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Rough justice

The trial against Lula da Silva is politically motivated and based on flimsy evidence, argues Germany's former justice minister

Read this article in German

Brazilians will find out tomorrow (24 January) if the most popular politician in their country's history, Luiz Inácio Lula da Silva, will go to jail or run for the presidency.

The former two-term, leftist president is appealing against a conviction for corruption and money laundering. If the appeals court upholds his conviction, Lula will face up to nine and a half years in prison.

The appeal court's decision is important for a number of reasons. Firstly, because there are question marks hanging over the soundness of the original verdict and rule-of-law violations. Secondly, because the appeal court's decision will determine whether Lula can stand as the candidate for the Workers' Party (PT) in Brazil's upcoming presidential election.

Brazil's ruling elite want to stop this from happening. Their allies include Brazilian media giant, Globo.

Lula's popularity is growing daily, while Brazil's political institutions and courts are losing credibility due to corruption allegations and policies that are hurting Brazil's poor.

Many Brazilians fear the appeal court will uphold the original verdict. They point to an escalating barrage of attacks by senior judges against Lula, his successor Dilma Rousseff and left-wing parties since 2013. Lula and his Workers' Party are vilified daily as 'corrupt, crooked, organised criminals'.

The onslaught is a response to Lula and Rousseff's attempts to nationalise companies and redistribute wealth as a way to increase social equality. The current conservative government has already rolled back a number of

progressive policies that threatened the political and economic interests of Brazil's wealthy upper classes and their ties to international corporations.

Rousseff is also being punished by her opponents. Her impeachment in August 2016 has been described as a ‘new form of coup’ by renowned political scientist Aníbal Pérez-Liñán.

The legal basis for Rousseff's impeachment is flimsy and inadequate. Despite this, her appeal is still pending. It’s possible the supreme court is waiting till Michel Temer (Brazil's current, indisputably corrupt president) leaves office, at which point it will declare the matter effectively settled.

Many suspect Sérgio Moro, the judge who passed the original verdict, is involved in this political campaign. Moro serves at the first-instance federal court in Curitiba that is hearing the corruption cases against state-owned oil company Petrobras. He has denounced Lula publicly on several occasions – a clear sign of bias.

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That counts for little in Brazil, where even senior judges spoke out against Lula before he had actually been found guilty. Despite claiming ‘judicial independence’, they have undermined the principle of rule of law enshrined in Brazil’s constitution.

Lula submitted a dossier to the UN High Commissioner for Human Rights outlining violations of rule of law and human rights by the Brazilian judiciary, and the UNHCR is unambiguous in its condemnation of such practices.

Despite this, the EU and international community are paying too little attention to the alarming developments in Brazilian politics. Perhaps they believe claims by Brazilian judges that the Lula case is part of a legitimate effort to tackle corruption.

Indeed, Transparency International reports show corruption in Brazil is endemic, undermining the state, economy and public sphere. It erodes public trust.

To combat corruption, Brazil needs effective legislation, punishment for all those who flout the law, and preventive policies. Uncovering and proving corruption can be difficult, especially when we’re dealing with political bribery.

Despite the accusations, Lula actually strengthened anti-corruption legislation during his presidency. Are the corruption proceedings against Lula simply a case of these strengthened laws being applied?

As indicated above, this seems unlikely. For a start, the current anti-corruption crusades have a strongly political slant. Brazil's courts and political elite are apparently turning a blind eye to the flagrant corruption of President Temer and many of his (conservative) supporters in the Chamber of Deputies and Senate.

What is more, during the Lula trial, Brazil's judiciary has repeatedly ignored key principles such as judicial impartiality and the right to a fair trial. Appeal hearings often quickly bring to light serious procedural breaches in investigations and trials, raising suspicions that court procedures are being abused for political ends.

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Many examples of such breaches were outlined in Lula's defence team's petition to the UNHCR. The dossier alleges Lula was arbitrarily detained for questioning without prior summons. It also claims Lula's rights to presumption of innocence, fair trial and privacy were violated. Specifically, wiretaps were placed on Lula's and his lawyer's phones and police searched his home. These claims are corroborated by Judge Moro's ruling.

Moro argues these actions were justified due to the gravity of the charges against Lula. As further justification, he has raised allegations against Lula's lawyer and claims Lula himself attempted to destroy evidence, influence witnesses and intimidate the court.

Brazilian legal experts speak of 'lawfare', where, under the pretext of combating corruption, courts abuse their power in order to support the Brazilian elite's political battle against the hated Left.

The appeal court's decision will need to take all this into account. The text of Judge Moro's ruling is both long and verbose: 961 paragraphs spread across 186 pages (in the English translation).

Moro doesn't just lay out the charges and his assessment of them, but bulks out the document with constant disparagements of Lula, vague assertions and repetitive rejections of motions filed by the defence team.

His motives are clear: Moro needs to cover up the striking lack of

evidence against Lula. He won't get far though. The document contains too many unsubstantiated and unverifiable assumptions, insinuations and assertions based on hearsay or on testimony made by prisoners who struck murky deals with the prosecution. It would not stand up in most European courts of law.

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As a result, the allegation that Lula accepted bribes in the form of cash and an apartment remains unproven. The charge that he, as president, was responsible for corruption at Petrobras seems equally tenuous in the absence of any evidence that he intervened personally, exerted influence or obtained any improper benefits from the company. Even the star witnesses were unable to testify to more than the already established fact that President Lula was responsible for nominating the state-owned company's directors.

Judge Moro's conduct of the trial reflected his partiality from the start. He repeatedly described Lula as being part of a 'criminal system'. When Lula's defence team filed motions complaining of judicial bias, Moro accused them of attempting to intimidate the court, prosecution and witnesses. He made the same accusation when they filed the dossier (which Moro declared to be unfounded) with the UNHCR. Moro also labelled Lula's public criticisms of the judicial process 'threats' and 'slander', while at the same time defending public statements made against Lula by judges.

Judge Moro also contradicted himself: if there were proof for any of his allegations that Lula had suppressed evidence or attempted to influence witnesses, as the lengthy custodial sentence of nine and a half years suggests, there would be no justifying his decision that Lula should remain free until the final verdict by the supreme court.

In short, the appeal court needs to overturn Moro's verdict. Upholding the verdict would not only diminish the credibility and effectiveness of efforts to combat corruption, but would also undermine the rule of law in Brazil. However, given the politicised nature of Brazil's judiciary, it's doubtful the appeal court will reach the right decision.



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