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INTERNATIONAL DECISION ABOUT LULA IS MANDATORY

Brazil has the chance to show respect for democracy

The statement issued on August 17 by the UN Human Rights Committee [HRC] regarding former President Lula's case has the nature of a decision, and Brazil is bound to comply with it in its Three Branches. According to the decision of the International Court, Lula cannot be prevented from standing for the 2018 elections.

The world witnessed many revolutions before being able to agree that States do not hold unlimited power. The creation of the UN after World War II tried to go further and achieve international cooperation in order to promote and inspire respect for human rights, fundamental liberties and achievements of civilisations. The International Covenant on Civil and Political Rights (ICCPR), was adopted by the UN in 1966, is one of the most relevant documents of this new world order.

At the time, Brazil was under a military dictatorship and, under cover of defending its sovereignty, the country refused to accede to the International Covenant which universally established the cornerstone of civil and political liberties, such as the impossibility of setting "unreasonable restrictions" on the right to vote and to be elected (Article 25).

Once democracy was reestablished and a new Constitution was adopted, making clear reference to the theme, Brazil underwent several phases with regards to human rights. The country signed various international human rights treaties and, in 1992, internalised the ICCPR, without exceptions.

The current rulings entered by the Federal Supreme Court recognise the universal nature of human rights and their interpretation, in addition to admitting the supra-legality (above ordinary laws) of human rights provisions contained in International Treaties. These rulings also acknowledge that decisions entered by the International Courts, recognized by the Country, are mandatory.

The UN Human Rights Committee is precisely part of this reality since it has been recognized by Brazil, with sovereignty, and without reservations, through Legislative Decree 311/09. Last week, the Speaker of the Federal Senate, through a public statement, reaffirmed the full effectiveness of that enactment.

In this context, in July 2016, alongside Geoffrey Robertson (QC), we filed before the HRC an individual communication — reporting that Lula was being the victim of an illegitimate judicial crusade aiming at suppressing his political rights. We demonstrated that, after various appeals were not granted in the country, the former President does not have effective legal remedies to stop the violations against the fundamental guarantees of his rights. The communication was updated and Brazil has already issued three statements in reply, all of which confirmed the country's commitment to the UN system and to the Committee.

The Committee's decision calls for the need for a "fair trial" regarding Lula. Its aim is to avoid irreparable damage in order to preserve the final decision of the International Court. It's important to note that said decision is not conflicting with Brazil's Clean Slate Law which, in addition, provides for the possibility of temporarily having the electoral limitation it sets forth suspended before a final and unappealable judgment of conviction (art. 26-C).

In view of this entire scenario and of the impossibility to claim any domestic law provision that would enable Brazil to fail to honor its international commitments provided for in the Vienna Convention on International Treaties (art. 27) — which Brazil has also executed — the binding strength of the Committee's decision is evident.

Brazil has an international responsibility, which must be above any political orientation or personal understanding of those responsible for complying with the Committee's decision. The country will have the opportunity to show the world that it respects democracy; otherwise, the world will definitely assume it has gone back in time and is making the same excuses as the dictatorial regime to violate fundamental guarantees and international rules it has voluntarily committed itself to comply with.

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