



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2841/2016\*, \*\*, \*\*\*

<i>Communication submitted by:</i>	Luiz Inácio Lula da Silva (represented by counsel, Valeska Teixeira Zanin Martins, Cristiano Zanin Martins and Geoffrey Robertson)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Brazil
<i>Date of communication:</i>	28 July 2016
<i>Document references:</i>	Decision taken pursuant to rule 92 (2)–(5) of the Committee’s rules of procedure, transmitted to the State party on 25 October 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	17 March 2022
<i>Subject matter:</i>	Fair trial; imprisonment without a final judgment; and prohibition of standing for election
<i>Procedural issues:</i>	Exhaustion of domestic remedies; compliance with interim measures
<i>Substantive issues:</i>	Arbitrary arrest and detention; competent, independent and impartial tribunal; presumption of innocence; privacy; unlawful attacks on honour or reputation; voting and elections
<i>Articles of the Covenant:</i>	9 (1), 14 (1)–(2), 17 and 25
<i>Articles of the Optional Protocol:</i>	1 and 5 (2) (b)

1.1 The author of the communication is Luis Inácio Lula da Silva, a national of Brazil born on 27 October 1945. He was President of Brazil from 2003 to 2010. He claims that the State party has violated his rights under articles 9 (1), 14 (1) and (2), 17 and 25 of the

\* Adopted by the Committee at its 134th session (28 February–25 March 2022).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

\*\*\* An individual opinion by Committee member Duncan Laki Muhumuza (concurring) and a joint opinion by Committee members José Manuel Santos Pais and Kobauyah Tchamdja Kpatcha (dissenting) are annexed to the latter part of the present Views ([CCPR/C/134/D/2841/2016 \(Final proceedings\)](#), annexes I–II).



Covenant. The Optional Protocol entered into force for the State party on 25 December 2009. The author is represented by counsel.

1.2 On 25 October 2016, in accordance with rule 92 (5)<sup>1</sup> of the Committee's rules of procedure, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, requested that the State party submit observations relating only to the question of admissibility.

1.3 On 22 May 2018, the Committee rejected the author's request for interim measures on the basis that the information provided by the author did not enable the Committee to conclude at that time that the facts before it would put the author at risk of irreparable harm or that they could prevent or frustrate the effectiveness of the Committee's Views. The Committee recalled, however, that it was incompatible with the obligations under the Optional Protocol for a State party to take any action that would prevent or frustrate the consideration by the Committee of a communication alleging a violation of the Covenant or to render the expression of its Views nugatory and futile. The Committee also decided to overturn its decision of 24 October 2016 and examine jointly the admissibility and the merits of the communication.

1.4 On 17 August 2018, the Committee, taking note of the author's submission of 27 July 2018, concluded that the facts before it indicated the existence of a possible irreparable harm to the author's rights under article 25 of the Covenant. Pursuant to rule 92 of its rules of procedure, the Committee requested that the State party take all measures necessary to ensure that the author enjoyed and exercised his political rights while in prison, as a candidate in the presidential election in 2018, including appropriate access to the media and members of his political party, and that the State party not prevent the author from standing for election, until the pending applications for review of his conviction had been completed in fair judicial proceedings and the conviction had become final. On 10 September 2018, the Committee reiterated its request to the State party of 17 August 2018, recalling the State party's obligations under the Optional Protocol.

## **Facts as submitted by the author<sup>2</sup>**

### *Context*

2.1 In March 2014, a criminal investigation (later known as "Operation Car Wash") was opened within the federal jurisdiction of the state of Paraná, Brazil. Judge of the Thirteenth Federal Criminal Court of Curitiba, Sérgio Moro, was the acting judge in the investigation. Operation Car Wash uncovered evidence of corruption among the State-owned national oil and petrol company, Petrobras, five major construction companies and various parties across the political spectrum, namely, for providing secret campaign funds. The author denies having known or approved of such crimes or having received any money or favours for actions or decisions that he took during his presidency or at any other time.

2.2 The author was also investigated in the context of, among others, two cases related to Operation Car Wash, both under the jurisdiction of Thirteenth Federal Criminal Court of Curitiba, a case relating to construction companies that had allegedly helped the author buy a holiday apartment and a case relating to the alleged furnishing of his property in Atibaia, São Paulo.

### *Legal proceedings against the author*

2.3 On 19 February 2016, Judge Moro approved a request by the Office of the Federal Prosecutor to tap the author's telephones, as well as those of members of the author's family and his lawyer. On 26 February 2016, Judge Moro specifically authorized a tap on the central extension of the law firm of the author's lawyer, affecting 25 lawyers and 300 clients.

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<sup>1</sup> Then rule 97.

<sup>2</sup> The following section has been compiled from the author's submissions and requests received by the Committee on 28 July 2016, 17 November 2016, 25 May 2017, 5 October 2017, 29 January 2018, 16 March 2018, 6 April 2018, 27 July 2018, 4 September 2018 and 25 October 2018.

2.4 On 2 March 2016, Judge Moro issued a bench warrant summoning the author for questioning. At 6 a.m. on 4 March 2016, the police gained entry to the author's house and demanded that he accompany them to the official compound at Congonhas Airport, where he was held for six hours. The author notes that the news that the judge had issued a bench warrant for questioning was leaked to the media by the "prosecution apparatus (i.e. the judge, the federal prosecutor and the federal police)". Consequently, photographs were taken of the author portraying him as if he were under arrest. The airport became the scene of demonstrations and counter-demonstrations.

2.5 On 16 March 2016 at 11.12 a.m., Judge Moro sent an urgent order to the Office of the Federal Prosecutor that the tapping of the author's telephone should cease with immediate effect. The author explains that the tap continued illegally, however, and was in place when he held a telephone call with then President of Brazil, Dilma Rousseff, at 1.32 p.m. and discussed with her matters related to his appointment as Chief of Staff. The author adds that, although illegally intercepted, Judge Moro released to the media information on the content of the call that afternoon, along with that of other calls between the author, his wife, his lawyers and other members of his family. On 17 March 2016, Judge Moro issued a decision confirming the legality of both the telephone tap and the disclosure of the content of the call between the author and the President.

2.6 On 22 March 2016, Teori Albino Zavascki, Justice of the Supreme Federal Court, in the context of a complaint submitted by the President, granted a preliminary injunction suspending the effects of Judge Moro's decision authorizing the disclosure of the conversations between the President and the author. On 13 June 2016, Justice Zavascki overturned Judge Moro's decision of 17 March affirming, inter alia, that the latter had no jurisdiction to lift the confidentiality of the conversation with the President, and declared its content null for the purposes of the investigations. On 11 July 2016, the author filed a motion for bias (*exceção de suspeição*), requesting that Judge Moro recuse himself, which was rejected by the former judge himself on 22 July.<sup>3</sup>

2.7 On 4 March 2016, the Association of Federal Judges of Brazil, of which Judge Moro is a member, issued a statement indicating that he, as well as the prosecutors and the police, had "acted within strict legal and constitutional limits" and would "continue to act in compliance with the law and the Constitution". On the same day, the National Association of Federal Prosecutors issued a press release noting that the bench warrant against the author was fully lawful. On 29 July 2016, the Association of Federal Judges issued a press release condemning the author's petition to the Committee, saying that it had "unfounded laments", and, on 13 December 2016, the President of the Association appeared in the media praising Judge Moro as "an example to Brazil". On 15 December 2016, the National Association of Federal Prosecutors issued a press release attacking the author for suing Deltan Dallagnol, the lead prosecutor of Operation Car Wash, for defamation.

2.8 On 14 September 2016, the prosecutors of the investigations related to Operation Car Wash had appeared on television for 90 minutes setting out their case for the author's guilt "beyond reasonable doubt".<sup>4</sup> After the event, the author sued Prosecutor Dallagnol for defamation.

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<sup>3</sup> The author filed a total of four such motions, all of which were rejected by Judge Moro himself.

<sup>4</sup> The author provides a transcript of the television broadcast, which includes such phrases as: "These pieces of evidence demonstrate that Lula was the big general commanding the practice of crimes with powers to determine how it worked and, if he wanted, to order its interruption."; "Now, who did have power to distribute, and effectively has distributed, positions for fund-raising purposes? Lula. Only Lula's decision-making power enabled the strategy of corrupted governability. Lula was at the top of the power pyramid, appointing high-level positions in the federal public administration. In addition, during the period in which the criminal scheme was structured to the detriment of Petrobras, Lula provided the high positions in the federal public administration."; "Without Lula's decision-making power, this scheme would be impossible."; "It is inconceivable that a party leader such as Lula did not take part in [the corruption scheme] and, more than that, that he was not in charge of these schemes that reveal a permanent and unique way of obtaining public resources in the name of the Workers' Party"; "Once more, this makes Lula the common and necessary link of the criminal scheme."

2.9 On 22 September 2016, the Special Court of the Federal Regional Court of the Fourth Region rejected a disciplinary procedure motion, against Judge Moro, filed by other defendants in the Operation Car Wash investigations. According to the Court, given that Operation Car Wash was an “unprecedented case”, it brought “unprecedented problems” and demanded “unprecedented decisions”; it was “not possible to condemn [Judge Moro] for adopting preventive measures against the obstruction of justice”.<sup>5</sup>

2.10 On 9 March 2017, the Federal Regional Court dismissed a criminal complaint brought by the author and his family against Judge Moro on the basis that the question of administrative sanctions against the judge had already been decided on 22 September 2016. The author’s appeals before the Superior Court of Justice and the Supreme Federal Court were rejected.

2.11 On 12 July 2017, Judge Moro convicted the author for corruption and money-laundering and sentenced him to nine years’ imprisonment. By November 2017, the author’s motions for bias against Judge Moro, which had been rejected on appeal by the Federal Regional Court, had also been rejected by the Superior Court of Justice.<sup>6</sup> The Supreme Federal Court rejected appeals on two of the motions in December 2017.<sup>7</sup> On 24 January 2018, the Federal Regional Court confirmed the author’s conviction on appeal and increased the prison sentence to 12 years and one month’s imprisonment. The author appealed that decision on the merits. On 2 February 2018, the author filed a writ of habeas corpus before the Supreme Federal Court arguing that, according to the Constitution, a convicted person should not serve a prison sentence until the judgment was final.

2.12 On 5 April 2018, the Supreme Federal Court rejected the author’s writ of habeas corpus and indicated that there was no bar to his imprisonment, despite the fact that his appeal was still pending.<sup>8</sup> Within a few hours of the announcement of the decision, Judge Moro issued an arrest warrant requiring the author to be taken into custody to serve his sentence. On 7 April 2018, the author was taken to the prison in Pinhais, Curitiba.

2.13 On 23 April 2018, the author filed a special appeal with the Superior Court of Justice and an extraordinary appeal to the Supreme Federal Court, both of them challenging his detention order. According to the author, although the Federal Regional Court could have granted leave to appeal in a matter of days, it did so only on 22 June 2018, and only granted leave to appeal to the Superior Court of Justice. The author requested an urgent hearing in that Court, but his request was not examined until after the judiciary recess had begun on 26 June 2018.

2.14 On 6 July 2018, the author’s writ of habeas corpus came to an appellate judge of the Federal Regional Court assigned to hear all such cases in the court’s recess period, Rogério Favreto. At 9.05 a.m. on 8 July 2018, Judge Favreto granted the author’s writ of habeas corpus and ordered his provisional release. In his decision, Judge Favreto noted the following: (a) the author’s presidential candidacy was a new fact relevant to the question of whether he should be incarcerated before his appeal was decided by a court; (b) the 6 to 5 Supreme Federal Court decision allowed for the author’s incarceration but did not mandate it; and (c) Judge Moro had given no reasoning for the decision to incarcerate the author. The release order was not implemented by the relevant authorities, and the author brought that fact immediately to Judge Favreto’s attention. Enquiries soon revealed that Judge Moro, who was on vacation, had given an order by telephone that the author should not be released. At 12.44 p.m., Judge Favreto reissued his release order and directed that it be immediately

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<sup>5</sup> Federal Regional Court of the Fourth Region, case No. 0003021-32.2016.4.04.8000/RS, decision of 22 September 2016.

<sup>6</sup> The Federal Regional Court denied the first three motions on 26 October 2016 and the fourth one on 8 March 2017. The Superior Court of Justice rejected the appeals against the rejection of the motions for bias on 22 September 2017, 2 October 2017, 19 October 2017 and 6 November 2017.

<sup>6</sup> The Federal Regional Court denied the first three motions on 26 October 2016 and the fourth one on 8 March 2017. The Superior Court of Justice rejected the appeals against the rejection of the motions for bias on 22 September 2017, 2 October 2017, 19 October 2017 and 6 November 2017.

<sup>7</sup> By June 2018, the review of the other two motions had been rejected by the Supreme Federal Court.

<sup>8</sup> In the minority opinion on the ruling, it was noted that the Constitution established that a defendant could only be incarcerated after a judgment had become final.

implemented. At 2.13 p.m., João Pedro Gebran Neto, one of the three judges who had denied the author's appeal, ordered that Judge Favreto's decision be vacated. At 4.12 p.m., Judge Favreto ruled that Judge Gebran Neto had no jurisdiction, given that Judge Favreto was the authorized recess judge. At 5.53 p.m., the Office of the Federal Attorney appealed to Carlos Eduardo Thompson Flores, Chief Justice of the Federal Regional Court, who, at 7.30 p.m., ruled that Judge Gebran Neto was the competent authority, overruling the decision to release the author.

2.15 On 23 August 2018, the author submitted a request to the Superior Electoral Court asking that it ensure that public media companies give the author, who was leading in voting intention polls, equal treatment in their coverage of electoral campaigns, in line with the applicable electoral law. On 24 August 2018, however, the Court denied the request. The author filed an appeal before the same court on 27 August 2018, and the Court denied it the next day.

2.16 On 1 September 2018, in disregard of the Committee's request for interim measures, the Superior Electoral Court rejected the author's candidacy for the presidency, prevented him from campaigning through radio, television and the Internet and ordered the party to appoint a substitute candidate within 10 days. The result of that order was that the author could not even be mentioned in voting intention polls from then on.<sup>9</sup> On 11 September 2018, the Workers' Party was compelled to withdraw the author's candidacy and put forward a replacement candidate.

2.17 On 28 September 2018, a Supreme Federal Court Justice, Enrique Ricardo Lewandowski, authorized an interview with the author in prison by a newspaper columnist, after a complaint had been filed by the newspaper arguing censorship of the press. On the same day, Luis Fux, then acting Chief Justice of the Supreme Federal Court, admitting a motion filed by a political party, suspended Justice Lewandowski's decision, prohibited the interview and ordered that, if already conducted, its release must be censored. On 1 October 2018, Justice Lewandowski issued another decision to authorize the interview, on the basis that the political party that had filed the motion did not have the procedural legitimacy and that his decision was not an injunction subject to possible suspension, but a decision on the merits. On the same day, José Antonio Dias Toffoli, a Chief Justice of the same Court, suspended Justice Lewandowski's second decision, indicating that the decision rendered by Chief Justice Fux should be complied with until the subsequent deliberation of the Supreme Federal Court en banc.

## **Complaint**

### *Bench warrant of 2 March 2016*

3.1 The author states that article 260 of the Code of Criminal Procedure of Brazil sets out a precondition for issuing a bench warrant, namely, that if the defendant refuses to give testimony in the interrogation, the competent authority may order that the defendant be compelled to attend the investigating authority. He alleges that, as confirmed by case law, that compulsory procedure, which deprives the suspect of his liberty, can only be ordered by a judge if the defendant has explicitly refused to give testimony. He adds that the judge must first subpoena the potential defendant, and only if he fails or refuses to attend, can a bench warrant be issued.

3.2 In the present case, however, Judge Moro issued the bench warrant on 2 March 2016, for execution on 4 March, without ever having subpoenaed the author, claiming that a bench warrant was necessary to secure the author's safety. Nevertheless, the author alleges that the legal precondition for the issuance of the warrant was never fulfilled and that therefore the question of public order could not arise. Although the period during which he was compulsorily detained was only six hours, the event and the demonstration that it provoked had enormous symbolic effect, inter alia, because it conveyed the message that he was hiding from justice. The author explains that that amounted to a violation of article 9 (1) of the

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<sup>9</sup> The author filed two supersedeas motions before the Supreme Federal Court, to request that the extraordinary appeal have suspensive effect, but both were rejected.

Covenant, because compulsory transportation for questioning also constituted a deprivation of liberty. The author adds that the Committee has held that an eight-hour detention was disproportionate and therefore arbitrary.<sup>10</sup>

*Disclosure of various telephone intercepts*

3.3 The author explains that Judge Moro's release to the media of various transcripts and audio recordings of telephone intercepts was carried out in contravention of articles 8 and 10 of Law No. 9,296/96, which regulates tapping. He alleges that the disclosure of that material was in no conceivable way in the public interest and was done out of malice with the design of publicly humiliating and intimidating the author, in violation of his rights under article 17 of the Covenant. He adds that the State party was recently condemned by the Inter-American Court of Human Rights for allowing the disclosure of secret recordings of a personal nature.<sup>11</sup> The author claims that Judge Moro, both in the light of domestic law and that jurisprudence, should have kept such intercepts confidential, at least until a ruling on their relevance and admissibility at trial.

3.4 The author adds that releasing the conversation between him and the President was even more clearly illegal, given that that conversation had been intercepted even after Judge Moro himself had requested that the telephone tapping be discontinued. Therefore, in violation of his own order, Judge Moro decided not only to keep the intercepted conversation but to release it to the media. He justified the release on the grounds of public interest, however, the author's appointment as Chief of Staff had already been announced to the public by the Office of the President on the morning of 16 March 2016, before the intercepted conversation and the disclosure of it. The author alleges that the disclosure was designed to create a public political outcry and to create strong pressure to reverse the author's appointment, giving the impression that the author had been anxious to escape apprehension because he was guilty.

3.5 The author contends that, although the Supreme Federal Court overturned Judge Moro's decision on the legality of the wiretap, no action has been taken against him. Despite several complaints by citizens, the National Court Council has not taken any action, nor have other prosecutorial authorities, who should have acted ex officio knowing that Judge Moro had committed public action crimes.<sup>12</sup>

*Taps of the author's lawyers' telephones and disclosure of the intercepts*

3.6 The author alleges that the tapping of his lawyers' telephones and the subsequent selective disclosure of certain intercepted conversations, covering his lawyers' advice about various aspects of issues with Judge Moro, also violated his rights under article 17 of the Covenant. According to Judge Moro, the telephone tapping was carried out because there was evidence of involvement of one of the author's lawyers in the purchase of the author's property in Atibaia. Roberto Teixeira, the lawyer in question, was therefore an investigated party, not a lawyer. The author alleges that that is a false distinction, given that Mr. Teixeira remained his lawyer at all times and that there could be no suspicion derived from his involvement as a lawyer in a property purchase, unless the transaction itself was fraudulent or illegal. The author adds that no such evidence existed, nor did it emerge from the transcripts of the intercepted telephone calls. The author alleges that it was therefore a clear breach of attorney-client privilege which, as has been recognized by the Committee, is intended to protect the client.<sup>13</sup>

<sup>10</sup> *Spakmo v. Norway* (CCPR/C/67/D/631/1995), para. 6.3.

<sup>11</sup> Inter-American Court of Human Rights, *Escher v. Brazil*, judgment of 6 July 2009.

<sup>12</sup> The author alleged that the Supreme Federal Court should have submitted a copy of the case to the Office of the Federal Attorney, pursuant to article 40 of the Code of Criminal Procedure, which sets out that when judges or courts verify in records and documents which are known to them the existence of a public action crime, they must send to the Office of the Federal Attorney the copies and documents needed to file a charge.

<sup>13</sup> *Van Alphen v. Netherlands* (CCPR/C/39/D/305/1988), para. 5.7.

*Absence of an impartial tribunal*

3.7 The author maintains that, when deciding on the motion for bias, Judge Moro relied on the standard procedure that permits a judge who renders a decision at the investigative stage to sit as the trial judge. The author explains that the Code of Criminal Procedure in Brazil does not effectively differentiate between the stages of investigation and trial. The judge of the court of first instance is responsible for authorizing prosecution requests for extraordinary measures,<sup>14</sup> for approving the criminal charges laid by the prosecution and for trying the case without a jury<sup>15</sup> and without other judges. The author alleges that, whereas the procedure itself is not a breach of article 14 of the Covenant, according to the Committee, the involvement of judges in preliminary proceedings wherein they form an opinion about a defendant is incompatible with the requirement of impartiality.<sup>16</sup> He adds that the Committee has also asserted that judges must not only be impartial, they must also be seen to be impartial.<sup>17</sup> He alleges that it is relevant that the public perception was that Judge Moro would arrest and convict the author, which he eventually did.

3.8 The author explains that the indications of Judge Moro's partiality included, among other things: (a) deliberately issuing an unlawful bench warrant to detain the author unnecessarily and in a public manner; (b) tapping his telephones and those of his family and unlawfully and maliciously releasing transcripts to the media, in particular of the calls with the President; and (c) intercepting and releasing to the media recordings and transcripts of confidential calls with his lawyer and making allegations of criminal conduct against his lawyer. He adds that Judge Moro had repeatedly accepted invitations to attend and speak at events run by groups that were politically hostile towards the author and that had called publicly for his arrest and conviction,<sup>18</sup> and he attended as guest of honour the launch of a book about the Operation Car Wash investigation, which portrayed Judge Moro in a hagiographic light and defamed the author by claiming that he was guilty of corruption. The author highlighted that the perception of Judge Moro's actions could not be divorced from his much publicized theory of the crusading proactive "attack judge", which he advanced in his public lectures and publications.<sup>19</sup> The author contends that, because Judge Moro used his position in public office to advance arguments in which he prejudged the author's guilt, he disqualified himself as an impartial judge in the proceedings against the author.

*Risk of indefinite pretrial detention*

3.9 When submitting his original communication, and before he was imprisoned after the Federal Regional Court's confirmation of the conviction, the author had argued that he was at risk of indefinite pretrial detention, in violation of article 9 of the Covenant. He explains that he had been formally identified as a suspect in a number of investigations and was undergoing a procedure that would in all likelihood lead to his pretrial arrest and indefinite detention without any effective remedy. He explains that article 312 of the Code of Criminal Procedure provides that preventive detention may be ordered to maintain public order or economic order, for the convenience of a criminal investigation or to secure the enforceability of the criminal law, whenever there is evidence of a crime and sufficient indication of authorship. He claims that the "maintenance of public order", the exception under which most Operation Car Wash suspects had been detained, is vague and must be confined to emergency situations. Similarly, the "convenience" of a criminal investigation should be interpreted as a situation where the detainee is likely, if released, to frustrate the investigation by fleeing or interfering with witnesses, or can be shown from his or her criminal record or

<sup>14</sup> Such as search and seizure warrants, bench warrants and telephone tapping.

<sup>15</sup> Except in intentional crimes against life.

<sup>16</sup> *Larrañaga v. Philippines* (CCPR/C/87/D/1421/2005), para. 7.9. See also European Court of Human Rights, *Hauschildt v. Denmark* (application No. 10486/83) judgment of 24 May 1989.

<sup>17</sup> *Lagunas Castedo v. Spain* (CCPR/C/94/D/1122/2002), para. 9.7.

<sup>18</sup> Among others, the Brazilian Social Democratic Party, *Editora Abril* (a paper that has repeatedly called the author corrupt and demanded his arrest and conviction) and *Veja* magazine (which published on its front cover a doctored picture of the author in a convicted prisoner's uniform).

<sup>19</sup> The author cites Judge Moro's publication "Considerações sobre a Operação Mani Pulite", *Revista do CEJ, Brasília*, No. 26, July/September 2004, in which he uses the term *juízes de ataque* (attack judges).

recent intentions to be likely to commit further serious crimes. The author claims that article 312 of the Code does not comply with article 9 of the Covenant, because it lacks the strict criteria<sup>20</sup> regulating detention for the purposes of obtaining testimony, which is an exceptional measure that must be carefully and precisely regulated.<sup>21</sup> He adds that the Committee has condemned States that have detained defendants to force them to cooperate with investigations.<sup>22</sup> The author claims that, although he was never put in pretrial detention, he should be considered a victim according to the Committee's jurisprudence because there was a "real risk" of a violation of his rights under the Covenant.<sup>23</sup>

#### *Breaches of the presumption of innocence*

3.10 The author alleges that the virulent media campaign fostered by Judge Moro, the Office of the Federal Prosecutor and the police amounted to a breach of his right to the presumption of innocence, in violation of article 14 (2) of the Covenant. He recalls that, in the Committee's general comment No. 32 (2007), it noted that it was a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused.<sup>24</sup> He adds that that principle was applied by the Committee in a case where public assertion of guilt by a high ranking prosecutor at a public meeting, which was given wide media coverage, amounted to a breach of article 14 (2).<sup>25</sup> In the same vein, the author notes that the Committee has found that making extensive and adverse pretrial comments through State-directed media<sup>26</sup> was in violation of that right, which highlights the significance of the link between adverse media coverage and the State.

3.11 The author alleges that many Operation Car Wash suspects were held in detention until they entered into plea bargains and that the details of those plea bargains, whenever they mentioned him or his associates, were leaked to the media. The media then deployed the leaked information, no matter how unreliable, to add to his public demonization and the expectation that he would be found guilty of corruption. He alleges that the State party's media were all hostile towards him. Although he was formally a subject of investigation, the State party's legislation offered no protection to his honour and reputation during that period, a protection which could have been afforded him through contempt of court laws preventing the media from prejudging his guilt. He alleges that Judge Moro did nothing to discourage the slander, because of his notion that public opinion must demonstrate support for prosecutions.<sup>27</sup>

3.12 The author alleges that the federal prosecutors involved in his cases have continuously made public statements asserting his guilt.<sup>28</sup> He highlights, as examples, the 90-minute press conference held on September 2016 and the book by Prosecutor Dallagnol, entitled *A Luta contra a Corrupção* (The Fight against Corruption), portraying the author as guilty of the crimes of which he was accused. He claims that the only remedy available against such abuse was to lodge a complaint with the National Council of Prosecutors, which he filed on 31 May 2016. However, no action was taken on the grounds that the Council could not reproach a

<sup>20</sup> *Campbell v. Jamaica* (CCPR/C/47/D/307/1988), para. 6.4.

<sup>21</sup> The author cites, inter alia, Inter-American Court of Human Rights, *Usón Ramírez v. Venezuela*, Series C, No. 207, para. 144.

<sup>22</sup> See *Van Alphen v. Netherlands*.

<sup>23</sup> *Kindler v. Canada* (CCPR/C/48/D/470/1991), para. 13.2.

<sup>24</sup> Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 30.

<sup>25</sup> *Gridin v. Russian Federation* (CCPR/C/69/D/770/1997), para. 8.3.

<sup>26</sup> *Saidova v. Tajikistan* (CCPR/C/81/D/964/2001), para. 6.6.

<sup>27</sup> Among other things, the author cites a lecture held in São Paulo in which Judge Moro said: "These cases involving severe corruption crises, [and] powerful public figures, only proceed if supported by the public opinion and the organized civil society. And this is your role."

<sup>28</sup> As an example, the author provides the following statements made on the radio by one of the heads of the investigation, federal prosecutor, Carlos Fernando dos Santos Lima. He allegedly told radio station Jovem Pan on 27 March 2016: "We clearly see payments by construction companies benefitting the former President and his family ... others who cooperated (i.e. by plea bargains) confirm the former President already knew about the scheme and approved it ... And he also knew about everything, he had the power and ability to hinder the result ... so in this sense he was not just being part of it, and that's why saying he ruled over it is correct. He is the author of the crime."



member of the Office of the Federal Attorney other than by conducting an internal investigation and merely offering recommendations to the prosecutors involved.

*Right to vote and right to be elected*

3.13 The author submits that the State party violated his rights under article 25 (b) of the Covenant, both to stand as a candidate in the presidential election and to vote, given that Supplementary Law No. 135/2020, also known as the Clean Slate Law, institutes an eight-year ineligibility period for political agents convicted by a collegiate body for committing specific crimes, among them those for which the author was convicted.<sup>29</sup> The author alleges that the law is both unconstitutional and incompatible with the Covenant, because its application amounts to a violation of the right to be presumed innocent. He notes that the Committee has already found a violation of the right to vote and the right to be elected in a case where the author's imprisonment resulted from a proceeding in which his due process guarantees were not respected.<sup>30</sup> He alleges that, in his case, his imprisonment was the result of criminal proceedings without due process guarantees and that it was a criminal process instituted against him in order to prevent him from standing as a candidate in the presidential election. He notes that nearly 1,400 politicians who had had their registrations denied by the electoral courts in 2018, and had appeals pending, were allowed to continue campaigning for that year's election until the decisions on their appeals were final.

*Exhaustion of domestic remedies*

3.14 The author notes that it is the Committee's constant jurisprudence that the rule of exhaustion applies only to the extent that those remedies are effective and available.<sup>31</sup> He cites the Committee's jurisprudence according to which remedies must offer a reasonable prospect of redress<sup>32</sup> and must not be unreasonably prolonged<sup>33</sup> and that internal reviews by professional supervisory bodies for judges and prosecutors do not constitute a remedy that must be exhausted.<sup>34</sup>

3.15 With regard to the bench warrant, the author claims that he was not given the opportunity to challenge it at the time and that the damage done to him by the publicity was irreversible. He adds that any later complaint against Judge Moro would have been sent for "internal investigation" by a council of judges, which would not have resulted in an effective remedy. He also claims that any subsequent constitutional action would have been met with the argument that the litigation was futile, because the case was in the past and the damage was irreversible. The author argues that he could have sued for civil damages, but the trial would have been prolonged.

3.16 Regarding the two claims involving the disclosure of intercepts obtained through telephone tapping, the author argues that there was no domestic remedy available other than a civil action, which would take years to come to trial. Although Justice Zavascki of the Supreme Federal Court confirmed the illegality of the disclosure of the contents of the call involving the President on 13 June 2016, he provided no remedy or redress to the author, accepting that the effects of the illegality were "irreversible". The author claims that there was no effective way that he could provoke action by the Government or by the National Justice Council.

3.17 With regard to Judge Moro's lack of impartiality, the author claims that there was no effective way in which Judge Moro could be recused for bias. The appropriate motion to recuse could only be filed before the judge himself, or by a petition directed to the Attorney General who had himself, in his role as federal prosecutor, accused the author of being guilty.

<sup>29</sup> In the author's case, the collegiate body was the Federal Regional Court, which acted as the court of appeal with regard to the author's conviction.

<sup>30</sup> *Scarano Spisso v. Bolivarian Republic of Venezuela* (CCPR/C/119/D/2481/2014), para. 7.12. The author also refers to the Committee's general comment No. 25 (1996) on participation in public affairs and the right to vote, para. 14.

<sup>31</sup> CCPR/C/113/4, para. 49.

<sup>32</sup> *Patiño v. Panama* (CCPR/C/52/D/437/1990), para. 5.2.

<sup>33</sup> *Ičić and Ičić v. Bosnia and Herzegovina* (CCPR/C/113/D/2028/2011), para. 8.3.

<sup>34</sup> *Yachnik v. Belarus* (CCPR/C/111/D/1990/2010), para. 8.3.

He claims that, in any event, the Attorney General merely had the discretion to initiate government action, which did not amount to an effective remedy. All possible motions had to be submitted to Judge Moro, who rejected them. The remedies were not efficient to guarantee a trial with an impartial judge, because they hinged on the decision of the very judge to whom objection was taken. The author appealed the motions all the way to the Supreme Federal Court, and they were denied.

3.18 With regard to the risk of pretrial detention, the author argues that, as a pretrial detainee, he had no right to habeas corpus or to access to a court to challenge his detention other than by going through Judge Moro. He claims that, given that domestic law does not confine pretrial detention to cases where there is likelihood of flight or interference with evidence, and that pretrial detention was used in order to obtain a confession (i.e. a plea bargain), there was no effective remedy available to prevent it.

3.19 With regard to his right to the presumption of innocence, the author claims that the State party took no measures to prevent the leaks and disclosure of information to the media. He adds that, owing to the lack of contempt of court laws in Brazil, there were no effective remedies to prevent the media from prejudging his guilt on the basis of those leaks. He claims that the complaints to the National Council of Prosecutors about the behaviour of the federal prosecutor in publicly alleging that the author was guilty were merely sent for “internal investigation”. He argues that they cannot be considered effective remedies, given that they are administrative and discretionary disciplinary proceedings.

*State party’s non-compliance with the Committee’s request for interim measures*

3.20 The author explains that the State party failed to comply with the request for interim measures issued by the Committee. He claims that the State party clearly had the intention of making the violations to his political rights irreversible and of making it impossible for a potential decision by the Committee to be complied with. He claims that, by acting to prevent, frustrate or render the examination by the Committee nugatory and futile, the State party has committed grave breaches of its obligations under the Optional Protocol.<sup>35</sup>

**State party’s observations on admissibility and the merits<sup>36</sup>**

*Non-exhaustion of domestic remedies*

4.1 The State party alleges that the author failed to invoke and exhaust all available domestic remedies prior to filing his individual communication before the Committee and that the Committee is therefore barred from examining the communication pursuant to article 5 (2) (b) of the Optional Protocol. It claims that the European Court of Human Rights has established in its jurisprudence that the exhaustion of domestic remedies is normally determined with reference to the date on which an application is lodged, accepting exceptions when the last stage is reached, shortly after the lodging of the application but before the determination of admissibility.<sup>37</sup>

4.2 The State party explains that the author’s several submissions show that he has been gradually making use of the available domestic remedies since filing his communication with the Committee, which demonstrates that he had not properly exhausted them before resorting to the Committee. The State party submits that the author’s claims relate to two ongoing criminal proceedings in Curitiba, which were pending before the court of first instance at the time of filing of the author’s communication. The State party explains that, should a conviction be reached – as did happen subsequently – the author would be entitled to appeal against both convictions, in accordance with article 593 (I) of the Code of Criminal Procedure, appeals which would stay his conviction sentence. The State party also explains that, if faced

<sup>35</sup> *Maksudov et al v. Kyrgyzstan* (CCPR/C/93/D/1461,1462,1476&1477/2006).

<sup>36</sup> The following section has been compiled from the State party’s submissions received by the Committee on 27 January 2017, 29 September 2017, 3 April 2018, 11 May 2018, 9 and 13 September 2018 and 21 November 2018.

<sup>37</sup> See, inter alia, European Court of Human Rights, *Baumann v. France*, (application No. 33592/96), judgment of 22 August 2001, para. 47; and *Karoussiotis v. Portugal*, (application No. 23205/08), judgment of 1 February 2011, para. 57.

with a conviction, the author would be entitled to other ordinary and extraordinary appeals before the Superior Court of Justice and the Supreme Federal Court, as well as internal appeals within those courts, in accordance with articles 619, 105 and 102 of the Code. The State party alleges that the author had also filed lawsuits for damages but had failed to wait for the decision of the court of first instance before he filed his communication before the Committee.

4.3 The State party adds that, even at the moment of filing of its observations on admissibility and the merits, the last stages of available domestic remedies had still not yet been reached.<sup>38</sup> It alleges that, in the light of the myriad of domestic remedies filed by the author after submitting the communication before the Committee, and given the fact that some important appeals were still pending, it should be concluded that domestic remedies were not exhausted.

4.4 The State party adds that the author tried to depict the domestic system of justice as a whole as a biased system in which there would be no prospect of real relief to be granted. It alleges that the suggestion of a general partiality among national judges towards the author is a subjective illation. It therefore requests that the Committee declare the author's communication inadmissible for lack of exhaustion of domestic remedies.

#### *Bench warrant of 2 March 2016*

4.5 The State party explains that the bench warrant did not subject the author to arbitrary arrest or detention because both the request from the Office of the Federal Prosecutor and the decision by the court were fully reasoned as required by domestic law. It adds that the warrant was a purely technical measure with no associated political nuance or intention, which did not involve any prejudgment of criminal liability. The State party explains that, as clarified at the time by the Operation Car Wash Task Force,<sup>39</sup> the measure was ordered in compliance with articles 201, 218, 260 and 278 of the Code of Criminal Procedure and the judicial authority's general power to grant precautionary measures, which were at the time of issuance of the bench warrant considered constitutional by the Supreme Federal Court.

4.6 The State party contends that the bench warrant was necessary and justified by the circumstances, because public security was at stake. On 17 February 2016, the Prosecution Service of the State of São Paulo had scheduled depositions of the author and his wife. The author tried to avoid the investigative act by filing a writ of habeas corpus before the Court of São Paulo arguing that it would generate a great risk of protests and conflict. Neither the author nor his wife attended the depositions, and protests still took place in the area surrounding the courthouse. The State party alleges that that event was an important factor that motivated the issuance of the bench warrant against the author, with the aim of guaranteeing the overall tranquillity of the investigative act.

4.7 The State party argues that, when deciding on the motion for bias, Judge Moro explained that an intercepted telephone call between the author and the President of the Workers' Party on 27 February 2016 had shown that the author had had knowledge of a scheduled search and seizure and had revealed that he was contemplating "assembling some congressmen to surprise them". The State party notes that, in the light of those conversations, the police had taken steps to avoid risks to both the investigation and the security officers' moral and physical integrity. The State party alleges that, under the circumstances, the court could have opted to issue an even more severe legal measure, such as temporary detention or preventive arrest. However, in addition to having opted for a less severe measure, the court asserted in its order that the use of handcuffs and filming of the author were not allowed, expressly guaranteed his right to remain silent and the presence of his attorney and indicated that the order was only to be used should the author refuse to accompany the police.

4.8 The State party affirms that the author's allegations that the prosecution illegally publicized the investigative act has no credibility. Given that the measure was issued

<sup>38</sup> The State party notes the several appeals before the Superior Court of Justice and the Supreme Federal Court that were still pending at the time.

<sup>39</sup> See [www.mpf.mp.br/pr/sala-de-imprensa/noticias-pr/nota-de-esclarecimento-da-forca-tarefa-lava-jato-do-mpf-em-curitiba](http://www.mpf.mp.br/pr/sala-de-imprensa/noticias-pr/nota-de-esclarecimento-da-forca-tarefa-lava-jato-do-mpf-em-curitiba).

precisely to guarantee that the deposition would take place in an atmosphere of tranquillity, its successful execution relied on strict compliance with the necessary secrecy. In fact, contrary to the author's allegations, the influx of people only began after the author's counsel came to know of the measure. The State party concludes that it was the author's counsel, and not the prosecution, who intended to disrupt the deposition.

*Disclosure of various intercepts of telephone conversations*

4.9 The State party explains that an interference with the right to privacy under article 17 of the Covenant must not be arbitrary or unlawful. It recalls that, according to the Committee's general comment No. 32 (2007), even in cases in which the public is excluded from the trial, the judgment, including the essential findings, evidence and legal reasoning, must be made public, except where the interest of juvenile persons otherwise requires, or the proceedings concern matrimonial disputes or the guardianship of children.<sup>40</sup>

4.10 The State party explains that the decisions concerning all taps on telephones, which were requested by the Office of the Federal Prosecutor, were widely substantiated and in line with domestic law. It alleges that the reasoning in the initial decision explains the indispensability of the measure for the elucidation of serious crimes that had emerged from considerable evidence, as did the subsequent decisions that extended and expanded the measures taken. The State party adds that the lifting of confidentiality was also motivated and carried out to prevent the obstruction of justice and because of the public interest for a "healthy public scrutiny [of] the performance of the Government and criminal justice itself".<sup>41</sup> According to Judge Moro, "there is no defence of privacy or social interest that justifies the maintenance of secrecy in relation to evidentiary elements related to the investigation of crimes against the Government".<sup>42</sup> Therefore, the disclosure of the telephone intercept granted by the judge, in a decision widely substantiated, raises no issues under article 17.

4.11 The State party adds that the Supreme Federal Court determined the invalidation of the communication between the author and the President, which demonstrates the possibility of reviewing judicial decisions and the independence of the organs involved in the author's criminal process. It asserts that overturning a judicial decision that was rendered in a technical way constitutes an act within the judicial procedure and does not imply recognition of disciplinary or criminal fault, which did not occur in the author's case.

*Taps of the author's lawyers' telephones and disclosure of the intercepts*

4.12 The State party alleges that, with regard to the tapping of the author's lawyers' office, the telephone number subject to the tap was registered in the name of a company that belonged to the author. That fact was confirmed by the Federal Regional Court, which, upon learning that the telephones had been used by third parties, decided that the evidence would not be used for any purpose. In addition, the recorded audio recordings were destroyed. The State party cites Judge Moro's decision on the motion for bias, according to which "there are no records of [intercepted] conversations ... of lawyers other than Roberto Teixeira himself, not even conversations with content related to the right of defence".

4.13 With regard to the tapping of Mr. Teixeira's mobile phone, the State party affirms that he was himself investigated and that a criminal complaint was filed against him for the alleged perpetration of money-laundering crimes. The State party cites Judge Moro's decision, according to which Mr. Teixeira was not listed as one of the defence attorneys of the author and that "if the attorney himself gets involved with illegal conduct, which is the object of the investigation, there is no immunity to investigation or tapping".<sup>43</sup>

<sup>40</sup> Committee's general comment No. 32 (2007), para. 29.

<sup>41</sup> Judge Moro's decision of 16 March 2016, as cited in his letter to the Supreme Federal Court of 29 March 2016.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

*Absence of an impartial tribunal*

4.14 The State party alleges that the participation of a judge in public events, such as book releases and artistic exhibitions, does not entail a breach of the duty of impartiality or an attempt at self-promotion. It adds that awarding prizes as a result of recognition of the exercise of a professional activity is a legitimate and common practice in the field of law and other areas of human knowledge.

4.15 With regard to the allegations of lack of impartiality due to the fact that the trial judge decided on requests for provisional measures during the pretrial stage, the State party affirms that the role of the judge in the preliminary investigation was of a passive nature. It explains that the investigative judge evaluates the legality of requests presented by the parties and the police authorities but is not allowed to actively conduct investigations himself. The decisions are therefore taken with a low degree of judicial cognizance and do not bind the judge during the trial of the case. The State party cites Judge Moro's decision, according to which "although deliberations mean, on judicial cognizance, some type of consideration of the case, what is relevant is that the judge, even after taking favourable or unfavourable decisions in favour of one of the parties in the lawsuit, keep an open mind to change his mind during the trial, after the adversarial phase and the arguments".<sup>44</sup>

4.16 The State party notes that, in *Larrañaga v. Philippines*, the trial judge and two Supreme Federal Court judges were involved in the evaluation of the preliminary charges against the author and that the involvement was such that it allowed them to form an opinion on the case prior to the trial and appeal proceedings. The State party adds that the European Court of Human Rights has asserted that the mere fact that a trial judge had also made pretrial decisions in a case was not in itself a vice of partiality.<sup>45</sup>

4.17 However, according to the State party, in its legal system, the judge never takes part in the investigation stage and does not participate in the investigative strategy designed by prosecutors and police officers. The judge therefore does not form an opinion on the case prior to the trial, but only guarantees the defendants' right to judicial supervision of acts carried out by police and prosecutors. The State party explains that that was confirmed by the Federal Regional Court when rejecting the author's four motions for bias. However, it does not mean that the author had no effective remedy or that the judges and courts were not impartial.

4.18 The State party explains that judges and prosecutors' professional associations are private institutions created by citizens in their private capacity and regulated by the Civil Code. They are not part of the State party's judiciary and therefore enjoy a wide scope of protection of freedom of speech. It adds that the opinions expressed by those associations do not constitute official opinions of any of the State party's government branches and that they have no capacity to influence the independence of judges. It concludes that the author's allegations in that regard are rhetorical claims that lack substantiation.

*Risk of indefinite pretrial detention*

4.19 The State party clarifies that the author was never placed under preventive arrest. It adds that the author was imprisoned due to the provisional execution of his conviction, after sentences had been rendered by the courts of first and second instances, in accordance with Supreme Federal Court case law. The State party explains that lawful detention of a person after a conviction by a competent court is legitimate grounds for the deprivation of liberty that, although explicit in the Convention for the Protection of Human Rights and Fundamental Freedoms, is implicit in other treaty provisions.<sup>46</sup> It notes that the Supreme Federal Court decided, on 17 February 2016, before the author's first conviction, that the presumption of innocence did not prevent imprisonment resulting from a judgment that, on

<sup>44</sup> Judge Moro's letter to the Supreme Federal Court of 29 March 2016.

<sup>45</sup> European Court of Human Rights, *Hauschildt v Denmark*, para. 50.

<sup>46</sup> Office of the United Nations High Commissioner for Human Rights, "*Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers* (United Nations publication, 2003), chap. 5, "Human Rights and Arrest, Pretrial Detention and Administrative Detention", p. 172.

appeal, confirms a conviction.<sup>47</sup> In fact, several other defendants in Operation Car Wash were imprisoned with convictions confirmed by the court of second instance, before the author was.

4.20 With regard to the alleged lack of enforcement of a decision of the Federal Regional Court rendered by Judge Favreto, ordering the author's release, the State party explains that Judge Favreto is under investigation before the Superior Court of Justice for the alleged commission of the crime of wilful abuse of power.

4.21 With regard to the allegations of widespread use of pretrial detention in relation to Operation Car Wash, the State party explains that the Federal Criminal Court of Curitiba had duly based its decisions ordering the pretrial detention of the accused on the relevant legal provisions, i.e. article 312 of the Code of Criminal Procedure, providing the reasoning for them and highlighting the exceptionality of pretrial detention. It adds that, although some of the decisions were reversed by higher courts, that only shows that the State party's judiciary is independent and impartial.

4.22 With regard to the allegations that pretrial detentions in relation to Operation Car Wash were ordered with the intent to force plea bargains, the State party notes that 83.5 per cent of the 175 plea agreements concluded were carried out while those investigated were free. It adds that, for plea bargains to be valid, they must be voluntary, in accordance with Law No. 12850, as amended in 2013, a year prior to the commencement of investigations in Operation Car Wash.

#### *Presumption of innocence*

4.23 The State party alleges that there is nothing in the pronouncements of members of the Office of the Federal Prosecutor that could influence the independent and impartial performance of the judiciary. It adds that a technical explanation to the public regarding the charges against the author is in accordance with the right to information and the principle of transparency. It notes that the author and his defence team held several press conferences to convey their version of the facts.

4.24 With regard to the first televised press conference held by the prosecutors of the Operation Car Wash Task Force, the State party refers to Judge Moro's decision on the motion for bias against them. According to that decision, the press conference: (a) was not endowed with political-partisan or political-ideological purposes; (b) had the intention to inform and remain accountable to the public, considering the notoriety of the accused; (c) attested to the relevance of the affirmation of the author's power of command; and (d) did not include a disrespectful tone in the adjectives used in the charges presented.<sup>48</sup>

4.25 The State party explains that the author filed a lawsuit against Prosecutor Dallagnol, seeking compensation for alleged moral damages, which was dismissed, and that it was dismissed again on appeal. The State party highlights the context of the charges of the appellate decision, the strong evidence available and the fact that the public interest trumps the right to privacy when a public person is involved. The State party explains that the author also filed an administrative complaint against the Office of the Federal Prosecutor, before an independent control body, the National Council of the Office of the Federal Attorney, which dismissed the complaint on similar grounds.

#### *Right to vote and right to be elected*

4.26 The State party alleges that a violation of article 25 of the Covenant can only be considered, as its own text asserts, if the restriction to the concerned right is unreasonable. It cites the Committee's general comment No. 25 (1996), according to which restrictions can

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<sup>47</sup> The writ of habeas corpus only confirmed the long-standing jurisprudence of the court on the matter, prior to a revision that took place in 2009.

<sup>48</sup> The State party quotes large excerpts from the author's first conviction, in which Judge Moro also highlighted the ways in which the conduct of the prosecutors was in line with the exercise of their functions.

be imposed as long as they are established by law and based on objective and reasonable criteria.<sup>49</sup>

4.27 With regard to the author's right to be elected, the State party explains that the Clean Slate Law was passed, in accordance with article 14 (9) of the Constitution, by an absolute majority of the National Congress, indicating that the restrictions are both exceptional and carefully considered. It adds that the law derived from the people's initiative, in line with article 61 (2) of the Constitution, which demonstrates a strong exercise of legislative democracy and popular sovereignty, and promulgated by the author himself while President. According to article 1 (e) (1) thereof, citizens are ineligible to hold any public office for eight years if they have been convicted of crimes such as money-laundering or crimes against the public administration, in virtue of a criminal sentence subject to *res judicata* or rendered by a collective judicial body. The State party explains that such was the author's case. The State party adds that, in 2012, the Supreme Federal Court ruled that the law was in compliance with the Constitution. The decision was rendered four years before the criminal cases against the author, which indicates that it has not been applied to him in an *ad hoc* manner.

4.28 The State party holds that the types of restrictions to the author's rights were democratically established by domestic law and duly applied to him, as a result of equitable protection of the human rights to good governance and democracy, making the restrictions reasonable and in accordance with article 25 of the Covenant.

4.29 With regard to the author's right to vote, the State party alleges that the restriction was legal, objective and reasonable. It explains that, in accordance with the Electoral Code, the Superior Electoral Court adopted a resolution on 8 December 2017 establishing electoral sessions in imprisonment and correctional facilities having at least 20 people who are able to vote. That was not the case at the regional superintendence of the federal police in Curitiba and therefore the author could not vote. The State party explains that, with 600,000 people in custody, the restriction is not only established by law but also reasonable and objective.

#### *Interim measures*

4.30 The State party claims that the Superior Electoral Court took duly into account, in good faith, the recommendation of the Human Rights Committee to grant provisional measures to the author. It highlighted that the proposal to allow the author's registration as a candidate was defeated. It adds that the proposal against the registration of the author's candidacy, but in favour of his right to campaign and have his name maintained in the ballot box system, was also defeated.

5. The present Views are continued in document [CCPR/C/134/D/2841/2016 \(Final proceedings\)](#).

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<sup>49</sup> Committee's general comment No. 25 (1996), para. 4.