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## **I. LAND AND PEOPLE**

### **A. Description of the territory**

1. With a surface area of 8,511,966.3 km<sup>2</sup>, Brazil is the fifth largest country in the world. Brazil is located in the central-eastern part of South America, occupying almost half of its entire area (48.36 per cent); in world terms, it covers 5.89 per cent of the earth's surface.
2. Distances inside the Brazilian territory are great, both north-south and east-west. It is 4,394 km from its northernmost point, at the border with Venezuela, to its southernmost point, at the border with Uruguay, and 4,328 km from its easternmost point to the westernmost point. Brazil covers four time zones, three in its continental area and one in the oceanic islands.
3. Its national borders run through 23,127 km of borders: 15,719 km on land and a 7,408 km shoreline along the Atlantic Ocean. Only two countries in South America do not share borders with Brazil: Ecuador and Chile.
4. Most of the Brazilian territory is located between the Tropics of Cancer and Capricorn. The prevailing climate is tropical and semi-tropical.

### **B. Demographic profile**

5. The 2000 census done by the Brazilian Institute for Geography and Statistics (IBGE) shows that Brazil has 5,507 municipalities and a total population of 169,590,693. The Brazilian population increased nearly tenfold during the twentieth century but this growth was not spread uniformly over the period, with the lowest growth rates occurring in the final decades. Between 1970 and 1980 the average growth rate was 2.48 per cent, while in the period 1980-1991 it was 1.93 per cent a year, falling to 1.63 per cent in the last decade, as shown by the 2000 census. The first analysis indicates that this decelerated population growth was due in particular to lower fertility levels beginning in the late 1970s.<sup>1</sup> As a result of this reduction, families became smaller and the population older.
6. Population growth did not occur uniformly in the five major regions of the national territory. The highest rates were recorded in the North Region, which accounted for 5.6 per cent of the country's population in 1980 and for 7.8 per cent in 2000; and in the Centre-West, where the growth rate rose from 5.8 per cent to 6.8 per cent between 1980 and 2000. The country's three most densely populated regions still are the South-East, the North-East and the South. The South-East, the North-East and the South have maintained the same population share since the 1950s but the North -East, with the second largest population, shows a declining share in the country's overall population.<sup>2</sup>

**Table 1****Resident population by region**

Period	Brazil	North	North-East	South-East	South	Centre-West
2000	169 590 693	12 893 561	47 693 253	72 297 351	25 089 783	11 616 745
1991	146 917 459	10 257 266	42 470 225	62 660 700	22 117 026	9 412 242
1980	121 150 573	6 767 249	35 419 156	52 580 527	19 380 126	7 003 515

*Source:* Demographic Census. 2000 data are from the Preliminary Summary, IBGE.

**Table 2****Demographic density - inhabitants/km<sup>2</sup>**

Period	Brazil	North	North-East	South-East	South	Centre-West
2000	19.92	3.35	30.69	78.20	43.54	7.23
1991	17.26	2.66	27.33	67.77	38.38	5.86
1980	14.23	1.76	22.79	56.87	33.63	4.36

*Source:* Demographic Census. 2000 data are from the Preliminary Summary, IBGE.

7. The demographic density in Brazil is 19.92 inhabitants/km<sup>2</sup>. The South-East and the South concentrate 57.4 per cent of the overall population in 17.6 per cent of the country's total area. The North, with 7.6 per cent of the overall population, covers 45.2 per cent of the country's total area.

8. Data from the latest demographic census confirm the growing trend towards urbanization, which increased from 67.6 per cent in 1980 to 81.2 per cent in 2000, with greater concentration in metropolitan regions. The most recent data show that only 18.8 per cent of the population lives in rural areas.

9. The rapid increase in urban population in recent decades was not accompanied by an equal pace of implementation of public policies in the areas of health, transport and education. Inhabitants of large urban centres live today with serious problems of insufficient infrastructure in these areas, particularly with respect to basic sanitation. However, some initiatives have reduced mortality rates and raised life expectancy. The overall mortality rate in Brazil dropped from 9 per 1,000 inhabitants in 1980 to 7 per 1,000 in 1996, dropping further to 6 per 1,000 in 1998. Infant mortality dropped from 43 to 34.6 per 1,000 live births between 1992 and 1999.<sup>3</sup> Regarding maternal mortality, it is estimated that there were 160 deaths per 100,000 live births in 1999.<sup>4</sup>

10. The 1990s may be characterized by significant improvement in education in Brazil.<sup>5</sup> Worth noting is a substantial drop in illiteracy rates<sup>6</sup> as well as an increase in average schooling<sup>7</sup> and school attendance.<sup>8</sup> Although it is declining - from 17.2 per cent in 1992 to 13 per cent in 1999 - the illiteracy rate in Brazil is still very high. At the end of the decade there were over 15 million illiterate Brazilians.<sup>9</sup>

11. In 1996<sup>10</sup> Brazil joined the ranks of the countries considered to have a high Human Development Index (HDI) pursuant to the criteria used by the United Nations Development Programme (UNDP).<sup>11</sup> In 1996 Brazil showed an HDI of 0.809, ranking sixty-second among the 174 countries.<sup>12</sup> In 1999, though, owing to a change in the income evaluation criteria, Brazil fell back into the group of average human development, ranking seventy-fourth, with an HDI of 0.739. In 2000, it also ranked seventy-fourth. According to the report issued in July 2001, Brazil ranked sixty-ninth. Despite a slight increase in life expectancy, from 67.3 years to 67.5 years, and in school enrolment, from 78.3 per cent to 80 per cent, there was a decline in quality of life.

12. In 1999, the gross domestic product (GDP) was US\$ 730.4 billion and estimated per capita income was US\$ 4,350.<sup>13</sup> Although they rank Brazil as one of the world's 10 richest countries, these figures do not show the actual disparity in income distribution. The tables that follow show this disparity as well as the percentage of the Brazilian population living in poverty and the situation in the different regions.

**Table 3**

**Income distribution: number of times by which the income of the richest 20 per cent exceeds that of the poorest 20 per cent, by major region, 1997 to 1999**

Region	1997	1998	1999
North	16.06	16.20	14.96
North-East	19.30	17.38	17.61
South-East	18.49	17.61	16.41
South	16.57	16.26	16.15
Centre-West	19.05	18.14	17.54
Total	18.93	18.06	17.36

*Source:* IBGE/Pesquisa Nacional por Amostra de Domicílios - PNAD; Indicadores de Dados Básico (IDB) - 2000 - Datasus/Ministério da Saúde.

**Table 4****Percentage of the population living in poverty,<sup>a</sup> by region**

Region	1997	1998	1999
North	34.49	35.43	34.85
North-East	52.19	49.67	50.15
South-East	16.00	16.25	16.78
South	19.07	18.68	19.84
Centre-West	22.59	21.96	23.64
Total	28.40	27.73	28.36

*Source:* IBGE/Pesquisa Nacional por Amostra de Domicílios - PNAD; Indicadores de Dados Básico (IDB) - 2000 - Datasus/Ministério da Saúde.

<sup>a</sup> In the 1996 PNAD, IBGE defined the poor as the “percentage of the population with a per capita income of up to half a minimum salary”.

13. As to religion, the country is predominantly Christian - 75 per cent of the population declare themselves as Catholic and 14 per cent as Evangelical. It should be noted that there is a great deal of religious syncretism in the country, with a marked influence of religions of African origin, such as *Umbanda* and *Candomble*. The fact that someone professes to be a Catholic does not exclude attendance at other cults.

### **C. Economic profile**

14. The Brazilian economy went through three different stages in the 1990s. The first, from 1990 to 1994, was characterized by persistently high inflation rates and included two recession years - 1990 and 1992 (see table 5 at the close of this item). Those two years together with the debt crisis years - 1981 and 1983 - were the only years after the Second World War when Brazil recorded a negative growth rate. Owing to this recession environment and its exchange policy, Brazil managed to achieve high international trade surpluses and thus pay interest on the foreign debt and accumulate foreign exchange in strong currency until 1994. Beginning in 1990, imports were liberalized, forcing the Brazilian industry to modernize itself to meet competition.

15. In 1994, the availability of foreign exchange allowed for the introduction of a macroeconomic stabilization plan based on an anchor exchange rate, i.e. on the preservation of the exchange rate. The Brazilian anchor exchange rate design was flexible, allowing a slight fluctuation - a 1994 valorization of the real, the new currency, and a slight devaluation of the exchange rate in 1995-1998. The combination of an overvalued, stable exchange rate, trade liberalization and large foreign exchange reserves managed to stabilize domestic prices but led to a marked increase in imports and to a disequilibrium of the Brazilian trade balance as of 1995 (see table 5 at the close of this item). Given the large current account deficits since the mid-1990s, the balance of payments became markedly dependent on foreign investment and loans (see capital/financial account in table 5), which increased the foreign debt.

16. As macroeconomic stabilization depended on the maintenance of a stable exchange rate, the interest rate became the variable whereby the national currency was adjusted and defended. Marked interest rate increases absorbed the impact of the international monetary and financial crises beginning in 1994. Higher interest rates had two major consequences: productive activity was discouraged, which affected employment and income generation; and there was an extremely rapid increase of the domestic debt in this period.

17. In 1998, this delicate balance reached a limit after the Asian and Russian financial crises, when the current account deficit (particularly the trade balance + interest payments) totalled a record US\$ 33.4 billion. Only the massive privatization of the telecommunications system in that year and a major agreement with the International Monetary Fund (IMF) managed to prevent a crisis in Brazil at that time. In January 1999, though, in President Fernando Henrique Cardoso's second term, a financial crisis occurred, when the foreign exchange was drastically devalued, changing the configuration of the Brazilian economy for the second time in the decade. Since 1999, the trade balance and current account deficits have been gradually smaller (see table 5) and the country's external vulnerability has thus become less marked. Despite the shock of the strong exchange devaluation in 1999, inflation remained under control in the following years, owing to an inflation-targeting policy implemented by the Central Bank.

18. In 2000 and in the first half of 2001, the Brazilian economy, having recovered from the financial crisis, began to grow vigorously, fuelled basically by industrial and agricultural production. However, the change in the international scenario in mid-2001, with the deepening of the crisis in Argentina and the recessive climate in the United States, two of Brazil's major trade partners, halted the rising trend of the first half of 2001. Further exchange rate devaluations in 2001 and 2002 have led to higher foreign trade surpluses and to smaller current account deficits. But the exchange rate devaluation, which has increased the cost of imports, has had some impact on domestic prices; thus, owing to foreign exchange devaluation in 1999, 2001 and 2002, salaries have lost their real value in recent years.

19. Brazil's GDP ranked the country among the world's 10 largest economies in the late 1990s. It should be noted, though, that in the 1980s and 1990s Brazil's economic growth rates remained quite below the historic average of the 1950-1980 period. In those three decades, GDP grew vigorously at rates that far exceeded population growth rates, so that the yearly average per capita GDP in that period grew by 4.2 per cent. Brazil still needs high growth rates to absorb into the labour market the large young population reaching active age. But in the 1990s, yearly growth rates were often disappointing, such as in 1991, 1998 and 1999, in addition to the 1990 and 1992 recessions. Per capita GDP declined steadily, falling to US\$ 2,922 at the beginning of the twenty-first century. Converted by the purchasing power parity so as to allow international comparison, the Brazilian per capita GDP in 1998 was US\$ 6,625, according to the *Human Development Report 2000*. This ranks Brazil with the group classified by the World Bank as high average income countries.

**Table 5**  
**Brazil: Macroeconomic indicators, 1990-2001**

		1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Current transactions	US\$ million	-3 783	-1 408	6 109	-676	-1 811	-18 384	-23 502	-30 452	-33 416	-25 335	-24 225	-23 213
Trade balance FOB	US\$ million	10 752	10 580	15 239	13 299	10 467	-3 466	-5 599	-6 753	-6 575	-1 199	-698	2 642
Exports FOB	US\$ million	31 414	31 620	35 793	38 555	43 545	46 506	47 747	52 994	51 140	48 011	55 086	58 223
Imports FOB	US\$ million	20 661	21 041	20 554	25 256	33 079	49 972	53 346	59 747	57 714	49 210	55 783	55 581
Services and income	US\$ million	-15 369	-13 543	-11 336	-15 577	-14 692	-18 541	-20 350	-25 522	-28 299	-25 825	-25 048	-27 493
Capital/financial account	US\$ million	4 593	163	9 947	10 495	8 692	29 095	33 968	25 800	29 702	17 319	19 326	27 925
Foreign debt	US\$ million	123 439	123 910	135 949	145 726	148 295	159 256	179 935	199 998	241 644	241 469	236 157	226 067
Exchange rate	R\$/US\$	-	-	-	-	0.65	0.92	1.01	1.08	1.16	1.82	1.83	2.35
Real GDP	R\$ billion 2001	898.4	907.7	902.7	947.2	1 002.6	1 045.0	1 072.8	1 107.9	1 109.3	1 118.3	1 167.1	1 184.8
GDP growth	% annual	-4.4	1.0	-0.5	4.9	5.9	4.2	2.7	3.3	0.1	0.8	4.4	1.5
Per capita GDP	US\$ (2001)	2 588	2 574	2 521	2 606	2 719	2 794	2 828	2 881	2 846	2 832	2 916	2 922
Inflation IPG-DI* (centered)	% annual	1 217.0	496.7	1 167.2	2 851.3	908.0	15.0	9.2	7.1	1.8	19.9	9.5	10.2

Source: IPEADATA.

\* General Price Index-Internal Availability.

#### **D. Social indicators**

20. Social indicators in Brazil in the 1990s point, on the one hand, to a picture of poverty and marked social and regional inequality and, on the other hand, to the expanding coverage of the various social services that are important in modern, complex societies, including health, basic sanitation, education, social security and welfare.

21. The economic development model of the 1960s and 1980s contributed to a marked income concentration in the country. Throughout the 1980s, labour income measured by the Gini Index remained at its maximum concentration level in recent history (0.60 between 1993 and 1998), ending the decade with a slight decline in 1999 (0.59).

22. The percentage of poor in the population is also high, although it has dropped significantly in the mid-decade owing to economic stabilization. The poverty rate, understood as the percentage of the population whose pecuniary income is insufficient to meet the basic needs of food, housing, clothing and transport, among others, stood at 40.8 per cent in 1992, dropping to 34.0 per cent in 1999. In 1999, poverty was heavily concentrated on Afro descendants (47.7 per cent) and people living in the North-East (58.6 per cent). At the same time, Whites (22.6 per cent) and people living in the South-East (20.6 per cent) accounted for the lowest poverty rates.

23. This poverty and inequality picture is due to various factors, both historical and situational. One factor was the deterioration in the 1990s of the labour market, which was unable to absorb into socially protected activities the large contingent of young people entering it. In the six major metropolitan areas, the unemployment rate rose steadily between 1989 and 1998, from a 3.5 per cent to 7.6 per cent yearly average, respectively. After peaking in 1998, with the rearrangement of the economic model as of 1999, the unemployment rate declined slightly to a 6.23 per cent average in 2001. This labour market situation is also the reason for the reduction in the formal Social Security coverage in the 1990s - the odds of encountering a contributor to Social Security among the economically active population fell from 39.8 per cent in 1992 to 35.9 per cent in 1999.

24. The history of the Brazilian worker's average real income also saw very different moments in the course of the last decade. Whereas before the 1994 macroeconomic stabilization high inflation steadily eroded the purchasing power of salaries and aggravated poverty, with the stabilization brought on by the Real Plan real income from labour also increased steadily. The average real income reached its best level of the decade in 1997 - 129.3 (July 1994 = 100). After the international monetary crises of Asia (1997) and Russia (1998) and the devaluation of the Brazilian exchange rate in 1999, the Brazilian worker's average real income began to fall again, reaching an average 116.1 in 2001 (July 1994 = 100).

25. The average number of school years is still low as compared with other developing countries and this aggravates inequality and poverty. Despite progress in terms of the number of school years completed by people aged 15 and over - an average of 5.2 years in 1992 and of 6.1 years in 1999, there are great regional and even racial disparities. While in the South-East the average number of school years in 1999 was 6.8, in the North-East it was only 4.6. The average

of 7.4 years in metropolitan areas was more than twice that of rural areas, where it was 3.5 years. There was also a significant gap between Whites, with 7.0 years of schooling, and non-Whites, with 4.9 years. The best finding in relation to this indicator is that in 1999 women had an average of 6.2 years of schooling as compared with men's 5.9 years.

26. The illiteracy rate, another internationally adopted indicator, is still high but is declining. Among people aged 15 and over, the percentage of illiterates dropped from 17.2 per cent in 1992 to 13.3 per cent in 1999. But also in this regard there are marked differences among regions: in the South, in 1999, the rate was 7.8 per cent while in the North-East it was 26.6 per cent.

27. Numerous policies have sought to address these indicators, which are considered no less than unsatisfactory. It is interesting to note that since the entry into force of the 1988 Constitution, a result of the redemocratization of Brazilian society in the 1980s, several social policies have managed to expand their coverage.

28. With respect to education, the percentage of children aged 7 to 14 at school rose significantly between 1992 and 1999, from 86.6 per cent to 95.7 per cent.

29. Regarding health policies, in 1990 a public, free health system of universal access entered into operation - the Unified Health System-SUS. In 1998, this system effectively assisted 90 million people out of a population of approximately 165 million. As a result, health indicators continued to improve in the 1990s. Infant mortality dropped from 49.4 deaths per 1,000 children to 33.1 per 1,000 between 1990 and 1998, although there were regional differences (18.7 per 1,000 in the South against 53.5 per 1,000 in the North-East in 1998). Life expectancy at birth was 68.4 years for men and women in 1999 (64.3 for men and 72.3 for women). The population in areas covered by the Family Health Programme-PSF, introduced in the first half of the 1990s, totalled 51 million in 2001. It is worth noting that in the North-East, where social indicators are less favourable, this programme has had its widest expansion and in 2001 covered 67.5 per cent of the municipalities.

30. In the area of sanitation, water supply and trash collection there was also progress in terms of coverage in the 1990s. Between 1992 and 1999, the percentage of households with drinking water rose from 83.3 per cent to 89.2 per cent. Adequate sewerage coverage increased from 68.2 per cent to 75.7 per cent in the same period, while regular trash collection, which was available to 81.7 per cent of households in 1992, became available to 93.7 per cent in 1999. In each of the three areas, the highest coverage rates - of over 90 per cent - were recorded in the South and South-East in 1999, while the North and North-East showed the lowest rates (between 55 per cent and 80 per cent).

31. A last example of a social policy whose coverage expanded significantly in the 1990s is social security. In that decade the beneficiary public was expanded, as mandated by the 1988 Constitution, particularly in the rural area and through welfare pensions. In December 2001, Social Security paid over 20 million monthly benefits. Of that total, approximately 7 million pensions were paid out in the rural area, 2.1 million of which were welfare pensions. Owing to these initiatives, the percentage of the population 60 years of age or over receiving some sort of social security benefit (including welfare pensions and civil service pensions) rose from 68.8 per cent in 1992 to 77.3 per cent in 1999. It is known that income transfers are of utmost importance in combating poverty among the aged and their families in Brazil.

## II. GENERAL POLITICAL STRUCTURE

### A. Political history

32. The Portuguese arrived in the territory which later became known as Brazil in 1500, finding in place a non-sedentary indigenous population. This indigenous population has been decimated for centuries by epidemics and diseases caught from the white men, and today there remain in Brazil some 374,000 Indians. Brazilian colonial history is characterized by economic cycles of export of brazilwood (early sixteenth century), sugar cane (sixteenth and seventeenth centuries), and gold and diamonds (eighteenth century), which made intense use of African slave labour, brought over by the Portuguese. The presence of black slaves in the country and the racial miscegenation that followed (not only between Whites and Blacks, but also between Whites and Indians) were factors that determined the ethnical, cultural and social profile of Brazil. Slavery was abolished in 1888.

33. After its independence, in 1822, during the imperial regime, Brazil preserved special bonds with Portugal (the two emperors were members of the Portuguese royal family). The imperial period ended in 1889, when the republic was proclaimed. By that time, the federative and decentralized system was adopted, inspired by the Constitution of the United States.

34. Beginning in 1930, the republic went through a period of institutional disturbances which led to modernizing political, economic and social reforms. In 1937, President Getúlio Vargas, one of the leaders of the process of changes in the country's framework, sanctioned a constitution of a rather dictatorial nature and, carrying on with his reform programme, ruled as a dictator until he was overthrown in 1945. A troubled period followed, but one in which constitutional solutions prevailed, until Juscelino Kubitschek and his successor, Jânio Quadros, were elected. After the latter resigned in his first year in power, in 1961, the country plunged into crises which led to a military coup in 1964.

35. The military regime abolished constitutional guarantees, restricted civil and political rights, and asphyxiated the opposition. Initially, the military governments produced positive economic results, partly at the expense of heavy foreign indebtedness, but in the 1980s, pressing political problems were enhanced by remarkable economic difficulties derived from the debt crisis (high inflation rates, a drop in economic growth, and loss of competitiveness of the Brazilian economy). The end of the military regime was marked, in 1985, by a popular campaign for direct elections for the presidency of the republic, although elections were only actually held in 1989, after a period of transition during which a civil government was in power. In February 1987, a National Constituent Assembly was established to draft a new constitution based on democratic principles and aimed at ensuring individual and collective rights and guarantees. In 1989, the redemocratization process culminated in the election of the President of the Republic, Fernando Collor, through universal suffrage.

36. After a long impeachment process, President Fernando Collor was legally ousted from office in September 1992, on charges of corruption. As prescribed by the Constitution, the Vice-President, Itamar Franco, took over the presidency of the country. The impeachment process of the President took place with the intense participation of the people, and it took place strictly under constitutional norms.

37. In 1994, Fernando Henrique Cardoso was elected President of the Republic. At the beginning of his Administration in 1995, a new government model was implemented, which had as main focus the fight against inflation and assurance of monetary stability. These objectives were reached through the Real Plan introduced in July 1994, when Fernando Henrique Cardoso was Minister of Finance. After a constitutional amendment that allowed re-election for positions in the executive branch, Mr. Cardoso was re-elected in 1998. He held office for eight years.

38. In 2002, Luiz Inacio Lula da Silva was elected President of Brazil. He took office on 1 January 2003.

## **B. Political-administrative organization**

### **1. Organization of the State**

39. Brazil is a federative republic. The Union comprises 26 States, one Federal District (where the capital is located) and 5,507 municipalities. The regime is presidentialist. The executive, legislative and judicial branches of Government are independent and harmonious in their mutual relations.

40. The jurisdictions of the Union, the States, the Federal District and the municipalities are provided for in detail in the Federal Constitution. The country's political structure reflects the effort aimed at decentralizing the power of the State from both an organizational, a geographical and a spatial standpoint.

41. The separation of powers and the federative structure of the State are at the untouchable core of the Constitution - the so-called "ironclad clauses", which cannot be abolished through constitutional reform pursuant to article 60, paragraph 4, I and II. Further to the federative structure of the State and the separation of powers, the 1988 Constitution includes in its material, untouchable core - its "ironclad clauses" - direct, secret, universal and periodic suffrage and individual rights and guarantees, pursuant to article 60, paragraph 4, I-IV.

42. Reacting to the authoritarian legacy that left its mark on the country during the 1964-1985 period, which was also characterized by a hypertrophy of the executive branch and the predominance of the Union over the members of the Federation, the 1988 Charter aimed at restoring the harmony and equilibrium among the executive, the legislative and the judicial branches as well as among all the members of the Brazilian Federation - the Union, the States, the municipalities and the Federal District.

43. One of the principles embodied in the Constitution is the separation of powers. Under the Charter, the powers of the Union are vested in the legislative, the executive, and the judicial branches, which are independent from but in harmony with each other (art. 2), each having its specific area of operation and attributes as defined by the Constitution.

44. The legislature is bicameral, being formed by the Chamber of Deputies (the house that represents the Brazilian people) and the Federal Senate (the house that represents the States and the Federal District). As to the executive branch, it follows a presidential model, wherein the

President of the Republic is the Head of State and Government and is assisted by the ministers of State. As to the judiciary, its highest instance is the Federal Supreme Court, whose foremost duty is to uphold the Constitution. The judiciary consists of three bodies comprising the “common courts” and the “specialized courts” (electoral, military and labour courts).

45. Other than the political decentralization of power in the Government’s structure, in adopting the federative principle, the Constitution also determines the political decentralization of power from a geographical and spatial standpoint. Under it the Union, the States, the municipalities and the Federal District are endowed, as federated bodies, with autonomy. Thus, the indissoluble union of States, municipalities and Federal District forms the Federative Republic of Brazil. The Constitution sets forth the specific attributions of the Federation members, which are equally autonomous and charged with specific functions, there being no hierarchical order among them.

46. The 1988 Constitution embodies the lineaments of a democratic rule of law founded on sovereignty, citizenship, the dignity of the human being, the social values of work and free enterprise, and political pluralism (art. 1, I-IV).

## **2. The executive branch**

47. The executive branch is made up of the President of the Republic and his ministers of State, whom he appoints. The term of office of the President of the Republic is four years, and he can be re-elected for an additional term. The competence of the President of the Republic is provided for in detail in the Constitution. Two bodies are directly linked to the President of the Republic for consultations: the Council of the Republic, which issues opinions on federal interventions, state of defence and state of siege, and on matters relating to the stability of the democratic institutions; and the National Defence Council, which deals with matters relating to the national sovereignty and defence of the democratic State.

48. Brazilian law defines as “responsibility crimes” those acts committed by the President “which attempt against the Federal Constitution, and particularly against: the independent functions of the Legislative and Judicial branches, of the Public Ministry, and of the constitutional powers of the units of the federation; political, individual, and social rights; probity in his administration; compliance with the law and with judicial decisions”. If an accusation against the President is accepted, he is judged before the Federal Senate for responsibility crimes or before the Supreme Federal Court for ordinary criminal offences.

49. Ministers of State can be summoned by the Chamber of Deputies or the Federal Senate to provide information on matters of interest to them. If they fail to comply with summons of this nature, they can be considered guilty of a responsibility crime.

## **3. The legislative branch**

50. Legislative power is exercised by the National Congress, which is made up of an upper house, the Federal Senate, and a lower house, the Chamber of Deputies. Senators’ term of office is eight years, and that of deputies is four. Deputies and senators enjoy parliamentary immunity and cannot be charged for their opinions, words or votes. It is up to the National Congress to provide for all matters within the jurisdiction of the Union, with the sanction of the President of

the Republic. Among others, the following matters are within the exclusive competence of the National Congress: to issue decisions on treaties, agreements, or international acts which imply burdens or onerous commitments on the national patrimony; to authorize the President to declare war or make peace; to approve the establishment of a “state of defence” and federal interventions; to authorize the declaration of a state of siege, or to suspend any of these measures; to stay acts of the executive branch that exceed the reglamentary authority or the limits of the legislative delegation of powers; to examine the accounts rendered by the President; to supervise and control the acts of the executive branch; to preserve its legislative jurisdiction vis-à-vis the normative prerogatives of the other branches.

#### **4. The judicial branch**

51. The organs of the judicial branch are the following: the Federal Supreme Court, the Superior Court of Justice, the federal regional courts and federal judges; the labour courts and judges; the electoral courts and judges; the military courts and judges; the state and federal district courts and judges. The Federal Supreme Court and the higher courts have their headquarters in the Federal Capital and their jurisdiction covers all of the national territory.

52. By a majority vote of their members, the courts can declare a law or normative act of the Government unconstitutional.

53. It is up to the Federal Supreme Court to safeguard the Constitution and it has original jurisdiction to adjudicate cases concerning the constitutionality of laws or federal or State normative acts; lawsuits and conflicts between the Union and the States, the Union and the Federal District, or between any of them; extraditions requested by foreign States; jurisdictional conflicts between the Supreme Court of a State and any other courts, between high courts, or between these and any other court; requests for writs of prevention in direct actions of unconstitutionality.

54. The Federal Supreme Court is made up of 11 ministers appointed by the President of the Republic, after approval by an absolute majority of the Federal Senate.

55. Among other functions, the Superior Court of Justice has original jurisdiction to adjudicate jurisdictional conflicts between any courts (except for matters within the competence of the Federal Supreme Court) and jurisdictional conflicts between administrative and judicial authorities of the Union, or between judicial authorities of one State and administrative authorities of another.

56. Regional federal courts have original jurisdiction to adjudicate criminal review of and rescissory action for their decisions or those of the federal judges of the region, and to act as the appeal court in matters decided by federal and State judges in exercising federal authority within the area of their jurisdiction. It is up to the federal judges to adjudicate disputes relating to indigenous rights.

57. Labour courts conciliate and adjudicate individual and collective labour disputes between employees and employers, including disputes in the public administration.

58. Military courts adjudicate military crimes provided for in the law. The Superior Military Court is made up of 15 ministers appointed for life by the President of the Republic, after approval by the Federal Senate; 5 of the 15 ministers are civil ministers.

59. States of the Federation organize their own courts, and the constitution of each State defines the jurisdiction of the State courts.

60. Judges are appointed for life. They are irremovable and their salaries cannot be reduced for any reason.

61. The Constitution provides that the figure of the lawyer is indispensable to the administration of justice and he or she is inviolable for acts or views expressed in the performance of his or her professional functions.

62. According to the Constitution, the Public Defender's Department is an institution that is essential to the jurisdictional function, and its task is to provide legal guidance and defend, on all levels, those who need legal assistance.

### **5. The Ministério Público**

63. Sometimes labelled "the fourth branch", the *Ministério Público* (Attorney-General's Office) is an institution found only in Latin America. The *Ministério Público* is permanent and essential to the jurisdictional function of the State. Although it does not belong to the judicial branch, it is responsible for the defence of the legal order, the democratic regime and inalienable social and individual rights and interests. Its activities may only be exercised by career officials having undergone a public examination. Members of the *Ministério Público* have the same guarantees as judges. The principle of the relative autonomy of the States is respected in the actions of the *Ministério Público*: in addition to the *Ministério Público* at the Federal level there is one in each State.

64. Among the main institutional functions of the *Ministério Público* are to institute public criminal actions, civil lawsuits and public civil actions to protect social and public property, the environment and other diffuse and collective interests; and to defend in court the rights and interests of indigenous populations.

## **III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED**

### **A. The Constitution and the legal framework**

65. The Brazilian Constitution of 1988 reflects the efforts of lawmakers to consolidate and expand the fundamental rights and guarantees included in its preamble (a democratic State, aimed at ensuring social and individual rights, liberty, security, well-being, development, equality and justice as supreme values of a fraternal and pluralist and unprejudiced society), which were confirmed in the Fundamental Principles (Title I) and detailed in five chapters of Title II ("Fundamental Rights and Guarantees") dealing with individual and collective rights and duties, social rights, nationality, political rights and political parties.

66. The Constitution does not provide for any exceptions or derogations of fundamental rights and liberties. However, restrictions may be imposed on rights if a state of defence or state of siege is declared. The duration of such restrictions are provided for in the Constitution.

67. The 1988 Charter provided the legal framework for the democratic transition and the institutionalization of human rights in the country. Making a break with the authoritarian military regime that had come into power in 1964, it reflected a “post-dictatorship” democratic consensus. After 21 years of authoritarian regime, the Constitution sought to restore the rule of law, the separation of powers, the Federation, democracy and fundamental rights based on the premise of human dignity.

68. The 1988 Constitution includes the lineaments of the democratic rule of law among the fundamental principles it embodies and reinforces the federative and separation of powers principles, as pointed out in the previous item.

69. The Charter marks extraordinary progress in the consolidation of fundamental rights and guarantees and as such is the most comprehensive and detailed document in Brazil’s constitutional history.

70. Article 1, III establishes the value of human dignity as the basic core that informs the Brazilian juridical order as a valuation criterion and parameter for understanding the constitutional system introduced in 1988. Human dignity and fundamental rights and guarantees acquire a special, expansive force that permeates the entire Constitution and serve as the interpretation criterion for all the norms of the Brazilian juridical order.

71. The Charter introduces highly significant innovations in the area of international relations pursuant to article 4, I-X. While this article reflects the concerns of the imperial period with national independence and non-intervention and preserves the republican ideals of peace, the 1988 Charter innovates as it stresses an internationalist orientation previously unknown in Brazilian constitutional history. This internationalist bent finds expression in the principles of “prevalence of human rights”, “self-determination of the peoples”, “repudiation of terrorism and racism”, and “cooperation among peoples for the progress of mankind” (art. 4, II, III, VIII and IX).

72. In breaking away from previous charters, the 1988 Constitution, in a unique manner, embodies the primacy of respect for human rights as the paradigm advocated for the international order. This principle calls for the opening up of the internal juridical order to the international system of protection of human rights. As the prevalence of human rights is for Brazil the governing principle of international relations, it follows that the human rights issue should be of legitimate concern and interest for the international community. This concept of human rights is, for the 1988 Charter, an issue of global import.

73. In an equally novel manner, the 1988 Charter establishes - at the end of an extensive Declaration of Rights (art. 5, I-LXXVII) - that the rights and guarantees provided for in the Constitution “do not preclude others arising out of the regime and the principles adopted by it, or

out of international treaties to which the Federative Republic of Brazil is a party". The 1988 Charter thus innovates in including the rights emanating from international treaties of which Brazil is a signatory. In doing this, the Charter ascribes to international rights a special, differentiated hierarchy, i.e. the hierarchy of a constitutional norm.<sup>14</sup>

74. In addition, the 1988 Charter embodies the principle of immediate applicability of the norms defining fundamental rights and guarantees pursuant to article 5, paragraph 1.

75. As the major legal framework for the protection of human rights, the "citizen" Constitution rests on a broad basis of popular legitimacy. Of all Brazilian Constitutions, the 1988 Charter is the one that contemplated to the highest degree the demands and claims of civil society and the plurality of its agents.

### **B. Internal mechanisms for protecting human rights**

76. The universalization of human rights led to the establishment of an international normative system of protection that is global and regional in scope, as well as general and specific. Grounded in the primacy of the human being, these systems complement each other, interacting with the national protection systems, thereby ensuring the greatest possible effectiveness in the promotion and protection of fundamental rights.

77. In embracing the international protection apparatus and the international obligations arising from it, the State thereby accepts international monitoring of the manner in which human rights are respected on its territory. The international human rights protection instruments thus acquire a twofold importance: they consolidate minimum international parameters for the protection of human dignity, and ensure recourse to an international rights protection instance when national institutions are guilty of failures or omission.

78. It should be added that since the democratization process, and particularly since the 1988 Federal Constitution, Brazil has adopted important measures to incorporate international instruments for the protection of human rights. International human rights treaties ratified by Brazil include the following:

- (a) Convention on the Elimination of All Forms of Discrimination against Women, 1 February 1984;
- (b) Inter-American Convention to Prevent and Punish Torture, 20 July 1989;
- (c) Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, 18 September 1989;
- (d) Convention on the Rights of the Child, 24 September 1990;
- (e) International Covenant on Civil and Political Rights, 24 January 1992;
- (f) International Covenant on Economic, Social, and Cultural Rights, 24 January 1992;

(g) American Convention on Human Rights (“Pact of San José”), 25 September 1992;

(h) Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (“Convention of Belem do Para”), 27 November 1995;

(i) Protocol to the American Convention on Human Rights to Abolish the Death Penalty, 13 August 1996;

(j) Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”), 21 August 1996;

(k) Rome Statute of the International Criminal Court, 20 June 2001; and

(l) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 28 June 2002.

79. Although they have specific objectives in the area of human rights, all these international instruments share the common objective of ensuring the value of equality and impose on States parties the obligation to ensure the free and full exercise of human rights without any discrimination. According to the National Human Rights Programme, it is incumbent on the executive branch to give the widest publicity to the international treaties ratified by Brazil. This has been done through publications, debates, seminars and training courses offered by the Government in partnership with civil society organizations.

80. In addition to the ratification of these international treaties, Brazil has recognized the competence of the American Court of Human Rights by Legislative Decree No. 89 of 3 December 1998, which expressly declared this recognition pursuant to article 62 of the American Convention. In 2002, the Brazilian State embraced the individual complaint system under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination and in July 2002 submitted to the appreciation of the National Congress a bill on Brazil’s acceptance of the individual complaint mechanism provided for in the Convention against Torture.

81. In addition to the significant progress achieved under the “citizen” Constitution and to the incorporation by the Brazilian State of the international norms on the protection of human rights, the period after 1988 boasts the largest production of human rights legislation in Brazil’s entire legislative history. It can be said that the majority of the laws on the protection of human rights -

understood as the exercise of civil, political, social, economic and cultural rights - was enacted after and as a consequence and under the inspiration of the 1988 Constitution. The following laws stand out:

(a) Law 7716 of 5 January 1989: defines crimes resulting from racial prejudice and considers racism a non-bailable crime for which statutory limitations are not applicable (prior to the 1988 Constitution, racism was considered merely as misdemeanour);

(b) Law 8069 of 13 July 1990: provides for the Child and Adolescent Statute, which is considered to be one of the most advanced pieces of legislation on the subject, as it provides for full protection of the child and adolescent;

(c) Law 9029 of 13 April 1995: prohibits the requirement of pregnancy and sterilization certificates and other discriminatory documents for admission to or keeping a formal job;

(d) Law 9140 of 4 December 1995: recognizes as deceased any person who disappeared because of participation or alleged participation in political activities from 2 September 1961 to 15 August 1979, and makes the State responsible for these deaths and for paying compensation to the victims' families;

(e) Law 9263 of 2 January 1996: regulates article 226 of the Federal Constitution on family planning;

(f) Law 9265 of 12 February 1996: regulates article 5, LXXVII, of the Federal Constitution and provides for the non-payment of fees for acts required for the exercise of citizenship;

(g) Law 1904 of 13 May 1996: establishes the National Human Rights Programme and endows human rights with the status of public policy, as well as proposes government initiatives for the promotion and protection of civil and political rights in Brazil;

(h) Law 9299 of 7 August 1996: transfers from the military jurisdiction to the civil jurisdiction the right to hear cases of felonious homicide committed by members of the military police;

(i) Law 9455 of 7 April 1997: defines and punishes the crime of torture as a non-bailable crime whose perpetrator is not entitled to mercy or amnesty and whose principals, accessories, as well as those who, being in a position to prevent the crime abstain from doing so shall be held liable pursuant to article 5, XLIII, of the 1988 Constitution;

(j) Law 9799 of 26 May 1999: introduces into the Consolidated Labour Laws rules on women's access to the labour market;

(k) Law 9807 of 13 July 1999: sets norms for the preparation and maintenance of special protection for threatened victims and witnesses and establishes the Federal Programme for Assistance to Threatened Victims and Witnesses;

(l) Law 10224 of 15 May 2001: provides for the crime of sexual harassment;

(m) Decree No. 4228 of 13 May 2002: establishes the National Affirmative Action Programme under the Federal Public Administration; and

(n) Decree of 13 May 2002: establishes the National Human Rights Programme II and sets targets for the promotion of economic, social and cultural rights.

82. The Constitution provides for procedural instruments aimed at ensuring the observance of rights. Every citizen has the right to receive from public agencies information of private interest to him or her or of a collective or general interest within a period provided for in the law. Petitions may be referred to the public authorities responsible for the defence of rights or against illegal acts or abuse of power. The law cannot exclude any harm or threat to a right from consideration by the judicial branch. The law cannot harm acquired rights, perfect juridical acts and the *res judicata*. The law punishes any form of discrimination against fundamental rights and freedoms. The Constitution provides for the six principal remedies for the defence of threatened rights: habeas corpus, habeas data, writ of mandamus and collective writ of mandamus, writ of injunction, popular action and public civil action.

83. The rights and guarantees provided for in the Constitution do not exclude other rights and guarantees derived from international legal instruments to which Brazil is a party. The international legal instruments signed by Brazil must be approved by the National Congress (through a legislative decree) and sanctioned by the President of the Republic. After they are published in the *Official Journal of the Union* (promulgated), the sanctioned instruments become a rule of the domestic legal system and must be executed compulsorily. They can, therefore, be invoked and directly applied by the courts and competent authorities.

84. All authorities, whether judicial or administrative and at all levels, must respect the constitutional and legal provisions relating to the protection of human rights, and there is no authority with exclusive and specific jurisdiction in this area. The judicial authorities and the *Ministério Público* are competent to protect threatened human rights. Through actions at law, which can be brought against the Union itself, the States of the Federation, municipalities, the Federal District and any public entity, a victim of human rights violations can get legal redress.

85. Individuals who feel that their rights were harmed can resort directly to the *Ministério Público* at the State level (in most counties, there is a representative of the *Ministério Público*) or at the federal level, in accordance with the distribution of competences. The Council for the Defence of the Rights of the Human Person (CDDPH) is another organ to which individuals can directly apply. The Council, whose members share equal powers, is made up of representatives of the federal public administration and of the civil society, presided over by the Minister of Justice. The Council receives complaints and accusations of human rights violations from the interested parties themselves or third parties, or even from the press, and proposes and recommends the adoption of corrective measures to the competent authorities. The Council is not an executive body and has no coercive power over administrative or judicial authorities; it merely requests and recommends the measures that need to be taken to investigate, punish and redress human rights violations. In cooperation with the *Ministério Público* and governmental and non-governmental bodies, CDDPH monitors how the competent authorities deal with concrete cases of human rights violations it is aware of.

86. The law which created the Council in 1964 provides that its functions are the following: “to carry out inquiries, investigations and studies on the effectiveness of the rules which regulate the rights of the human person provided for in the Federal Constitution, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights, and cooperate with the United Nations in all matters related to initiatives or the implementation of measures aimed at ensuring respect for human rights”.

87. Indigenous rights are judicially defended by the *Ministério Público*. Complaints brought by indigenous individuals can also be referred to the General Board for the Defence of the Rights and Interests of Indigenous Populations, a body created in August 1991 within the *Ministério Público* to receive, investigate, evaluate and refer accusations of violations of the rights of indigenous persons and their communities to the competent authorities.

88. The collective rights of detained individuals are defended by the National Criminal and Penitentiary Policy Council, a body linked to the Ministry of Justice.

89. Courts of the States judge violations of rights as courts of first instance; thereafter, interested parties can appeal to a higher court (the Supreme Court of the State or the Court of Appeals, as appropriate). In exceptional cases, it is possible to appeal directly to the Federal Supreme Court against decisions of a higher court; however, such cases are very rare, as the Federal Supreme Court is predominantly a constitutional court.

90. Regarding the role of the police, the Federal Police and the State police (civil and military) have different jurisdictions. The Federal Police are directly subordinated to the Ministry of Justice and their functions are provided for in the Federal Constitution (art. 144): to investigate criminal infractions committed against the political and social order or against the goods, services and interests of the Union, as well as other infractions with inter-State or international repercussions requiring a uniform repressive action; to prevent and repress drug trafficking; to perform the functions of coastguard, air and border police; and to perform exclusively the functions of judicial police of the Union. The State police act under the authority of the governors of the States of the Federation and are made up of the civil police, which investigate crimes and criminal offences and play the role of judicial police at the State level, and of the military police, who wear a special uniform and are charged with preserving order (to police the streets and public locations, to repress behaviour which might disturb the security of citizens, to preserve order and repress street traffic offences). The military police are not part of the armed forces.

#### IV. INFORMATION AND PUBLICITY

91. All international legal instruments dealing with the protection of human rights to which Brazil is a party are translated into Portuguese and published in the *Official Journal*, which is distributed all over the national territory and, therefore, accessible to any person at practically no cost. Moreover, information about the internal ratification of international legal instruments is disseminated through a national radio network in a daily programme which informs the public of the activities of the executive and the legislative branches.

92. The texts of the Universal Declaration of Human Rights and of the main international conventions on human rights are printed and disseminated by official entities and associations of the civil society (such as academic entities, unions, the Brazilian Bar Association) and of the Catholic Church. The unions and the Catholic Church disseminate the contents of these texts in the form of popular primers. In certain cases, official agencies print and distribute the texts of international conventions on human rights in cooperation with international bodies such as UNICEF.

93. The Government and the civil society have been organizing debates on international legal instruments on human rights and on Brazil's compliance with them. At the Federal, State and municipal levels, the Government has been sponsoring seminars and training courses on human rights for civil servants, in some cases in cooperation with international organizations.

94. In cooperation with other agencies of the Federal administration charged with implementing the instruments, the Ministry for Foreign Affairs prepares national reports on the implementation of international legal instruments on human rights to be submitted to the bodies in charge of monitoring them.

### Notes

<sup>1</sup> *Síntese de Indicadores Sociais - 2000*, Rio de Janeiro, IBGE, 2001. Overall fertility rate - average number of children per woman in reproductive age - dropped from 5.8 children in 1970 to 2.3 children in 1999.

<sup>2</sup> *Sinopse Preliminar do Censo Demográfico 2000*, Rio de Janeiro, IBGE, 2001.

<sup>3</sup> *Síntese de Indicadores Sociais 2000*, Rio de Janeiro, IBGE, 2001.

<sup>4</sup> World Development Indicators 2001, World Bank.

<sup>5</sup> *Indicadores Sociais 2000*, IBGE Foundation, May 2001.

<sup>6</sup> A person who cannot read and write a simple note in his/her language is considered to be illiterate. This indicator refers to the over-15 population that is illiterate.

<sup>7</sup> Schooling is measured in average numbers of years in school.

<sup>8</sup> School attendance is defined as the percentage of school-age children who are actually enrolled in elementary school.

<sup>9</sup> *Síntese de Indicadores Sociais 2000*, Rio de Janeiro, IBGE, 2001.

<sup>10</sup> 1995 data.

<sup>11</sup> The United Nations Development Programme-UNDP has issued Human Development Reports since 1990. Their purpose is to measure the quality of life of the population in the 174 nations covered by the survey. The Human Development Index is formed by three indicators: per capita income; longevity, expressed in terms of life expectancy at birth; and the

degree of education, assessed by the literacy and illiteracy variables. Countries with an HDI below 0.500 are classified as having low human development; those with an HDI between 0.500 and 0.799 are considered to have average human development; and those with an HDI of 800 and above are considered as having high human development.

<sup>12</sup> The HDI had been 0.787 in 1991 and 0.734 in 1988.

<sup>13</sup> World Development Indicators - 2001, World Bank.

<sup>14</sup> It should be noted that there is serious divergence from a doctrinal and jurisprudence standpoint about the hierarchy of human rights protection treaties in Brazil. Four positions are defended: (a) supraconstitutional hierarchy of human rights treaties; (b) a constitutional hierarchy; (c) a supralegal but infraconstitutional hierarchy of these treaties; (d) hierarchical parity between treaties and federal law (predominant position at the Federal Supreme Court).

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