounts to Congress within 60 days of the opening of next year's legislative session;

FUNCTIONS OF CONGRESS:

The National Congress is composed of the two elected chambers, the Senate and the Chamber of Deputies. Normally they will meet separately; but they will meet together as the National Congress to:

- Inaugurate the legislative session;
- receive the oath of office of the President and Vice-President;
- deliberate on Presidential vetoes;

BRIEF 3

THE EXECUTIVE, LEGISLATIVE AND JUDICIAL POWERS

FUNCTIONS OF THE PRESIDENCY:

- The President has the unrestricted right to:
- Name Ministers of State, chiefs of the Armed Forces and all public service positions not designated by law for Congressional approval;
 - Exercise with his Ministers of State the highest level of public administration;
 - Act as Commander in Chief of the Armed Forces;
 - Maintain diplomatic relations and accredit foreign representatives;

Subject to Congressional oversight powers (as described below), the President has the powers of initiative to:

- To propose and veto legislation;
- To nominate ambassadors, supreme court and superior court judges, the Attorney-General, the President and governors of the Central Bank, and three ministers of the Federal Accounts Tribunal;
- Declare states of defence, of siege or of intervention which suspend normal individual rights and legal powers of lower levels of government;
- Declare war, celebrate peace and permit foreign forces to transit through or temporarily occupy national territory;
- Declare provisional legal measures and delegated laws;

The President has the following responsibilities to Congress:

- To send a "State of the Union" message to Congress at the start of each annual legislative session regarding the government's plans;
- To submit to Congress the government's budget and multi-year investment plan;
- To send the government's accounts to Congress within 60 days of the opening of next year's legislative session;

FUNCTIONS OF CONGRESS:

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- deliberate on Presidential vetoes;

BRIEF 3 cont.

- vote to approve Presidential declarations of a state of defence, state of siege or state of intervention;
- and on October 5th 1993, to decide whether to reconvene the Constituent Assembly to revise the present Constitution. (Art 57, DT 3)

The annual session of Congress will run from February 15th until June 30th and from August 1st to December 15th and shall not end until the government's budgetary law has been passed (see below).

THE LEGISLATIVE PROCESS

The legislative process includes the following legal measures:

- Constitutional amendments, which require approval of 60% of the membership of both the Senate and the Chamber of Deputies;
- Complementary laws, which implement general norms outlined in the constitution, which require the approval of 50% of the total membership of both the Senate and the Chamber of Deputies;
- Ordinary laws, which require a approval by a majority of present members of both the Senate and Chamber of Deputies;
- Provisional measures with the effect of law, which the President can decree in the case of urgent need. These measures must be approved by Congress and converted into ordinary law within 30 days or they cease to be valid.
- Delegated laws, to be elaborated by the President at the request of a majority of both chambers of Congress. (Arts 59, 60, 62, 69);

Any Deputy or Senator may propose a piece of legislation. Once approved in the chamber in which it was proposed, it must go to the other chamber for approval before becoming law. If amended in the second chamber, it must return to the originating chamber for approval. (Art 65)

Draft laws may be presented by the President, the Attorney-General, judges of the Supreme and Superior federal courts to the Chamber of Deputies for consideration. In addition, draft laws may be presented by public petition to the Chamber of Deputies, if they receive the signature of one percent of the electorate, representing at least three tenths of one percent of the electorate in at least five states. (Art 61)

Draft constitutional amendments must be proposed by one third of the members of the Senate or the Chamber of Deputies, the President or by majority vote of more than half

BRIEF 3 cont.

of the state legislatures. (Art 60)

Only the President may present draft laws concerning the structure, functions, administration, staffing and rates of pay for government ministries or the Armed Forces. (Art 61)

Once a law has been passed by both chambers of Congress, the President has 15 days to approve it. If he chooses to veto it, in whole or in part, Congress must consider the law again within 30 days in a joint session of both chambers. A Presidential veto can be over-riden by an absolute majority of the membership of the two chambers, through a secret vote. (Art 66)

CONGRESSIONAL OVERSIGHT POWERS:

The President must obtain Congressional approval for:

- Declarations of war or peace and granting the right to foreign armed forces to pass through or remain in national territory;
- Declarations of a state of defence, of siege or of intervention;
- All international treaties or agreements;
- All nuclear activities;
- All awards of radio and television station licenses;
- All mining concessions on Indian lands;
- All transfers or concessions of public lands greater than 2500 hectares;
- All referendums or plebiscites;
- His absences from the country for more than 15 days; (Art 49)

The Senate must approve through a secret vote Presidential nominations for Supreme and Superior court judges, Ambassadors, the Attorney-General and the President and Directors of the Central Bank (Art 52);

The Senate, the Chamber of Deputies or any of their commissions may require the presence of any government minister to appear before them to answer questions on any predetermined topic (Art 50);

THE BUDGETARY PROCESS:

Through the legislative process described above, the National Congress has the power to legislate concerning:

- Taxation, collection and distribution of income;
- The government's annual budget, public debt credit operations and multi-year investment plans;
- National, regional and sectorial programs and plans;

BRIEF 3 cont.

- Emission of money and the size of the federal monetary debt;
- Creation and elimination of public service positions and restructuring of government ministries;
- Regulation of financial institutions and their operations (Art 48);

The Senate has the exclusive power to:

- Authorize external financial operations, including all foreign debt agreements, affecting all three levels of government;
- Set, based on a proposal by the president, a global limit for the total consolidated debt of all three levels of government;
- Establish global limits on the foreign and domestic credit operations and the granting of credit guarantees by all three levels of government, including public enterprises. (Art 52).

The Executive will submit to Congress a budgetary law establishing:

- a multi-year investment plan for the government's capital expenditures;
- a statement of budget directives for the next fiscal period indicating goals and priorities for tax collections and expenditures;
- and the annual budget, which will include the fiscal budget of all government ministries and agencies, the investment budget of all enterprises in which the government has a majority shareholding position and the social security budget.
- The proposed budgetary law shall be accompanied by a regionalized balance sheet, demonstrating income and expenses resulting from (Art 165)

The budgetary law shall be examined by a permanent joint committee Senators and Deputies, which will consider all amendments to the Executive's proposed law. Amendments will only be considered if they are compatible with the multi-year investment plan and the budgetary directives. They will also only be considered if indicate the source of the resources required elsewhere in the budget, and they may not entail cancelling personnel expenditures, debt servicing payments, or constitutionally mandated tax transfers to states or municipalities. (Art 166)

The Executive is prohibited from:

- initiating programs which are not included in its budgetary law;
- open a supplementary or special line of credit without

BRIEF 3 cont.

- prior legislative approval and without indicating the corresponding resources;
- making expenditures or taking on obligations which exceed the budget, if necessary supplemented by previously authorized special credits;
 - transferring resources from one program or government agency to another without prior legislative approval; (Art 167)

The Congress aided by the Federal Accounts Tribunal (an agency analogous to our Auditor-General) can review all federal government expenditures, including transfers to states and municipalities. The Tribunal will audit on Congress's behalf the annual government accounts presented by the President to Congress. The Tribunal can set deadlines for persons or organizations found engaged in unauthorized expenditures, and enforce legal sanctions in the case of irregular accounting or illegal expenditures. Of the nine ministers of the Tribunal, three are nominated by the President subject to Senate approval, and the other six are selected by the Congress. (Arts 70-73)

STRUCTURE OF THE JUDICIARY:

At the federal level there are three judicial tribunals: the Supreme Federal Tribunal comprised on eleven justices which serves as the supreme court and judges on constitutional issues; the Superior Tribunal of Justice comprised of thirty-three justices, which adjudicates disputes between different courts or between state authorities; and the Federal Regional Tribunals, which serve as courts of appeal. (Arts 101-109)

Below these there is a system of federal judges, empowered to hear any case in which public bodies, including the federal government are the plaintiffs or the defendants. The federal government is legally represented by the Advocate-General of the Republic, whose functions have been separated from those of the Attorney-General (see below). (Art 110)

In addition, at the federal level there are three systems of specialized tribunals: the Superior and Regional Labour tribunals, which conciliate and ultimately adjudicate all labour disputes; the Superior and Regional Electoral Tribunals, which hear cases concerning the electoral laws; and the Superior Military Tribunal, comprised of ten military justices and five civilian justice, which hears military crimes as defined by law. (Arts 111-123)

Finally, there is the important function known as the Public Ministry, which is headed by the Attorney-General. Lawyers of the Public Ministry serve as crown prosecutors in criminal cases. However they also serve as society's advocates against the state. They are empowered to bring suits challenging the constitutionality of acts of the Executive or Legislature. They can launch investigations and bring suits to protect public property, and the environment and other collective interests. They can investigate police activities and serve to defend in court the rights and interests of the Indian populations. (Arts 127-130)

Justices of all federal tribunals and the Public Ministry acquire lifetime tenure after two years in office and can only be removed from office by two third vote of the judicial body to which they belong. (Art 95, 128)

- All hydro-electric energy sources;
- All land traditionally occupied by Indians;

In addition, the federal government has its own lands (acquired through past purchase and legislation). State governments own any vacant land that does not belong to the federal government. (Art 30)

LEGISLATIVE POWERS

The federal government has exclusive powers to:

- Conduct foreign relations and national defence;
- Issue money;
- Maintain a postal service;
- Execute regional and national development plans;
- Maintain federal and frontier police services;
- Establish national plans for use of water resources, urban development and national highways;
- Exploit nuclear energy for exclusively peaceful purposes;

The federal government also has exclusive powers to regulate:

- Labour conditions;
- Foreign and inter-state commerce;
- Financial and insurance operations;
- Commercial advertising;
- Inter-state transport;
- Telecommunications and data processing;
- Energy;
- Mining;
- Employment insurance and social security;
- Immigration and citizenship;
- Rights of native populations; (Arts 22, 23)

BRIEF 4

THE FEDERAL SYSTEM

CONTROL OF TERRITORY

The federal government automatically owns:

- All land within 150 kms of the nation's land borders;
- All federal roads;
- Areas needed for protection of the environment;
- All rivers and other bodies of water that run along or flow across the nation's borders;
- All coastal beaches;
- The continental shelf and all marine resources within the exclusive economic zone;
- All sub-soil mineral resources;
- All hydro-electric energy sources;
- All land traditionally occupied by Indians;

In addition, the federal government has its own lands (acquired through past purchase and legislation). State governments own any vacant land that does not belong to the federal government. (Art 20)

LEGISLATIVE POWERS

The federal government has exclusive powers to:

- Conduct foreign relations and national defence;
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- Telecommunications and data processing;
- Energy;
- Mining;
- Employment insurance and social security;
- Immigration and citizenship;
- Rights of native populations; (Arts 21,22)

BRIEF 4 cont.

The federal government shares with state governments jurisdiction over: taxation, health, education, culture, environmental protection, agriculture, food distribution, housing, sanitation, social welfare programs and the activities of the civil police. In these fields, the federal government is limited to establishing general norms. Within these norms, state governments are free to pass supplementary legislation. Any subjects not specified by the constitution are reserved for state government legislation. (Arts 23,24,25)

Municipal governments may pass legislation on subjects of local interest to supplement federal or state legislation. They may provide local services in the fields of: public transport, pre-school and basic education, health care, land use and historic and cultural preservation. (Art 30)

TAXATION AND TRANSFERS

The federal government is empowered to tax:

- Imports and exports;
- Personal and corporate incomes;
- Industrialized products, not for export;
- Financial operations and insurance;
- Rural property;
- Large fortunes, to be defined by law; (Art 153,154)

State governments are empowered to tax:

- transfers of property, stocks or bonds at death;
- the value added from the circulation of goods, transportation and communications (excluding the circulation of industrialized products for export and petroleum products)
- imports of merchandise and services by firms in the state;
- motor vehicles; (Art 155)

Municipal governments are empowered to tax:

- Urban property;
- Transfers of real estate and property between living persons;
- Retail sale of all fuels, except diesel; (Art 156)

The federal government shall transfer 47 percent of the revenues it collects from taxes on incomes and industrialized products as follows:

- 21.5 percent to the states;
- 22.5 percent to the municipalities;
- 3 percent to regional institutions for financing programs for productive sectors in the Centre-West, North and Northeast (half of this total must be dedicated to the semi-arid Northeast); (Art 159)

The federal government shall also transfer to the states ten percent of the taxes it collects on industrialized products, in proportion to their share of industrial exports. However, no state may receive more than 20 percent of the total amount (under strict proportionality, Sao Paulo would undoubtedly receive more). In turn, the state governments must pass on 25 percent of the amount they collect from this source to their municipalities. (Art 159)

The federal government shall also transfer all income taxes the federal government collects on state and municipal government salaries back to the originating government. (Arts 157,158)

The state governments shall transfer to the municipalities:

- 50 percent of the death taxes they collect on rural property within the municipality;
- 50 percent of the motor vehicle taxes collected within the municipality;
- 25 percent of the value added tax on goods and services circulating within the municipality (Art 159)

CREATION OF NEW STATES (DTs 13-15)

A new state of Tocantins will be created from the northern half of the existing state of Goias. Elections will be held for all state representatives and the governor within 75 days of the promulgation of the new constitution. The mandates of these newly elected representatives will expire with the mandates of their counterparts in other states.

The Federal Territories of Roraima and Amapa will become full states on January 1st 1991, following the swearing into office of the governors elected on October 3rd 1990.

The federal territory of Fernando de Noronha will be re-incorporated into the state of Pernambuco.

BRIEF 5

ELECTORAL SYSTEM

EXECUTIVE ELECTIONS

VOTING RIGHTS

Voting is obligatory for literate persons between the ages of 18 and 70; Voting is optional for illiterates, persons between the ages of 16 and 18, and for persons over 70. (Art 14).

MANDATES OF PUBLIC OFFICES

The President and Vice-President have a five year mandate, starting on January 1st of the year following their election. Governors and Mayors have a four year mandate, starting on January 1st of the year following their election. Federal Deputies have a four year mandate. Federal Senators have an eight year mandate. (Arts 28,29,44,46,77)
The mandate of the incumbent President expires on March 15, 1990. The mandates of the incumbent Governors expire on March 15, 1991. The mandates of the incumbent Mayors expire on January 1st, 1989. (DT 4)

ELIGIBILITY TO HOLD OFFICE

Only native born Brazilians can serve as: President or Vice-President; President of the Chamber of Deputies or the Senate; justice of the Supreme Federal court; member of the diplomatic service; officer of the armed forces (Art 12).
The incumbent President, Governors and Mayors can not stand for immediate re-election. They can however run for subsequent terms. Federal Deputies and Senators are free to run for re-election. (Art 14)

Federal Senators or Deputies, Governors or Mayors can not occupy other elected offices or public service positions. Federal Senators and Deputies may however serve as federal Ministers or as Secretaries in State governments. In these cases elected substitute members will fill their legislative positions. (Arts 28,29,38,54,56).

In order to run for other positions, the incumbent President, Governors and Mayors must resign their current positions six months before the date of the election.
(Art 14)

Relatives by blood or marriage, up to the second degree, of the President, Governors and Mayors are ineligible to run

BRIEF 5 cont.

for office in the same jurisdiction, unless they have already been elected to office. (Art 14, DT4).

EXECUTIVE ELECTIONS

Elections for President, Vice-President, Governor and Mayor are scheduled 90 days before the mandates of the incumbents expire (i.e on November 15th 1989 for the next President and Vice-President; on November 15th 1990 for the next Governors; and on October 3rd for all subsequent elections). (Art 77, DT4)

Elections for President, Vice-President, Governor, and Mayor for municipalities of over 200,000 people will take place in two rounds. If no candidate wins an absolute majority in the first round, a second election between the two candidates who received the most votes will be held within 20 days of the proclamation of the result of the first round. The winner of the second round is the candidate who receives a majority of the votes. (Art 77)

Vice-Presidential and Presidential candidates must be registered by a political party, run together and be elected on the same ticket. (Art 77)

LEGISLATIVE ELECTIONS

Federal Deputies and Senators are elected by state on the basis of proportional representation. The number of deputies from each state will be in proportion to its population, as determined by law. However no state may have less than eight Deputies or more than seventy Deputies. Every state will have three Senators. All Deputy positions from each state come up for election every four years. The number of Senatorial positions up for election from each state will alternate: two in one election and one in the next election. (Arts 44,45,46)

POLITICAL PARTIES

Political parties have complete freedom to organize, combine and disband, within the following requirements:

- They must be national in character (i.e no state or regional parties are allowed);
- They must not receive funding from foreign sources;
- They must respect the sovereignty of the nation, the democratic multi-party system and fundamental human rights;
- They must incorporate themselves as legal entities, and register their statutes and annual accounts with the Supreme Electoral Tribunal; (Art 15)

BRIEF 6

INDIVIDUAL RIGHTS

FUNDAMENTAL RIGHTS: (Article 5)

All Brazilians are guaranteed:

- Equality under law between men and women;
- Freedom from torture or degrading treatment;
- Freedom of expression of ideas (except anonymously);
- Freedom of conscience, belief and worship;
- Protection of privacy, honour and reputation and the right to sue for damages to these rights;
- Freedom of movement within the country in peacetime;
- Freedom to gather peacefully, unarmed in any public place, provided prior notification is given to public authorities;
- Freedom to create associations and co-operatives;
- The right to own and inherit property;

LEGAL RIGHTS (Article 5)

- Police require judicial search warrants to enter a private home.
- Police require a judicial order to violate the privacy of correspondence or electronic communication.
- Journalists may not be obliged to reveal their sources.
- No one shall be deprived of his liberty or property except through due legal process.
- All litigants and defendants in judicial proceedings are guaranteed the rights to legal counsel and defence.
- Proof illegally obtained is not admissible as evidence in legal cases.
- Civilians may only be arrested when caught in the act of committing a crime, or by written court order (this does not apply to military crimes committed by military personnel).
- Once detained, a person's family and legal counsel shall be immediately informed of his whereabouts.
- Detainees have the right to know the identity of persons responsible for their detention or police interrogation.
- The state will provide free legal assistance to persons who can prove they lack the means to hire their own counsel.
- Prisoners shall be informed of their rights, among them the right to remain silent, and shall be guaranteed access to legal counsel.
- Racism will be considered an imprisonable offence.
- Crimes not subject to bail, amnesty or pardon are torture, narcotics trafficking, racism, terrorism, armed action against the democratic state and other heinous crimes to be

defined by law.

- Brazilians may not be extradited, except for crimes of narcotics trafficking or for crimes committed before becoming naturalized Brazilian citizens.
- The death penalty is prohibited in peacetime; perpetual punishment, forced labour, banishment or punishment of a cruel nature are prohibited.
- Brazil shall grant political asylum to foreign nationals.

RIGHTS AGAINST THE STATE: (Article 5, clauses LXIX - LXXIII)

- Individuals are guaranteed the right of "Habeus corpus", whenever their liberty or freedom of movement is threatened by the abuse of power.
- A political party represented in Congress, a registered association or syndicate may petition the courts for a writ of security to protect a sure and certain right on behalf of the public or its members, if that right is threatened with an abuse of power by a public authority.
- In response to a petition, the courts may issue a writ of injunction whenever a lack of government regulation or legislation renders inviable the exercise of constitutional rights and liberties.
- Individuals have the right to obtain access to records about them in government archives, data banks or registries and to seek rectification of such records (referred to as the right of habeus data).
- Any citizen may launch a civil suit against the state to redress damage to the environment, cultural or historic patrimony, or to administrative morality; the author of such an action will be exempt from judicial costs and will be awarded legal fees, except in case of suits launched in bad faith.

STATE OF SIEGE:

In the event of the failure of measures taken under a state of defence, a serious disturbance with national (as opposed to local) impact or an act of armed aggression against the nation, the President may declare a state of siege. The procedures are the same as for a state of defence, except that the following additional restrictions may be declared on individual liberties:

- Individuals may be obliged to remain in a fixed locale;
- Individuals may be detained in public or private buildings;
- Public authorities may requisition private property.

BRIEF 7

THE DEFENCE OF DEMOCRATIC INSTITUTIONS

EMERGENCY SITUATIONS:

The Brazilian constitution specifies three emergency states, which suspend certain constitutional practices and rights. They are:

STATE OF DEFENCE:

The President may decree a state of defence to preserve or quickly re-establish, in specified locales, public order and social peace when threatened by serious and imminent institutional instability or when hit by large scale natural disasters.

Under a state of defence freedoms of associations, privacy of communications may be restricted by government decree. Persons charged with crimes against the state may be imprisoned without judicial order for up to 10 days. Persons so detained may not be held in comunicado and they may request from the police the evidence against them.

Prior to declaring a state of defence, the President must hear the advice of the Council of the Republic and the Council of National Defence. Within 24 hours of issuing the decree, the President must submit the decree, along with a full justification for it to the Congress. Congress has 10 days to consider the decree (15 days if the decree is issued when the Congress is not in session). If it is rejected by an absolute majority of Congress, the state of defence immediately comes to an end. The decree must be for a spcefied period of not longer than thirty days; with one renewal for the same reasons allowed.

STATE OF SIEGE:

In the event of the failure of measures taken under a state of defence, a serious disturbance with national (as opposed to local) impact or an act of armed aggression against the nation, the President may declare a state of siege. The procedures are the same as for a state of defence, except that the following additional restrictions may be declared on individual liberties:

- Individuals may be obliged to remain in a fixed locale;
- Individuals may be detained in public or private buildings;
- Public authorities may requisition private property.

BRIEF 7 cont.

- The press, radio and television may be restricted or censored;
- Public authorities may enter and make arrests in private homes;
- Public authorities may intervene in public utilities.

STATE OF INTERVENTION:

The federal government may issue a decree of intervention in a state in order to:

- maintain the integrity of the nation;
- repel foreign invasion;
- end a serious problem of public order;
- guarantee the free exercise of the executive, legislative or judicial powers of the state;
- reorganize the state's finances, if it suspends its debt payments for more than two years, without force majeure, or if it fails to make constitutional transfer payments to its municipalities;
- to ensure compliance with federal law or judicial decisions;
- to protect the following constitutional principles: human rights, representative democratic institutions, municipal autonomy, accountability for public accounts.

A decree of intervention shall specify its scope, duration and shall name an a representative of the federal power (an "interventor") in the state if necessary. The decree must be submitted to Congress for its approval within 24 hours. Congressional approval is not required if the decree is limited to an intervention intended to ensure compliance with a federal law or judicial decision or to protect the constitutional principles listed above. In such cases, the decree of intervention must be requested by the federal judicial authority.

State governments may also intervene in municipalities if the municipality has not paid its debts for two consecutive years, fails to account for its expenditures as required by law, or fails to spend the minimum amount of municipal receipts on education. A state Tribunal may also request the intervention in a municipality, in order to carry out a judicial ruling.

COUNCIL OF THE REPUBLIC: (Article 89, 90)

The Council of the Republic is the highest consultative organ for the President of the Republic. The Council shall express itself regarding: declarations of states of defence, siege and intervention; and all questions relevant to the

BRIEF 7 cont.

stability of democratic institutions. The Council is comprised of:

- The Vice-President;
- The President of the Senate;
- The President of the Chamber of Deputies;
- The majority and minority leaders of the Senate and the Chamber of Deputies;
- The Minister of Justice;
- Six native born Brazilians over the age of 35, two appointed by the President, two elected by the Senate and two elected by the Chamber of Deputies, all for three year non-renewable mandates.
- Any minister whose participation is requested by the President;

COUNCIL OF NATIONAL DEFENCE: (Article 91)

The Council of National Defence is a standing consultative body of the Executive empowered to:

- Advise the President regarding declarations of war and peace;
- Advise the President regarding declarations of states of defence, siege and intervention;
- Study and advise the President regarding initiatives required to guarantee the independence of the nation and the defence of democracy;
- Propose criteria for the use of all areas considered indispensable for national security, especially the "frontier zone" 150 kilometres around the nation's borders;
- Propose criteria for the preservation and exploitation of all all types of natural resources;

The National Defence Council shall comprise of:

- The Vice-President;
- The President of the Senate;
- The President of the Chamber of Deputies;
- All the military ministers;
- The Minister of Justice;
- The Minister of Planning;
- The Minister of Foreign Affairs;

THE ARMED FORCES (Articles 142, 143)

The Armed Forces, consisting of the Army, Navy and Air Force under the supreme authority of the President are designed to defend the nation, guarantee the constitutional powers and guarantee law and order at the initiative of any of the constitutional powers.

Military service as determined by law is obligatory, except for women and members of the clergy. The Armed Forces

shall determine alternative forms of public service for conscientious objectors.

POLICE FORCES (Article 144)

There are five separate police charged with protecting public order.

The Federal Police investigate all violations of federal laws, all interstate or international crimes, all acts against the property or interests of the federal government, its departments or state owned corporations and all crimes carrying the penalty of jail against the political and social order. The federal police also has a special mandate to police the nations land, sea and air frontiers and to combat drug trafficking.

The Federal Highway Police patrol the federal highways. The Federal Railway Police patrol the federal railroads. The Civil Police investigate all violations of state or municipal laws. The Military Police and Military Fire Brigades are responsible for the policing and preservation of public order and civil defence. The Civil Police and Military Police are subordinate to state governors.

DEFINITION OF A NATIONAL COMPANY:

A Brazilian company is any company that is constituted under Brazilian law and has its headquarters located in Brazil.

A Brazilian company of national capital is a Brazilian company in which a majority of its voting capital and its facts management is exercised by persons resident in Brazil or by entities governed by internal Brazilian law.

For companies to be considered Brazilian companies of national capital in certain strategic technological sectors,

BRIEF 8

THE ECONOMIC ORDER

GENERAL PRINCIPLES

The economic order shall observe the following principles of social justice:

- National sovereignty;
- Right to private property;
- The social function of private property;
- Free competition;
- Defense of consumers interests;
- Defence of the environment;
- Reduction of social and regional inequalities;
- The pursuit of full employment;
- Favoured treatment for small sized Brazilian companies of national capital;

ECONOMIC ROLE OF THE STATE:

As the normative and regulatory agent of economic activity, the state performs the functions of planning, providing incentives and levying tariffs, fines and taxes (fiscalizacao). Its decisions are binding on the public sector, and set the boundaries of action for the private sector. (Art 174)

The state shall only be permitted to engage in direct economic activities in cases of collective necessity or national security, as defined by law. (Art 173)

The state is required to provide public services, directly or by concessions which are always awarded through public bids. (Art 175)

DEFINITION OF A NATIONAL COMPANY:

A Brazilian company is any company that is constituted under Brazilian law and has its headquarters located in Brazil.

A Brazilian company of national capital is a Brazilian company in which a majority of its voting capital and its de facto management is exercised by persons resident in Brazil, or by entities governed by internal Brazilian law.

For companies to be considered Brazilian companies of national capital in certain strategic technological sectors,

BRIEF 8 cont.

as defined by law, the law may require a participation of Brazilian persons and capital above 50 percent, and extend the definition of management control to include control over the decision making power to develop or absorb technology.

BRIEF 8 cont.

Brazilian companies of national capital may be allowed by law:

- Special and temporary protection to develop activities considered strategically essential to the defence or development of the nation.
- To receive preferential treatment in government procurement of goods and services.

MINING:

Subsoil reserves, whether they are being mined or not, other mineral resources, and sources of hydro-electric power, constitute property distinct from the soil and belong to the federal government (a Uniao). Through public concession, the government can grant private companies the rights of ownership to the production of a mine. (Art 176)

Exploration, mining and other economic uses of mineral and hydro-electric resources can only be carried out, through government concession, by Brazilians or Brazilian companies of national capital. However, Brazilian companies not of national capital (e.g Brascan) are exempted from this restriction if, by Oct 5th 1992, all the minerals they extract and/or the hydro-electric power they generate are being used in their own industrial processes in Brazil. (Art 176, DT 44)

The specific conditions by which exploitation of these resources may be carried out within 150 kms of the border (faixa de fronteira) or on Indian lands will be defined by law. Concessions for exploration will always be granted for a specified period of time. Exploration or mining concessions may not be transferred between private parties without the prior approval of the government. (Art 176)

The government shall promote the formation of itinerant miners (garimpeiro) co-operatives, taking into the protection of the environment and need for the socio-economic advancement of the prospectors. These co-operatives will have priority when awarding concessions to alluvial mineral deposits that can be extracted by panning techniques (mineraiis garimpaveis) or in areas where itinerant miners are already working. (Art 174)

BRIEF 8 cont.

Exploration or mining concessions which have not been used by Oct 5th, 1989, cease to be valid. (DT 43)

ENERGY

The federal government shall have a monopoly on:

- Exploration and extraction of petroleum, natural gas and other hydro-carbons;
- Refining both domestic and imported petroleum;
- The import and export of petroleum, natural gas and all hydro-carbons;
- The maritime transport of domestically produced crude oil or petroleum derivatives;
- The transport by pipeline to or from Brazil of crude oil, petroleum derivatives and natural gas or whatever origin;
- The exploration, reprocessing, enrichment and sale of all nuclear minerals, their ores and derivatives; (Art 177)

State governments and municipalities will be allowed to participate in the benefits of the petroleum exploration within their territory or off their coastlines. However, the federal government is prohibited from subcontracting out to the private sector participation in the exploration or extraction of these resources. (Art 20, 177)

TRANSPORTATION:

The regulation of international transport shall follow guidelines established by international agreements signed by the government on the basis of reciprocity. Cargo transport on coastal and inland waterways is restricted to Brazilian vessels, except in cases of necessity, to be defined by law. Vessels carrying the Brazilian flag shall have Brazilian owners and captains and at least two thirds Brazilian crew. The preferences given to Brazilian vessels, to vessels of the country of origin of imports or destination for exports, the regulation of grain transport, and fishing fleets, will be determined by law. (Art 178)

SMALL BUSINESS

The federal government, states and municipalities shall, as defined by law, grant preferential and simplified treatment to small businesses through taxation and the application of other regulations. (Art 179)

Small businesses (defined as those with annual receipts up to 25,000 OTNs -approximately C\$250,000) that incurred bank loans or received rural credits with up to 5000 OTNs (approx C\$50,000) during the Cruzado Plan period

February 28th 1986 - February 28th 1987 may repay these loans up until January 5th 1989 by calculating interest on the face value of the loan - without correcting the value of the principal for inflation. (DT 47).

INTEREST RATES:

Real interest rates, including commissions and any other direct or indirect fees obtained from the concession of credits, shall not be superior to 12 percent a year; charges above this limit shall be considered usury, and shall be punishable in terms to be defined by law. (Art 192)

SALARY BENEFITS: (Art 7)

- A uniform national minimum salary, set by law at a level capable of satisfying the vital needs of a basic wage earner and his family for housing, nutrition, education, health, clothing, leisure, and transport, which is periodically readjusted to maintain its purchasing power.
- The right never to earn less than the minimum wage, for workers who earn a variable wage.
- A 13th salary based on full pay.
- Higher pay for night work than day work.
- Overtime pay 50 percent above the normal rate.
- Annual vacation pay 33 percent higher than normal pay.
- Additional pay for heavy, unhealthy or dangerous work, to be defined by law.

HOURS OF WORK: (Art 7)

- A normal work period of not more than eight hours a day and 44 hours a week.
- Maximum six hour work day for uninterrupted shifts, unless negotiated through collective bargaining.
- A weekly day of rest, preferably on Sunday.

WORK BENEFITS: (Art 9, DT 10)

- Maternity leave, with no danger to job security or salary, for 120 days.
- Paternity leave of five days, until a pay limit is legislated.
- Prohibition against firing pregnant workers until five months after their child is born, until a list of protected jobs is set by law.
- Free child care assistance in creches and pre-school for children of workers up to six years old.
- Accident insurance paid by the employer.

BRIEF 9

SOCIAL RIGHTS AND ENTITLEMENTS

All workers have the rights to:

JOB SECURITY: (Art 7)

- A list of jobs protected against arbitrary dismissal without a compensating indemnity, to be defined by law.
- Unemployment insurance, in the case of involuntary unemployment.
- A severance pay fund based on length of service.
- Prior notice before dismissal proportional to time of service, for a minimum of thirty days.

SALARY BENEFITS: (Art 7)

- A uniform national minimum salary, set by law at a level capable of satisfying the vital needs of a basic wage earner and his family for housing, nutrition, education, health, clothing, leisure, and transport, which is periodically readjusted to maintain its purchasing power.
- The right never to earn less than the minimum wage, for workers who earn a variable wage.
- A 13th salary based on full pay.
- Higher pay for night work than day work.
- Overtime pay 50 percent above the normal rate.
- Annual vacation pay 33 percent higher than normal pay.
- Additional pay for heavy, unhealthy or dangerous work, to be defined by law.

HOURS OF WORK: (Art 7)

- A normal work period of not more than eight hours a day and 44 hours a week.
- Maximum six hour work day for uninterrupted shifts, unless negotiated through collective bargaining.
- A weekly day of rest, preferably on Sunday.

WORK BENEFITS: (Art 7, DT 10)

- Maternity leave, with no danger to job security or salary, for 120 days.
- Paternity leave of five days, until a new limit is legislated.
- Prohibition against firing pregnant workers until five months after their child is born, until a list of protected jobs is set by law.
- Free child care assistance in creches and pre-school for children of workers up to six years old.
- Accident insurance paid by the employer.

BRIEF 2

SOCIAL RIGHTS AND ENTITLEMENTS

All workers have the rights to:

- JOB SECURITY: (Art 7)
 - A list of jobs protected against arbitrary dismissal without a compensating indemnity, to be defined by law.
 - Unemployment insurance, in the case of involuntary unemployment.
 - A severance pay fund based on length of service.
 - Prior notice before dismissal proportional to time of service, for a minimum of thirty days.

SALARY BENEFITS: (Art 7)

- A uniform national minimum salary, set by law at a level capable of satisfying the vital needs of a basic wage earner and his family for housing, nutrition, education, health, clothing, leisure, and transport, which is periodically readjusted to maintain its purchasing power.
- The right never to earn less than the minimum wage, for workers who earn a variable wage.
- A fifth salary based on full pay.
- Higher pay for night work than day work.
- Overtime pay 50 percent above the normal rate.
- Annual vacation pay 13 percent higher than normal pay.
- Additional pay for heavy, unhealthy or dangerous work, to be defined by law.

HOURS OF WORK: (Art 7)

- A normal work period of not more than eight hours a day and 44 hours a week.
- Maximum six hour work day for uninterrupted shifts, unless negotiated through collective bargaining.
- A weekly day of rest, preferably on Sunday.

WORK BENEFITS: (Art 7, Pt 10)

- Maternity leave, with no danger to job security or salary, for 120 days.
- Paternity leave of five days, until a new limit is legislated.
- Prohibition against firing pregnant workers until five months after their child is born, until a list of protected jobs is set by law.
- Free child care assistance in creches and pre-school for children of workers up to six years old.
- Accident insurance paid by the employer.

BRIEF 9 cont.

EQUALITY OF TREATMENT: (Art 7)

- Equality of rights among permanent and temporary employees.
- Prohibition of salary differentials, hiring criteria and job function, based on sex, age or civil status.
- Prohibition of salary discrimination against the handicapped.
- Prohibition of all work, except apprenticeships, for minors under 14 years.
- Prohibition of night work, heavy, unhealthy, or dangerous work for minors between the ages of 14 and 18 years.
- Special incentives to protect job access for women, to be defined by law.

RIGHT TO STRIKE: (Art 9)

- All workers are guaranteed the right to strike, to decide when to strike and to decide what interests they wish to defend by striking.
- Necessary social services and the means of guaranteeing their provision will be defined by law.

RIGHTS OF ASSOCIATION: (Art 8)

The following rights and obligations apply both to syndicates representing workers and syndicates representing employers.

- Everyone has the right to join a syndicate.
- Nobody may be obliged to join a syndicate.
- The state is prohibited from interference in the internal organization of syndicates.
- Only one syndicate may represent workers or employers of the same economic or professional category within the same territorial unit - to be defined by the syndicate members (but which may be no smaller than a municipality).
- The participation of syndicates in collective bargaining is obligatory.

RIGHTS OF PUBLIC SERVANTS (Articles 39-41)

Civil servants are guaranteed the right to free association. Civil servants right to strike shall be exercised within the terms and limits defined by complementary legislation. Military public servants are prohibited from striking or engaging in union activities.

All public service positions, except those defined by law, shall be filled by candidates approved through public examinations. Persons may not hold more than one paid public position, in government ministries, foundations or state companies. The only exceptions are teachers and doctors holding positions with compatible working hours.

BRIEF 9 cont. cont.

Maximum and minimum salaries for public positions shall be set by law. Public salaries in the Executive branch can not exceed those paid to Ministers; in the Legislative branch, those paid to members of Congress; and in the Judiciary, those paid to Ministers of the Supreme Federal Tribunal. Comparable positions in each of the three branches of government shall receive equal pay; however, salaries for different categories of public servants may not be linked (for such purposes as calculating pay increases). Retirement from public positions is compulsory at 70 years and voluntary after 35 years of service for men and 30 years of service for women;

Public servants who gain positions through public competitions achieve tenure after two years of service. Public servants with tenure may not lose their jobs following an administrative trial in which their rights to a defence are assured. When a position occupied by a tenured public servant is cut, the public servant shall receive full pay until he receives adequate placement in another position.

A ceiling will be set by complementary legislation stipulating the percentage of federal, state and municipal government budgets that may be devoted to payroll and related personnel expenses. Until the legislation is passed the ceiling will be 75 percent of their current receipts. (Article 169, DT 37)

SOCIAL SECURITY (Arts 194-195)

The social security system is designed to guarantee the public's rights to health, welfare and social assistance services. The social security system is financed by resources from the budgets of the federal government, the states, the municipalities and from contributions from employers, workers and through lotteries. No social security benefit or service shall be created, increased or extended without a corresponding source of receipts for its cost.

The social security system should provide universal coverage and uniform benefits and services to rural and urban populations. Non-wage earning workers (e.g. rubber tappers, fishermen, share croppers, itinerant miners and their working family members) shall contribute to social security through a tariff on the sale of their production and shall receive benefits as the law provides.

SOCIAL WELFARE (Art 201)

Social welfare programs (previdencia social) will provide, based on contributions: retirement pensions;

workmens' compensation; maternity pay; unemployment insurance for workers who have involuntarily lost their jobs; pensions for spouses and dependents after death of an insured worker. Anybody may participate in the benefits of social welfare through contributions to welfare plans. All welfare contributions and benefits will be indexed (corrigido monetariamente) to preserve their real value. No welfare benefit which substitutes for a contributing workers monthly income (e.g unemployment insurance, retirement benefits) shall have a monthly value less than a minimum salary. These provisions shall come into effect by May 5th 1989. (DT 58)

SOCIAL ASSISTANCE (Art 203)

Social assistance (asistencia social) shall be supplied to whoever needs it, independent of contributions to social security. It is intended to assist poor children and adolescents, the handicapped and the elderly. The handicapped and the elderly who are proven to have no means to support themselves, as defined by law, are guaranteed monthly social assistance benefits worth one minimum salary.

Persons who obtain rural properties through agrarian reform shall receive a title of dominion to the property which may not be sold or negotiated for a period of ten years. Titles of dominion shall be conferred to both men and women, regardless of their civil status, under terms to be defined by law.

Land owners whose properties have been expropriated for the purpose of agrarian reform will be indemnified by agrarian debt bonds whose true value will be guaranteed by law (against inflation) for a period up to twenty years. Useful and necessary improvements to the expropriated property shall be compensated in cash. The federal government's annual budget shall set the total volume of agrarian debt bonds and the resources allocated to the agrarian reform program for the following year.

Anyone who is not already a rural or urban landowner who occupies uncontested in a rural district an area no larger than 50 hectares for a period of five years, who resides there, and who makes it productive through his or his families work, shall be deemed to have acquired the property.

BRIEF 10

AGRARIAN REFORM

The federal government has the authority to expropriate for the purpose of agrarian reform (i.e. land reform) rural property which is not complying with its social function.

A rural property complies with its social function when it meets the the following requirements, to be defined by law:

- Rational and adequate use;
- Adequate use of the natural resources available and preservation of the environment;
- Rural labour regulations;
- Use of the property which prompts the welfare of both the owners and the workers;

Productive property that complies with its social function and small and medium sized rural properties, as defined by law, whose owner has no other properties, may not be expropriated for the purpose of agrarian reform.

Persons who obtain rural properties through agrarian reform shall receive a title of dominion to the property which may not be sold or negotiated for a period of ten years. Titles of dominion shall be conferred to both men and women, regardless of their civil status, under terms to be defined by law.

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Anyone who is not already a rural or urban landowner who occupies uncontested in a rural district an area no larger than 50 hectares for a period of five years, who resides there, and who makes it productive through his or his families work, shall be deemed to have acquired the property.

The rights of foreign individuals to acquire or lease rural properties shall be defined by law; the law shall specify cases in which such rights must be authorized by Congress.

A joint Commission of Congress shall be established by October 5th 1991, to review all donations, sales and concession of public lands over 3000 hectares that took place between January 1st 1962 and December 31st 1987. In cases where it is proven that the sale was illegal or the donations or concession was contrary to the public interest, the land will revert back to the patrimony of the federal, state or municipal government that originally owned it. (DT 51)

- Preserve the genetic patrimony of the nation and supervise entities dedicated to the research and use of genetic material;
- Define throughout the country areas for special environmental protection, which may only be altered in ways permitted by law;
- Protect by law endangered species;
- Require by law that prior environmental impact studies be carried out and publicized of any activity that could potentially cause significant environmental damage;
- Control production, sale and use of hazardous substances;
- Promote at all levels environmental education;

Public land (terra devoluta) that is necessary for the protection of natural eco-systems may not be transferred to private hands.

Individuals and companies found guilty of damaging the environment shall be subject to administrative and penal sanctions, independent of reparations for the damage they have caused. Individuals and companies that exploit mineral resources shall be obliged by law to recuperate the damage to the environment they have caused.

Any citizen may propose a civil suit which seeks to annul an act damaging to the environment. The author of an action, unless proved to be acting in bad faith, shall be exempt from judicial costs and shall be awarded legal fees (Art 5). The Public Ministry (a body of public prosecutors that function as society's advocates against the state) are empowered to promote civil investigations and civil suits to protect the environment and other collective interests. (Art 129)

BRIEF 11

THE ENVIRONMENT (Art 225)

Everyone has the right to a well balanced environment, which is a public good essential to maintaining the quality of life. It is a concurrent responsibility of all three levels of government and the collective duty of society to defend and preserve the environment for current and future generations. To realize this right, it is the responsibility of government to:

- Preserve and restore essential ecological processes;
- Provide for the ecological management of species and ecosystems;
- Preserve the genetic patrimony of the nation and supervise entities dedicated to the research and use of genetic material;
- Define throughout the country areas for special environmental protection, which may only be altered in ways permitted by law;
- Protect by law endangered species;
- Require by law that prior environmental impact studies be carried out and publicized of any activity that could potentially cause significant environmental damage.
- Control production, sale and use of hazardous substances;
- Promote at all levels environmental education;

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(Art 129)

BRIEF 11 cont.

The Brazilian Amazonian forest, the Atlantic forest, the Serra do Mar, the Mato Grosso Pantanal and the coastal zones are national patrimony. The use and development of their natural resources shall only be undertaken within conditions, determined by law, that assure the preservation of their environment.

Indians shall have the right to their lands, their customs, languages, beliefs, and traditions. The lands they have traditionally occupied by the Indians and which are permanently inhabited by them, shall be subject to the purposes, necessary for the preservation of the natural resource necessary to assure the well-being of the Indians for physical and cultural development, according to their customs and traditions.

Lands traditionally occupied by the Indians are subject to exclusively to federal jurisdiction (Article 174, paragraph 1, of the Constitution of the United States). It is responsibility of the federal government to demarcate Indian lands and to protect the Indians and their property. Lands traditionally occupied by the Indians are inalienable and the rights to them are not to be transferred to others.

Indians shall have exclusive rights in the use of the resources found in the soil, waters and lands of their lands. Mineral resources and other resources found in their lands may only be exploited with the participation of Congress, after hearing from the communities affected shall benefit the Indians of these resources, in terms to be established by law.

Indians may not be removed from their lands except in cases of epidemic or catastrophe which pose a serious risk, or in the interests of national defense. They may only be removed from their lands if the Congress, after hearing from the Congress and their immediate representatives, shall see as the public risk ends is guaranteed.

All actions intended to change the boundaries of lands occupied by Indians are nullified, without prejudice to indemnification or judicial appeal, except for improvements to the land resulting from the good faith.

Article 174 authorizing the state to exploit the mineral resources of the Amazon region (co-operative garimpeiros) does not apply to Indian lands (Arts 231-232)

BRIEF 12

INDIAN RIGHTS

Indians shall have recognized their social organization, customs, languages, beliefs, traditions and rights over the lands they have traditionally occupied. Lands traditionally occupied by the Indians are considered to be lands permanently inhabited by them, used by them for productive purposes, necessary for the preservation of the environmental resource necessary to maintain their welfare, and required for physical and cultural continuity, according to their customs and traditions.

Lands traditionally occupied by the Indians are subject to exclusively to federal government jurisdiction. (sao bens da Uniao). It is responsibility of the federal government to demarcate Indian lands and to protect the Indians and their property. Lands traditionally occupied by the Indians are inalienable and the rights to them may not be transferred to others.

Indians shall have exclusive rights to the use of the resources found in the soil, rivers and lakes of their land. Mineral resources and hydro power potential on Indian lands may only be exploited with the authorization of Congress, after hearing from the communities affected. The Indian communities affected shall benefit from the exploitation of these resources, in terms to be assured by law.

Indians may not be removed from their lands except in cases of epidemic or catastrophe which puts the public at risk, or in the interests of national sovereignty. They may only removed from their lands following the deliberation of the Congress and their immediate return to their lands as soon as the public risk ends is guaranteed.

All actions intended to occupy lands traditionally occupied by Indians are nullified, without recourse to indemnization or judicial appeal, except in the case of improvements to the land resulting from occupation in good faith.

Article 174 authorizing the state to grant priority to the concession of mineral resources to mining co-operatives (co-operativos garimpeiros) does not apply to Indian lands. (Arts 231-232)

Indians, their communities and organizations may initiate and participate in court proceedings. The Public Ministry shall participate in all legal cases involving Indians. Disputes over Indian rights shall be heard by federal judges. (Arts 109).

Indian communities are assured of instruction in their own methods of learning and in their own native languages, as well as in Portuguese (Art 210).

The federal government shall conclude all demarcation of Indian land within five years of the promulgation of the Constitution (i.e by October 5th 1993). (DT 67)

- National independence;
- The respect for human rights;
- Self-determination of peoples;
- Non-intervention (in the internal affairs of other states);
- Equality among states;
- The defence of peace;
- The peaceful resolution of conflicts;
- Repudiation of terrorism and racism;
- Co-operation between peoples for the progress of humanity;
- Granting of political asylum;

The Federative Republic of Brazil will seek the economic, political, social and cultural integration of the peoples of Latin America, in order to create a Latin American community of nations. (Art 4)

Brazilian citizens may not be extradited, except in cases of proven involvement in drug trafficking in terms to be established by law. In addition, naturalized Brazilian citizens may be extradited in the case of a common crime committed before they became naturalized. Foreign citizens may not be extradited from Brazil for political crimes or crimes of opinion. All requests for extradition by a foreign state will be heard by the Supreme Federal Tribunal. (Arts 5, 102).

Brazil shall propose the formation of an international human rights court. (DT 7)

A joint Congressional Commission will be created by October 5th 1989 to analyze the origins of Brazil's external debt. The Commission may propose to the Executive that past irregularities in the contracting of Brazil's external debt be declared null and void. (DT 26)

BRIEF 13

CHAPTER 07 INTERNATIONAL RELATIONS

There are numerous references in the text of the 1988 Brazilian constitution to the rights of foreign citizens or corporations to participate in the Brazilian economy. The following are the only provisions which deal with Brazil's relations with foreign governments.

The Federative Republic of Brazil is governed in its international relations by the following principles:

- National independence;
- The respect for human rights;
- Self-determination of peoples;
- Non-intervention (in the internal affairs of other states);
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BRIEF 14

CHAPTER DIVISIONS OF THE 1988 CONSTITUTION

Should readers wish to study the full text of the Constitution, the following is an outline of its divisions into chapters, indicating where the provisions summarized in our attached briefs may be found.

PREAMBLE (Article 1)

TITLE I: FUNDAMENTAL PRINCIPLES (Articles 2-4)

Declares Federative Republic of Brazil to be an indissoluble union of states and municipalities, with three equal powers, the Executive, Legislature and the Judiciary. Discusses the general principles of Brazilian foreign policy, including the aim of Latin American integration. (Brief 13).

TITLE II: FUNDAMENTAL RIGHTS AND GUARANTEES (Articles 5-17)

Deals with individual and social rights, citizenship and the rules governing political parties. (Briefs 5,6,9).

TITLE III: ORGANIZATION OF THE STATE (Articles 18-43)

Deals with the distribution of powers between the federal, state and municipal levels of government, and the norms governing public administration. (Briefs 4,9).

TITLE IV: ORGANIZATION OF THE POWERS OF GOVERNMENT
(Articles 44-135)

Deals with the mandates of public offices, the distribution of powers between the federal Executive, Legislature and Judiciary and the functions of each. Defines the roles of the Council of the Republic and the Council of National Defence. (Briefs 3,5,7).

TITLE V: DEFENSE OF THE STATE AND DEMOCRATIC INSTITUTIONS
(Articles 136-144)

Defines the rules governing the declaration of a "State of Defense" and a "State of Siege", and the roles of the Armed Forces and the police. (Brief 7)

BRIEF 14 cont.

TITLE VI: TAXATION AND THE BUDGET (Articles 145-169)

Defines the powers of taxation between the three levels of government and the transfer of revenues between them; also deals with the norms governing fiscal and monetary policy, and the execution of the government's budget. (Briefs 3,4)

TITLE VII: THE ECONOMIC AND FINANCIAL ORDER (Articles 170-192)

Deals with the regulation of investment and commerce, defining activities reserved for the state and for Brazilian companies; also deals with urban policy, agrarian reform and the regulation of banking and finance, including maximum interest rates. (Briefs 8,10)

TITLE VIII: THE SOCIAL ORDER (Articles 193-232)

Deals with norms governing social security and welfare programs, health, education, culture, family law, science and technology, communications industries, environmental protection and the rights of indigenous peoples. (Briefs 9,11,12)

TITLE IX: GENERAL CONSTITUTIONAL PROVISIONS (Articles 233-245)

Miscellaneous articles dealing with issues not included in other titles of the constitution.

TRANSITORY PROVISIONS (Articles 1-70)

Provisions governing the implementation of the constitution over the next five years, the means of amending it after that period and the creation of new states. (Brief 3, plus others)

ARTICLE VI: TAXATION AND THE BUDGET (Articles 145-169)

Defines the powers of taxation between the three levels of government and the transfer of revenues between them; also deals with the norms governing fiscal and monetary policy, and the execution of the government's budget. (Articles 3,4)

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