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WALTA

WALTA'S REPORT ON THE FAIRNESS AND TRANSPARENCY OF THE BRAZILIAN PRESIDENTIAL ELECTIONS OF OCTOBER 2022

By Professor Augusto Zimmermann PhD, LLB, LLM, CIArb

*President, The Western Australian Legal Theory Association (WALTA)
Commissioner, Law Reform Commission of Western Australia (2012-2017)*

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1. First Considerations

The second round of Brazil's presidential elections was held on Sunday, October 30. The former president, Lula da Silva, who has served prison time for corruption, won 50.90% of the vote and the current incumbent, Jair Bolsonaro, received 49.10%. This is according to judges of the Superior Electoral Tribunal (TSE), Brazil's top electoral authority. The president of this top electoral tribunal, Alexandre de Moraes, has praised the "efficiency" of electronic ballot boxes, noting that he and other electoral authorities managed to "certify" the winning candidate just three hours after polls were closed.¹

It was an unexpected comeback for the former president, who was directly responsible for the biggest series of corruption scandals in the nation's history.² Lula is "back at the scene of the crime", according to the description made not a long time ago by Geraldo Alckmin, his own vice-president in the presidential ticket. "After bankrupting Brazil, Lula says he wants to be president again. In other words, friends, he wants to return to the scene of the crime", he said in 2017.³ Amid allegations of massive electoral fraud, Brazilians have been protesting in their millions over hundreds of cities nationwide. "The problem is that millions of Brazilians do not believe or trust the TSE and say the electoral high court is part of the electoral fraud scheme in this presidential election", says Lolanda Fonseca, a journalist for *The Rio Times*.⁴

2. Electronic Voting Machines

One of the arguments put forward by so many Brazilians is that some electronic ballot boxes showed Bolsonaro with no vote, that is, 0 (zero) vote. Economist Marcos Cintra, a former Secretary of the Federal Revenue, is one of those who think it is not possible to find an explanation for the strange result in hundreds of electronic ballot boxes that he would have checked.⁵ "There are hundreds, if

¹ 'Electoral high court president says those who doubt election results in Brazil will be treated as criminals', *The Rio Times*, 5 November 2022, at <https://www.riotimesonline.com/brazil-news/brazil/electoral-high-court-president-says-those-who-doubt-election-results-in-brazil-will-be-treated-as-criminals/>

² John Otis, 'Government Corruption at New Heights in Brazil', *Houston Chronicle*, 16 October 2005, at <http://www.chron.com/cs/CDA/ssistory.mpl/headline/world/3399089>

³ 'Brazilian centrist Alckmin, Lula's big-tent for VP', *France 24*, 1 November 2022, at <https://www.france24.com/en/live-news/20221101-brazilian-centrist-alckmin-lula-s-big-tent-bet-for-vp>

⁴ Lolanda Fonseca, 'Amid allegations of a stolen election, Brazilians have been protesting in the millions in over 300 locations nationwide', *The Rio Times*, 7 November 2022, at <https://www.riotimesonline.com/brazil-news/modern-day-censorship/opinion-amid-allegations-of-a-stolen-election-brazilians-have-been-protesting-in-the-millions-in-over-300-locations-nationwide/>

⁵ Ibid.

not thousands of such ballot boxes with equally improbable votes”, he says.⁶ Cintra is a well-known opponent of Bolsonaro, who he considers “incapable of running the country”.⁷ However, when he dared to raise concerns about the transparency of electronic voting machines, his Twitter account was suspended as a result of a court order of the electoral tribunal, on Sunday, 6 November.⁸

Indeed, a preliminary report concerning the “behaviour” of voting machines used in the first round of presidential elections, on 2 October, revealed a number of “inconsistent voting patterns” in the official data released by the federal electoral tribunal.⁹ Although voting patterns derived from pre-2020 non-auditable voting machines should be similar to those of more recent and auditable voting machines, the former actually gave Lula much more votes over Bolsonaro than the latter, with the chance of this to ever occurring being of the order of 1 in 1,000,000,000,000,000,000.¹⁰ Curiously, these anomalies favoured only one of the two primary candidates, namely Lula da Silva.¹¹ The report goes on to provide a number of evidences regarding these electronic ballot boxes, including these:

Example 1: Quiterianópolis (Ceará State)

0 vote for Bolsonaro out of 117.

1 blank vote out of 117

Example 2: Confresa (Mato Grosso State)

0 vote for Bolsonaro out of 375.

375 votes for Lula out of 375.

Example 3: Turvo (Paraná State)

1 vote for Bolsonaro out of 181

177 votes for Lula out of 181

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ ‘Preliminary report of the analysis of the electronic ballot boxes used in the first round of the presidential election of Brazil – October 2, 2022’, at <https://brazilwasstolen.com/wp-content/uploads/2022/11/Ballot-box-elections-2022-It-is-very-difficult-to-justify.pdf>

¹⁰ Ibid.

¹¹ Ibid.

On November 9, 2022, the Defence Ministry sent to the Superior Electoral Court (TSE) its long-awaited report on the process of monitoring the electronic voting system. Produced by the technical team of the Armed Forces, the document brings observations and conclusions about the electronic voting system, according to the attributions that were given by the electoral tribunal to these supervisory entities.¹² The report confirms the lack of security of voting machines because it does not reject the possibility of fraud in such machines. For example, the report says that the binary codes for generation of programs in these machines can be changed and even replaced. It also says that “functionality tests” carried out through the “Integrity Test and the Biometric Pilot Project” were “not sufficient” to confirm that the electronic voting system is exempt from the influence of any “malicious code” that could “alter the operation of the system”, which constitutes a transparency gap and a possible risk to its entire security and integrity. As a result, the report recommends the “urgent” creation of a special commission consisted of “renowned technicians” to conduct a technical investigation to better understand the occurrence of possible anomalies caused by the compilation of source code and its possible effects. Finally, the report requests a thorough analysis of binary codes that were executed in voting machines so as to investigate possible changes in the source code, which would, according to the document, compromise the integrity of the electoral system. In sum, the report indicates important aspects that require further clarification, basically because:

- there was a possible risk to security in the generation of electronic voting machine programs due to the occurrence of access of computers to the TSE network during the compilation of the source code;
- the functionality tests of the electronic ballot boxes (Integrity Test and Pilot Project with Biometrics) were not sufficient to rule out the possibility of the influence of any malicious code capable of altering the functioning of the voting system; and
- there were restrictions on the adequate access of technicians to *source code and software libraries developed by third parties*, making it impossible to fully understand the execution of the code, which covers more than 17 million programming lines.¹³

¹² ‘Relatório Técnico – Fiscalização do Sistema Eletrônico de Votação Pelas Forças Armadas’, *Ministério da Defesa*, 9 November 2022, at https://static.poder360.com.br/2022/11/Relatorio_EFASEV.pdf

¹³ ‘Relatório das Forças Armadas não excluiu a possibilidade de fraude ou inconsistência nas urnas eletrônicas’, *Ministério da Defesa, Governo do Brasil*, 10 November 2022, at <https://www.gov.br/defesa/pt-br/centrais-de->

In order to avoid a distortion of the findings contained in the report to the Superior Electoral Tribunal (TSE), the Ministry of Defence issued an official note on November 10 to clarify that “the accurate work of the team of military technicians in the supervision of the electronic voting system ... does not exclude the possibility of fraud or inconsistency in electronic voting machines and the electoral process of 2022”.¹⁴ As a result of these findings, the note says the Ministry of Defence has reached the conclusion that “it is not possible to ensure that the computer programs that have been implemented at electronic voting machines are free from malicious insertions that alter their functioning”.¹⁵ Therefore, the Ministry of Defence requests the Superior Electoral Tribunal “to conduct an urgent technical investigation into what happened in the compilation of the source code and a thorough analysis of the codes that were executed in electronic voting machines”.¹⁶ Finally, the Ministry of Defense reaffirms “the permanent commitment of the Armed Forces to the Brazilian People, democracy, freedom, the defense of the homeland and the guarantee of the constitutional order”.¹⁷ In a letter in which he personally requests that all the recommendations be immediately accepted by the Superior Electoral Tribunal, the Minister of Defence, Army General Paulo Sérgio Nogueira, commented:

*From the work done, I make two points. First, it was observed that the occurrence of network access, during the compilation of the source code and consequent generation of programs (binary codes), can configure a relevant risk to the security of the process. Second, from the functionality tests, conducted through the Integrity Test and the Pilot Project with Biometrics, it is not possible to affirm that the electronic voting system is exempt from the influence of any malicious code that may alter its functioning.*¹⁸

Fair and transparent elections invariably require paper-based voting. This is why most developed countries still use paper ballots and physical ballot boxes made of canvas, plastic, and other non-electronic materials.¹⁹ About seven years ago, two German citizens challenged the constitutionality of electronic voting before that nation’s Constitutional Court. The decision by the German

conteudo/relatorio-das-forcas-armadas-nao-excluiu-a-possibilidade-de-fraude-ou-inconsistencia-nas-urnas-eletronicas

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ ‘Ministério da Defesa entrega relatório sobre urnas eletrônicas ao TSE’, Agência Brasil, 9 November 2022, at <https://agenciabrasil.ebc.com.br/politica/noticia/2022-11/ministerio-da-defesa-entrega-relatorio-sobre-urnas-eletronicas-ao-tse>

¹⁹ Thomas Korontai, ‘Brazil é o único país com urna eletrônica sem contraprova física’, *Convergências*, June 15, 208, at <https://convergencias.org.br/a-bem-da-verdade-brasil-e-o-unico-pais-com-urna-eletronica-sem-contraprova-fisica/>

Constitutional Court stressed the need for absolute transparency in the electoral process, which is not possible if the process is restricted to specialist technical knowledge. Therefore, the court concluded, the complementary examination by the electoral bodies and the general public can only be made possible through physical vote records in addition to electronic storage.²⁰

With the entirely electronic voting system implemented in Brazil, however, there is no absolute guarantee that citizens' votes are exactly what they have cast in the ballot box, and simply because there is no actual physical register for each vote cast electronically. In other words, Brazilians are unable to confirm whether their votes were cast properly. Of course, if these elections were done on paper ballots, then the counting of votes could be made public via the direct participation of electoral inspectors and voluntary delegates, so that any suspicion of possible electoral fraud would be reduced. Curiously, the nation's electoral system is supposed to respect the principle of publicity of the vote counting as per Article 37 of the Brazilian Constitution. It is, therefore, essential for Brazilians to find better and more reliable ways to uphold this constitutional provision by providing better publicity and transparency to electoral process.

Although the reintroduction of paper-based voting would make the counting of votes more time-consuming, at least this would deliver more confidence in the results than the present electronic system. However, on August 10, 2021, the National Congress failed to pass a constitutional amendment that required the printing of physical ballots that could be checked by the voter. Unfortunately, that proposal was rejected in great part due to the political lobbying of the then top electoral judge, Luís Roberto Barroso, who is also a justice of the Supreme Court, a "vociferous opponent of Bolsonaro"²¹, and ardent defender of voting machines. As reported, he convinced enough members of the legislature to reject these reasonable amendment proposals.²² Curiously, on August 9, 2021, Barroso tweeted that, in Brazil, "election isn't won if it is not taken".²³ Although the then top electoral judge claimed that this statement has been taken out of context, geography

²⁰ 'Electronic voting technology: pros & cons', *PaySpace*, November 2, 2022, at <https://payspacemagazine.com/tech/electronic-voting-technology-pros-cons/>

²¹ Jack Dutton, 'Brazil's Bolsonaro Rallies See Country Heading for Its Own January 6', *Newsweek*, 8 September 2021, at <https://www.newsweek.com/brazils-bolsonaro-rallies-see-country-heading-its-own-january-6-1626989>

²² Frederico Rocha Ferreira, 'Urnas Eletrônicas sem impressão do voto são um risco à democracia?', *Jusbrasil*, at <https://fredericorochaferreira.jusbrasil.com.br/artigos/1260615589/urnas-eletronicas-sem-impressao-do-voto-sao-um-risco-a-democracia>

²³ Jorge Serrão, 'Desmentido de Barroso sobre 'Eleição não se vence, se toma' não alivia seus erros', *Jovem Pan*, 12 August 2022, at <https://jovempan.com.br/opiniaio-jovem-pan/comentaristas/jorge-serrao/desmentido-de-barroso-sobre-eleicao-nao-se-vence-se-toma-nao-alivia-seus-erros.html>

professor Licio Malheiros thinks it constitutes a serious attack on the democracy in Brazil. According to Professor Malheiros,

When a comment of this magnitude is uttered by a justice of the Supreme Court (STF), the higher court and last instance of appeal within the Brazilian judiciary, there has greater weight in negativity because it is a clear affront to democracy. This sentence, which is surreal, shameful, immoral, aggressive and of vexatious potential, mind you, was uttered by no less than an illustrious justice of the Supreme Court, Luís Roberto Barroso, who until recently presided over the Superior Electoral Court.²⁴

Democratic elections require independent verification that all balloting choices have been recorded as intended, and, vote totals have been reliably and indisputably created from the same material examined by the voters.²⁵ But if the process is entirely electronic accurate audits are practically impossible, thus making it harder to verify the reliability of electoral results. However, votes that are cast using electronic voting machines appear to contain weaknesses in controls designed to protect the system.²⁶ Apparently, touch-screen voting machines are susceptible to fraud whenever they rely on outdated technology such as the case in Brazil. This was the 7th national presidential election using the same voting machines which are similar to self-service touchscreen devices found at fast food-restaurants. According to Ellen Theisen, CEO of the Vote-PAD Company, because the sensors in these touch-screen voting machines can be easily knocked out of alignment by shock and vibration, such machines may ultimately misinterpret a voter's intent. As a result, a voter might touch the part of the screen identified with candidate "Bolso", but candidate "Louis" would light up instead.²⁷

Above all, electronic voting machines are not as secure as paper-based systems as there is always the potential for hackers to tamper with the results. This is why most developed countries still use analogical voting and counting (i.e., paper ballots and physical ballot boxes made of canvas, plastic, and other materials).²⁸ Besides Brazil, the other countries that use similar voting machines

²⁴ Licio Antonio Malheiros, 'Opinião: "Eleição não se vence, eleição se toma"', *O Documento*, 26 October 2022, at <https://odocumento.com.br/licio-malheiros-eleicao-nao-se-vence-eleicao-se-toma/>

²⁵ Rebecca Mercuri PhD, 'Facts About Voter Verified Paper Ballots', 23 February 2004, at <http://www.notablessoftware.com/Papers/VVPBfacts.pdf>

²⁶ 'Elections: Federal Efforts to Improve Security and Reliability of Electronic Voting Systems Are Under Way, But Key Activities Need To Be Completed', *Government Accountability Office* (GAO), 21 October 2005, at <https://www.gao.gov/products/gao-05-956>

²⁷ Ellen Theisen, 'Myth Breakers, Facts About Electronic Elections' (2006), at <http://www.votersunite.org/mb2.pdf>

²⁸ 'Brasil é o único país com urna eletrônica sem contraprova física', *Convergências*, 15 June 2018, at <https://convergencias.org.br/a-bem-da-verdade-brasil-e-o-unico-pais-com-urna-eletronica-sem-contraprova-fisica/>

nationwide are Bhutan and Venezuela. As noted by Aviel Rubin, PhD, director of the Information Security Institute at John Hopkins University, and author of several books on information technology and cyber security, the use of electronic voting machines is flawed and easy to manipulate.²⁹ According to Rebecca Mercuri, PhD, president of Notable Software,

*A Voter Verified Paper Ballot (VVPB) provides an auditable way to assure voters that their ballots will be available to be counted ... Without VVPB there is no way to independently audit the election results. Equipment failures, configurations and programming errors have resulted in costly election recalls and disputes that could have been prevented with VVPB.*³⁰

There have been several reports in Brazil of problems with the nation's electronic voting system, although these reports are typically discarded by the relevant authorities. In 2012, for example, a hacker revealed to a stunned audience at the Society of Engineers and Architects of Rio de Janeiro how he had rigged that year's local elections by intercepting data fed into the vote counting system. He modified the results in the computer of the regional electoral tribunal in order to favor some candidates, without the fraud being detected. Using the codename "Rangel", he explains how he had acted to rig the results:

*We accessed the electoral tribunal network when the results were being transmitted and after 50% of the data had already been transmitted, we struck. We modified the results, even when the counting was about to be closed.*³¹

In the 2014 presidential election, electoral delegates from Porto Velho, the capital city of Rondônia state, discovered that only the number 13 for candidate Lula da Silva was appearing on the voting machine's screen. As stated by electoral delegate Evaldo Filho, who was monitoring the voting at the site, more than 20 people had complained that the machine would display only that specific number whenever the voter would type another candidate's number. The problem was reported to the regional electoral tribunal by many members of that polling station and electoral delegates. As a solution, electoral judge Álvaro Káliz Ferreira explained: "After the first complaint about the

²⁹ Aviel D. Rubin et al, 'An Analysis of an Electronic Voting System', *John Hopkins University*, 27 February 2004, at <https://avirubin.com/vote.pdf>

³⁰ Mercuri, above n 26.

³¹ Frederico Rocha Ferreira, 'Urnas Eletrônicas sem impressão do voto são um risco à democracia?', *Jusbrasil*, at <https://fredericorochoferreira.jusbrasil.com.br/artigos/1260615589/urnas-eletronicas-sem-impressao-do-voto-sao-um-risco-a-democracia>

machine was made, technicians examined the problem and the system was restarted, so there was no further problem”. “There was no need to change the equipment. Voting continued on the spot,” he added.³²

Eight years ago the federal Department of Public Prosecutions relied on a comprehensive report by academic researchers from the University of Brasília (UnB) to report that the nation’s electronic voting system was “flawed and cannot guarantee confidentiality of voting and the integrity of election results”.³³ The report addressed “vulnerabilities in the program used in those voting machines, with the potential effect of violating vote counting”.³⁴ Elaborated mainly by public prosecutor Pedro Antonio Machado, the official report informed that, due to restrictions imposed by the federal electoral tribunal, researchers were not allowed to undertake conclusive tests, thus making it not possible to demonstrate the existence of any further vulnerability to the electronic voting machines.

According to cyber security professor Diego Aranha of the University of Campinas (Unicamp), those researchers were given only five hours to access the source code (program in computer language) of the voting software.³⁵ In 2018, electoral judges invited Professor Aranha to participate in official tests of these electronic voting machines. And yet, those judges required him to sign a confidentiality agreement prohibiting him the disclosure of information regarding the results of that investigation. Of course, he refused to sign such agreement since he believes these results should have been made publicly available. Still, he eventually agreed to participate as the tests’ researcher coordinator, explaining later that numerous vulnerabilities were discovered in those voting machines. In a public hearing held by the Superior Electoral Tribunal (TSE), to Professor Aranha’s astonishment, he watched its electoral judges postulate that at no moment during those tests neither the secrecy nor the integrity of votes casts in the electronic machine had been violated, an assertion that he deems to be a “blatant lie”.³⁶ “The problems are far more serious than the TSE

³² Tiago Albuquerque, ‘Delegados afirmam que só aparecia o número 13 em urna de Porto Velho’, *Jusbrasil*, at <https://tiagoalbuquerque.jusbrasil.com.br/noticias/143481945/delegados-afirmam-que-so-aparecia-o-numero-13-em-urna-de-porto-velho>

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Tiago Albuquerque, ‘Urna eletrônica é falha, alerta MP’, *Jusbrasil*, at <https://tiagoalbuquerque.jusbrasil.com.br/noticias/143481949/urna-eletronica-e-falha-alerta-mp>

³⁶ Guilherme Petry, O dia em que o TSE revelou o código da urna: a história de Diego Aranha’, *The Hack*, at <https://thehack.com.br/o-dia-que-o-tse-revelou-o-codigo-da-urna-a-historia-de-diego-aranha/>

claims it to be”, he said.³⁷ Upon learning of that interview, the electoral tribunal issued a statement claiming that Professor Aranha’s disclosure of security flaws constitutes “a threat to democracy”.³⁸

3. Judicial measures to combat “misinformation”

Brazil has a Superior Electoral Tribunal (TSE) where its electoral judges create rules, decide on disputes, and even supervise the finances of electoral campaigns. Composed of seven members, three are elected by secret vote from among Supreme Court justices and two others are elected by secret vote from among judges of the Superior Court of Justice (STJ), Brazil’s second highest court. The remaining two are appointed by the President of the Republic among six lawyers nominated by Supreme Court justices.

Curiously, some of these top electoral judges of the TSE campaigned openly and ferociously against one of the candidates – President Jair Bolsonaro. For example, on February 19 the then presiding judge of this top electoral tribunal, Luis Roberto Barroso, spoke at the Texas University Law School on the topic of “Ditching a President”.³⁹ Thirty days earlier, he had already delivered a talk at the University of Chicago where the actions of the electoral court were described by him as a “warfare operation”. This sort of “war operation”, according to Justice Barroso,

*was made possible through immediate responses to questions about the validity of the Brazilian electronic voting system, and by cooperating with major social media platforms to exert continuous monitoring of social media behavior in search for inauthentic behavior. Also, TSE established alliances with major fact-checking companies in Brazil and traditional media outlets. Finally, social education was focused on addressing the issue of what is fake news, how to identify it, and how to avoid passing it along.*⁴⁰

On June 25, Justice Barroso addressed the ‘Brazil Forum UK’ at the University of Oxford. There he expressed displeasure about the fact that far too many Brazilians appeared to have WhatsApp as a

³⁷ ‘Teste feito por equipe da Unicamp revelou falhas de segurança nas urnas eletrônicas’, *Senado Notícias*, 6 March 2022, at <https://www12.senado.leg.br/noticias/materias/2018/03/06/teste-feito-por-equipe-da-unicamp-revelou-falhas-de-seguranca-nas-urnas-eletronica>

³⁸ Ibid.

³⁹ Gustavo Maia, ‘Barroso participa de evento nos EUA sobre como se livrar de um presidente’, *Revista Veja*, 18 February 2022, at <https://veja.abril.com.br/coluna/radar/barroso-participa-de-evento-nos-eua-sobre-como-se-livrar-de-um-presidente/>.

⁴⁰ ‘Supreme Court Justice Luis Roberto Barroso Delivers Talk for CLAS on Brazilian Democracy’, Center for Latin American Studies – The University of Chicago, 19th January 2022, at <https://clas.uchicago.edu/content/supreme-court-justice-lu%C3%ADs-roberto-barroso-delivers-talk-clas-brazilian-democracy>

primary source of information. According to him, the use of social media is not desirable because it causes the spread of “misinformation” that is not filtered by “professional journalists”.⁴¹ When he started to advocate for the transparency and reliability of electronic voting machines, he was interrupted by two Brazilian students from Oxford who rather consider these machines entirely unreliable. Like millions of other Brazilians, those students suspected that electronic voting machines are not reliable and just wanted to see a physical register for each electronic ballot -- a sheet of paper that could be printed so that citizens could confirm whether their votes were cast properly. On August 1, 2021, millions of people took to the streets of major cities in Brazil to protest against the apparent lack of transparency in the electronic voting system.⁴²

Due in part to the fact that unelected judges, including those responsible for overseeing the recent presidential election, were ostensibly playing a political role that is not fitting to the judicial function, an opinion poll carried out by *DataPoder360*, released on June 15, 2020, revealed that the vast majority of Brazilians consider the performance of the judiciary regular, bad or horrible. These judges are perceived positively by only 23 percent of the population.⁴³ The result demonstrated, once again, that there is a nearly complete lack of public faith in the judiciary.⁴⁴

Many Brazilians traditionally believe that some people, particularly judges and politicians, are never adequately punished for breaking the law.⁴⁵ This appeared to have changed when, in 2017, Brazil’s former president Lula da Silva was sentenced to 12 years and one month in prison for widespread corruption and money laundering. And yet, he spent only a year and a half in jail. In 2021, the Supreme Court annulled all these convictions on entirely technical grounds. The Court did not say a word about Lula’s culpability – demonstrated in three court decisions, before nine judges, and in a series of criminal proceedings where there were numerous confessing witnesses, plea bargains and even the return of stolen money. Instead, the Court simply stated that the former president should not have been prosecuted in the city of Curitiba, but rather in Brasilia,⁴⁶ thus restoring Lula’s political

⁴¹ ‘Media Talks in Oxford, Barroso defends the professional press and is attacked by a print vote’, 25 June 2022, at <https://newsrebeat.com/world-news/55182.html>

⁴² Simone Preissler Iglesias and Andrew Rosati, ‘Jair Bolsonaro wages Trump-like campaign to sow doubt over voting in Brazil’, *The Japan Times*, 13 July 2021, at <https://www.japantimes.co.jp/news/2021/07/13/world/brazil-voting-bolsonaro/>

⁴³ ‘STF e bem avaliado por 23% dos brasileiros; 26% acham ruim ou pessimo’, *Poder360*, 15 June 2022, at <https://www.poder360.com.br/brasil/stf-e-bem-avaliado-por-23-dos-brasileiros-26-acham-ruim-ou-pessimo/>

⁴⁴ William Prillaman, *The Judiciary and Democratic Decay in Latin America* (Praeger, 2002) p 76.

⁴⁵ *Ibid.*

⁴⁶ J.R. Guzzo, ‘Fachin agiu como um militante político empenhado em servir a Lula e ao PT’, *Jovem Pan*, 13 March 2021, at <https://jovempan.com.br/opiniao-jovem->

rights that enabled him to run for this year's presidential election.⁴⁷ In a January 10 interview, Bolsonaro accused these top federal judges of "wanting Lula to be president". Then he asked rhetorically: "They might not want to vote for me, but do they want to return to office the man who robbed the nation for eight years?"⁴⁸

A controversial lawyer called Alexandre de Moraes was appointed as the nation's top electoral officer in August 2022, in a public ceremony with 2,000 guests at the court auditorium.⁴⁹ Prior to this, in April 2005, he was appointed by the then President Lula da Silva to join the first composition (biennium 2005-2007) of the National Council of Justice (CNJ). From 2002 to 2005 he served as the Secretary of Justice and Defense of Citizenship of São Paulo state under Geraldo Alckmin, the candidate for vice president on Lula's presidential ticket, and who had previously served as the Governor of São Paulo from 2001 to 2006, and then again from 2011 to 2018. Moraes also held the important post of Public Security Secretary under Governor Alckmin, from 2014 to 2016. As reported by the French daily *Le Monde*, seven years ago he was at the centre of a controversy when the daily *Estadão*⁵⁰ published an investigation showing that he had intervened as a lawyer in at least 123 legal cases to defend a corporation (Transcooper) suspected of being linked to Brazil's main drug trafficking group, the First Command of the Capital (PCC).⁵¹

During the presidential campaign this year, Moraes issued numerous orders against alleged "fake news", in addition to sending many of President Bolsonaro's friends and supporters to jail.⁵² As the nation's top electoral judge, he ordered social networks to remove thousands of posts and arrested numerous supporters of the president without a trial for posts on social media that he claims "attacked Brazil's institutions", namely his own court.⁵³ In addition to sending some of Bolsonaro's

⁴⁷ Igor Carvalho, 'Understand the decision that annuls Lula's sentences and the Brazilian political game', *Brasil De Fato*, 9 March 2022, at <https://www.brasildefato.com.br/2021/03/09/understand-the-decision-that-annuls-lula-s-sentences-and-the-brazilian-political-game>

⁴⁸ 'Brazil's Bolsonaro accuses Supreme Court justices of partisanship', *Al Jazeera*, 12 January 2022, at <https://www.aljazeera.com/news/2022/1/12/brazil-bolsonaro-accuses-supreme-court-justices-of-partisanship>

⁴⁹ Alexandre de Moraes, 'Ministro Alexandre de Moraes toma posse como presidente do TSE', *Agência Brasil*, 16 August 2022, at <https://agenciabrasil.ebc.com.br/justica/noticia/2022-08/ministro-alexandre-de-moraes-toma-posse-como-presidente-do-tse>

⁵⁰ Edgar Maciel and Marcelo Godoy, 'Novo secretário de Alckmin defende cooperativa de van', *Estadão*, January 9, 2015, at <https://sao-paulo.estadao.com.br/noticias/geral,novo-secretario-de-alckmin-defende-cooperativa-de-van,1617265>

⁵¹ 'Brésil: le juge Alexandre de Moraes, bête noire de Bolsonaro', *Le Monde*, 15 October 2022, at https://www.lemonde.fr/international/article/2021/10/15/bresil-le-juge-alexandre-de-moraes-bete-noire-de-bolsonaro_6098546_3210.html

⁵² 'Bolsonaro Pardons Silveira One Day After His Conviction', *MercoPress*, 22 April 2022, at <https://en.mercopress.com/2022/04/22/bolsonaro-pardons-silveira-one-day-after-his-conviction>

⁵³ Jack Nicas and André Spigariol, 'To Defend Democracy, Is Brazil's Top Court Going Too Far?', *The New York Times*, September 26, 2022, at <https://www.nytimes.com/2022/09/26/world/americas/bolsonaro-brazil-supreme-court.html>

friends and supporters to jail, he also ordered the confiscation of their electronic devices and the freezing of their personal bank accounts.⁵⁴ One of the materials censored by him refers to a 2018 federal police inquiry which investigated how hackers might have attacked the computers of the Superior Electoral Tribunal. “This is not fake news. One, even, stole the password of a judge”, the president says.⁵⁵

President Bolsonaro, who sought re-election in the election, relied on the messaging app Telegram to reach his voter base.⁵⁶ He has more than a million followers on the platform and this could prove crucial to his electoral campaign. However, on March 18, Justice Moraes ordered the nationwide suspension of Telegram.⁵⁷ The ruling came after Telegram ignored an earlier order to block the account of Allan dos Santos, a supporter of Bolsonaro accused of spreading “misinformation”.⁵⁸ In his monocratic ruling suspending Telegram nationwide, Justice Moraes mentions its failing to remove “misleading” content from Bolsonaro’s own Telegram page.⁵⁹ As reported, not only did he order the shutdown of the message app nationwide but also ordered Apple and Google to introduce “technological obstacles” to block Telegram on their operating systems and withdraw it from their digital stores in Brazil.⁶⁰

On May 27, 2020, Justice Moraes ordered the federal police to launch an operation probing businessmen, bloggers and elected parliamentarians allied to President Bolsonaro.⁶¹ In the decision authorising the operation, he determined the blocking of all their accounts on social media outlets such as Facebook, Twitter and Instagram.⁶² The investigation conducted by him concerned the dissemination of “misinformation” about the transparency of voting machines and the credibility of

⁵⁴ Above n. 53.

⁵⁵ Luana Patriolino, ‘Bolsonaro Volta a Atacar o Judiciario e diz que Fachin foi advogado do MST’, *Correio Braziliense*, 27 May 2022, at <https://www.correio braziliense.com.br/politica/2022/05/5011215-bolsonaro-volta-a-atacar-o-judiciario-e-diz-que-fachin-foi-advogado-do-mst.html>

⁵⁶ ‘Brazil: Telegram messaging app blocked by top court’, *DW (Deutsche Welle)*, 19 March 2022, at <https://www.dw.com/en/brazil-telegram-messaging-app-blocked-by-top-court/a-61183805>

⁵⁷ *Ibid.*

⁵⁸ Yogesh Sahu, ‘Brazil Supreme Court Judge Alexandre de Moraes Bans Messaging App Telegram for Ignoring Rule’, *PiPa News*, 19 March 2022, at <https://pipanews.com/brazil-supreme-court-judge-justice-alexandre-de-moraes-bans-messaging-app-telegram-for-ignoring-ruling/>

⁵⁹ ‘Brazil judge bans messaging app Telegram for ignoring ruling’, *The Economic Times*, 19 March 2022, at <https://economictimes.indiatimes.com/news/international/world-news/brazil-judge-bans-messaging-app-telegram-for-ignoring-ruling/articleshow/90325739.cms?from=mdr>

⁶⁰ Bryan Harris and Michael Pooler, ‘Brazil’s supreme court blocks messaging app Telegram’, *Financial Times*, 19 March 2022, at <https://www.ft.com/content/ff094139-b411-4850-95f7-051e3676736f>

⁶¹ ‘Polícia Federal faz buscas em endereços de Roberto Jefferson, Luciano Hang e blogueiros’, *G1 Globo*, 27 May 2020, at <https://g1.globo.com/politica/noticia/2020/05/27/pf-cumpre-mandados-em-inquerito-do-stf-sobre-fake-news.ghtml>

⁶² *Ibid.*

the electoral tribunal headed by Moraes himself. Special Advisor to the Presidency of the Republic for International Affairs, Filipe Martins, stated on the occasion that “journalists, comedians and ordinary citizens who act spontaneously were treated as criminals for daring to express opinions that displease the establishment”.⁶³ Among the targets of police actions ordered by Moraes were the national president of the Brazilian Workers’ Party (PTB), Roberto Jefferson, businessman Luciano Hang and congresspersons Douglas Garcia, Gil Diniz, Carla Zambelli, Bia Kicis, Junio Amaral, Filipe Barros and Luiz Phillipe Orleans e Bragança, and Daniel Silveira.⁶⁴ One of these parliamentarians, Carla Zambelli, stated that “every person who respects the law has the obligation to repudiate these searches within the scope of an illegal and unconstitutional investigation.”⁶⁵ By the same token, another congresswoman, Bia Kicis, commented:

*We are living in dark times of brazen attack on democracy. Don't forget the people who are celebrating the abuses of authority and undemocratic acts by Justice Alexandre de Moraes against journalists, comedians, businessmen and any other common people. They are accomplices of the dictatorship. I have never been silent against tyranny or opponents.*⁶⁶

4. Violation of Constitutional Rights

Article 53 of the Brazilian Constitution says that congresspersons shall “enjoy civil and criminal immunity for any of their opinions, words and votes”. Parliamentary immunity in Brazil aims at protecting the freedom of speech of elected representatives. Therefore, members of Parliament should be immune, both civil and criminally, for expressing political opinions. This immunity applies both inside and outside the premises of the legislative House, so that this freedom of political communication does not even have to be directly related to the exercise of the parliamentary function or activity.⁶⁷ And the same must be applied for the protection of political opinion expressed by a congressperson on the internet or social media.⁶⁸ Furthermore, such immunity must be

⁶³ Augusto Fernandes, ‘Censura, ditadura e vergonha: bolsonaristas reagem a ação da PF’, *Correio Braziliense*, 27 May 2020, at https://www.correio braziliense.com.br/app/noticia/politica/2020/05/27/interna_politica,858701/censura-ditadura-e-vergonha-bolsonaristas-reagem-a-acao-da-pf.shtml

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Supreme Court, Inq 1,344/DF, Full, Rel. Min. Sepúlveda Belongs, DJ 1.8.2003.

⁶⁸ Supreme Court, Inq 2,130/DF, Full, Rel. Min. Ellen Gracie, DJ 5.11.2004.

extended to all those who disclose the information given by a congressperson, as in the case of any journalist who disseminates information provided in the context of an interview.⁶⁹ These immunities must persist even during a decree of emergency and it can only be suspended by the express decision of at least two-thirds of all the members of the particular House of Parliament.⁷⁰ On 20 April, however, the Supreme Court decided by 10 votes to one to sentence congressman Daniel Silveira to eight years and nine months in prison for “posting insults” against members of that court on social media. Chief Justice Luiz Fux argued that Silveira’s comments amounted to “criminal anarchy” against democratic institutions, while Justice Alexandre de Moraes, who acted as rapporteur, downplayed the defence’s argument that the lawmaker’s remarks fell under the umbrella of “parliamentary immunity.”⁷¹ “The constitution does not allow freedom of expression to be used as a shield for hate speech and attacks against institutions,” Moraes said.⁷²

Of course, the trial and conviction of an elected representative of the people was entirely unconstitutional. The Brazilian Constitution directly refers to the principle of parliamentary immunity. However, that congressman was sentenced to 8 years and nine months in prison in an initial close regime for verbally “offending” the very judges who condemned him and stripped him of his seat in Congress, barring him from running for a legislative office in the October elections. Justices of this Court, who effectively acted as investigators, judges and executors in their own cause, also imposed a heavy fine of US\$41,600 on this parliamentarian in addition to requesting the immediate removal of his parliamentary status. “Society is in legitimate shock at the conviction of a parliamentarian protected by the inviolability of opinion granted to him by the Constitution, who only made use of his freedom of expression,” President Bolsonaro said.⁷³

On November 4, the federal politician elected with the most votes in the country, Nikolas Ferreira (Liberal Party, Minas Gerais) had his Twitter account suspended by force of a judicial ruling. This elected politician had posted the link to a document produced by Argentine journalist Fernando Cerimedo, who appears to show that voting machines produced before 2020, “would not be

⁶⁹ STF, RE 210.917/RJ, Full, Rel. Min. Sepúlveda Belongs, DJ 18.6.2001.

⁷⁰ For a full account of parliamentary immunity in Brazil, see Augusto Zimmermann & Fabio Condeixa, *Direito Constitucional Brasileiro – Tomo II* (Lumen Juris, 2015) pp 707-709.

⁷¹ ‘Jail Sentence Imposed on Brazilian Bolsonaro Lawmaker’, *MercoPress*, 21 April 2022, at <https://en.mercopress.com/2022/04/21/jail-sentence-imposed-on-brazilian-bolsonarist-lawmaker>

⁷² ‘Brazil: Bolsonaro’s Pardon Ally Draws Opposition Challenges’, *Al Jazeera*, 22 April 2022, at <https://www.aljazeera.com/news/2022/4/22/brazils-bolsonaro-pardons-ally-convicted-of-hate-speech>

⁷³ ‘Bolsonaro Pardons Silveira One Day After His Conviction’, *MercoPress*, 22 April 2022, at <https://en.mercopress.com/2022/04/22/bolsonaro-pardons-silveira-one-day-after-his-conviction>

auditable and counted fewer votes for President Bolsonaro”.⁷⁴ “I transcribed what the Argentine said on Twitter, and that’s probably why they stood down my account, with almost 2 million followers”, he said.⁷⁵

Freedom of speech is protected by Article 5, IV, of the Brazilian Constitution, which provides that “the manifestation of thought is free and anonymity is protected”. Apparently, however, nobody in Brazil has been allowed to question the result of the recent elections. Whoever dares to do so runs the risk of being arrested and prosecuted. The presiding electoral judge, Alexandre de Moraes says that anyone who share any shred of doubt about these electoral results, according to him, “will be treated like criminals”.⁷⁶ “Brazil is on the road to dictatorship. This is how dictatorships start now. You lose your freedom little by little, then one day you look and you are completely tied up”, President Bolsonaro told network Jovem Pan.⁷⁷

In Brazil, the right to free of expression is further guaranteed under Article 5, IX, according to which every expression of intellectual, artistic, scientific communication is “free and immune to censorship or license”. The Constitution not only guarantees free speech but it also seeks to encourage this freedom through generous tax exemptions. Under Article 150, IV, d, all the tiers of government in Brazil (the Union, States, the Federal District and Municipalities) are prohibited from ever taxing “books, newspapers, periodicals and the paper destined for their printing”, precisely to promote the free flow of political and non-political information.⁷⁸ What is more, free speech is also guaranteed by law via Article 13 of the American Convention on Human Rights, which has been turned into domestic law through Federal Decree No. 678 of 1992.⁷⁹

On August 23, Justice Moraes directed the federal police to execute search warrants in five states targeting eight businessmen.⁸⁰ He ordered police to raid their homes, to access their bank accounts, and to suspend their social media accounts. These individuals were investigated over a couple of

⁷⁴ Fonseca, above n.5.

⁷⁵ Ibid.

⁷⁶ ‘Electoral high court president says those who doubt election results in Brazil will be treated as criminals’, *The Rio Times*, 5 November 2022, at <https://www.riotimesonline.com/brazil-news/brazil/electoral-high-court-president-says-those-who-doubt-election-results-in-brazil-will-be-treated-as-criminals/>

⁷⁷ ‘Bolsonaro condemns raids over Brazil’, *Macao Business*, August 27, 2022, at <https://www.macaubusiness.com/bolsonaro-condemns-raids-over-brazil-coup-plot/>

⁷⁸ The Supreme Court does not admit the extension of this tax exemption to electronic media (RE 330.817/RJ ,rel. min. Dias Toffoli, DJ 23.4.2013).

⁷⁹ See Augusto Zimmermann & Fabio Condeixa, *Direito Constitucional Brasileiro – Tomo I* (Lumen Juris, 2015), pp 338-339.

⁸⁰ ‘Bolsonaro condemns raids over Brazil’, *Macao News Agency*, August 27, 2022, at <https://www.macaubusiness.com/bolsonaro-condemns-raids-over-brazil-coup-plot/>

messages posted in their WhatsApp group whereby some dared to say they would prefer another military regime to the return of the far-left candidate to the presidency.⁸¹ Justice Moraes then ordered all their bank accounts blocked.⁸² One of those targeted by the operation was Luciano Hang, the founder of retail chain Havan and a Bolsonaro supporter with millions of followers on social media. Although Hang categorically states that he has “never spoken of a coup” and he has “always defended democracy and freedom of expression”, all his social media accounts, including Twitter, Instagram, Facebook, YouTube, WhatsApp, and TikTok, were blocked.⁸³ Other businessmen who reportedly had their social media and bank account blocked include Meyer Joseph Nigri, chairman and former CEO of property developer Tecnisa; Jose Isaac Peres, founder of shopping mall company Multiplan; and Afranio Barreira Filho, owner of restaurant chain Coco Bambu.⁸⁴

During his talk in the 9th Lisbon Legal Forum in Portugal, on 16 November 2021, Supreme Court justice Dias Toffoli commented that “presiding over Brazil is not easy”.⁸⁵ “We already have a semi-presidentialism with a moderating power control that is currently exercised by the Supreme Court”, he said.⁸⁶ Of course, the system of government in Brazil, as per its Constitution, remains entirely presidential. This supposed “moderating power” is found only in the creative minds of such activist judges. It amounts, in practice, to a usurpation of government powers derived from the people by the unelected judicial oligarchy. On 21 February 2021, Gilmar Mendes of the Supreme Court met the then President of the House of Representatives, Rodrigo Maia, and ten other federal congressmen, to discuss what they should do about the Brazilian President. He told these politicians that ending any “kindness” towards the democratically elected leader was urgently required. Justice Mendes proposed “a harsher attack” against President Bolsonaro. He wanted “zero tolerance” with the Head of the Executive.⁸⁷ To give another example, in May 2021, Celso de Mello, then the longest-

⁸¹ Ibid.

⁸² Ibid.

⁸³ Chaheti Singh Sisodia, ‘Pro-Bolsonaro businessmen accused of coup talk raided by Brazilian people’, *WION*, August 24, 2022, at <https://www.wionews.com/world/pro-bolsonaro-businessmen-accused-of-coup-talk-raided-by-brazilian-police-509601>

⁸⁴ Above n.81.

⁸⁵ ‘Supreme Court Judge Compares Brazil to Hitler’s Germany and Says Bolsonaro Supporters Want an Abject Dictatorship’, *Folha de S. Paulo*, 17 November 2021, at <https://www1.folha.uol.com.br/internacional/en/brazil/2020/06/supreme-court-justice-compares-brazil-to-hitlers-germany-and-says-bolsonaro-supporters-want-abject-dictatorship.shtml>

⁸⁶ ‘Justice Toffoli says Brazil is experiencing semi-presidentialism with STF as a moderating power’, *The Rio Times*, 17 November 2021, at <https://www.riotimesonline.com/brazil-news/rio-politics/justice-toffoli-says-brazil-is-experiencing-semi-presidentialism-with-stf-as-moderating-power/>

⁸⁷ ‘STF Justice Gilmar Mendes Advocates Harsher Attack Against Bolsonaro’, *The Rio Times*, 24 February 2020, at https://www.riotimesonline.com/brazil-news/brazil/gilmar-mendes-advocates-harsher-attack-against-bolsonaro/?__cf_chl__tk=o.wdAphpyEhPk8WVmk980IGWYq5OWTy.tqm_kRAHRIs-1656928196-0-gaNycGzNCWU

serving member of the Supreme Court, sent a text message to his judicial peers comparing the Brazilian President to Adolf Hitler. He said to his colleagues in the Court that it was “necessary to fight Bolsonaro”.⁸⁸

The process to appoint Supreme Court justices in Brazil is practically identical to that in the United States. These top judges are nominated to the court by the President and then must be confirmed by the absolute majority of the Senate after a confirmation hearing. However, the last four years in Brazil have been characterised by a remarkable rise of judicial activism. A question often raised is whether judges in Brazil are becoming an entrenched oligarchy devoid of any accountability.⁸⁹ In many cases, says an article in *The New York Times*, “Justice Moraes has acted unilaterally, emboldened by new powers the court granted itself in 2019 that allow it to, in effect, act as an investigator, prosecutor and judge all at once”.⁹⁰ “It is an unprecedented role, turning the court in some cases into the accuser and the judge”, says Marco Aurélio Mello, a former Supreme Court justice who last year reached the mandatory retirement age of 75.⁹¹

5. International Interference

After knowing all these extraordinary things, who would dare say that these presidential elections in Brazil were fair and transparent? After all, as two U.S. journalists recently stated in *The New York Times*, “the court’s expanding influence could have major implications for the winner of the presidential vote”.⁹² And yet, there is a rather decisive international element in Lula da Silva’s electoral victory. In August 2021, U.S. National Security Advisor Jake Sullivan visited Brazil to issue the following warning to the Brazilian president - do not even dare even to question the reliability of the country’s electronic voting system.⁹³ A month earlier, in July 2021, just months after entering office, Biden sent his CIA director William Burns to travel to the country to meet with senior Brazilian officials. During that meeting, the U.S. delegation warned the Brazilian government that President

⁸⁸ ‘STF Justice Celso de Mello Likens Brazil to Hitler’s Germany’, *The Rio Times*, 1 June 2020, at <https://www.riotimesonline.com/brazil-news/brazil/supreme-court-justice-celso-de-mello-likens-brazil-to-hitlers-germany-claims-bolsonarists-hate-democracy/>

⁸⁹ ‘Bolsonaro Pardons Silveira One Day After His Conviction’, *MercoPress*, 22 April 2022, at <https://en.mercopress.com/2022/04/22/bolsonaro-pardons-silveira-one-day-after-his-conviction>

⁹⁰ Jack Nicas and André Spigariol, ‘To Defend Democracy, Is Brazil’s Top Court Going Too Far?’, *The New York Times*, September 26, 2022, at <https://www.nytimes.com/2022/09/26/world/americas/bolsonaro-brazil-supreme-court.html>

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ Robbie Gramer, ‘How Team Biden Tried to Coup-Proof Brazil’s Elections’, *Foreign Policy*, 28 October 2022, at <https://foreignpolicy.com/2022/10/28/brazil-elections-bolsonaro-democracy-biden/>

Bolsonaro “should stop casting doubt in his country’s [entirely electronic] electoral process”.⁹⁴ Then, in a June 2022 meeting of the “Summit of the Americas” meeting in Los Angeles, the Biden administration notoriously repeated the same warning that the U.S. government would not tolerate Bolsonaro casting any doubt on the reliability and security of the nation’s voting machines.⁹⁵

Since these messages came before the outcome of the election, this was a clear warning of dire consequences should the Brazilian president contest the alleged fairness and transparency of the electoral process.⁹⁶ Just after a few outlets called the election in Brazil, U.S. President Joe Biden orchestrated a rapid international embrace of the ex-convict and former president. In a statement released immediately after the result was officially announced, Biden claimed that Lula had won “following free, fair, and credible elections”.⁹⁷ Quickly afterwards, Canadian Prime Minister Justin Trudeau, French President Emmanuel Macron, and British Prime Minister Rishi Sunak all released statements congratulating Lula. “The people of Brazil have spoken”, said Trudeau, writing within an hour and a half of the result.⁹⁸ Likewise, a statement from the European Union released on the day after the election in Brazil focused heavily on the alleged integrity of the vote, praising the country for ‘the effective and transparent manner it conducted its constitutional mandate throughout all stages of the electoral process, demonstrating once again the strength of Brazil’s institutions and its democracy’.⁹⁹

On September 28, the U.S. Senate unanimously approved a resolution recommending the suspension of US-Brazil relations in case of any questioning of the security and transparency of electronic voting in Brazil, “otherwise the U.S. must consider its relations with the Brazilian government and suspend cooperation programs, including in the military area”, says the resolution.¹⁰⁰ No senator, not even from the Republican Party, opposed the text presented by Senators Tim Kaine and Bernie Sanders.¹⁰¹ According to Michael Kinley, former U.S Ambassador to

⁹⁴ Ibid.

⁹⁵ Gramer, above n. 94.

⁹⁶ Tom Porter, ‘Western leaders rushed to recognise Bolsonaro’s defeat in Brazil to head off any Trump-like attempt to stay in power, experts say’, Business Insider, 31 October 2022, at <https://www.businessinsider.in/politics/world/news/western-leaders-rushed-to-recognise-bolsonaros-defeat-in-brazil-to-head-off-any-trump-like-attempt-to-stay-in-power-experts->

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ ‘U.S. Senate unanimously approves resolution in defense of democracy in Brazil’, *WBO (Washington Brazil Office)*, September 28, 2022, at <https://www.braziloffice.org/press-releases/us-senate-unanimously-approves-resolution-in-defense-of-democracy-in-brazil>

¹⁰¹ Ibid.

Brazil (2017-2018), “[Brazilians] have built up strong electoral tribunals that supervise elections, work with state governments, state electoral officials in a centralized system that commands tremendous credibility”. That is “backstopped”, he continues, “by a Supreme Court that enforce the rules”.¹⁰² As for how this Supreme Court “backstops” the enforcement of these rules, *Newsweek’s* journalist Jack Dutton comments:

*One of the justices, Alexandre de Moraes, jailed the head of a party allied with the nationalist president as part of a probe on alleged online misinformation and anti-democratic threats. He also opened a probe on Bolsonaro for allegedly posting confidential material on social media to try and prove an allegation of election fraud. The other justice, Luis Roberto Barroso, has been a vociferous opponent of Bolsonaro’s fraud claims over the upcoming election.*¹⁰³

6. Concluding Comments

As can be seen, it is hard to agree with the good ambassador about the “tremendous credibility” of electoral judges who command of the country’s electoral process. Brazilians have now taken the streets of all the major cities across their country to protest against what far too many of them consider the biggest electoral fraud in the country’s history. Indeed, a question currently being raised in Brazil is whether or not some judges have become an entrenched oligarchy devoid of any accountability. So, was there a fair and transparent presidential election in Brazil? Certainly not the millions of Brazilians turning out to protest against the lack of transparency in this electoral process. Until a neutral body thoroughly investigates all these suspicions of electoral fraud and impact on the outcome of the election by unconstitutional judicial interference in the entire electoral process, there is no reason to consider that the recent presidential elections in Brazil were anything close to fair and transparent, and quite to the contrary.

**Professor Augusto Zimmermann PhD
Perth/WA, 12 November 2022**

¹⁰² Gramer, above n.94.

¹⁰³ Dutton, above n.12.

Augusto Zimmermann was born in Brazil and completed his LLB and LLM with cum laude at the Pontifical Catholic University of Rio de Janeiro. In January 2002, he emigrated to Australia, completing a PhD in Legal Philosophy at Monash University in 2006. In 2007, Dr Zimmermann was invited to join Murdoch University Law School where, among other things, he served as Director of Postgraduate Research (2011-2012 and 2015-2017) and Associate Dean, Research (2010-2012). During his time at Murdoch, Dr Zimmermann was awarded the University's Vice Chancellor's Award for Excellence in Research in 2012. He is currently professor and Head of Law at Sheridan Institute of Higher Education, in Perth, Western Australia. He is also and President of the Western Australian Legal Theory Association (WALTA) and a former Commissioner with the Law Reform Commission of Western Australia (2012-2017). Dr Zimmermann is the author/co-author of numerous law books, including two books on Brazilian Constitutional Law and Theory: 'Curso de Direito Constitucional' (4th ed., Lumen Juris, 2006 - 783 pp) and 'Direito Constitucional Brasileiro – Volumes 1 & 2' (Lumen Juris, 2015 - 1,000 pp).