Brazil: A Brief Survey of the Constitutional Evolution of Political Rights and the Political System

June 2009

LL File No. 2008-001412
LRA-D-PUB-002328
This report is provided for reference purposes only. It does not constitute legal advice and does not represent the official opinion of the United States Government. The information provided reflects research undertaken as of the date of writing. It has not been updated.
Executive Summary

Throughout Brazilian history, many civil and military coups d’état have occurred, and after each of them, a new constitution was promulgated to legitimate the unorthodox regime change. As a result, Brazil has enacted six additional constitutions since the promulgation of its first in 1824. However, only two constitutions, those of 1934 and 1988, were actually discussed and voted on by a National Constituent Assembly.

Currently, discussion revolves around the need to reform the Brazilian political system, and, many constitutional amendments have been proposed. In October 2008, the executive sent a political reform proposal to the Brazilian congress.

I. Introduction

The first Brazilian Constitution was enacted on March 25, 1824, by the Brazilian emperor, Dom Pedro I, imposing a constitutional monarchy on the country that lasted for almost sixty-seven years. The next progression of the Brazilian political system occurred on February 24, 1891, when a new constitution put an end to the monarchy and introduced a republican form of government to Brazil. The political system has continued to evolve and several other constitutions have followed, most of them imposed on the population by authoritarian regimes through coups d’état. A step by step account of the checkered development follows.¹

II. The Constitution of 1824

The Constitution of 1824 only allowed Brazilian citizens² who were twenty-five years of age or older³ and at a certain income⁴ level to vote in indirect elections. Indirect elections

¹ This is an abbreviated version of a lengthier account of Brazil’s constitutional developments, to be issued separately.
³ Id. art. 92(I).
⁴ Id. art. 92(V).
consisted of qualified voters participating in the Parochial Assemblies (*Assembléias Paroquiais*), where they voted for Provincial Constituents (*Eleitores de Província*), who would then vote for Representatives of the Nation (*Representantes da Nação*) – Federal Deputies and Senators – and Representatives of the Province. Although illiterate persons were allowed to vote, women, religious persons, and military personnel did not have this right.

The Constitution of 1824 also created the moderator power (*Poder Moderador*). This power concentrated the administration in the hands of the emperor and was above the legislative, executive and judiciary branches of the government. The exercise of this power allowed the emperor, *inter alia*, to appoint persons to govern the provinces, as the future states were called at that time.

Article 5 of the Constitution of 1824 provided that the Catholic religion would continue to be the official religion of the empire, and that the emperor also had the power to appoint bishops to the church and to provide ecclesiastic benefits. The legislative power was delegated to a general assembly and required the sanction of the emperor. The general assembly was composed of the Chamber of Deputies and the Chamber of Senators.

In 1834, the Constitution was amended to begin decentralizing power. Legislative assemblies were created in the provinces following a system of indirect elections, but no further advances were made in the realm of political rights.

In an effort to improve the electoral system, many decrees were issued, but the indirect electoral system continued to exist, which caused much public dissatisfaction. In 1847, Brazil, influenced by the English experience, attempted a parliamentary system. However, instead of being appointed by the legislature, the Brazilian Prime Minister was, in fact, appointed by the emperor, who controlled the Council of Ministers, the body formally responsible for the appointment. This enabled the emperor to continue to keep power centralized.

In 1881, after the emperor finally agreed to establish direct elections, a new decree to this effect was issued. The decree revoked all previous electoral laws and established direct elections in all levels of government.

---

5 *Id.* art. 90.

6 Religious persons were defined in article 92 (IV) of the Constitution of 1824 as anyone living a monastic life.

7 *Id.* art. 92(I).

8 *Id.* art. 10.

9 *Id.* art. 165.

10 *Id.* art. 102(II).

11 *Id.* art. 13.

12 *Id.* art. 14.

III. The Constitution of 1891

On November 15, 1889, the emperor was overthrown and a republican form of government was proclaimed. To reflect this new form of government, on February 24, 1891, a new constitution was promulgated.\(^\text{14}\) The new constitution;

- reduced the minimum voting age to twenty-one years of age;\(^\text{15}\)
- eliminated the requirement of a minimum income to be eligible to vote;
- allowed military officers to vote;\(^\text{16}\)
- eliminated the rights of illiterate persons to vote;\(^\text{17}\)
- determined that the provinces would become states (article 2);
- established that an area in the center of Brazil (Planalto Central) would become the future capital of the country (article 3);\(^\text{18}\)
- eliminated the moderator power;
- introduced a presidential system,\(^\text{19}\) as well as direct elections to elect the president\(^\text{20}\) and the members of the Chamber of Deputies\(^\text{21}\) and the Senate;\(^\text{22}\)
- established that the legislative power was to be exercised by the National Congress, which was composed of the Chamber of Deputies and the Federal Senate (article 16); and,
- imposed a separation between church and government (article 72, §7).

\(^{14}\) CONSTITUIÇÃO DA REPÚBLICA DOS ESTADOS UNIDOS DO BRASIL (de 24 de Fevereiro de 1891) art. 1, available at the website of the Brazilian Presidency, [http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao91.htm](http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao91.htm).

\(^{15}\) Id. art. 70.

\(^{16}\) Id. art. 70, §1(3).

\(^{17}\) Id. art. 70, §1(2).

\(^{18}\) This would finally occur in 1960 when the city of Brasilia (Distrito Federal) was constructed to house the federal government.

\(^{19}\) CONSTITUIÇÃO DA REPÚBLICA DOS ESTADOS UNIDOS DO BRASIL (de 24 de Fevereiro de 1891) art. 41.

\(^{20}\) Id. art. 47.

\(^{21}\) Id. art. 27.

\(^{22}\) Id. art. 30.
IV. The Constitution of 1934

Although not the direct product of a coup d’état, the constitution of 1934 was born after a civil revolution seized power and installed a provisional government that later called for a National Constituent Assembly to discuss a new constitution. The features of this constitution were:

- the right to vote became mandatory;\(^{23}\)
- the voting age was reduced to eighteen years;
- women were now allowed to vote;\(^{24}\)
- religious persons were allowed to vote;
- illiterate persons\(^ {25}\) and soldiers were not\(^ {26}\) allowed to vote; and,
- legislative power was exercised by the Chamber of Deputies with the collaboration of the Federal Senate (article 22).

V. The Constitution of 1937

In 1937, yet another coup d’état occurred, and all legislative bodies in the country ceased functioning as a consequence. Again, a new constitution was promulgated. In this new constitution, the autonomy of the states was eliminated, because with the new constitution the president obtained the power to appoint an administrator (Interventor) to the states, to exercise functions previously attributed to the executive.\(^ {27}\) These appointed administrators were given the power to appoint mayors to govern the cities.\(^ {28}\) In addition, the president acquired both the executive and legislative functions because the legislative power was to be exercised by the National Parliament, with the collaboration of the National Council of Economy and the President of the Republic.\(^ {29}\) The National Parliament was composed of the Chamber of Deputies and the Federal Council.\(^ {30}\) Elections for President of the Republic were indirect,\(^ {31}\) as were those

---


\(^{24}\) Id. art. 109.

\(^{25}\) Id. art. 108(a).

\(^{26}\) Id. art. 108(b).

\(^{27}\) CONSTITUIÇÃO DA REPÚBLICA DOS ESTADOS UNIDOS DO BRASIL (de 10 de Novembro de 1937) art. 9, available at the web site of the Brazilian Presidency, http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao34.htm.

\(^{28}\) Id. art. 27.

\(^{29}\) Id. art. 38.

\(^{30}\) Id. §1.
for the members of the Chamber of Deputies. The members of the Federal Council were appointed by the President of the Republic and the states.

VI. The Constitution of 1946

In 1945, another coup d’état resulted in another constitution, promulgated on September 18, 1946. The new constitution reestablished direct elections for mayors of the municipalities, federal deputies, senators and President of the Republic. The legislative power was once again exercised by the National Congress, which was composed of the Chamber of Deputies and the Federal Senate. The minimum age to vote remained at age eighteen; illiterate persons and soldiers were not allowed to vote, and voting remained mandatory for both men and women.

In 1961, a constitutional amendment reintroduced the parliamentary system in Brazil. The parliamentary system remained in place until 1963, when this form of government was defeated in a plebiscite that opted for a presidential system.

VII. The Constitution of 1967

The constitution of 1967 was promulgated after a military coup d’état in 1964. Although article 29 of the constitution of 1967 established that the legislative power was exercised by a national congress composed of a chamber of deputies and a federal senate, the ruling was, in fact, being made by the military council that was governing Brazil. This became clear when after the coup, the military council issued numerous Institutional Acts that were contrary to the constitution. The military dictatorship ultimately shut down the National Congress and suspended all political rights (Ato Institucional No. 5).

Constitutional Amendment No. 1 and the Constitution of 1969

Although no constitution was promulgated in 1969, on October 17, 1969 the military
council issued Constitutional Amendment No. 1.\footnote{Emenda Constitucional No. 1 de 17 de Outubro de 1969, available at the website of the Brazilian Presidency, \url{http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc_anterior1988/emc01-69.htm}.} This amendment incorporated several provisions of Institutional Act No. 5 into the Constitution of 1967. Thereafter, Constitutional Amendment No. 1 became known as the Constitution of 1969.

In 1979, the military dictatorship began to point to a future democracy in Brazil by passing an Amnesty Law that allowed people exiled abroad to return to Brazil. Another law reintroduced the multi-party system, and in 1980, the people were allowed to directly vote for governors of the states\footnote{Emenda Constitucional No. 15, de 19 de Novembro de 1980, available at the website of the Brazilian Presidency, \url{http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc_anterior1988/emc15-80.htm}.} and the National Congress resumed its functions. In 1982, an amendment to the constitution authorized the direct vote for mayors and councilmen of the municipalities.\footnote{Emenda Constitucional No. 22 de 29 de Junho de 1982, available at the website of the Brazilian Presidency, \url{http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc_anterior1988/emc22-82.htm#artu}.} In 1984, a proposal for a constitutional amendment allowing the Brazilian citizens to directly vote for president of the republic was defeated in Congress. In 1985, an indirect election elected a civilian as the new president of Brazil, bringing an end to the military dictatorship.

On May 15, 1985, the constitution was subsequently amended which;

- allowed direct elections for federal deputies, senators, president and vice-president of the republic;
- kept the minimum age to vote at eighteen years old; and,

Finally, on November 27, 1985, an additional amendment was made to the constitution, which called for a national assembly to discuss and vote on a new constitution.\footnote{Emenda Constitucional No. 26 de 27 de Novembro de 1985, available at the website of the Brazilian Presidency, \url{http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc_anterior1988/emc26-85.htm}.}

In the political rights arena, the constitutional amendment of 1985 granted amnesty to all civil public servants and military personnel that had been punished by legal acts (\textit{Atos de Exceção, Institucionais ou Complementares})\footnote{Id. art. 4.} during the period between September 2, 1961 and August 15, 1979.\footnote{Id. §2.} Amnesty was also granted to those who were accused of political crimes; directors and representatives of unions, and student groups and any government employee...
dismissed for political reasons.49

VIII. The Constitution of 1988

On February 1, 1987, a unicameral assembly, called National Constituency Assembly, convened at the National Congress50 and, on October 5, 1988, a new Brazilian constitution was enacted. This new constitution provided, inter alia:

• that a plebiscite would decide the form of government (republic or constitutional monarchy) and the government system (parliamentary or presidential);51

• established direct elections for President,52 governors53 and mayors;54 and,

• required that the presidential term be five years and prohibited re-elections.55

• stated that the three powers of the government, legislative, executive, and judicial, are independent and harmonious;56

• replaced the decree-law form of executive branch legislation with the Provisional Measure (Medida Provisória);57

• restricted the powers of the Armed Forces (Forças Armadas);58

• maintained the optional vote for illiterate citizens59 and minors between sixteen

49 Id. §1.

50 Id. art. 1.


52 Id. art. 77.

53 Id. art. 28.

54 Id. art. 29, I.

55 Id. art. 82.

56 Id. art. 2

57 Provisional measures originate from the parliamentary system and were adapted to the Brazilian presidential system to provide the President with a quick tool, enabling the executive to take action when presented with urgent matters. Article 62 of the Brazilian Constitution states, “in important and urgent cases, the President of the Republic may adopt provisional measures with the force of law but must immediately submit them to the National Congress.”


59 Id. art. 14, §1, II, a.
and eighteen years of age;60 and

- dedicated a specific chapter to enumerating the individual and collective duties and rights of a citizen in Brazil.61

Amnesty

The Constitution of 1988 also included a provision that expanded the amnesty of 1985 granted to all people affected by legal acts (Atos de Exceção, Institucionais ou Complementares) for political reasons for the period between September 18, 1946 and October 5, 1988.62

The Plebiscite of 1993

The date originally established in the constitution for the plebiscite was September 7, 1993. However, on August 25, 1992, a constitutional amendment was enacted which changed the date to April 21, 1993,63 and on February 4, 1993, Law No. 8,62464 was enacted to regulate the plebiscite. The result of the voting was that the population chose to continue with a republican form of government, along with a presidential system.65

Presidential Term and Re-election

The most significant changes in the constitution involving the political process occurred on June 7, 1994, when Constitutional Revision Amendment No. 566 altered the presidential term to a single term of four years. Three years later, Constitutional Amendment No. 16 of June 4, 199767 allowed the re-election of the president, governors, and mayors for one subsequent term.

IX. Political Reform

In recent years there has again been a discussion occurring within Brazil on the need to further reform the Brazilian political system. The proposals currently being considered include:

60 Id. art. 14, §1, II, c.
61 Id. art. 5.
• the introduction of a so-called barrier clause (cláusula de barreira) aimed at reducing the number of political parties (though such a clause has recently been ruled unconstitutional by the Federal Supreme Court);

• public financing of electoral campaigns, designed to stop the abuse of economic power during campaigns;

• prohibition of liaisons between different political parties for proportional elections (a sub-species of the barrier clause intended to inhibit small political parties from joining forces);

• restrictions on the publication of polls, to avoid manipulation of the vote;

• ending or reducing free radio and television time made available to political parties and candidates by the electoral legislation;

• removing restraints on a person’s ability to change political parties;

• pure or mixed district voting, a system that uses majority voting instead of the current proportional one;

• making the right to vote optional instead of mandatory;

• ending the disproportionate representation of Brazilian States in the Chamber of Deputies by introducing a new national electoral coefficient; and

• separation of the election for Federal Deputies from the election for President of the Republic.  

On August 27, 2008, the executive branch of the Brazilian federal government sent a proposal to the presidents of the chamber of deputies, federal senate and the Brazilian Bar Association (Ordem dos Advogados do Brasil). The executive proposed a political reform designed to fight corruption, improve political campaigns, reinforce political parties, and to guarantee the National Congress’s sovereignty on the discussion of the proposal. The proposal was made available for public consultation (Consulta Pública) for two months at the website of the Ministry of Justice and, will now be forwarded to the National Congress.

---


The proposal lists six topics that, if approved, will amend article 17 of the constitution and several provisions of the following Laws:

- No. 4,737 of July 15, 1965 (Código Eleitoral);
- No. 9,504 of September 30, 1997 (Lei das Eleições);
- No. 9,096 of September 19, 1995 (Lei dos Partidos Políticos); and,
- Complemental Law No. 64 of May 18, 1990 (Lei das Inelegibilidades).

The topics include:

- a new form of voting (Lista Fechada) where an individual would vote for the political party, instead of the candidate;
- exclusive public financing of electoral campaigns (Financiamento Público Exclusivo) to enable better financial control of electoral expenses and prohibit political parties from receiving, directly or indirectly, contributions from citizens or companies, public or private, domestic or foreigner;
- fidelity to the political party (Fidelidade Partidária), aimed at strengthening the political parties;
- ineligibility (Inelegibilidade) of persons under investigation by the Electoral Tribunal due to abuse of political or economic power in the electoral process;
- prohibition of colligations (Coligações) of political parties for the sole purpose of transfer of votes or to aggregate free radio and television time; and,
- prohibiting the exercise of a deputy mandate (federal, state or district) of the political parties that do not obtain a minimum percentage of votes.  

X. Concluding Remarks

It took Brazil more than 300 years after its discovery in the year 1500 to proclaim its independence from Portugal and promulgate its first constitution. However, Brazil’s first constitution was the product of a disguised coup d’état, in which the king, dissatisfied with the discussions towards the constitutional limitation on his powers, dissolved the Constituent Assembly specifically called to debate, vote on, and enact Brazil’s fundamental law. The king then in 1824 proclaimed an authoritarian Constitution that concentrated all power in himself.

Unfortunately, this coup d’état was only the first of a series of coups that Brazil has

\[^{71}\text{Id.}\]
suffered throughout its history. Following each coup, the new rulers enacted a new constitution, which did not guarantee long stability of the political system.

Brazil has now had a democratic regime for less nearly three decades, and the current constitution in force, its seventh, has been in force for twenty years. However, the many reported scandals affecting all three political powers make it certain that urgent and necessary adjustments need to be made to the Brazilian political system. The question is whether the solution remains, as the history would predict, in a new constitution or in a better political system.

Prepared by Eduardo Soares
Foreign Law Specialist
June 2009