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Laws + Statutes

Consulate General of the
United States of America

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Department of State

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American Embassy, Rio de Janeiro

March 4, 1966

Basic Law on Organization and Functioning of Future Brazilian
Political Parties Operative This Year

Brasilia's A-9 of July 23, 1965

Summary

1. Future Brazilian political parties are to be organized and function in accordance with the Organic Statute on Political Parties of July 15, 1965. In addition to making generally uniform the rules respecting political parties, this Statute introduced a number of innovations seeking to reduce them in number and give them a more democratic and representative character.

2. Subsequent to the elections scheduled for later this year, a reorganization of national political parties is to be carried out under the terms of this Statute. New parties may then come into being if they meet the founding requirements, while ARENA and the MDB may become permanent parties if they satisfy the conditions for continued existence set forth in the law.

3. The end result may be what some regime strategists wanted from the start, -- a two-party system. More likely, however, a third national political party will separate from the ranks of ARENA (National Renewal Alliance) and the MDB (Brazilian Democratic Movement), thus restoring in general outline the country's traditional orientation toward three major political parties.

End of Summary

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1. Enclosed is a summary of the principal features of the Organic Statute on Political Parties, signed into law on July 15, 1965, by President Castello Branco, and transmitted to the Department by the referenced airmail. This Statute constitutes the basic legislation regulating the founding, organization, functioning, continued existence, and finances of legal political parties in Brazil. The announced objectives of this law were to give political parties a more concrete and uniform pattern of democratic organization, as well as to make them more efficient instruments of the voting public's will. Implementation of this law was interrupted, however, by a series of events, and was further deferred until late 1966 by the issuance of Complementary Edict No. 4 on November 20, 1965, establishing new rules for the organization of both provisional and permanent political parties.

Noteworthy Features of Statute

2. In addition to laying down generally uniform legal requirements respecting political parties, some of the more notable specific innovations of the Organic Statute as it now stands are these: (a) Sets conditions for founding or continued registration of a party which are drastic enough to make the ultimate emergence and survival of more than three national political parties improbable; (b) Seeks to promote democratic leadership within each party through an ascending hierarchy of elections by the membership; (c) Would broaden the representative character of the parties by setting reasonable basic membership minima in any district where a party proposed to operate; (d) Standardizes throughout the country, at each level, the holding of party conventions and of office-taking by directorates; (e) Tightens and codifies the disciplining of errant party members, and control over party finances and accountability; (f) Establishes the Party Fund, to provide non-discriminatory financial assistance to political parties; and (g) Sets up an Institute of Political Instruction, designed to educate political leadership and keep it up to date.

Formation of Permanent Parties

3. Complementary Edict No. 4 provided for certain key provisions of this Statute to become operative only after the 1966 elections. Article 15 of the Edict stipulated that subsequent to those elections the formation of political parties would be undertaken within the framework of the Statute. The Edict further stated, in its Article 16, that "beginning in 1967" the provisional political organizations to be registered by March 15, 1966, (i.e. ARENA and MDB) could request their transformation into regular political parties, if they satisfied the terms of the Statute's Article 47, as described below.

4. Some confusion has been caused by these provisions in the Edict, since the Organic Statute actually contains one set of conditions respecting the founding of political parties and another, quite different set, governing their continued existence. The conditions for founding are: (a) collection of signatures

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of followers amounting to at least three percent of the electorate which voted in the "last" elections for the Chamber of Deputies (which would have been 1962); and (b) said three percent must have been distributed throughout at least 11 states, with a minimum of two percent in each of them.

5. Continued existence of a party depends on these conditions, set forth in Article 47 of the Statute: (a) within a period of not more than 12 months from the date of its registration, the party must prove to the Superior Electoral Tribunal that it has legally established regional (state) directorates in at least 11 states; (b) elect 12 or more federal deputies from at least seven states; and (c) receive a vote, in the name of the party, amounting to at least three percent of the electorate registered in the country in general elections to the Chamber of Deputies.

6. Taken at face value, it would seem the Administration intended by the language of Complementary Edict No. 4 that completely new parties could come into being in 1967 only after meeting the conditions for founding a party. The provisional parties now being put together, on the other hand, could continue in existence if their performance in the 1966 elections fulfilled the requirements of Article 47. Such a reading of the Edict would appear to give great advantages to the provisional parties, since there will be only two, and it is practically beyond belief that each one will not be able to satisfy those requirements. But any completely new party would have an uphill struggle to meet the founding conditions set forth in the Statute.

Legal Anomalies

7. Before the Organic Statute can become operative, however, there must be removed certain anomalies created by the Statute's not having come into force in 1965 as the drafters had intended. There are also discrepancies to be eliminated between the Statute and Complementary Edict No. 4. It may be anticipated that the Government will eventually issue or obtain legislation resolving these problems and changing certain provisions of the Statute. (In fact, the Edict refers to "modifications" of the Statute, whereas no modifications yet exist.)

8. It would seem necessary, for example, to change the time period for meeting the conditions set for continued existence of any regular party founded after the 1966 elections, i.e. other than ARENA or the MDR. Such a party could not within a 12-month period satisfy the terms of Article 47, since the next elections to the Chamber of Deputies after that time are scheduled for 1970. (Originally, the 1966 elections would have been used for this purpose.) Also, the founding conditions of the Statute should probably be updated by requiring the use of 1966 electorate figures, rather than those for 1962 as the Statute intended. These and similar problems will have to be ironed out over the months ahead.

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Third Party Likely

9. Looking into the future, it appears likely that after the November elections the political forces in Brazil will arrange themselves along lines more in harmony with the country's tradition and temperament. In this context, the emergence of a third major party would not be surprising, as both the manpower and leadership for such a development should be available. Many members of the ARENA and the MDB may well not adjust for one reason or another to the new environment, and the founding requirements can probably be met by a third political organization. On the leadership level, numerous outstanding politicians like Carlos Lacerda, Magalhães Pinto, Carvalho Pinto, and Ademar de Barros have to date purposefully refrained from joining either ARENA or the MDB. Apparently they calculate their chances for a shot at the presidency and national political leadership are better if they remain outside current political groupings. Finally, a natural gravitation toward a third party would seem induced by the Brazilian national character--which has an inherent aversion to a harsh two-choice world that allows of little play for that inventive manipulation and improvisation called jeito.

10. Notwithstanding this anxiety, the probability seems good that ARENA and the MDB will continue to exist in some form. Though both will have losses, ARENA will in all likelihood suffer considerably greater defections than the more compact and less heterogeneous MDB. Massive centrifugal movements away from these two entities, however, may not be as easily forthcoming as seems to be imagined by some observers. A certain cohesiveness and organizational identification will doubtless develop within them as their members labor together to elect candidates in the various contests set for this year. And ultimately, for those who remain within the two parties there will be important, tangible rewards in the form of positions, privileges and "pull" that will not be lightly cast aside to join an unknown and uncertain third political force.

For the Charge d'Affaires ad Interim:

Lewis W. Bowdon
Second Secretary of Embassy

Enclosure:

As described.

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SUMMARY OF PRINCIPAL FEATURES OF
ORGANIC STATUTE ON POLITICAL PARTIES

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(Law No. 4740 of July 15, 1965)

Preliminary Provisions

1. These provisions note that "the foundation, organizing, functioning and extinction of national political parties" are subject to the terms of the present law, and that a party acquires juridical personality upon being registered with the Superior Electoral Tribunal. No party may be "organized, registered or function whose program or activity is contrary to the democratic system based on a plurality of political parties and on the guarantee of the fundamental rights of man." Only Brazilians in possession of their political rights may be members of political parties or participate in their activities. Political parties must carry on their activities "without connection with foreign parties or governments."

Foundation and Registration

2. The founders of a party (101 or more) appoint a provisional commission (at least seven members) to obtain the party's registration and to publish (at least three times) in major newspapers and in every state the party's founding manifesto, program and statutes. This commission then designates state committees-- which form lower organs in the municipalities or districts --- to solicit the signatures of persons wishing to list themselves as voters of the party concerned. These lists, duly authenticated, are sent to the local Regional Electoral Tribunal, which in its turn forwards them to the Superior Electoral Tribunal (hereafter referred to as the TSE) when the required number of adherents has been reached. The TSE then enters these lists under the rubric of the appropriate party and makes written note in the relevant book of the number of persons registered for each party from each state.

3. At this point, the political party may petition the TSE to be registered, provided it has duly collected signatures amounting to at least three percent of the electorate which voted in the last (i.e. 1962) elections for the Chamber of Deputies. It is further provided that such three percent must have been distributed throughout at least 11 states, with a minimum of two percent in each of them. /Concretely, if the 1962 figures are used, this means a party must get at least 442,417 signatures in 11 or more states, with a minimum of 8,848 signatures in each of the relevant states. These figures are derived from Dados Estatisticos, v. 6, 1962, Tribunal Superior Eleitoral, Brasilia, 1964/7

4. If the TSE concedes the registration, it then publishes the party's program, its statutes and the names of the members of the provisional commission. Once duly registered, a party may engage in all forms of legal political activity.

Requisites for Continued Existence

5. In order to retain its registration, and therefore continue to exist, each party must: (a) within a period of not more than 12 months from the date of its registration prove to the TSE that it has legally established regional directorates in at least 11 states; (b) elect 12 or more federal deputies from

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at least seven states; and (6) receive a party (i.e. not coalition) vote amounting to at least three percent of the electorate registered in the country in general elections to the Chamber of Deputies.

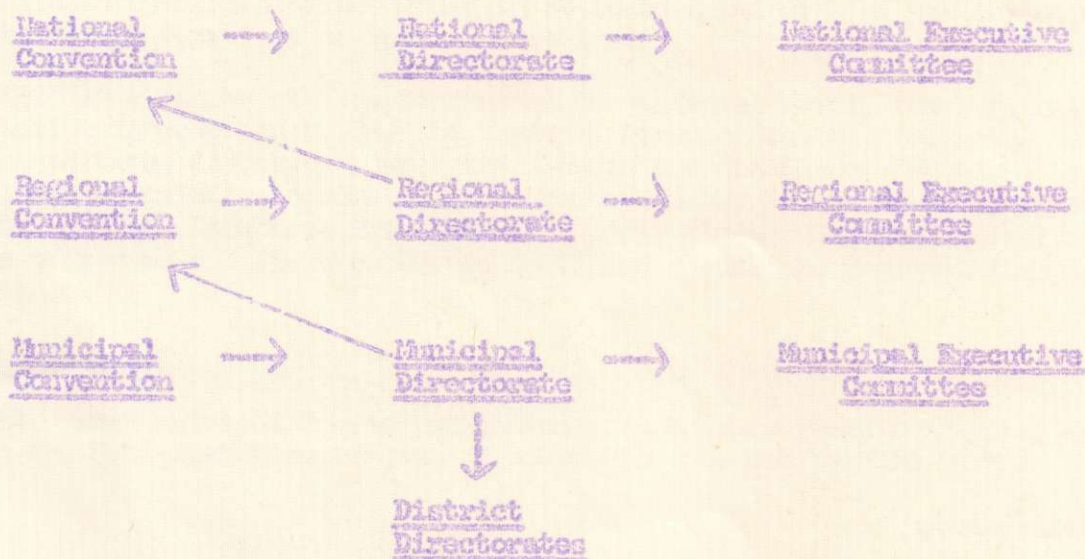
6. NOTE: By a stroke of the pen here, President Castello Branco undid the effort of Congress to give the parties less onerous conditions for survival. The text drafted by Congress had provided that "at least one of" the foregoing conditions had to be fulfilled in order for the party to continue in existence. These four words were vetoed by the President, thus making it necessary for all three conditions to be met. He thereby guaranteed a drastic reduction in the number of political parties in the country.

7. A party may voluntarily elect to go out of existence by a two-thirds vote of the members of its national convention.

Party Organs

8. The National Convention is the supreme organ of the political party, and, on their respective levels, the Regional and Municipal Conventions are the highest deliberative bodies. The municipal, Regional and National Directorates constitute the managing and directing organs of the party. The basic action organ of the party is the District Directorate, while the "municipal section is the fundamental and organic unit of the party." Except for certain specified reasons, party organs may not interfere with the operations of lower organs.

9. The hierarchical ordering of party organs and their interrelationship, as explained in the text below, will present the following picture under this law:



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9. (Cont'd) /NOTE: Broken-line arrows indicate election or appointment of one body by another. Solid-line arrows mean one body participates in the deliberations of the other, according to the direction of the arrow./

National Level

10. The supreme deliberative body of a political party, the National Convention, is to convene on the first Sunday in May, mainly for the purpose of electing the principal policy and management organ, the National Directorate. The National Convention is to be composed of (a) representatives of the party in the Chamber of Deputies and the Senate, (b) delegates appointed by the regional directorates (from the minimum 11 states) in a number double that of the party's representation in Congress, (c) members of the National Directorate and (d) a member of the Public Ministry designated by the Superior Electoral Tribunal as an observer.

11. The National Convention elects the National Directorate, which may consist of between seven and 51 members, to serve a four year term of office. The National Directorate takes office on the first Sunday in June and proceeds to elect the National Executive Committee (Comissão), whose membership may not exceed one-third of the National Directorate membership.

Regional Level

12. This level encompasses states, territories and the Federal District. The top deliberative body at this level is the Regional Convention, which is scheduled to convene on the first Sunday in March to elect the Regional Directorate. In order to hold a Regional Convention, the party must have established municipal directorates in at least one-fourth of the municipalities in the state, territory or Federal District.

13. In a manner similar to that at the national level, the Regional Convention is composed of (a) the Regional Directorate, (b) delegates from the municipalities, (c) party representatives in the Chamber of Deputies, Senate and local Legislative Assembly, (d) a member of the Public Ministry appointed by the Regional Electoral Tribunal. The newly elected Regional Directorate, takes office on the first Sunday in April and elects the Regional Executive Committee.

Municipal Level

14. The Municipal Convention convenes in January every four years to elect the Municipal Directorate. A convention may not be held in the

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municipality unless the party concerned has legally attained a certain percentage of membership from among the qualified electorate in that municipality. The scale on which this percentage is measured is the following:

<u>Electorate in Municipality</u>	<u>Required Party Membership</u>
Up to 1,000	Up to 50 (5%)
Up to 50,000	60 to 540
Up to 200,000	545 to 1,290
Up to 500,000	1,295 to 2,190

15. For purposes of making this determination, only party members are counted who were registered as such at least three months prior to the date of the convention. When it meets, the convention is comprised of the municipal directorate; councilmen, deputies and senators with residence in the municipality; and a number of delegates based on a proportion between the party membership and the qualified electorate in the municipality.

Fusion

16. Two or more parties may fuse into one, or one party may incorporate any number of others. In the first instance, the national directorates of the parties concerned are to work out a common program and party statutes. The parties then meet in a joint national convention and vote--by an absolute majority--to approve the new program and statutes. In the case of one party's incorporating one or more others, each party to be incorporated will vote by absolute majority in national convention to adopt the program and statutes of the incorporating party. If the latter agrees, the two (or more) parties then have a joint national convention and elect a new national directorate.

Party Discipline

17. Party members who violate party discipline are subject to: (a) warning, (b) three to 12 months suspension, (c) cancellation of their function(s) in party organs and (d) expulsion. Punishments are naturally designed to fit the infraction of duty or discipline committed. The most serious punishment, expulsion, can be effected only by a two-thirds vote of the competent party organ. Appeals against expulsion may be made by the party member concerned to the local electoral authorities (justice electoral) within a period of 30 days from the date of publication of the act of expulsion.

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18. Each party is to include in its statutes rules governing the maximum amounts which can be spent on publicity and candidates and defining the limits on contributions and gifts from its members. A strict book-keeping account is to be kept of receipts and expenditures, with an indication of their origin and use. The national party accounts are maintained by the party National Directorate and inspected by the TNE. Accounts kept by state, federal district and territory directorates are to be examined by the respective Regional Electoral Tribunal. Each party must render a financial accounting to the appropriate electoral court authorities at the end of each fiscal year.

19. Parties are forbidden to (a) receive direct or indirect financial or equivalent assistance from foreign sources; (b) accept funds from public organs or authorities, except as provided in this law; (c) receive any kind of direct or indirect assistance from mixed economic societies or public service concession enterprises, or from any private enterprise run for profit, or (d) from a source which cannot be explained.

20. Financial funds of the parties may be received and disbursed only by duly registered party leaders or specially constituted campaign committees. These funds are to be deposited in certain banks where they can be inspected by electoral court authorities. At the end of each electoral campaign each party must render an account of its activities to an inter-party campaign inspection committee established for the purpose. Limits are to be established in each election for donations, contributions and the expense of each electoral campaign committee. All campaign expenses must be paid by the parties or electoral committees. Such expenses may not be paid by candidates themselves, on pain of cancellation of their registration.

Party Fund

21. There is created by this law a Special Fund of Financial Assistance to the political parties, to be composed of the following: (a) fines collected through application of this Code and related laws; (b) financial resources which may be assigned the Fund by law; and (c) private donations, including those destined to maintain the Institute referred to in Article 75 (See below).

22. Distribution of resources in the fund is to be made by the TNE to the parties' national directorates in the following way: (a) 20 percent is earmarked for allocation among all the political parties in equal parts; (b) 80 percent is to be distributed in proportion to the number of deputies the parties have in the Chamber of Deputies. Each national directorate then distributes at least 80 percent of the funds received to the state directorates, and so on down the hierarchy in like manner.

23. Resources coming from the Fund will be used to (a) maintain party headquarters and pay non-salary office expenses; (b) conduct doctrinal and political propaganda; (c) carry out voter registration (alistamento) and the

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election process; (d) found and maintain the Institute mentioned in Article 75. Parties are required to render an account annually to the Tribunal of Accounts concerning the expenditure of these funds.

General Provisions

24. Parties are free of taxes of any kind, entitled to the gratis publication of many types of documents relating to party life and (Article 75) are guaranteed that there will be maintained an Institute of Political Instruction for the educating and renewal of political cadres and leaders. No political or electoral entity may exist without having satisfied the requisite legal requirements to function as such.

Transitory Provisions

25. Political parties are to reorganize themselves and rewrite their statutes in accordance with the terms of this law, under penalty of having their party registration cancelled.

26. NOTES: (A) The foregoing sentence is the essence of Article 79, from which the President excised the words "within a period of two years." As a result of this veto, no specific time period is prescribed in the legislation for party reform. It was clear, however, that by his veto the President intended to shorten, not lengthen, the period of party reorganization, since his original text to the Congress had provided a one-year reorganization period.

27. (B) Notwithstanding the immediately foregoing, this law technically came into force on August 19, 1965, 30 days after its publication in the Diario Oficial, but it did not actually become operative at that time for a number of reasons. These included a substantial modification proposal sent by the President to Congress in September. Further suspensive effect was wrought by Institutional Act, No. 2 (October 27, 1965) which abolished all political parties, followed by Complementary Edict No. 4 on November 20, which dealt with provisional political organizations and future, permanent political parties, and reaffirmed the validity of this Statute. 7

Source used for text:

Diario Oficial, July 19, 1965

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