



# BRAZIL

CAPITAL: Brasilia

POPULATION: 191.5 million

GNI PER CAPITA (PPP): \$10,070

<b>SCORES</b>	<b>2006</b>	<b>2010</b>
ACCOUNTABILITY AND PUBLIC VOICE:	N/A	4.91
CIVIL LIBERTIES:	N/A	4.85
RULE OF LAW:	N/A	4.06
ANTICORRUPTION AND TRANSPARENCY:	N/A	3.63

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

## David Fleischer

### INTRODUCTION

Brazil has been an independent nation since 1822, and a republic governed by a federalist constitution since 1889. Starting in 1930, Getúlio Vargas led a period of considerable autocratic modernization and incipient industrialization. Vargas was toppled by the military in December 1945, and the 1946 constitution installed a democratic regime. Vargas returned by direct election as president in 1950, but his populist regime ended in August 1954 when he committed suicide rather than again be removed by the military. In 1955, Juscelino Kubitschek was elected president, promising “50 years of progress in 5,” with a new intense phase of import-substitution-industrialization and the construction of the new inland capital Brasília.

The 1960s and 1970s were characterized by intense rural-urban migration. In March 1964 the military removed President João Goulart and proceeded to rule Brazil until March 1985. Unlike other military regimes in South America, Brazil held congressional elections every four years and political parties were allowed to operate, though with severe restrictions. After a prolonged 10-year “political transition,” democracy finally returned when, in January 1985, the Electoral College chose Brazilian Democratic Movement Party (PMDB) member Tancredo Neves as president. Neves died before taking office and Vice President José Sarney completed the five-year mandate. During this period,

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**David Fleischer** is emeritus professor of Political Science at the University of Brasília and a founding member of Transparency Brazil. He received his Ph.D. from the University of Florida (1972) and was visiting professor at the UFMG (1969–1971) and The George Washington University (1997). He served in the Peace Corps in Minas Gerais, Brazil (1962–1964).

a new constitution was approved in 1988, but rampant inflation inhibited development. On November 15, 1989, the first direct elections for president since 1960 were held and Fernando Collor de Mello of the Party of National Reconstruction (PRN) narrowly defeated the Workers' Party (PT) candidate. However, Collor was impeached by the National Congress in December 1992 following a corruption scandal.

In October 2002, PT candidate Luiz Ignácio "Lula" da Silva was elected president following the eight-year presidency of Fernando Henrique Cardoso of the Brazilian Social Democracy Party (PSDB). This marked a new phase of maturity for the Brazilian political system: peaceful alternation in power between the two main political parties. Lula, a poor migrant from the northeast and former labor union leader, had lost the 1994 and 1998 elections to the renowned sociologist, former senator, and finance minister Cardoso.<sup>1</sup>

Lula rose to power as head of the metalworkers' labor union in São Paulo in the late 1970s and in 1980 helped found the leftist PT, which favored a large state role in the economy, redistribution of wealth, and nationalist policies. After the 1994 election, the PT became less radical and concentrated on electing more officials and eventually achieving the presidency.<sup>2</sup> Meanwhile, during the Cardoso presidency, nationalist elements of the constitution were altered to permit privatization of many state enterprises, and other market-friendly measures were adopted. However, both foreign debt and unemployment soared, especially after a currency devaluation in 1999. In the 2002 campaign, the PT assumed a more market-friendly posture, and Lula defeated PSDB candidate José Serra in a runoff with 62.5 percent of the vote.

As president, Lula shocked orthodox PT militants by maintaining austere orthodox macroeconomic policies. This belt tightening helped the economy expand by 5.2 percent in 2004. The government suffered a major debacle in 2005 with the *mensalão* scandal, a scheme involving monthly payments to various parties and their deputies in return for progovernment votes. Although Lula was not personally implicated, the scandal hurt his approval ratings, which sank to 28 percent in December 2005. However, fears regarding reelection prospects diminished in early 2006 as Lula's standing began to improve in the polls.<sup>3</sup> When balloting was held in October 2006, Lula fell just short in the first round but topped PSDB candidate Geraldo Alckmin in the runoff with 60.8 percent.

Growth continued at higher than 5 percent in 2007 and 2008. Despite a subsequent sharp slowdown caused by the global financial crisis, as of mid-2009 Lula's popularity remains high, aided by sustained economic growth that has considerably improved both Brazilian self-confidence and the nation's international standing. Over the past seven years, the country has experienced considerable upward social mobility, and extreme poverty declined from 17.3 percent of the population in 2001 to 10.2 percent in 2007.<sup>4</sup> Perhaps no policy has been more successful than the conditional cash transfer program known as *bolsa família* (family stipend), which provides US\$50 per month for low-income families who keep children vaccinated and in school. By the 2006 elections, this

program reached some 11 million families—and importantly, some 40 million voters in an electorate of 125.8 million.<sup>5</sup>

Despite this progress, Brazil has some persistent social and governance problems. As a coalition-based presidential system, maintaining the government support base requires significant bargaining, which encourages corruption, a vice also present in many other governance realms. Violence by organized criminals is a major problem in large cities and provokes severe police abuses. The 27 state governors possess a level of autonomy sometimes not matched by accountability. Land reform remains a difficult question, with actors from giant agribusinesses to landless peasants seeking new territory along an enormous and ambiguously titled frontier. Moreover, Brazil still has one of the most unequal income distributions in the world, as well as notable racial disparities. Nonetheless, a combination of structural and policy shifts have left the country in a position to confront these issues. As Brazil's international prominence rises, success or failure to achieve sustainable social and economic progress will be on display for the world to see.

## ACCOUNTABILITY AND PUBLIC VOICE

4.91

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	5.25
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	4.25
CIVIC ENGAGEMENT AND CIVIC MONITORING	6.00
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	4.14

Brazil has a generally free and fair election system. Voters go to the polls every two years, alternating between municipal and general elections. Voting is obligatory for most Brazilians. In the October 2008 municipal elections, the electorate numbered 130,469,549 eligible voters,<sup>6</sup> and turnout was 85.46 percent. Balloting is overseen by a national election governance body, the National Election Court (TSE), with regional election courts (TREs) in each state and election judges and registry offices at the municipal level.<sup>7</sup> The TSE, which commands high respect from both the population and elites, has seven judges with two-year mandates on rotation from the Supreme Court (STF), the top federal appeals court (STJ), and the Brazilian Bar Association (OAB).

Occasionally, the TSE engages in what some observers consider the judicialization of politics, determining election norms that should be the prerogative of Congress. For example, in response to a rash of party switching in 2002–2003 and 2006–2007 that facilitated President Lula's efforts to construct a coalition in Congress, in 2007 the TSE decided that the mandate of those elected belongs to the party that elected them and not the individual officeholder. Hence, elected officeholders who switch parties could lose their mandates under some circumstances. Candidates for president, governor, and mayor must receive an absolute majority of the valid vote or face a second-round runoff election three weeks later.

In spite of Lula's 2006 reelection, the PT dropped to 83 deputies (from 91 in 2002) and 11 senators (versus 14 in 2002). The Lula bloc in the Chamber of Deputies was similar at 321, while the opposition declined from 170 to 153. In the Senate, the Lula bloc declined from 48 to 44, while the opposition increased 2 seats to 34. The campaign was considered free and fair.<sup>8</sup> Since the mid-1990s, four parties—the PMDB, PT, PSDB and the Liberal Front Party (PFL), which in 2007 changed its name to the Democrats (DEM)—have held the largest blocs in Congress. In the 2008 municipal elections, the PT and PMDB secured gains, while the two major opposition parties, the PSDB and PFL/DEM, suffered declines.<sup>9</sup> This result was typical of gains accrued by the parties in power at the federal level.<sup>10</sup>

Each state elects three senators by simple majority to eight-year terms in alternation. In 2009, 11 parties are represented in the Senate. The Chamber of Deputies has 513 deputies, with a minimum of 8 from small states and a maximum of 70 for the state of São Paulo. This produces skewed regional representation; very small states such as Amapá and Roraima, proportionate to their populations, should have only one deputy, whereas Brazil's largest state should have a 120-deputy delegation. The election of state and federal deputies uses an open-list proportional representation system. Because there is no minimum required percentage, in 2006, 21 parties elected at least one deputy. This system produces some unexpected results. In some states, a candidate with 200,000 votes is not elected, but in other states a candidate with 500 votes is elected.

Election finance comes from several sources, including a party fund and seven weeks of free television and radio time distributed by the TSE, proportionate to each party's votes received in the last election. Contributions from individuals and firms are capped by law, but perhaps 80 percent of campaign finance comes from off-the-books (*caixa dois*) contributions not officially reported to the TSE. The TREs often unquestioningly accept suspiciously low spending declarations from candidates without investigation. The election courts lack sufficient material and human resources to monitor contributions, which are often decisive in elections and bring great influence to private sector groups. Congress, with its own vested interests in mind, has never approved stronger laws to this effect. Another indirect form of financing comes from "cultural contributions" made by public and private companies to nongovernmental organizations (NGOs) and organizations linked to certain parties and candidates—which then expect budget allocations back to the donors.

Citizens who have been convicted in court are allowed to run for office in Brazil until their last appeal has been exhausted. Thus, many become candidates in hopes of gaining parliamentary immunity. Politicians are judged exclusively at the Supreme Court. In 2008, 40 percent of Brazil's 513 federal deputies had cases pending with the courts.<sup>11</sup> This hurts Congress's credibility and makes it more difficult to fulfill its role of checking the executive. Cases most frequently involve tax evasion but also include money laundering, fraud, corruption, and even murder.

Election courts are empowered to remove from office officials who violate laws prohibiting the “abuse of private and public economic power.” Two of the 27 governors elected in 2006 were removed in early 2009 after defeated candidates brought cases alleging vote buying and illegal use of state governments’ human and material resources.

Brazil’s system of checks and balances is patterned roughly on the U.S. model. The president has line item veto power and Congress hardly ever overrides his vetoes. Very few of the president’s 25,000 political appointments must be confirmed by the Senate. To a large extent, the president dominates the congressional agenda via party coalitions whose cohesion is maintained through the distribution of key appointments and budget appropriations to parties and individual legislators.<sup>12</sup> The STF on occasion rules that decisions by Congress and the executive are unconstitutional, and both other branches abide by these high court decisions.

The civil service is recruited by competitive public exams and has career and promotion plans detailed by law. In spite of a large number of political appointees, Brazil is considered to have a high-quality, well-trained permanent bureaucracy. Once a public servant’s status becomes permanent, it is very difficult to effect removal or dismissal except via complicated administrative procedures. However, the large number of confidence appointees means that bureaucrats are subject to political pressures. For example, in 2009, the first woman to head the Federal Tax Service (SRF), Lina Maria Vieira, was summarily dismissed by the finance minister because she had implemented a broad anti-tax evasion policy against large firms and banks, including firms controlled by the family of powerful Senator José Sarney.<sup>13</sup> In addition, nepotism remains a problem; when the STF in August 2008 issued an edict prohibiting nepotism in hiring, the resulting revelations of the extent of such hires caused a scandal that lasted into August 2009.<sup>14</sup>

Brazil has a very large and well-developed civil society. Civic groups and NGOs are allowed to testify and comment on pending legislation, and their efforts receive considerable coverage in the media. However, the influence or impact of these efforts is spotty. On certain issues, such as environmental protection, press coverage has some impact. International NGOs such as the World Wildlife Foundation and Greenpeace are very active in Brazil. Civic groups are also active in the annual budget process but have little impact on the joint budget committee. At the municipal level, NGOs and civic groups exercise more influence, especially in the south and southeast regions. Good governance groups have an increasingly vocal presence in Brazil.

In general, NGOs are free from government pressure, although they must file with the SRF every year to maintain their nonprofit status. In 2009, the PSDB and DEM installed a parliamentary commission of inquiry (CPI) to investigate the activities of and federal funding for NGOs and civil society public interest organizations (OSCIPs) during Lula’s first term. Since 2001, Senator Mozarildo Cavalcanti (PTB-Roraima) has been denouncing NGOs, especially

transnational groups, that he deems “enemies of the Amazon region” and pressuring for their exclusion by the federal government.<sup>15</sup> NGO activists are subject to threats and intimidation, and many have been killed because of their militancy, especially in land tenure conflicts. Notable examples are Chico Mendes, the leader of rubber tappers in the state of Acre, murdered in December 1988, and Dorothy Stang, an American nun murdered in Anapu, Pará in February 2005. Attempts to convict Vitalmiro Bastos de Moura (the farmer who allegedly ordered Stang’s murder) have not been successful, illustrating the difficulties in achieving justice in such cases.

Although the Lula government is frequently dissatisfied with media coverage, it strongly supports constitutional and legal protections for freedom of expression and media freedom. Brazil still has some laws and decrees left over from the military regime, including, until recently, a draconian 1967 press law that limited journalism work to those with a BA degree in social communications. The law also contained articles that inhibited freedom of expression by the press and journalists, with fines and prison terms for defamation, libel, and slander. In February 2008, STF minister Carlos Ayres de Britto issued a temporary injunction suspending a large portion of the law, and in April 2009 the full court abolished it entirely.<sup>16</sup> Before the press law was overturned, criminal prosecutions for libel and defamation were common.

Civil defamation complaints are also often filed by aggrieved subjects of media reports. One of Brazil’s major press freedom issues is that courts frequently impose censorship on media outlets in such cases. A notable incident of prior newspaper censorship occurred in July 2009, after federal police indicted Fernando Sarney, the son of Senate president José Sarney, on various corruption-related charges. On July 30, Federal District Supreme Court president Dácio Vieira (a friend of the Sarney family) issued an injunction imposing prior censorship on any reporting of Fernando’s indictment in *O Estado de São Paulo*, one of Brazil’s major daily newspapers.<sup>17</sup>

Intimidation and attacks against journalists remain a problem as well, especially for reporters investigating crime and corruption in rural areas. The most notorious episode was the murder of TV Globo journalist Tim Lopes in June 2002 while he was investigating the use of child prostitutes by drug traffickers in Rio de Janeiro.<sup>18</sup> In 2008 two journalists were held and tortured by a Rio militia. A 2009 Committee to Protect Journalists report warned of continued impunity in five of the eight cases of dead journalists over the previous decade.<sup>19</sup>

Brazil’s presidency has an annual budget allocation of around US\$600 million for official publicity that is used by state agencies to promote their activities and achievements. In 2008, this propaganda machine reached 4,417 media outlets. Such revenue is hotly sought after by the Brazilian media as an important contribution to their bottom lines. This mechanism is also practiced by state and larger city governments.<sup>20</sup> To a certain extent this advertising influences media policies and opinions. State governors, especially, exercise control over local newspapers through advertising.

Media ownership is highly concentrated, especially in the broadcast sector, and owners use their outlets to further personal interests. Many important politicians own media outlets in their home states, which are used to further their political and economic interests and attack their enemies. In August 2009, federal police and prosecutors indicted leaders of the Universal Church of the Kingdom of God (IURD) for illegally siphoning off contributions to finance the church-owned media empire, Record TV and radio network, which is in fierce competition with the dominant Globo TV and media network.<sup>21</sup> Following the indictment, both networks used considerable portions of their evening news programs to attack each other.

The federal government owns the Brazilian Communication Firm, which operates a news agency, plus official television and radio stations. However, the audience ratings for TV Brasil are extremely low, as are those of other federal and state broadcast channels. The federal government still maintains a one-hour obligatory radio network program carried by all radio stations called the Voice of Brazil, broadcast every weeknight. Access to the internet suffers few restrictions, although some limitations were imposed on campaigning via social networking sites during the 2008 municipal elections.<sup>22</sup>

## CIVIL LIBERTIES

4.85

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	3.50
GENDER EQUITY	4.33
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	4.25
FREEDOM OF CONSCIENCE AND BELIEF	6.67
FREEDOM OF ASSOCIATION AND ASSEMBLY	5.50

Although both the Cardoso and Lula governments made advances on human rights, certain sensitive cases from the military regime (1964–1985) have yet to be revealed. In 1996, it was estimated that there were 358 deaths during this period, including 138 disappearances.<sup>23</sup> As part of the final stage of transition from the military regime, Congress granted a general amnesty to both sides: military personnel and the regime's civilian defenders, as well as opponents who attacked the government through armed guerrilla actions.<sup>24</sup> In August 2001, an Amnesty Commission was installed at the Ministry of Justice to examine requests for amnesty and compensation for those who suffered persecution during the period. By 2007, 29,079 cases had been analyzed, with another 28,558 on the agenda. President Lula, his chief of staff Dilma Rousseff, and former chief of staff José Dirceu were among those who received amnesty and monetary compensation.<sup>25</sup> Generally, public opinion favors the truth, amnesty, and compensation process, but only the most notorious cases get media coverage.

It was assumed by most that the 1979 amnesty precluded any trials of military personnel involved in the torture, persecution, and killing of antimilitary

activists. However, civil suits have been filed against some known torturers. In the case filed in 2007 against former army colonel Carlos Alberto Brilhante Ustra, the government assumed his defense in a São Paulo court.<sup>26</sup> As of mid-2009, there is a movement to alter the amnesty law to allow prosecution of those accused of perpetrating torture during the military era.

Abuses including torture and even death at the hands of state agents remain one of Brazil's most pressing human rights issues, although the victims are no longer political. Confronted with well-armed, lethal urban gangs, the police have been accused of seeking to cut corners in ways that lead to rights violations. In Rio de Janeiro, for example, 1,330 deaths at the hands of police were registered in 2007 and another 1,137 in 2008.<sup>27</sup> Although these police killings were recorded as "acts of resistance," the UN Special Rapporteur for Extrajudicial Killings has reported that a significant portion appeared to have been executions.<sup>28</sup> Nor is the human dignity of prison inmates well respected. State and federal prisons are overcrowded and most prisoners lack legal assistance. Violence and sexual abuse are common. Trials are slow, and prisoners often remain incarcerated after their sentence has expired for lack of an adequate control system. In addition, leaders of Brazil's numerous large organized crime organizations, such as the First Capital Command (PCC) in São Paulo and the Red Command (CV) in Rio de Janeiro, maintain command from behind prison walls via cell phones and visits by couriers. After these privileges were rescinded in 2006, the PCC organized an "uprising" in the city of São Paulo, with scores of attacks on police barracks and outposts that left at least 150 people dead.

These issues are both caused by and symptoms of crime, which remains one of Brazil's major social maladies. The number of homicides in Brazil reached a peak of 51,043 in 2003 before steadily declining to 42,179 in 2008. However, a study compiled by the Brazilian Forum for Public Security contrasted a decrease in homicides in larger cities with an increase in smaller interior cities. The most significant reduction was in the state of São Paulo, where killings decreased 7.8 percent between 2007 and 2008.<sup>29</sup> Adolescents are particularly at risk. A recent study of 267 cities found a national homicide rate of 200 per 100,000 for youths between 12 and 18.<sup>30</sup> Other crimes, including kidnapping and armed robbery, also present major challenges to authorities in many cities. Indeed, the prevalence of such crime and the impunity for most criminals is one reason the public has not demanded more drastic action to decrease the volume of police abuses.

In 2007, the Lula government created the National Program of Public Security with Citizenship (Pronasci) within the Ministry of Justice to initiate social programs, train police officers, and offer special stipends for police operating in dangerous areas. Police in São Paulo affirm that the decrease in the homicide rates is due to improved management and higher imprisonment rates. Others feel that the reduction in conflicts between rival organized crime groups explain the lower violence, because the PCC has consolidated its control in the state.



When abuses by state-level civil and military police occur, citizens have the right to seek justice and file a complaint or criminal suit, usually through a public defender, but a police inquest might also be installed. Occasionally, the police involved are demoted, expelled from the force, or imprisoned, but such cases are rare due to numerous problems ranging from lack of cooperation within the police to poor coordination among the various agencies involved in investigations.<sup>31</sup> Unlike most Latin American countries, Brazil has no independent national human rights ombudsman. In April 1997, the Cardoso government created, within the Ministry of Justice, the National Secretariat for Human Rights, renamed the Special Secretariat for Human Rights (SEDH) in 2003. This unit monitors human rights issues and coordinates policy across branches of government, focusing on vulnerable sectors of society. In addition, a majority of states in Brazil now have police ombudsmen located in state capitals. However, the ombudsmen do not have independent investigative capacity and turn over complaints to the internal affairs divisions of state police forces or state prosecutors.<sup>32</sup> In practice, the poor have much less access to receive redress, especially in rural areas.

Successive Brazilian governments have generally refrained from using state power to persecute political opponents. There are exceptions at the state and local levels, where opposition newspapers are harassed, or firms owned by opposition leaders are subjected to strict tax audits. Arbitrary arrests of political and economic opponents also occur mostly at the state and local level, but judges usually are quick to grant habeas corpus requests by defense lawyers or public defenders. This depends on the economic status of the person who has been arrested.

More frequent are arbitrary arrests of those suspected of regular criminal offenses. It is common for persons accused of crimes to be imprisoned for long periods without trial, especially in the case of the poor. The justice system is severely overloaded; absent legal assistance, the poor languish in prison until their case comes to trial. Between July 2008 and July 2009, a National Council of Justice (CNJ) task force reviewed 28,052 cases in 13 states and freed 4,781 prisoners held without trial for extended periods, including 310 minors.<sup>33</sup> The task force plans to complete its survey in the remaining 14 states and elaborate new guidelines and rules to ameliorate these problems.

Over the last 10 years, the federal police has conducted investigations of international human trafficking, including women destined for prostitution in Europe, the kidnapping of children for “placement” with families overseas, and the illegal extraction of organs for transplant. Similar trafficking cases also occur internally.<sup>34</sup> In addition, Labor Ministry investigators frequently discover and sometimes prosecute cases of semi-slave labor in rural areas, as well as the exploitation of illegal immigrants in urban areas.<sup>35</sup>

Brazilian law ensures that both men and women are entitled to all civil and political rights, and the state has taken some steps to ensure effective protections for women. In 1985, President Sarney created the National Council for

Women's Rights (CNDM). The Special Secretariat for Women's Policies (SPM) was established by Lula on his first day in office in January 2003. In August 2006, Congress passed the Maria da Penha Law, which criminalized domestic violence in accordance with Article 226 of the constitution.<sup>36</sup> Over the past three years, this law has slowly been enforced in most states to reduce what remain high levels of domestic abuse. By 2008, states and cities had established 386 special police precincts to deal with cases involving women.<sup>37</sup> These precincts are staffed by female police officers, as women seeking to enforce their rights had been frequently ridiculed and humiliated by male police officers.

Brazil features a 30 percent quota for women candidates on the open lists for deputy. However, because 98 percent of the electorate votes for an individual rather than the party list, just 45 women—9 percent of the total—were elected as federal deputies in 2006, and 11 of 81 senators.<sup>38</sup> Women have gained access to the judiciary with appointments to the superior courts. Ellen Gracie Northfleet, appointed to the STF in 2000, served as STF president in 2006–2008.

Protection against gender discrimination in private sector employment is more difficult. According to the 2007 National Survey Sample of Housing Units (PNAD), the average salary for women was 33.9 percent lower than the average for men.<sup>39</sup> In spite of the data for the private sector routinely collected by government agencies, no efforts have been made to correct this situation. Some firms require younger women to present a doctor's certificate that they have had their fallopian tubes tied, thus guaranteeing that they will not take a six-month maternity leave with pay, as required by labor legislation.

Brazilians consider their nation to be a "racial democracy," and many observers believe that this myth long prevented Brazil from undertaking an honest reckoning with the realities of racism. There are many laws that prohibit racial discrimination, but much informal discrimination still exists. The 2006 PNAD described the racial composition of Brazil's population as 49.9 percent white, 6.9 percent black, and 42.6 percent *pardo*, or mixed race, with most of the rest Asian/Indian.<sup>40</sup> A 1995 poll found that 89 percent of the sample agreed that "whites discriminate against blacks in Brazil"; the response was almost the same (91 percent) in 2008.<sup>41</sup> Brazil's indigenous population is very small—734,000 in the 2000 census—but indigenous populations occupy significant territory and are involved in sensitive legal issues (see Rule of Law).<sup>42</sup>

Brazil has many antidiscrimination laws and policies. In 2003, Lula created a special cabinet-level position for the promotion of racial equality. Many universities integrate affirmative action criteria in their entrance exams that favor Afro-Brazilians, members of indigenous groups, and the poor. However, this practice has not been confirmed by law, and various groups have challenged these "racial quotas" in federal courts; they may soon be tested at the STF.<sup>43</sup>

In the public sector, quotas have been implemented in some ministries. The Ministry of Justice, for example, has a 20 percent quota for Afro-Brazilians, but in reality these measures have not been very effective. In the private sector, there

is considerable disguised discrimination in hiring and salary levels. A Ministry of Planning report in 2008 revealed that white men make nearly twice the monthly income of Afro men and nearly three times that of Afro women, a pay gap that stands when adjusted for equal work and similar qualifications.<sup>44</sup> The state has legislation banning such discriminatory practices, but in practice these customs are entrenched.

Although Brazil has traditionally been more tightly linked to the Catholic Church than any other religion, there are no restrictions on the practice of religion, and the government does not take religion into account when making political appointments. The Vatican is seeking to establish a new agreement with Brazil to guarantee religious instruction in all public schools and gain new tax exemptions. The Catholic Church also has radio stations, but only one cable TV station. There are a few Roman Catholic priests in Congress, but the Church places restrictions on their candidacies.

Evangelical Christian churches have expanded in Brazil since 1960, and 43 evangelical deputies and senators were elected in 2006, down from 60 in the 2002 balloting. The practices of some evangelical churches, which are not hierarchical like the Catholic Church, have come under scrutiny. As noted previously, the practices of the large and influential IURD have led to criminal indictments.

The state guarantees the freedom of association and the right of assembly. The only restriction on public assembly is the need to request a parade permit in advance of marches along public thoroughfares; these permits are sometimes denied. Protests are common in urban areas, and public demonstrations occasionally become tense, especially when a countergroup is present. At times these protests become violent and the destruction of property and looting of stores ensues, at which point the police intervene.

Labor unions remain strong in Brazil, especially for industrial workers, whose strikes can bring entire sectors to a standstill. The Lula government is protective of labor unions and sensitive to their demands. Nonetheless, trade unions are not fully free and independent in Brazil insofar as a specific category of workers can be represented by only one union in each municipality. Pressure to break this singular representation rule faces resistance from labor unions. All public and private employees have one day's salary deducted each year as their obligatory "labor contribution." Union organizers are subject to violence in rural areas.

## **RULE OF LAW**

## **4.06**

INDEPENDENT JUDICIARY	5.00
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	3.40
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	3.50
PROTECTION OF PROPERTY RIGHTS	4.33

The Brazilian judiciary is considered generally independent and impartial, at least at the federal level. First-level federal judges, who are well trained, are recruited by competitive public exams that are free of political interference. Appointments to the federal regional courts, the STJ, and the Supreme Court are by presidential nomination, subject to confirmation by the Senate.

However, the justice system still faces serious problems, particularly on the state level. As of August 2009, the CNJ was investigating the possible removal of 107 federal and state judges for corruption.<sup>45</sup> After some 15 years of deliberation, under pressure from the executive branch and despite strong opposition from the judiciary, Congress finally approved a judicial reform package in 2004. This reform established the CNJ and an equivalent body for public prosecutors.<sup>46</sup> Since 2005, the CNJ has been reviewing and analyzing the administration of justice in federal and state courts and has suspended some judges. Most observers suggest that the CNJ has performed well so far but faces many long-term challenges.

Presidential appointments to the higher federal courts are never rejected by the Senate. Since 2003, for example, Lula has appointed 7 of the 11 members of the Supreme Court. Nonetheless, the STF has maintained proper distance and independence from government pressures. STF sessions are broadcast live on cable television, so the public occasionally witnesses some lively verbal exchanges among judges. One such spat occurred in April 2009, when STF president Gilmar Mendes was accused by Judge Joaquim Barbosa—the first Afro-Brazilian appointed to the high court—of destroying Brazilian justice.<sup>47</sup> This transparency in STF deliberations has increased public awareness of judicial operations and procedures, including conflicts between judges.

The executive and legislative branches generally comply with judicial decisions. Members of Congress complain about intervention by the judiciary to “impose” rules, but this occurs in the absence of adequate legislation by Congress itself. Opposition parties in Congress frequently contest procedural decisions by the ruling bloc via a Direct Action for Unconstitutionality (ADIn) at the Supreme Court, which is an important tool for combating abusive actions by the government coalition. Other plaintiffs, including professional associations such as the OAB and state agencies such as the Public Ministry, also make effective use of ADIns.<sup>48</sup>

Under Brazil’s legal system, accused criminals are presumed innocent until proven guilty—all the way until the final appeal has been exhausted. This system permits literally hundreds of appeals and other legal maneuvers that competent and high-priced lawyers can string out for years. If the accused is a first-time defendant, the judge will often grant release during the appeal process, although in practice this generally applies only to those of high socioeconomic status. Generally, citizens receive a fair and public hearing, but it is rarely timely. All defendants have the right to independent counsel, but the poor must depend on public defenders, of which there is a shortage in almost all states. In general,

federal prosecutors are independent of political manipulation, but this is not always the case at the state level.

The case of Banco Opportunity CEO Daniel Dantas exemplifies the gap in justice between rich and poor Brazilians. In July 2008, a federal judge in São Paulo twice ordered his arrest by the federal police, who had been investigating his illegal activities for several months. His lawyers quickly bypassed two layers of federal courts and went straight to Supreme Court president Mendes, who granted habeas corpus after each arrest.<sup>49</sup> Most jurists considered Mendes' actions—which are not characteristic of the behavior of high court judges—very irregular.

High government officials and ruling party politicians accused of crimes were rarely prosecuted in the past because of parliamentary immunity for deputies and senators, as well as the fact that they can only be judged by the Supreme Court. This situation changed dramatically after the *mensalão* case in 2005. In 2007, Federal Chief Prosecutor Antônio Fernando Souza filed a brief at the STF accusing 40 people of involvement in the scandal. To great surprise, the STF accepted all 40 cases and determined that federal courts would hear each case and take testimony from witnesses. One of the cases accepted was that of the formerly all-powerful presidential chief of staff, José Dirceu, who was forced to resign and was expelled from the Chamber of Deputies in December 2005.<sup>50</sup>

The Brazilian Armed Forces are under civilian control and since the installation of the 1988 constitution the military has refrained from intervention in politics, though it retains strong influence. For example, only in 1999 was President Cardoso able to install a Ministry of Defense and relegate the three former armed forces ministries to command status. The military very rarely becomes involved in domestic security operations, except when convoked specifically by state governors to supplement local police activities. In 2004, the government created the National Public Security Force (FNSP) coordinated by the National Secretariat for Public Security (SENASP) under the Ministry of Justice. This force is recruited among the best qualified state-level military policemen and trained to be a highly mobile group ready for specific local interventions. Usually, these actions are to combat drug traffickers. The FNSP has been used in four states: Espírito Santo, Mato Grosso do Sul, Rio de Janeiro, and Goiás. The FNSP receives specific training in human rights and crisis management. Its limited operations since 2005 have been praised for efficiency and respect of citizens' rights, especially during the Pan American Games in Rio in 2007.<sup>51</sup>

However, control and accountability of regular state-level civil and military police are very problematic. In many states, these police forces become involved in local politics. Acting as a corporate segment of the electorate, the police are often able to elect retired officers to state legislatures, who then act as a powerful lobby in support of police units. In some states, public prosecutors and the

federal police have also discovered corruption schemes aimed at the enrichment of senior police officers, usually through over-invoicing service and procurement contracts. When discovered, these cases are subject to internal police inquests as well as indictments by public prosecutors.

Worse yet is the involvement of state police with organized crime in large cities such as Rio de Janeiro. There, police have created local private militias that expel criminals from neighborhoods and subsequently extort and harass residents, while imposing exclusive distribution of services such as cooking gas and cable television. According to a study by the Public Policy and Human Rights research unit at the Federal University of Rio de Janeiro, in May 2009 such militias were operating in 171 communities. On July 28, 2009, public prosecutors in Rio de Janeiro requested that the judiciary freeze the assets of city council member Cristiano Girão, who was arrested for links with the community militia during the 2008 municipal election campaign.<sup>52</sup> A former civil police chief in Rio de Janeiro, Alvaro Lins, was elected state deputy in 2006 but was expelled and arrested in August 2008 after investigations revealed that he oversaw a broad corruption scheme.<sup>53</sup> It is also common for off-duty military and civil police to have a second job with a private security company; this is prohibited by law but tolerated by state authorities.

The state gives all citizens the right to own property. Restrictions on foreign land ownership are a sensitive subject. Foreign investors now own 34,591 farms covering 4,038,000 hectares, and the National Land Reform Institute (INCRA) has requested that Congress restrict land ownership by foreigners in the Amazon.<sup>54</sup> The 1988 constitution and relevant legislation guarantee property rights and contracts, but enforcing contracts can be difficult and time consuming, and there are typically multiple layers of conflicting deeds for farmland registered at local notary's offices. Conflicts involving squatters' rights often explode into violence.

The Landless Workers Movement (MST) is one of the largest and best articulated civic groups in Brazil. The country began experiencing severe land tenure conflicts in the early 1960s, but the issue was muffled during most of the military regime. In 1984, the MST was born as a Marxist-inspired social movement favoring massive land expropriations and distribution to landless peasants. The MST is not registered as a formal organization in Brazil in order to avoid legal action by its adversaries; rather, it uses front organizations to receive donations from the private sector, the Brazilian government, and foreign entities. Thus, when laws are broken, police and prosecutors indict MST leaders individually. The MST's central strategy involves invading and occupying land it deems unproductive in order to force the federal government to accelerate expropriations and distribution. Although the MST leadership has never publicly adopted a strategy of violence, fighting frequently erupts during their actions. State courts usually decree evictions of MST land evasions rather quickly, but governors are often reluctant to issue eviction orders to state police units. Although the group previously received support from the PT and some

sectors of the Church, relations with the PT cooled after Lula became president in 2003. Between 2000 and 2007, the MST affirms that it led 2,190 invasions, with 450,000 families either settled or awaiting settlement.<sup>55</sup>

Although there are provisions for the land rights of indigenous populations, these often conflict with infrastructure projects. In addition, Indian tribes are divided into two groups—those who are adequately “civilized” (and thus emancipated) and others that remain under the tutelage of the National Indian Foundation (FUNAI). Many Indian groups prefer to not be declared civilized, but some tribes take advantage of this new status to allow resource extraction in their forest areas, often for meager financial return.

One major battle occurred after the Collor government initiated studies for the demarcation of the massive Raposa Serra do Sol Indian reservation in the state of Roraima. While demarcation was effected by presidential decree in 2005, it was challenged by the governor of Roraima at the Supreme Court. Finally, in a 10-to-1 decision on March 19, 2009, the STF decided in favor of continuous demarcation of 12 million hectares. This meant that all non-Indians (mostly rice growers and three small towns) lost their property rights, and the area was exclusively reserved for 18,000 Indians, with financial compensation for the former owners. The STF stipulated a number of rules to reconcile native and government control, but the decision will serve as a benchmark for the other 22 pending cases involving the demarcation of Indian reservations.<sup>56</sup> More generally, the state at times expropriates private property for use in infrastructure projects, with compensation arbitrated by the courts.

## ANTICORRUPTION AND TRANSPARENCY

3.63

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	3.00
PROCEDURES AND SYSTEMS TO ENFORCE ANTICORRUPTION LAWS	3.00
EXISTENCE OF ANTICORRUPTION NORMS, STANDARDS, AND PROTECTIONS	4.50
GOVERNMENTAL TRANSPARENCY	4.00

Corruption is a very serious problem in Brazil. In the most comprehensive available analysis, Getúlio Vargas Foundation economist Marcos Gonçalves Silva estimated that the direct and indirect impacts of corruption cost Brazil’s economy some US\$5 billion per year (0.5 percent of GDP), roughly half the US\$10 billion in public investments earmarked in the 2006 budget.<sup>57</sup> In 2008, Transparency International’s Corruption Perceptions Index ranked Brazil 80th out of 180 nations with a score of 3.5.<sup>58</sup> During the Lula period, Brazil’s numerical score has declined from 3.9 to 3.5, dropping especially sharply in 2006, when its score of 3.3 reflected the effects of the mensalão scandal.

The government has excessive regulations, requirements, and controls that provide opportunities for corruption. Bureaucratic procedures at the local level are frequently used by officials to solicit bribes and kickbacks from citizens.

In 1987, the government created the Integrated System of Financial Administration (SIAFI), which registers all expenditures by federal government units, online, every day. Only those with a special password and training may operate the system, but for journalists, congressional staff, and watchdog NGOs with access, SIAFI is a very powerful tool. However, federal bureaucrats often divide expenditures into several slices issued on different days within various layers of the bureaucracy, which makes deciphering and monitoring certain expenditures more difficult. Since its inception, SIAFI has developed techniques that make detection of such manipulation much easier. Indeed, the Office of the Comptroller General (CGU) uses the database to monitor suspected corruption cases.

The state still plays a large role in Brazil's economy: in 2008, it was estimated that the government had a 40 percent participation in Brazil's GDP.<sup>59</sup> Privatizations have improved since the 1990s, when such processes were often fraught with corruption and manipulation involving government agents, exemplified in the July 1998 auction of giant state telecommunications firm Telebrás. A substantial portion of current state ownership is related to Petrobras, the national oil company that is one of the largest state enterprises in the world and therefore a target of rent seekers. With the discovery of giant new reserves that place Brazil among the world's oil heavyweights, Petrobras is set to expand considerably over the next decade.<sup>60</sup> In mid-2009, the Senate installed a CPI to investigate "philanthropic" donations made by the firm to NGOs and cultural entities linked to the PT and allied parties. The CPI will also question the mechanism whereby Petrobras and the National Petroleum Regulatory Agency (ANP) distribute royalties to municipalities adjacent to petroleum fields, amid allegations that towns governed by PT mayors received upward adjustments of these royalties prior to the 2008 municipal elections. In addition, opposition parties suspect that Petrobras pressured its suppliers to make campaign contributions to the PT and allied parties.<sup>61</sup>

In spite of laws and regulations to the contrary, most Brazilian politicians use public funds for their private benefit.<sup>62</sup> One recent example occurred in Congress, where deputies and senators receive four round-trip air tickets per month to visit their home states on weekends. Many instead used the equivalent mileage for tickets for family and friends. In July 2009, the Chamber of Deputies initiated 44 investigations regarding the "sale" of these tickets.<sup>63</sup>

Some of the most dramatic cases of private appropriation of public resources involve powerful regional kingpins who are elected to Congress and thus gain political immunity. Perhaps the most prominent recent example involves the three-time president of the Senate and former national president, José Sarney. According to *Veja* magazine, when first elected Senate president in 1995, he installed a "staff mafia" that has done his bidding ever since.<sup>64</sup> Sarney and other senators allegedly used secret administrative acts (never published in the daily record) to hire and fire relatives, cronies, and friends.<sup>65</sup> Sarney also used his influence in several cabinet ministries and federal agencies to ensure financial



gain for his family's businesses (commanded by his son, Fernando Sarney). His daughter, Roseana Sarney, is the governor of their home state of Maranhão, and his son José Sarney Filho represents the state as a federal deputy.

Asset declarations are required from all senior officials in the three branches of government. Candidates for deputy and senator must file declarations with the election courts. All such statements are open to public and media scrutiny, and the press often questions seeming omissions of assets.

Since 2003, Lula has unchained the federal police and prosecutors, which were restrained under the Cardoso government, to actively investigate corruption in Brazil. Armed with federal court orders to search and seize, tap telephones, requisition call records, and gain access to income tax returns and bank transactions, many corruption schemes involving politicians and their allies have been uncovered. However, most politicians are protected by the STF trial privilege. The *mensalão* case—brought before the High Court by a federal prosecutor general appointed by President Lula—remains the most prominent exception to such impunity.<sup>66</sup> As of September 2009, no final verdicts have been rendered.

The government's external control units, which include the CGU and the Congress-linked Federal Accounts Court (TCU), discover many violations of anticorruption laws and request indictments with federal prosecutors, but often to no avail. The TCU is composed of nine judges, who serve until the mandatory retirement age of 70; one-third are chosen by the president, with Senate confirmation, one-third by the Senate, and one-third by the Chamber of Deputies. The politicians chosen usually have been recently defeated at the polls and are expected to cover for their respective parties and groups in TCU deliberations. On July 27, 2009, STF president Gilmar Mendes harshly derided the TCU's ineffectiveness at revealing the wave of corruption, much of it nepotism related, sweeping Congress.<sup>67</sup> This spate of scandals—especially in the Senate—was revealed in the press shortly after José Sarney was elected Senate president in February 2009 and Senator Renan Calheiros, himself a longtime target of corruption allegations, became the PMDB floor leader.

The transparency of tax collections has similarly come under question in relation to the scandal in which the SRF head Vieira was dismissed on attempting to collect back taxes from large evaders (see *Accountability and Public Voice*). After a series of personnel shifts and investigations, the episode resulted in the resignation of some 60 technicians in the SRF, including 12 top administrators who complained about political interference.<sup>68</sup>

In June 2009, 43 federal employees accused of corruption were dismissed, bringing the total to 2,179 since 2003, according to data from the CGU.<sup>69</sup> The Brazilian media gives broad and accurate coverage of corruption at the federal level, but less for smaller states and municipalities, as local media outlets are often owned or controlled by politicians. In general, at the national level, whistleblowers, anticorruption activists, journalists, and government investigators feel secure in reporting cases of corruption and bribery, although there is no

specific federal law protecting them. However, at the state and municipal levels this is not always the case. Educational institutions are generally free of corruption and graft regarding admission and grades.

Citizens' legal right to petition government agencies for information is guaranteed in Article 5 of the 1988 constitution, as regulated by law.<sup>70</sup> However, Brazil does not have a comprehensive freedom of information law, although such a proposal is under deliberation in Congress. Most government agencies maintain transparency websites that reveal information the agency deems appropriate, but "sensitive" information is not easily available. As seen previously, many agencies disguise their expenditures in the SIAFI system. In practice, the most powerful instrument to obtain government information is via a formal request by a deputy or senator.

Brazil's annual budget process has several stages, culminating in a detailed budget proposal submitted on August 1 for approval before the holiday recess in December. The elaboration of the budget proposal in Congress is done by the Joint Budget Committee (CMO), composed of 31 deputies and 11 senators and subject to complete rotation of the hotly disputed spots each year. Although the CMO does hold some public hearings, input from organized civic groups is very limited.<sup>71</sup> However, a participatory budget mechanism that incorporates demands from neighborhood associations is sometimes used at the municipal level. This system was famously installed by the local PT government in Porto Alegre, Rio Grande do Sul during four successive administrations (1989–2004).<sup>72</sup> Participatory budgeting is used by other city governments, though many use it for political cooptation.

The only detailed source of expenditures by the federal government is via SIAFI. The Senate and Chamber of Deputies have oversight committees that are supposed to monitor budget implementation. This is difficult because the executive branch—in the name of "austerity"—frequently freezes expenditures in specific areas, only to liberate spending later if tax collections permit the availability of funds. Although this manipulation is related to achieving the primary surplus target, it is one of the mechanisms used by the president to maintain cohesion in his congressional coalition.<sup>73</sup>

Brazil's procurement procedures are quite complicated, even when these are transferred to online competitive bidding; frequently the result is overpriced goods and services.<sup>74</sup> Despite the detailed rules, the press frequently carries stories about biased bidding procedures that favor specific suppliers, usually enabled via collusion among bidders to divide up the spoils. In mid-2006, the federal police revealed the so-called "bloodsucker" scandal, in which over-invoiced ambulances were acquired for distribution to local governments, with intermediation by federal deputies. Of the 69 deputies involved who sought reelection that year, only five were reelected.<sup>75</sup> The levels of corruption in the area of foreign assistance are low, as both foreign donors and the Foreign Affairs Ministry have quite efficient control and monitoring procedures.

## RECOMMENDATIONS

- Proportional elections should be changed from open list to closed list format in order to strengthen political parties and downgrade with the importance of high name recognition and unlimited financial resources.
- Election laws should be changed to prohibit candidates with criminal records from running for office.
- Merit-based civil service requirements should be extended, with the number of political appointments made by the president, governors, and mayors reduced.
- Congress should pass affirmative action legislation that implements quotas for university admissions based on the racial and class origin of applicants.
- Government should increase the repression of private militias in urban neighborhoods and strengthen mechanisms to ensure that civil and military police who participate in such groups are expelled.
- The government should finalize and implement the demarcation of the remaining 22 Indian reserves.
- The use of state enterprises to finance political campaigns should be prohibited, with strict accountability imposed in the Regional Election Courts.
- The use of political criteria to select TCU judges should be abolished and only technical criteria used.

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