



ASSOCIAÇÃO BRASILEIRA DE
JURISTAS PELA DEMOCRACIA

COMPLAINT

BEFORE THE INTERNATIONAL CRIMINAL COURT

(ROME STATUTE, ART. 15.1 AND 53)

**PLAINTIFF: ASSOCIAÇÃO BRASILEIRA DE JURISTAS PELA DEMOCRACIA –
ABJD**

**LAWYERS: RICARDO FRANCO PINTO, CHARLES KURMAY (ICC COUNSEL'S
LIST)**

**DEFENDANT: JAIR MESSIAS BOLSONARO, President of the Federative
Republic of Brazil**

A) THE PLAINTIFF

The Brazilian Association of Jurists for Democracy – “ABJD” (hereinafter referred to as “ABJD”) is a non-profit civil association that was created in May 2018 to denounce the 2016 coup d’état in Brazil. ABJD is present in all Brazilian states and in the Federal District. Currently, ABJD has approximately 1300 associates throughout Brazil including judges, (trial and appellate), prosecutors, private lawyers, public defenders, professors, civil servants of the justice system and law students. The singular purpose of ABJD is to defend democracy and the rule of law in Brazil.

ABJD denounces violations of human rights and violations of international criminal law, seeking to enforce the legal guarantees which the 1988 Constitution of the Republic of Brazil ensures. ABJD also works to ensure that the citizens of Brazil have access to its judicial system. Finally, ABJD seeks to enforce the rights that Brazilian citizens possess by virtue of Brazil’s being a party to the Treaty of Rome.

Pursuant to the purposes for which ABJD was formed, the Plaintiff requests the commencement of an investigation by the Office of the Prosecutor (“OTP”), pursuant to Articles 15.1 and 53 of the Statute of the Rome, into the Crimes Against Humanity that the President of Brazil, Jair Bolsonaro, has committed against his citizens.

B) LEGAL REPRESENTATION

As a result of the illegal actions that the Plaintiff alleges have been perpetrated by the President of the Federative Republic of Brazil, by its President Jair Bolsonaro, the Plaintiff will be represented by **RICARDO FRANCO PINTO, PhD** (member nº 2073 of the Bar Association of León, Spain and member 23.276 of the BAR of Paraná, Brazil), and **CHARLES KURMAY, JD** (member nº 413919, a duly admitted Commissioner of the Superior Court of the State of Connecticut, and New York, USA), **both lawyers registered with the ICC's List of Counsel.**

We hereby declare that the domicile elected for any kind of notifications of this procedure is at the office of **RICARDO FRANCO PINTO**, Calle Cipriano de la Huerga, 20, Entresuelo Izquierda, León, SPAIN, CP 24004.

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Consequently, all subsequent correspondence shall be sent only to the mailing and/or e-mail addresses given above. Any notification within the meaning of the Statute of the Court addressed in this way will be considered valid.

The Plaintiff, without election of domicile, will be also represented by:

- NUREDIN AHMAD ALLAN, Brazilian, lawyer, Registration nº 37.148-A (BAR of Curitiba, Brazil);

- PAULO FRANCISCO SOARES FREIRE, Brazilian, lawyer, Registration nº 50.755 (BAR of Distrito Federal, Brazil);

- LUÍS CLÁUDIO MARTINS TEIXEIRA, Brazilian, lawyer, Registration nº 168.850 (BAR of Rio de Janeiro, Brazil);

- GISELE RICOBOM, Brazilian, lawyer, Registration nº 33.714 (BAR of Paraná, Brazil);

- JOSÉ CARLOS MOREIRA DA SILVA FILHO, Brazilian, lawyer, Registration nº 42408-B (BAR of Rio Grande do Sul, Brazil);

- LARISSA LIZ ODRESKI RAMINA, Brazilian, Passport Number FS565452;

- MARCELO RIBEIRO UCHÔA, Brazilian, lawyer, Registration nº 11.299 (BAR of Ceará, Brazil).

C) DEFENDANT

- JAIR MESSIAS BOLSONARO, President of the Federative Republic of Brazil.

D) COUNTS

For committing such crime or crimes that are recognized by the Rome Statute and International Criminal Court, including:

a. Crimes against humanity, in violation of Article 7 (1) (k), of the Rome Statute of the International Criminal Court; and

b. Such other crimes for which he and any of his agents may be responsible in violation of the Rome Statute that may arise from any investigation conducted herewith.

E) PETITION

**HONOURABLE MRS. FATOU BENSOUDA
INTERNATIONAL CRIMINAL COURT PROSECUTOR**

THE BRAZILIAN ASSOCIATION OF JURISTS FOR DEMOCRACY - ABJD, a legal entity officially registered in Brazil under nº 31.045.402/0001-36, headquartered at Rua Abolição, 167, Bela Vista, São Paulo, (BRAZIL) CEP 01319-010, represented by its attorneys **RICARDO FRANCO PINTO** and **CHARLES KURMAY** (power of attorney included), comes before the Office of the Prosecutor and this Court, to address violations of art. 7, item “k”, of the Rome Statute, combined with arts. 267 and 268, of the Brazilian Penal Code, as well as art. VII, of the Heinous

Crimes Law of Brazil, and other legal provisions mentioned in the body of this petition, to propose that you investigate, accuse, and indict JAIR MESSIAS BOLSONARO, President of the Federative Republic of Brazil, who can be found at Praça dos Três Poderes, Planalto Palace, 4th Floor, CEP 70.150-906, Brasília / DF, for committing one or more CRIMES AGAINST HUMANITY by his victimizing the Brazilian population, particularly the elderly and infirm as is more particularly described herein.

1. FACTS:

On March 13, 2020¹, the World Health Organization (WHO) declared that the world is experiencing a pandemic of the new coronavirus, called Sars-Cov-2. The number of cases of Covid-19 [the disease caused by the virus] has increased both rapidly and substantially such that the number of countries and their populations that are affected by the virus has tripled.

The definition of a pandemic does not depend on a specific number of cases. For a pandemic to be declared, two criteria must be met: that the outbreak affects **more than one continent** and that the cases of each country are no longer imported but caused by **community transmission**.

¹ <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

As early as January of 2020, the virus reached the American continent, with its first case being reported in the United States of America killing several elderly persons in a nursing home in Washington State. The virus has since spread throughout South America and through all of Brazil. By March 20, 2020, Ordinance No. 454/2020 of the Ministry of Health reflected that the state of community transmission of the coronavirus was so widespread in Brazil that it was declared to be present nationwide.²

In recognizing the seriousness of the crisis now affecting Brazil, on March 20, 2020,³ the Federal Government of Brazil in conjunction with its Congress declared Brazil to be in a “State of Public Calamity” (a.k.a. State of Emergency or Disaster) and passed Legislative Decree No. 06, stating:

“Recognizes, for the purposes of art. 65 of Complementary Law No. 101, of May 4, 2000, the occurrence of a state of public calamity, pursuant to the request of the President of the Republic sent through Message No. 93, of March 18, 2020.”

The recommendation of health professionals worldwide is social isolation and voluntary quarantine, as measures to reduce the speed of expansion of Covid-19.⁴ On March 26, 2020, in a speech at the extraordinary and virtual summit of the G20, a group of the richest

² https://www.planalto.gov.br/ccivil_03/portaria/prt454-20-ms.htm

³ http://www.planalto.gov.br/ccivil_03/portaria/DLG6-2020.htm

⁴ <https://noticias.uol.com.br/colunas/jamil-chade/2020/03/27/oms-reune-50-ministros-da-saude-de-todo-o-mundo-mas-mandetta-nao-comparece.htm>

countries in the world, of which Brazil is a member, the director general of the World Health Organization (WHO), Tedros Adhanom Ghebreyesus, reinforced that social isolation is one tool to fight the coronavirus, but stressed that it is necessary to "**do more**" to overcome the disease.⁵ Data from the Ministry of Health of Brazil and the recommendations of its minister, Luiz Henrique Mandetta, indicate that social isolation is the only current way to prevent the disease from spreading like wildfire. Infectious disease professionals throughout the entire world have daily reinforced the importance of social isolation measures, in order not to overload health systems and because, while the death rate in younger people may be relatively modest, the illness is very frequently fatal in those who are 60 and older. The mortality rate is also substantially greater in those persons with certain preexisting medical condition, including those we consider relatively benign such as asthma. ***It is undisputed that COVID-19 has a 2-4% fatality rate overall, but is widely known to be as high as 14% for who those individuals who are ages 70 and over.***

Brazil's Ministry of Health announced measures to attempt to combat the virus, intensifying surveillance, diagnosis and treatment of the new coronavirus and the time for the flu vaccination campaign to begin was moved forward from to March 23 when it is typically done at the end of April. The announcement was made at a press conference by the

⁵ <https://saude.estadao.com.br/noticias/geral,oms-reforca-proposta-de-isolamento-social-contracoronavirus-mas-diz-que-e-preciso-fazer-mais,70003249476>

Minister of Health, Luiz Henrique Mandetta.⁶ These sober attitudes and responsible actions to slow and stop the spread of the virus just described were quickly contradicted by Brazil's President, Jair Bolsonaro. Mr. Bolsonaro has at every turn fanned the flames of the pandemic by spreading propaganda in his official capacity as President to minimize the gravity of the pandemic in Brazil. In so doing, he has knowingly and intentionally placed countless human lives at enormous risk of illness and death.

Mr. Bolsonaro's actions have been condemned by a myriad of health institutes, including: the National Health Council, the Brazilian Society of Infectious Diseases, the Brazilian Association of Public Health, the Brazilian Society of Geriatrics and Gerontology, the São Paulo Medicine Association, among others. In so doing, these organizations have reiterated the importance of following the determinations of health authorities, in order to avoid social contacts as much as possible.⁷ By March 31, 2020, Brazil's State's Health Departments accounted for 4,684 confirmed cases of the new coronavirus (Sars-Cov-2) nationwide.⁸ Nevertheless, as is more particularly described herein, President

⁶ <https://www.saude.gov.br/noticias/agencia-saude/46449-campanha-de-vacinacao-contr-a-gripe-sera-antecipada>

⁷ <https://g1.globo.com/politica/noticia/2020/03/25/sociedade-brasileira-de-infectologia-diz-que-distanciamento-social-e-fundamental-para-conter-o-coronavirus.ghtml>

⁸ <https://g1.globo.com/bemestar/coronavirus/noticia/2020/03/31/casos-de-coronavirus-no-brasil-em-31-de-marco.ghtml>

Bolsonaro persists with his campaign of misinformation to this very day, undeterred.

THE CRIMINAL ACTS OF JAIR BOLSONARO

Contrary to the clear and unequivocal instruction of health authorities worldwide, the WHO and that of all nations that have been or are at the epicenter of the pandemic, the President of the Republic, Jair Bolsonaro, has in his official conduct as President⁹ done everything in his power to minimize the severity of the pandemic and to encourage the spread of COVID-19 by instructing the nation of Brazil to act in a manner inconsistent with the sound recommendations of the health professionals described herein as follows:

a) On March 15, 2020, the President of the Republic, who was in quarantine due to contamination by several people on his team, went directly to the streets of Brazil to greet citizens gathered in a public demonstration. (it is still not credibly known the extent to which Bolsonaro himself has not been actually infected).¹⁰

⁹ <https://blogs.ne10.uol.com.br/jamildo/2020/03/15/bolsonaro-deixa-isolamento-vai-a-manifestacao-e-cumprimenta-apoiadores/>

<https://brasil.elpais.com/opiniao/2020-03-25/com-bolsonaro-e-coronavirus-amanha-pode-ser-tarde-demais-no-brasil.html>

¹⁰ <https://g1.globo.com/politica/noticia/2020/03/29/apos-provocar-aglomeracao-durante-passeio-em-brasil-bolsonaro-volta-a-se-posicionar-contrario-o-isolamento-social.ghtml>

b) On March 24, 2020, President Bolsonaro officially spoke to the nation through the national radio and television network, stating that the country cannot stop, schools have no reason to stay closed and businesses should start operating again¹¹;

c) On March 25, 2020, at the direction of Bolsonaro, the federal government published Decree 10.292, which includes among the “essential services” to include churches and lottery houses¹², which authorized the operation of these places notwithstanding prohibitions on such gatherings by governors and local mayors.

d) By and at the behest of Jair Bolsonaro, causing the Federal Government to institute a propaganda campaign in an

<https://www.nytimes.com/pt/2020/03/26/espanol/opinion/bolsonaro-coronavirus.html>

https://www.bbc.com/news/world-latin-america-52080830?intlink_from_url=https://www.bbc.com/news/topics/cdr1vzk8ngvt/jair-bolsonaro&link_location=live-reporting-story

<https://noticias.uol.com.br/politica/ultimas-noticias/2020/03/29/twitter-exclui-dois-posts-de-bolsonaro-por-infringir-regras.htm>

¹¹ <https://www.youtube.com/watch?v=VWsDcYK4STw>

¹² http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/decreto/D10292.htm

<https://noticias.uol.com.br/politica/ultimas-noticias/2020/03/29/bolsonaro-diz-estudar-decreto-para-liberar-trabalho-sem-isolamento.htm>

attempt to paint social isolation as alarmist and unnecessary, encouraging the people of Brazil to take to the streets and immediately return to work. The propaganda piece is part of a larger campaign entitled “Brazil cannot stop”.

e) To reinforce the purported veracity of the propaganda piece and to ensure the message was received by as many Brazilians as possible, Senator Flávio Bolsonaro¹³ shared the message on his own Facebook page, which, upon information and belief was done at the behest of and for the benefit of Jair Bolsonaro. The propaganda piece in question carried the hashtag “#oBrasilNãoPodeParar” (“Brazil can’t stop”, in English) (This propaganda campaign was eventually suspended by decision of federal judge Laura Bastos Carvalho, from Rio de Janeiro, at the request of the Federal Prosecution Service¹⁴);

f. On March 29, 2020, President Jair Bolsonaro¹⁵ to again minimize the importance of social distancing and other strategies to slow the spread of this disease personally and publicly took to the streets of the actual Capital of Brazil, greeting people who were in the process of conducting their business, entering hospitals

¹³ <https://www.facebook.com/watch/?v=198469951450285>

¹⁴ <https://www.conjur.com.br/dl/juiza-uniao-parar-campanha-isolamento.pdf>

¹⁵ <https://politica.estadao.com.br/noticias/geral,bolsonaro-visita-comercios-em-brasilia-e-cumprimenta-populares,70003252366>

and cafeterias, drawing crowds and once again failing to comply with the instruction of their own minister of health and the health professionals of the entire world.

These actions of Bolsonaro have personally jeopardized not only the lives of the people with whom he and his entourage had contact, but the lives of countless others. Worse still, this and the other actions of Bolsonaro have been done for the purpose of minimizing the seriousness of COVID-19 and encouraging activities that can only result in the rapid and uncontrolled spread of this deadly illness. In so doing, Jair Bolsonaro, as head of State of Brazil has, by his acts and his omissions¹⁶ violated Article 7(1)(K) of the Rome Statute which actions constitute a CRIME AGAINST HUMANITY. These violations of international criminal law deserve the attention of the International Criminal Court to protect the lives, health and well being of millions of people living in Brazil and throughout the world. ***Statistical projections demonstrate that there will be more than 1 million deaths in Brazil if the WHO recommendations are not met.***¹⁷

¹⁶ <https://g1.globo.com/mundo/noticia/2020/03/25/incendiario-inacreditavel-e-contraditorio-imprensa-europeia-analisa-pronunciamento-de-bolsonaro-sobre-coronavirus.ghtml>

¹⁷ <https://www.time24.news/t24/2020/03/radical-isolation-can-save-1-million-lives-in-brazil-says-study.html>

2. LEGAL PROVISIONS

2.1 The International Criminal Court has jurisdiction over this matter because Jair Bolsonaro is a head of State that has violated the Statute of Rome by committing Crimes Against Humanity and the Plaintiff's only recourse is to the ICC.

It is well known that that in order to have recourse to the International Criminal Court, the Plaintiff must exhaust what remedies are available to him or her within the State in which he or she is domiciled. The purpose of this rule is to allow the State to attempt to fulfill its obligations, as well as to reinforce the international character of a complementary system such that the ICC should be used only as a last resort.

The Preamble and Article 1 of the Rome Statute of the International Criminal Court, state that the ICC has jurisdiction over matters when a Member State's laws fail to regulate or punish violations of international law, or if its laws do proscribe that conduct, the State nevertheless neglects to prosecute those who engage in it. The latter is what is currently occurring in Brazil.

On March 25, 2020, five Associates of the Federal Prosecutor General of the Republic, coordinators of the 2nd, 4th, 6th and 7th Chambers of Coordination and Revision and the Federal Consumer Protection Office - PFDC (its acronym in Portuguese) from the Federal

Prosecution Service sent a Memorandum to the Prosecutor General of the Republic, Augusto Aras, requesting that he issue a recommendation to President Bolsonaro that the President respect the recommendations of the world's health officials for fighting the coronavirus, both in government actions and in official government pronouncements.¹⁸

In relevant part, the memorandum states:

"The Coordination and Review Chambers of the Federal Prosecution Service and the National Ombudsman, by their undersigned representatives, come to present Your Excellency a proposal for a recommendation to the federal government, in the person of Mr. President of the Republic Jair Bolsonaro, in the sense that the implementation and execution of health actions, as well as the transmission of pronouncements and related information, by any and every authority of the Federal Executive Power, be carried out in a coherent manner and in line with the guidelines issued by the national health authorities and the World Health Organization, as well as in line with the National Contingency Plan for Human Infection by the new coronavirus (COVID-19), from the Ministry of Health, duly compatible with the Public Health Emergency state of International Importance - ESPII (acronym in Portuguese), declared by the WHO"

¹⁸ <https://oglobo.globo.com/brasil/aras-arquiva-pedido-de-subprocuradores-para-enquadrar-conduta-bolsonaro-sobre-coronavirus-24334565>

The Prosecutor General of the Republic, Augusto Aras, however, received the request but took no action.¹⁹

It is appropriate to state that, in the Brazilian constitutional legal system, the power to lodge a complaint against the President of the Republic is exclusive to the Prosecutor General of the Republic. No private citizen or other organization may do so. The President of the Republic has rights and immunities in relation to any process which could trigger his criminal liability for the commission of common crimes. The procedural rules for processing common crimes are provided for in Law No. 8,038 / 90 and in arts. 230-b of the Internal Rules of the Federal Supreme Court.

Act 8.038/90 states:

“Art. 1 - In the case of crimes of public criminal action, the Federal Prosecution Service will have a period of fifteen days to offer a complaint or request the filing of the investigation or information pieces.”

STF Internal Regulations:

“Art. 230-b. The Court will not process a crime report, forwarding it to the Office of the Prosecutor General. (Included by Regimental Amendment No. 44, of June 2, 2011)”

¹⁹ <http://www.mpf.mp.br/pgr/noticias-pgr/covid-19-procuradoria-geral-da-republica-esclarece-atuacao-do-orgao-junto-aos-poderes-publicos>

In cases of public malfeasance by Brazil's head of state, only the Prosecutor General of the Republic may bring charges against him. If the Prosecutor General has not formed his *opinio delicti* that such a crime has occurred and that the President must be charged, the inquiry is dismissed. No private citizen, nor any Brazilian civil society may seek prosecution of the President of Brazil for any crime he commits or could commit against any of its citizens. The decision to charge or not rests solely with the discretion of the Prosecutor General.

The Rome Statute, which governs the performance of the International Criminal Court, was included in the Brazilian legal system after approval by the National Congress, through Decree nº 4,388, of September 25, 2002²⁰. By adopting this international norm domestically, Brazil follows the understanding that there are certain crimes that directly affect thousands of people worldwide, and reach the point of deeply shocking humanity. In describing its power to hear such matters, the Court claims to be restricted to the most serious crimes, which affect the international community as a whole.

In this matter, because only the Prosecutor General may bring such a charge and because the Prosecutor General has ignored all requests that he do so, the domestic Brazilian law has been rendered academic and meaningless. In spite of multiple requests that he not do so, with casualties and infections mounting by the day, Mr. Bolsonaro's conduct

²⁰ http://www.planalto.gov.br/ccivil_03/decreto/2002/d4388.htm

continues unabated. Given the apparent impossibility of any judicial intervention within the member state of the Republic of Brazil, the Plaintiff's only recourse is to the International Criminal Court.

Article 27, section 1 of the Rome Statute provides that Heads of State are not immune from criminal responsibility, nor are there grounds for a reduction in any potential sentence issued by the Court. Section 1 also holds that no special privilege arising from the official capacity of a head of state under national or international law prevent the Court from exercising its jurisdiction over him.

Perhaps most importantly, Brazil has not only signed and ratified the Rome Statute, but also included it in paragraph 4 of article 5 of its own Federal Constitution in 1988, recognizing Brazil's submission to the international jurisdiction of the International Criminal Court.

"Art. 5º

(...)

§ 4º Brazil submits to the jurisdiction of the International Criminal Court to whose creation it has expressed adherence."

There is no doubt about the legitimacy and competence of the International Criminal Court to investigate and prosecute the matters presented here.

2.2. Merits

When listing, in its art. 7, crimes against humanity, the Rome Statute provides:

“Article 7:

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

.....

k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”

The jurisdiction of this Court is fully justified in view of the refusal of the Prosecutor General of the Republic to act, even with the obviousness of the commission of crimes against humanity by the President of the Republic, Jair Bolsonaro.

It is the position of the Plaintiff that the actions of Mr. Bolsonaro fall within the meaning of “attack” or are tantamount to an “attack” when read in conjunction with the Preamble of the Rome Statute, which recognizes that some crimes that “*threaten the peace, security and well-being of the world*” must be addressed, making Article 7 applicable to the case at hand. Materially, Mr. Bolsonaro’s actions represent a head of

state knowingly and intentionally causing the spread of contagion, substantially endangering the physical health and well being of the Brazilian population, exposing them to a lethal virus which has the capacity to swallow the population whole, as already has been seen in several countries. Regardless of whether a head of state physically sends a biological weapon into a population to commit a physical attack or simply weaponizes his propaganda to expose them to the same virus, the result in both situations is identical, ***illness and death***. Mr. Bolsonaro's actions constitute a widespread or systematic attack directed against his own civilian population in violation of Article 7(k) of the Rome Statute and is a Crime Against Humanity.

Agencies such as Agence France-Presse (AFP) and Worldometer announced that the death toll from Covid-19 worldwide is over 50,000. The countries that recorded the highest number of deaths in the last 24 hours were Italy and Spain, with more than 800 deaths each, and the United States, with more than 500. The death toll in Italy, which registered the first death linked to the virus at the end of February, reaches more than 13,000. The country also registered a total of more than 110,000 infections. Italian authorities estimate that approximately 17,000 people

have healed.²¹ The total number of those infected as of the date of this writing now exceeds **ONE MILLION persons**.²²

The crime of epidemic was codified in various legal systems worldwide after the First World War, an event that relied on the use of pathogenic germs as a combat weapon²³, a practice prohibited by international conventions after the armistice, such as the Geneva Protocol, of 1925, which prohibited the use of chemical weapons in battle. The use of such agents was not repeated even in the horrors that followed in the second world war.

The crime of causing or contributing to an epidemic (outbreak of a transient disease that simultaneously attacks an undetermined number of individuals (civilians) in a certain location), through the propagation (diffusion, or dissemination) of pathogenic germs is proscribed by both Brazilian domestic law and international law.

In Brazil, such conduct falls into Article 267 of the Brazilian Penal Code:

“Art. 267 - Cause an epidemic through the spread of pathogenic germs.

²¹ <https://www.istoedinheiro.com.br/mortos-por-covid-19-no-mundo-passam-de-36-000-balanco-afp/>

And also <https://www.worldometers.info/coronavirus/>

²² <https://www.worldometers.info/coronavirus/#countries>

²³ Davidson N. The Role of Scientific Discovery in the Establishment of the First Biological Weapons Programmes. In: Bradford Science and Technology Report N° 5. October, 2005. [2014 1]. Disponível em: <http://bradscholars.brad.ac.uk:8080/handle/10454/711>

Penalty: Imprisonment, from 10 (ten) to 15 (fifteen) years.

§ 1: if death results from the fact, the penalty is applied twice”

The legislators understood that the crime is so serious that they included it in Act No. 8.072, of 1990, among the heinous crimes:

“Art. 1º. The following crimes are considered heinous, all typified in Decree-Law No. 2,848, of December 7, 1940 - Penal Code, consummated or attempted:

(...)

VII - epidemic with death result (art. 267, § 1o).”

The pandemics that have victimized millions of people around the world became global tragedies when humans have failed to act and think rationally, refusing to adopt the recommendations of our scientists that are based on empirical research. In modern times, the development of medicine and the adoption of sanitary conditions have substantially improved our collective life expectancies and have substantially controlled the spread of disease. The governmental adoption of behavior that contradicts world health authorities, especially in the face of these hard learned historical lessons endangering thousands, if not millions of people is a crime against humanity.

World experience shows that social confinement is the most efficient method for saving lives. Countries that have neglected the quarantine policy are where the impact of the pandemic has proved to be greatest, as in Italy, Spain and the United States. The case of the mayor of the City of Milan, Italy, who adopted a campaign called “Milan does not stop” caused the explosion of cases of Covid-19 in the city and in the region of Lombardy, of which Milan is the capital. ²⁴

Humanity is going through what may be known as the great tragedy of the 21st century. The greatest scientific authorities of our time, backed by careful observation of our world, have prescribed a strategy to combat and minimize the pandemic. Disregarding their appeals, the President of Brazil, echoing unscrupulous businessmen, has stubbornly refused to adopt the world standard of combating the pandemic, social confinement. Thus, Brazil due to the actions of President Bolsonaro ceases to participate in the strategy to flatten the infection curve. Rather, he seeks to expand it. Bolsonaro’s conduct inevitably will cause the health system in Brazil to collapse.²⁵

²⁴ <https://www.archyde.com/how-the-mayor-of-milan-underestimated-the-danger-of-coronavirus/>

<https://www.msn.com/pt-br/noticias/mundo/prefeito-de-mil%C3%A3o-admite-erro-ap%C3%B3s-campanha-para-n%C3%A3o-parar-a-cidade/ar-BB11Nx4L>

²⁵ <https://www.theguardian.com/world/2020/mar/25/bolsonaro-brazil-wouldnt-feel-anything-covid-19-attack-state-lockdowns>

The attitudes of Bolsonaro and his government are leading Brazil to a humanitarian crisis which is as lethal as any genocide, crime against humanity, or war crime that has come before this International Criminal Court. It cannot be understated however, that it is no less lethal, and this Court should take it just as seriously. The deviant behavior of this President when he takes to the streets of the federal capital (Brasilia), when there is a Decree of the government of the Federal District regarding the functioning of commerce and discouraging gatherings, violates yet another device of the Brazilian Penal Code:

“Infringement of preventive health measure

Art. 268 - Infringing the government's determination to prevent the introduction or spread of a contagious disease:

Penalty - detention, from one month to one year, and fine.”

In the same vein, Act No. 13,979, of February 6, 2020, was passed on an urgent basis in the National Congress to deal specifically with the emergence of Covid-19. It supports art. 268 of the Penal Code, authorizing, in its art. 3rd, the determination of measures such as isolation, quarantine and compulsory medical examinations and in arts. 5th and 6th communication duties.

In turn, Interministerial Ordinance No. 05, of March 17, 2020 determines, in its Articles 3rd and 4th, that failure to comply with isolation and quarantine measures, as well as resistance to undergoing medical examinations, laboratory tests and specific medical treatments, entails punishment based on arts. 268 and 330, of the Penal Code. The latter codifies the crime of disobedience, consisting of “disobeying the legal order of a civil servant”, whose penalty is imprisonment, from fifteen days to six months, and a fine. Pursuant to the recent legal order, conduct resulting from the Covid-19 pandemic is punishable pursuant to penal art. 268 CP when there is non-compliance.

If the entire legal framework in the federal legislation itself were not enough, it is important to note that in the Federative Republic of Brazil, health is a competing competence between the Union, States and Municipalities; thus, Decree nº 40.550, of March 23, 2020, of the Government of the Federal District²⁶, that provides for measures to deal with the public health emergency, of international importance, resulting from the new coronavirus, must be complied with by all citizens, even the President of the Republic. However, it continues to be clear that Bolsonaro believes himself to be exempt from the rule of law, and no official in the Brazilian judiciary is willing to hold him to account.

²⁶http://www.sinj.df.gov.br/sinj/Norma/2daec529965741e29602314371cc37bf/exec_dec_40550_2020.html#art12

Indeed, it is the President of the Republic of Brazil who violates all of these laws by encouraging people to return to their jobs, children to return to schools, young people to return to universities and all others to move normally through the streets. All of this will lead to the infection of thousands upon thousands of people and the death of thousands more due to the confusion that the President himself creates. Thus, if the President reports that COVID-19 is not dangerous, many Brazilians will naturally believe him, and will put themselves, their families and of all people with whom they have contact in great peril. The human tragedy to follow will be beyond that seen in our lifetimes.²⁷

If, even in the face of all the evidence, President Jair Bolsonaro persists in acting like a petulant child, he will become responsible for thousands of deaths and for the proliferation and increase of disease in Brazil, which makes the pronouncement of this Court URGENT and NECESSARY.

3. ADMISSIBILITY

Article 17.1.a and 17.1.b of the Rome Statute establish a double determination of the complementarity of the ICC:

²⁷ <https://www.theguardian.com/world/2020/mar/23/brazils-jair-bolsonaro-says-coronavirus-crisis-is-a-media-trick>

I) if, at the time of admissibility of a case, an investigation or ongoing case of the same case exists at the national level;

II) if the State is not willing or genuinely able to carry out such investigations or processes.

For these purposes, please observe the following precedents: *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, Appeals Chamber, "Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case", ICC-01/04-01/07-1497, 25 September 2009 - "Katanga admissibility Appeals Judgment" - §§. 1 and 75-79).*

The action of a State in the first case makes a case admissible before the Court, subject to an assessment of gravity under Article 17 (1) (d) (*Katanga admissibility Appeals Judgment*, § 78). The Prosecutor's Office conducts its determinations on complementarity in relation to the possible cases that are likely to be the focus of an investigation.

The admissibility provisions of the Statute are based on the complementary relationship between the ICC and "national criminal jurisdictions". As such, in principle, it is only national criminal investigations and/or prosecutions by a State that can trigger the application of Article 17.1 (1) (a) to (c).

4. GRAVITY

The severity assessment was conducted against the background of possible cases that may arise from an investigation into the situation (*Kenya Article 15 Decision*, §§ 50, 58, and 188; *Côte d'Ivoire Article 15 Decision*, § 202).

A gravity analysis involves a generic examination to determine whether a person, persons or groups of persons relevant to the investigation are identified as those who can take the greatest responsibility for the alleged crimes committed. The assessment should also be made from a quantitative and qualitative point of view, and factors such as the nature, scale and manner of committing the alleged crimes, as well as their impact on victims and possible victims. All of these indicators determine the severity of a particular case (*Kenya Article 15 Decision*, §§. 60-62; *Côte d'Ivoire Article 15 Decision*, §§. 203-205; *Georgia Article 15 Decision*, §. 51).

Therefore, the prosecution's observations on gravity refer to an assessment of the gravity of one or more potential cases, rather than the gravity of the whole situation.

Based on the information available, in the present matter, the potential cases related to alleged crimes committed by the President of the Federative Republic of Brazil are of sufficient gravity to justify the Court's actions, and to justify its investigation and prosecution. The

alleged crimes were committed with wide national and international repercussions, with abundant journalistic evidence, mainly through videos recorded by the national and international press, making it clear that the crimes were practiced institutionally, that is, by the President of the Republic of Brazil.²⁸

It is also sufficiently grave that the President of the Republic published his propaganda on his official social media (Twitter, Instagram, Facebook) and that many media outlets deleted his videos because they were considered utterly “uninformative” and therefore contrary to public health and local government guidelines. Unfortunately, as a head of state publishing this type of false and inflammatory material, the damage has been done with his misinformation being shared and republished by users throughout the world.²⁹

²⁸ <https://brasil.elpais.com/brasil/2020-03-25/em-cadeia-de-tv-bolsonaro-minimiza-coronavirus-para-insuflar-base-radical.html>

<https://www.theguardian.com/world/2020/mar/27/jair-bolsonaro-coronavirus-brazil-governors-appalled>

<https://www.cartacapital.com.br/politica/bolsonaro-reafirma-que-coronavirus-nao-e-isso-tudo-que-dizem/>

²⁹ <https://www.euronews.com/2020/03/30/twitter-removes-videos-of-jair-bolsonaro-visiting-a-busy-market-during-coronavirus-pandemi>
<https://www.nbcnews.com/tech/social-media/facebook-removes-video-brazilian-president-endorsing-unproven-antiviral-drug-n1172566>
<https://www.lavanguardia.com/politica/20200331/48201010286/facebook-tambien-excluye-video-de-bolsonaro-en-el-que-cuestiona-aislamiento.html>

5. INTERESTS OF JUSTICE

The gravity and extent of the crimes against humanity committed in Brazil cannot be understated. They are widely highlighted by the media in general (national and international), and are of international concern. The magnitude of the effects of Bolsonaro's actions are deadly, but the prospect for his being held accountable at the national level have already proved to be nil. Such questions undoubtedly militate in favor of opening an investigation, leading to Bolsonaro's prosecution.

The victims of Bolsonaro's alleged crimes will be thousands and could be millions. Brazil currently has a population of 210 million people, and the overwhelming spread of this virus which Bolsonaro's propaganda campaign and other unscrupulous acts minimizing the seriousness of the pandemic have caused will inevitably create a humanitarian crisis, the number of casualties from which will equal or exceed any genocide to have been presented to this Court.

It bears repetition that the Federal Prosecution Service of Brazil has requested that the Prosecutor General of the Republic urge the President to abstain from such actions, as explained above, through the judicial measures available to him (we repeat that he is the only authority that could sue the President of the country) and **the request was summarily archived with no action being taken.**

Brazil is a country in crisis and does not have the luxury of time. It is a country of continental dimension; the Brazilian territory is nearly the same size as all of Europe. The inaction of the Brazilian judiciary combined with the commission of crimes by the President himself will bring this country to a Dantesque situation. In light of the seriousness of the acts that Mr. Bolsonaro has committed and the absence of relevant national procedures (none) to hold him accountable, and taking into account the seriousness of the crimes and the interests of the victims, only an investigation will serve the interests of justice.

As has been said many times, the *raison d'être* of the ICC is to combat impunity. To date, because President Bolsonaro has been able to act with relative impunity he has been emboldened to commit the crimes discussed herein and at present there is absolutely nothing to deter him from continuing to do so.

The internationalization of the issue is urgent and important. To our knowledge, Brazil is the only country in the world that has a Head of State who advocates against the legal determinations of his own country and that of international health organizations, putting the Brazilian population at grave risk (due to the effect and harmful impact of its attitudes towards the general public, who will not know whom to obey, putting themselves at serious risk).³⁰ To a greater extent, the international community will

³⁰ <https://noticias.uol.com.br/ultimas-noticias/agencia-estado/2020/03/28/bolsonaristas-fazem-carreatas-antiquarentena.htm>

also be put at risk, as the virus will find its way to spread around the world again and again as the world will gradually reopen and may jeopardize the good work of so many who have labored to stop the spread of this virus.

This decision would, moreover, have a particularly useful role, as it would be a clear response to a crime against humanity that a head of state has committed and continues to commit. This Court's involvement would send a message that no government official should make decisions contrary to public health determinations at national and international levels. It can only save lives and limit the number of people infected.

For the foregoing reasons, this request for an investigation meets the criteria of the Statute of Rome.

6. ATTACHED DOCUMENTS

- Doc. 1 - Power of Attorney (Ricardo Franco Pinto and Charles Kurmay);

Doc. 2 - Power of Attorney (other representatives from Brazil), in Portuguese;

Doc. 3 - Minutes of the ABJD foundational assembly, in Portuguese;

Doc. 4 - ABJD Statutes, in Portuguese;

Doc. 5 - Official Brazilian Associations Registration Number, in Portuguese.

7. REQUESTS

Wherefore, the undersigned counsels respectfully request:

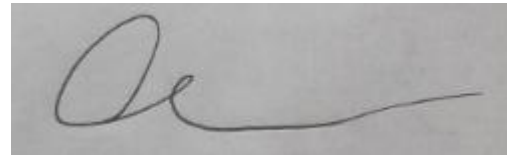
- a) Your acknowledgement of this Petition and a confirmation of the initiation of your investigation to ascertain the commission of a crime against humanity by Mr. Jair Messias Bolsonaro, President of the Federative Republic of Brazil;
- b) That the International Criminal Court obtain such information from the Federal Government of Brazil regarding this matter, and compel the personal testimony of Mr. Jair Messias Bolsonaro as to his conduct as a head of state in contradicting the global health guidelines of the World Health Organization - WHO in the fight against Covid-19;
- c) The trial and conviction of Mr. Jair Messias Bolsonaro for his crime against humanity, for exposing the lives of Brazilian citizens, with such actions that have helped accelerate the proliferation of the Covid-19; and

d) That Mr Jair Bolsonaro receive the appropriate penalty for the crimes against humanity that he has committed.

São Paulo (SP) – Brazil, April 2nd, 2020.



RICARDO FRANCO PINTO



CHARLES KURMAY