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Brazil

Lula's convictions quashed,- a bolt in Brazil's not-so-blue sky

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On 8 March, while the activities and pronouncements relating to International Women's Day were in full flow in Brazil, the Federal Supreme Court (STF) judge, Edson Fachin, overturned all the decisions taken in the four cases of the Lava-Jato operation against Luiz Inácio Lula da Silva. Thus, the two convictions against the former president were quashed, in addition to the initial decisions in two other cases that had not yet gone to the trial stage. The minister explained that the annulment was based on the understanding that the 13th Court of the Federal Circuit of Curitiba (Paraná), presided over by the former judge, Sergio Moro, which had judged Lula, did not have the jurisdiction for this. That was because the Curitiba Circuit had been charged with judging cases related to corruption in Petrobras; however, the charges against Lula in the four cases were not related to this oil company.

Lula was not declared innocent; Fachin ruled that the cases be restarted in the Brasilia Circuit Court (Federal District). On the other hand, Lula recovered his political rights and, if Fachin's decision is not reversed by the full STF, and if there are no new convictions from the Federal District court (there would hardly be time for this), he could be a candidate for President of the Republic in 2022.

The decision by Fachin, one of the members of the Supreme Court most identified with *Operation Lava Jato*, caused general surprise, although the argument that the cases should not have been tried in Curitiba is undoubtedly correct, and hardly questionable from a legal point of view. [1] Lula's lawyers had already argued this point several times. The group of Operation Lava Jato prosecutors and former judge Moro had manoeuvred to expand the scope of their "crusade against corruption", at a time when they enjoyed great support from the media and "public opinion".

Once the initial surprise at Fachin's decision had passed, it was soon understood that it had not been directed against *Operation Lava Jato*. In fact, it aimed to preserve as much as possible the convictions obtained by it and its supposed legacy. With Sergio Moro's actions annulled, the judge ruled that another lawsuit brought by lawyers of the former president would not proceed; this argued that the former judge himself was suspect, that is, that Sergio Moro had acted deliberately to condemn Lula, without the impartiality that judges are supposed to have. The annulment due to the court's lack of jurisdiction was judged to be much less demoralizing for *Operation Lava Jato* than an annulment due to the judge's suspect behaviour.

For critics, the bias in the cases against Lula has always seemed clear, and it became evident to more people when, in late 2018, Moro resigned from his career as a judge to take over the Ministry of Justice in the Bolsonaro government.

To make matters worse for Moro and the Lava Jato prosecutors, starting in June 2019 hacked messages from their conversations on the Telegram app began to be leaked in the press (by the website "The Intercept Brasil"). Since December more messages have been leaked. Moro and the prosecutors never claimed that the messages were fake, but said they had no way to prove their veracity, and insisted that they had been obtained illegally. However, they are not only true, they also show Moro's extreme partiality and even the criminal nature of his and the prosecutors' actions.

In the end, the rupture between Bolsonaro and Moro and the latter's departure from the ministry in April 2020 split the "Lava Jato" right wing. The Attorney General (appointed by the president) began to act against the Lava Jato. Moro, while still maintaining significant popular prestige, was greatly weakened. All this made it likely that his "suspect" status would be endorsed by the STF.

Fachin tried to "relinquish the rings in order not to lose the fingers", but was unsuccessful. Other Supreme Court justices decided to restart the judgement on Moro's suspect status the very next day, 9 March. Two of them read their vote in favour of the suspect status, and went further: they stated that there was collusion between the former judge and the prosecution, a criminal act on their part, and that Operation Lava Jato had been "the biggest judicial scandal in the country's history". This trial is not over, and has no date yet set for its conclusion.

The political impact of the quashing of Lula's convictions

Whatever Fachin's motives, from a legal point of view he was correct to overturn Lula's convictions. And the political impact has been huge.

It is important to remember that Lula was a candidate for President of the Republic when he was convicted and imprisoned, and was leading the polls. Without him being prevented from contesting the elections, it is unlikely that Bolsonaro would have been elected. Now, everything indicates that Lula will run for president in 2022. Although he did not say as much, it was in this role, as a likely candidate, that Lula made his speech and answered questions from journalists on 10 March, with massive media coverage.

Lula was able to make it seem that his innocence had been recognised by the courts, even though the quashing of his convictions does not imply that, and not even the Justices of the STF who voted for the suspect status of former judge Sergio Moro dealt with this question. They simply said that Lula has the right to a fair trial.

All the media reported that Lula gave an inspired speech and, above all, that he showed he was in a different league to Bolsonaro, especially on the ever more important issue of the fight against the pandemic, with the great worsening of Covid 19 in recent weeks in the country. Lula paid tribute to the victims, defended the need for physical distancing measures, the use of masks and the acceleration of vaccination. He criticised Bolsonaro for being wrong on all these issues. Besides this, he said that Bolsonaro does not have a vision for the country, nor a government programme, and expressed in general lines his own project - he defended his governments (he did not mention Dilma Rousseff), criticised total submission to the market (and at the same time said that the "market" does not need to be afraid of him) and repeated things that had characterised his government, in his view: defending workers, but talking to all sectors in the country and seeking an understanding between them, promoting the alliance of capital with labour etc., and seeking economic "development". He criticised Bolsonaro for encouraging people to carry guns, and emphasised it was the police and the Armed Forces that needed to be better armed.

The contrast with Bolsonaro and his genocidal, ultraliberal and anti-people policies was enormous. But Lula also retained all the limitations of his previous positions: he showed no understanding of the environmental collapse and the ongoing socio-environmental conflicts, he showed confidence in the development of a peripheral capitalism like Brazil's, and he did not mention the incarceration and massacre of the poor, black population that has intensified in recent years but already existed under his governments. Although he was very critical of Bolsonaro, he implied that the only way to remove him from government is to wait for the 2022 elections, inviting the left to wait passively in the face of the economic and health disaster that has become entrenched in the country in 2021. These shortcomings merely add to the reassertion of his class conciliation approach mentioned above.

All the media have emphasised that Lula has emerged as the candidate best placed to face Bolsonaro in the 2022 elections. What's more, Bolsonaro has once again been losing popularity since the end of 2020 - he is "at the worst moment of his government" - although he retains the support of almost 30% of the population. Despite being rejected by the majority, he still looks like someone who will get into the second round of the elections.

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The fact that Lula could be a candidate weakens the government further, and represents a positive change in the balance of forces, against the extreme right and in favour of the popular sectors. Some bourgeois representatives are beginning to take positions saying they may support Lula, and allies of the government are putting pressure on Bolsonaro to make changes, especially in his disastrous management of the pandemic. Bolsonaro himself has shown many signs that he has felt the blow.

The repositioning of Lula also has an impact on the left as a whole, including those who, like the PSOL, were in opposition to his government.

Everything indicates that the trend of recent years - the decline of the PT (while remaining in a broad sense the largest party of the left) and the relative strengthening of the PSOL - will be reversed, at least in the short term. The PT has gained a new vigour. In addition to this, the PSOL is now under pressure to join a front with the PT from the first round of the 2022 elections. Although this question is not yet being openly debated in the PSOL, it is certain that support for Lula already has its advocates there (even with declarations to the press in this sense).

A front around Lula's candidacy would not be a "left front" - Lula is clearly seeking support amongst the bourgeois parties least linked to Bolsonaro - and certainly not a front among the working class and oppressed sectors of society. That is why it would be a very bad mistake for the PSOL to embrace this perspective. It would imply losing much of what the party has gained as a left-wing force critical of class conciliation, and which it has developed, despite many difficulties, since its foundation.

Certainly the defeat of Bolsonaro is a paramount objective in the next elections (if it is not possible to end his government before then, which is a struggle that should not be abandoned). In spite of all the well-known problems, a new Lula government, even if it would not be a coherent alternative to the right-wing offensive and the attacks that the popular sectors have suffered, would be a huge relief after the horrors of Bolsonaro. But the election is in two rounds, and Lula, barring some major turnaround, will surely get through to the second. Therefore, it is important and decisive for the PSOL, as a party project of the Brazilian socialist left, to present its own candidacy in the first round of the 2022 presidential elections, and to discuss support for an anti-Bolsonaro candidate if the party does not reach the second round. This could also be essential to ensure the survival and maintenance of the PSOL's institutional spaces in the Brazilian national parliament.

The situation in Brazil has changed a lot with the quashing of Lula's convictions. The right has been weakened, while the PT has become much stronger. The judicial coup that was crucial for the election of Bolsonaro is being defeated. Obviously, this is to be welcomed by the socialist left. On the other hand, this left is also coming under increased pressure; it needs even more political coherence to uphold its socialist project.

15 March 2021

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[1] Operation Lava Jato was a vast, sprawling corruption investigation carried out by the Federal Police, that rocked Brazil's political establishment between 2014 and 2018, although it was only formally wound up in February 2021. It saw over a thousand search and arrest warrants issued and led to over a hundred convictions, of senior politicians from all the main parties, former presidents, ministers, governors and some of the country's

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richest businessmen. The investigation first centred on the embezzlement of funds from the state-controlled oil company, Petrobras, to pay bribes to politicians and other businessmen. It later spread to implicate Brazil's biggest construction companies, the 2016 Olympics and a dozen other countries. It was led by investigating judge, Sergio Moro and his team based in the city of Curitiba. It drew its name from a car wash ("lava jato") used to channel some of the funds. Former president, Luis Inacio Lula da Silva, of the Workers Party (PT) was convicted in two cases that had only an indirect connection with the main Lava Jato investigation. He was accused of receiving favours from construction companies in exchange for helping them with contracts. The evidence was flimsy. He flatly denied the charges and argued, as did his supporters, that the Lava Jato investigation was being manipulated to prevent him running again for president.