



ACADEMICS FOR LIBERTY ASSOCIATION
AND
NATIONAL ASSOCIATION OF MP PRO-SOCIETY



**MS Excellency FATOU BENSOUDA,
Prosecutor of the International Criminal Court**

Post Office Box 19519
2500 CM The Hague
The Netherlands
otp.informationdesk@icc-cpi.int
Fax +31 70 515 8555

ACADEMICS FOR LIBERTY ASSOCIATION, a legal entity of private law, of a civil nature and non-profit that brings together Teachers from all over Brazil, registered with CNPJ n.º 35.654.954/0001-00, headquartered at QS 1, Rua 210, Lotes 34-36, Torre 3, Sala 308, parte B, Águas Claras, Federal District, Brazil, CEP 71950-770; and **NATIONAL ASSOCIATION OF MP PRO-SOCIETY**, a legal entity of private law, of a civil nature and non-profit that brings together Prosecutors of the Prosecution Service from all over Brazil, registered with CNPJ n.º 32.702.3 01 / 0001-53, headquartered at SAS, Quadra 04, Bloco “A”, sala 1231, Edifício Victoria Office Tower, Brasília, Federal District, CEP 70.070-938, represented by its Lawyers¹, according to the attached power of attorney, comes, through its legal representative, based on article 15.2 of the Rome Statute, to present

PRELIMINARY INFORMATION to you regarding a Report addressed to this International Criminal Court by several Associative Entities like **Uni Global Union** (Uni Americas), **Internacional dos Serviços Públicos**, **União Geral dos Trabalhadores (UGT)**, **Central Única dos Trabalhadores (CUT)** and others **61 (sixty one)** unions privates of Brazil (hereinafter *Claimants*), according to the reasons below, with the intention of providing some details about the problem brought up in the representation from a different angle than what was exposed there.

I. THE REPORTING

The *Claimants* report for the initiation of investigation against the President of the Republic Federative of Brazil, Mr. Jair Messias Bolsonaro, imputing to him the crime against humanity provided for in Article 7, *k*, of the Statute of Rome, consisting 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.*”

¹ Any kind of officials notifications of this procedure maybe to bkirchner.adv@gmail.com and viviane@selloknoerr.com.br



ACADEMICS FOR LIBERTY ASSOCIATION
AND
NATIONAL ASSOCIATION OF MP PRO-SOCIETY



In the report, he states that government officials in Brazil, aware of the seriousness of the pandemic, created several field hospitals, endowing them with health personnel, as well as facilities for Intensive Care Units (ICU).

It claims that many leaders have conducted tests on the largest number of people to try to manage the contamination of the virus, as well as to reduce the epidemiological and death curve.

Some leaders would have underestimated the seriousness of the pandemic, among them, the Representative President of the Federative Republic of Brazil, Mr. Jair Messias Bolsonaro. Their attitude of neglect, and denial, would have had disastrous consequences, resulting in the intensification of the disease, in addition to overloading health services, which were unable to meet the minimum conditions to help the population, causing uncontrolled deaths. He claims that *"the failure of the Brazilian government amounts to a crime against humanity of genocide"*.

They narrate in the Report that as soon as the virus arrived in the Brazil, between the months of February and March of 2020, the Minister of Healthcare expressed his concern, and the Provisional Act n.º. 454, on March 20, declaring the state of community transmission of the coronavirus in Brazilian territory. In turn, the National Congress made its contribution, on the same date, by editing Legislative Decree n.º 6, recognizing the state of public calamity.

They claim that numerous measures have been approved by the National Congress, with the aim of giving the President freedom to do what is necessary in order to combat the pandemic in Brazil. Likewise, the Brazilian Supreme Court (Supremo Tribunal Federal - STF) would have made its contribution by authorizing the President to take measures to combat covid-19.

About lockdown, they say that many world leaders have endorsed the WHO recommendation for isolation. Thus, the then Minister of Healthcare, Dr. Luiz Henrique Mandetta, would have endorsed this recommendation, while the President would have taken a stand against lockdown, carrying out public activities, as a way of showing that he did not agree with the measure. He said that the Minister of Health resigned his post considering the differences between him and the President, who insisted that the treatment protocol use Hydroxychloroquin. The next Minister of Healthcare, Dr. Nelson Teich, announced that he was proposing a plan to make the economy more flexible, favoring technical recommendations that also included isolation as one of the measures to fight the virus, although he made it clear that he was against the use of medication to treat the disease.

It is said in the Report that social isolation allowed the opening of several essential activities such as supermarkets, pharmacies, butchers, shipping companies, healthcare, bakeries, as long as specific protocols and care were taken to avoid the contagion and spread of the coronavirus. It was recommended that, when necessary to leave the home, the people should keep their distance from each other, avoiding crowds and wearing protective masks.



ACADEMICS FOR LIBERTY ASSOCIATION
AND
NATIONAL ASSOCIATION OF MP PRO-SOCIETY



The next (and current) Minister interim of Healthcare, Dr. Eduardo Pazuello, did not adopt the measures of social distancing, having placed military servants in strategic functions. The minister in question is a layman in Healthcare and the President issued a Provisional Act 966/2020, which was considered unconstitutional by the Brazilian Supreme Court, deserving criticism from a dis Ministers of the Court, who speaks of genocidal policy in the Brazilian Healthcare Administration. The said Minister would have said that "*the Army is associating itself with a genocide*".

The Report said that President Bolsonaro had never given importance to the recommendations of the Minister of Healthcare, appeared in public with his voters and journalists and in public places, as well as speaking in public, minimizing the seriousness of the pandemic. After, the Document of *Claimants* reports the number of deaths, as well as the vetoes of two laws, which, according to the petitioners, deal with the use of masks.

They added that the President of Brazil was infected and that speaking to journalists he removed the mask in a public place, which constitutes a crime in the Brazilian Criminal Code. In addition, the President insists on the use of Hydroxychloriquin, when the Food and Drug Administration (FDA) and the ANVISA (Health Surveillance National Office at Brazil) have already warned that the drug is not effective in treating the coronavirus, in addition to not having allowed the removal of civil employees from the Alvorada Palace, the Brazil President's residence.

According Report, the President's acts and omissions represent irresponsibility that exposes the life of the population at risk and that up to now there are 2 million infected and 100 thousand dead, affecting the poor and indigenous population.

II. ADMISSIBILITY OF THE REPRESENTATION OF CLAIMANTS

The *Claimant's* Report makes a first mistake in the request for measures to this International Court. The ICC is not a Court of Cassation, nor does it fulfill the domestic jurisdiction of the signatory countries of the Rome Statute.

This is stated in Article 1 of the ER:

"An International Criminal Court ("the Court") is hereby established. **It shall be a permanent institution** and shall have the power to exercise **its jurisdiction** over persons for the most serious crimes of international concern, as referred to in this Statute, and **shall be complementary to national criminal jurisdictions**. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute."

In the same predict the Article 17, 1, *d*, os ER, when dispose about admissibility of investigation and judgment of an case:



ACADEMICS FOR LIBERTY ASSOCIATION
AND
NATIONAL ASSOCIATION OF MP PRO-SOCIETY



“Article 17. Issues of admissibility. 1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where: (...) (d) The case is not of sufficient gravity to justify further action by the Court.”

Then, the Internacional Court has complementary rather than supplementary jurisdiction. What the representatives did was knock on the doors of this International Court before, for example, formulating a crime report to the Hon. Mr. Prosecutor General of the Republic stating these untruths and asking for action that, domestically, would be the opening of an investigation. Why did not they do it? Because they know that in doing so they would be incurring the very serious crime of slanderous denunciation (malicious prosecution), whose penalty in the Brazilian Penal Code is set between two and eight years in prison. In other words, there is no omission by the Brazilian authorities in this regard.

However, despite the fact that they did not have the same audacity in the internal sphere of attacking such serious lies, the Brazilian criminal law, by virtue of the principle of extraterritoriality, applies to the petitioners, considering that, unquestionably, there is libel, a crime against honor, properly characterized.

The sole purpose of this complaint is to try to manipulate this Court for domestic political purposes, since the country is going through a period of political polarization, in which the left, of which all complainants are part, without any exception, does not accept the result of the elections in which a right-wing candidate, who has so far committed the “crime” of not surrendering to corruption, has won. The allies of the left in this legal adventure are the corrupt ones already condemned by the Brazilian Judiciary, who were making huge profits by embezzling public money. Besides, one should not ignore the hypothesis that they ended up seeing in this context the opportunity to regain control over public money diverted from the coronavirus, through construction of field hospitals, contracting of outsourced services, purchase of overpriced equipment and drugs without bidding, complying with public calamity decrees that gave rise to misappropriation opportunities by Governors, Mayors and public health managers, who are already being investigated and indicted for these deviations, and not President Bolsonaro.

The state of public calamity, recognized on March, the 20th, did not result from an isolated act by the Brazilian National Congress, but was started by Mr. President himself, who sent the request to the Congress on March 18th². As it is conveyed by a legislative decree, the representatives want to make Your Excellencies believe that the President of the Brazilian National Congress acted in the place of the President of the Republic of Brazil, which is not true.

2

<https://www.gov.br/planalto/pt-br/acompanhe-o-planalto/noticias/2020/03/entra-em-vigor-estado-de-calamidade-publica-no-brasil>



ACADEMICS FOR LIBERTY ASSOCIATION
AND
NATIONAL ASSOCIATION OF MP PRO-SOCIETY



III. ON THE MERIT

The narrative is, by itself, as will be seen, a lie and a dishonor to the Brazilian nation. There are legal incompatibilities with the very notion of genocide, as will be shown below.

Mr. President did not create the pandemic. It arrived in Brazil, it is now believed, between October and November of 2019³. The first death by Covid-19 in the country is believed to have occurred in January⁴. It is very likely that people may have died even earlier without the real cause being discovered, as the disease was not exactly known. Certainly, the problem was already serious in January, but the WHO officials, who should be subject to severe criminal investigation through international bodies, only declared a state of pandemic in March. Before that, even before the WHO spoke about the facts, when there was uncertainty whether or not to address it as a pandemic. In this context, Mr. President agreed on a bill, in conjunction with the Brazilian National Congress, and Law No. 13979, was enacted on February, the 6th, 2020, which provides for measures to be taken to fight the pandemic⁵. Note, Your Excellencies, that Mr. President took action long before WHO did so, at the expense of being accused of inciting panic and by opposing the interests of some Governors, by keeping a stance against Carnival, which has a huge flow of tourists from various parts of the world.

At no time did President Jair Bolsonaro disregard the pandemic. Contrary to what the petition says, which, *data venia*, lacks truth, since the state of public calamity was recognized by him. In addition to the fact that there was no omission, there was no legal action on the part of any government minister, especially the Healthcare Minister, since they act in accordance with what the President, who is the chief of the Executive Branch, determines. One more lie, therefore.

Another lie tells the representation by stating that the former Minister of Healthcare, Mr. Mandetta, would have taken the initiative to enact a lockdown. The governor of the Federal District was the first to take this measure⁶, in mid-March, which went through successive extensions, being true that Minister Mandetta was initially opposed to the measure⁷, stating that it would have the opposite effect. Later on, the then Minister of Health started to defend total isolation

3

<https://www.nsctotal.com.br/noticias/coronavirus-e-encontrado-em-amostra-de-esgoto-colhida-em-novembro-de-2019-em-florianopolis>

4

<https://noticias.uol.com.br/colunas/reinaldo-azevedo/2020/04/03/primeira-morte-por-covid-19-no-brasil-aconteceu-em-janeiro-diz-ministerio.htm>

5

<http://www.in.gov.br/en/web/dou/-/lei-n-13.979-de-6-de-fevereiro-de-2020-242078735>

6

[https://agenciabrasilia.df.gov.br/2020/04/01/isolamento-social-vai-ate-3-de-maio/#:~:text=O%20isolamento%20social%20no%20Distrito,quarta%20feira%20\(1%C2%BA\).](https://agenciabrasilia.df.gov.br/2020/04/01/isolamento-social-vai-ate-3-de-maio/#:~:text=O%20isolamento%20social%20no%20Distrito,quarta%20feira%20(1%C2%BA).)

7

<https://congressoemfoco.uol.com.br/saude/coronavirus-mandetta-diz-que-restricoes-impostas-no-df-podem-ter-efeito-contrario/>



ACADEMICS FOR LIBERTY ASSOCIATION
AND
NATIONAL ASSOCIATION OF MP PRO-SOCIETY



(lockdown), however there is currently information that groups of people who have isolated themselves have also ended up being contaminated, on a large scale, which demonstrates the ineffectiveness of such a measure⁸.

As in all countries in the world, despite all the measures taken by the President, including the creation of field hospitals⁹, the disease spread and claimed many victims, in numbers similar to what happened in the United States, but the press and petitioners do not mention that the number of cured people in Brazil is the second highest in the world, and that mortality per 100,000 inhabitants in Brazil is one of the lowest, much lower than in Italy and France, for example¹⁰.

What happened, in fact, was that the President advocated for vertical, selective isolation from the beginning (along the lines of South Korea, Japan and Sweden), therefore, because he foresaw the disastrous effects of the paralysis of economic activity, including for public health. Millions are unemployed, thousands of companies have closed their doors¹¹. And contrary to what these entities preach, the drop in GDP causes deaths, and in Brazil for every 1% drop in GDP they increase by 0.75 deaths per 100,000 inhabitants¹².

In parallel to this, the Mr. President supported and continues to support the use of Hydroxychloroquine, which he believes is the most effective medicine known so far to fight the disease¹³, but faces strong resistance from sectors of the newleft that are organized in various sectors of society and have the support of several communication vehicles, as well as applications and Social Networks that frequently censor comments in favor of early treatment and promoting the #stayathome which assumes that one should only seek medical assistance in advanced stages of the disease Covid-19.

8

<https://www.istoedinheiro.com.br/mais-de-66-dos-novos-infectados-em-nova-york-estavam-isolados-em-casa/>

9

<https://agenciabrasil.ebc.com.br/politica/noticia/2020-06/bolsonaro-inaugura-hospital-de-campanha-para-covid-19-em-aguas-lindas>

10

<https://agenciabrasil.ebc.com.br/politica/noticia/2020-06/bolsonaro-inaugura-hospital-de-campanha-para-covid-19-em-aguas-lindas>

11

<https://g1.globo.com/economia/noticia/2020/07/17/desemprego-diante-da-pandemia-volta-a-ter-alta-apos-leve-queda-aponta-ibge.ghtml>

¹¹https://www.researchgate.net/publication/336958337_Effect_of_economic_recession_and_impact_of_health_and_social_protection_expenditures_on_adult_mortality_a_longitudinal_analysis_of_5565_Brazilian_municipalities

12

13

<https://www.uol.com.br/vivabem/noticias/redacao/2020/03/19/cloroquina-o-que-se-sabe-sobre-remedio-que-pode-tratar-coronavirus.htm>



ACADEMICS FOR LIBERTY ASSOCIATION
AND
NATIONAL ASSOCIATION OF MP PRO-SOCIETY



The Workers' Party (PT), association of the left, whose representatives are allied, even petitioned the Brazilian Supreme Court for its non-availability to society¹⁴.

There seems to be a political polarization in Brazil around the pandemic, there are those that inflate the number of victims of the disease, causing unnecessary alarmism, and, on the other hand, there are those that minimize the problem, creating a false political dialectic around of the matter, to the detriment of the Mr. President Bolsonaro, his Government and Brazilian society.

Diagnosis of the disease requires a more precocious evaluation, with early classification of risk of evolution to a serious case and room for a rational use of medicines approved for human use and that already demonstrate robust evidence of efficacy when used in the initial moment, with the objective of mitigating the economic consequences, because already an unprecedented economic crisis is looming in all countries due to the lockdown decision.

The petition says that the President put people at risk by going out on the streets, which did not find support in the truth of the facts, because the President only came to test positive for the disease only in July, and it certainly did not endanger journalists in an open-air interview. When he took off his mask at the aforementioned press conference, he was more than two meters away from journalists and, as we know, in this distance, in open environments, contamination is impossible!

On the management of the fight against the disease in our country, the Brazilian Supreme Court, on April 15, 2020, decided to withdraw the powers of the President to conduct the fight against the coronavirus, transferring this decision also to states and municipalities (autonomous public entities according to the Brazilian Constitution, Arts. 1º, *caput*, e 18, *caput*)¹⁵.

Political wings against the Mr. President turned the fight against the coronavirus in Brazil into an eminently political issue, where the opinion of technicians and scientists aligned with the ideology that lost the election, opposes a more rational management of the crisis, such as the one adopted by Sweden and that can be proven even by the social media profiles of these supposed scientific authorities that are not unanimous.

On the one hand, the left supports the prolonging of isolation measures and the non-offer of medications that could cure most cases of the disease, even if there is no definitive scientific proof of the percentage of this benefit. On the other, the President and conservative groups, in fact, the society in general that needs to work to make a living, supporting vertical isolation and early treatment that includes the best evidence available for the disease.

The Brazilian Supreme Court Judge who referred to a “genocide”, which gave rise to the proposition of this procedural adventure, is one of the most unpopular personalities in Brazilian politics. In this episode, he not only accused the President, but the Brazilian Armed Forces

14

<https://marcelojose.com.br/2020/06/13/acao-do-pt-no-stf-contraria-a-divulgacao-pelo-governo-bolsonaro-do-uso-da-cloroquina-no-combate-ao-coronavirus-aguarda-parecer-da-pgr-2/>

15

<https://noticias.uol.com.br/saude/ultimas-noticias/redacao/2020/04/15/stf-tem-4-votos-a-favor-de-autonomia-de-governadores-durante-a-pandemia.htm>



ACADEMICS FOR LIBERTY ASSOCIATION
AND
NATIONAL ASSOCIATION OF MP PRO-SOCIETY



themselves of genocide. In this respect, he committed, in thesis, a crime provided for in the Military Penal Code, which motivated a representation to the Brazilian Prosecutor General of Republic¹⁶.

Interestingly, another Minister of the Court, Mr. Luis Barroso, in an absolutely unacceptable attitude in any Republic, declared that the aforementioned Supreme Court decision - the one which allowed the power to decree lockdown by states and municipalities without the agreement of the president and therefore, destroying the economy - prevented the occurrence of a genocide¹⁷!

They attack the president saying that there is no definitive evidence of the effectiveness of medications for treatment of COVID-19, however, horizontal quarantine measures lasting more than 100 days are much worse, as several evidences point to not only its inefficiency, but, also its risk of having, instead of protecting people, increased risk of COVID-19 transmission. Not to mention other effects such as increased domestic violence, child abuse, deaths from various causes, very serious psychiatric disorders that culminate even in the increase of suicides.

IV. THE INADEQUACY TO *ACTUS REUS*

The Complaint points to the practice of crime against humanity, although it refers to genocide in a country with democratic normality. A court accustomed to seeing cases of the most extreme gravity, will now dwell on this collection of lies, which flourishes in the midst of a domestic political fight in Brazil.

The complainants did not even bother to look a little outside the reality of Brazil, a country that does not register internal and external armed conflicts, to discover that the international crime pointed out, genocide, are not perpetrated under these conditions. This detail of the complaint, in stating that there is an ongoing crime against humanity, as stated in Article 7, 1, *k*, but giving it the name of genocide should be the subject of Your Excellencies' attention. It is not just a demonstration of a lack of technique, but an argumentative technique to confuse the Court.

It is not for nothing that they did not have the same boldness to make an imputation of genocide domestically, invoking the national law that deals specifically with this crime (***Federal Act n.º 2.889, de 1956***¹⁸, that define and punish the genocide crime). They preferred an international

¹⁶

https://www.em.com.br/app/noticia/politica/2020/07/14/interna_politica,1166890/ministro-da-defesa-envia-representacao-a-pgr-contr-gilmar-mendes.shtml

¹⁷

<https://congressoemfoco.uol.com.br/judiciario/stf-evitou-genocidio-ao-barrar-medidas-do-governo-diz-barroso/>

¹⁸

Art. 1º Quem, com a intenção de destruir, no todo ou em parte, grupo nacional, étnico, racial ou religioso, como tal: a) matar membros do grupo; b) causar lesão grave à integridade física ou mental de membros do grupo; c) submeter intencionalmente o grupo a condições de existência capazes de ocasionar-lhe a destruição física total ou parcial; d)



ACADEMICS FOR LIBERTY ASSOCIATION
AND
NATIONAL ASSOCIATION OF MP PRO-SOCIETY



crime to try to evade internal responsibility for crimes against the President's honor, but the effect will not be verified, since they gave international crime correspondence to crimes that punish putting one at risk in the Brazilian Criminal Code.

The large number of death cases result from complications of the disease, and it is a fact that is happening worldwide. There is no action or omission by the President interfering with this. On the contrary, the high recovery rate in the country shows that measures to combat the coronavirus are on the right track. If vertical isolation had been observed and the protocol for the use of hydroxychloroquine, as well as all other drugs suitable and adjusted for each stage of the disease, as described by Siddiqi et al^a, had been applied in planning the approach to patients, at the onset of the disease, possibly the number of deaths would have been lower, as shown by numerous international scientific studies that point out as criminal the study developed in Manaus that used chloroquine (a molecule more toxic than hydroxychloroquine) in quantities 4 times above the recommended doses in ALL serious studies that address treatment of COVID-19 and led to or contributed to the death of several volunteer patients in vulnerable situations. The treatment with hydroxychloroquine, in the appropriate dose, together with azithromycin, used at an early stage, in fact works. This was proved by the June 2020 study by the team of virologist Didier Raoult^b (researcher with 159 thousand citations^c), where only 0.9% of the 3037 treated patients lost their lives (zero deaths with patients under 60 years).

^a<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7118652/> - Siddiqi HK. *Journal of Heart and Lung Transplantation* 39 (2020) 405-407. DOI: 10.1016/j.healun.2020.03.012

^b: <https://www.sciencedirect.com/science/article/pii/S1477893920302817> - Lagier JC et al. *Travel Medicine and Infections* 36 (2020) 101791. Disease DOI: 10.1016/j.tmaid.2020.101791

^c: https://scholar.google.fr/citations?user=n8EF_6kAAAAJ&hl=fr

In other words, the complaint is narrating a unique hypothesis in which a president was elected with the purpose of killing his very voters through a pandemic that he did not create, nor could anticipate to happen. As the cure rate is over 90%, it can only be concluded that the genocidal plan was pre-conceived in unimaginable divination. In fact, the plan was also suicidal, as the President also contracted the disease himself and used a secret medication that he did not want to share with the Brazilian people, reserving its use only for him. Obviously, that was not what happened. The information about personal treatment, however, was kept from the public by a few personalities in the country, such as the COVID-19 Combat Coordinator of the State of São Paulo, Dr. David Uip, who used hydroxychloroquine himself but denied the fact until he was confronted

adotar medidas destinadas a impedir os nascimentos no seio do grupo; e) efetuar a transferência forçada de crianças do grupo para outro grupo; Será punido: (...).



ACADEMICS FOR LIBERTY ASSOCIATION
AND
NATIONAL ASSOCIATION OF MP PRO-SOCIETY



with a prescription in his own name containing the medication. In addition to him, another renowned doctor in Brazil, Dr. Kalil, who coordinates the Sírio Libanês Hospital in São Paulo, who was also against the use of hydroxychloroquine in the early treatment of COVID-19, admitted using the drug to treat the disease once he became ill. He was the private doctor of Mr. Luís Inácio LULA da Silva, former president of Brazil, sentenced in the Operation Car Wash.

The basic assumption of the crime pointed out in the complaint is that there is a "generalized" or "systematic" attack against the civilian population. How may the President be attacking the population that elected him, which is an absurd in itself, if moreover, he is implementing measures to combat the coronavirus, that have resulted in the second highest recovery rate in the world¹⁹ and a mortality smaller than several first world countries, as stated above? How can he be committing an attack, if he is just implementing more effective measures to contain the disease, being certain that the authors themselves point to government measures to combat the pandemic? None of the measures suggested by the Complainants, on the other hand, are considered effective. For all of them there are opinions to the contrary. There is no unanimity on how to fight the disease. What exist are techniques that fit the political objectives of the complainants and that result in the economic destruction of the country.

The absurdity of the imputation in the international crime pointed out compels us to dwell upon the imputation of crimes in the Brazilian Criminal Code. Domestically, Mr. President could never commit the crimes mentioned. Those of articles 131 and 132 of the Brazilian Penal Code are crimes that punish individualized situations of risk, with a clearly defined victim and the complainants point out that Mr. President is causing the mass death of the population that elected him. There is a clear logical incompatibility. The other crimes in the Brazilian Criminal Code, articles 267 and 269, that punish collective situations of risk, are equally impossible to configure, since the pandemic had an international origin and is killing thousands worldwide. Furthermore, how could Mr. President have committed the crime of violation of a preventive health measure if the authorities of his own government were the ones to initiate establishing the guidelines to prevent contamination that are being strictly obeyed and with the extension of these guidelines by state governments and city halls? If there is no adequacy to criminal law at the domestic level, even worse at the international level.

Notice, Your Excellencies, that in the country's domestic law there is a law regulating genocide²⁰, but the complainants did not have the audacity to impute the crimes foreseen there to the President, not only because they know that this crime did not occur, but because they want to hinder internal accountability for the slander committed. But as ignorance has no limits, even if falsely imputing a crime against honor of Mr. Presidente Bolsonaro, slander persists.

19

<https://www.cnnbrasil.com.br/saude/2020/06/25/covid-19-brasil-se-torna-pais-com-mais-recuperados-no-mundo-diz-universidade>

20

http://www.planalto.gov.br/ccivil_03/leis/l2889.htm#:~:text=LEI%20N%C2%BA%202.889%2C%20DE%201%C2%BA%20DE%20OUTUBRO%20DE%201956.&text=Define%20o%20crime%20de%20genoc%C3%ADdio



ACADEMICS FOR LIBERTY ASSOCIATION
AND
NATIONAL ASSOCIATION OF MP PRO-SOCIETY



As they observed that the crime of genocide is even more absurd than the crime against humanity, they decided to use its nomenclature only as rhetoric, but domestically, in Brazil, they do the opposite, point the spotlight of accusation against the President, emphasizing the existence of crime of genocide²¹ and even against indigenous people. The coronavirus does not choose ethnicity or gender, nor does it choose political or ideological orientation.

V. THE INADEQUACY TO *MENS REA*

It was not enough that the complainants are imputing a crime that would be committed in full democratic normality, with the government taking all measures to avoid as far as possible the harmful consequences of the a disease that kills on a global scale, they also state in their deceptive claim that the supposed international crime was committed through “*culpa stricto sensu*”, which is equivalent to the “negligence” of common law.

That's right, an “unintended crime against humanity”, a legal figure unknown in the world. And they want to emphasize this, when they say that he acted «irresponsibly» and that his «negligence» contributed to worsening the pandemic situation. In addition to negligence being incompatible with the definition of an international crime, as demonstrated, there was no negligence whatsoever. On the contrary, all possible measures are being taken by the federal government and only not in greater numbers because the Supreme Court prevented it from doing so. One could think of nitwit and ignorance, but it is pure and simple bad faith of the complainants. The charges non-existent facts against President Bolsonaro, incurring under Brazilian domestic law a crime of slanderous denunciation in the manner attempted (Brazilian Criminal Code, Art. 339. *Give cause to the initiation of a police investigation, a judicial proceeding, the initiation of an administrative investigation, a civil investigation or an administrative misconduct action against someone, imputing to him a crime of which he is innocent*)

They do not hide that they aim with this complaint to deepen the political use of the pandemic, internally and internationally. Even at the domestic level, the reference to negligence is incompatible with the crimes that punish situations of risk they say have been perpetrated.

It is observed that the international legislator did not foresee the hypothesis of a crime against humanity in the same way as the crimes of articles 131, 132, 267 and 268 of the Brazilian Penal Code - BPC, which are crimes that punish situations of risk, since they are motivated by the intent of putting one deliberately at risk, subjective type or *mens rea*, thus incompatible with those who aspire the death of the population they govern and who elected him. International crime agents aim to massacre the population, aim at genocide, widespread extermination, behaviors of the highest perversity, actions totally incompatible with the notion of putting one at risk. Explaining better, in the aspect of subjective typicality, in the BPC crimes imputed to Mr. President, the agent's conscious will reaches only the intent of risk, never of damage, death, for example. The only

21

<https://noticias.uol.com.br/colunas/jamil-chade/2020/07/26/bolsonaro-e-denunciado-no-tribunal-de-haia-por-crimes-contra-humanidade.htm>; <https://catracalivre.com.br/cidadania/bolsonaro-e-denunciado-por-genocidio-em-tribunal-internacional/>



ACADEMICS FOR LIBERTY ASSOCIATION
AND
NATIONAL ASSOCIATION OF MP PRO-SOCIETY



compatibility of this modality of intention in the Rome Statute - RS is the responsibility of superiors, Article 28.

The institute closest to the intention of putting one at risk, in the law of common law, which inspired the international legislator, is *recklessness*. For those who act, who are accused of the practice of international crimes, the Rome Statute (RS) demands the intent of harm, as observed in Article 30²², even because it implies the perpetrator would personally lead the killing, that is, would act within the hypothesis of article 25 “a” “ ” and “b”, although they do not say so. In other words, for the Rome Statute, those who practice or order the practice of an international crime actively want the mass killing of people, as a method of political or military action.

There is nothing to say about the crime of genocide, because they used the term exclusively as rhetoric. The Representation's authors carry out the following simple and mistaken syllogism : given that many people died, it follows that a genocide occurred. As the fallacious denunciation does not concern itself with minimally describing the extent to which there would have been a genocide, according to the requirements of article 6 of the Rome Statue, nor before the Brazilian domestic law that governs the matter, we understand that the answer to article 7, this one clearly imputed, is enough. As stated, the complainants did not dare to make this imputation internally knowing that it would be even more absurd.

VI. THE INCOMPATIBILITY WITH THE ELEMENTS OF THE CRIME AGAINST HUMANITY

Observing these requirements of objective and subjective typicality, let us see the incompatibility of the description of the facts with the requirements of the elements of the crime President Bolsonaro is accused of having committed.

In italics follows the demonstration of inadequacy. The incrimination begins in article 7 of the RS and is complemented by article 9, establishing the elements of the crime. In fact, the elements of the crime are provided for in a treaty parallel to the RS, curiously omitted by the representatives of the entities that made the request to Your Excellencies:

Article 7 (1) (k)

Crime against humanity of other inhumane acts

Elements

22

Mental element 1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge. 2. For the purposes of this article, a person has intent where: (a) In relation to conduct, that person means to engage in the conduct; (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events. 3. For the purposes of this article, "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly

12 / 15



ACADEMICS FOR LIBERTY ASSOCIATION
AND
NATIONAL ASSOCIATION OF MP PRO-SOCIETY



1. The perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act. Note: clearly the conduct is essentially active. The crime agent carries out an attack against the civilian population, which can only be done by action.

2. Such act was of a character similar to any other act referred to in article 7, paragraph 1, of the Statute. Note: the notion of what the attack must take any form prescribed in the previous paragraphs. It is a rule of systematic interpretation. And in the previous paragraphs there is no conduct related to crimes connected to public health, for the reason below.

3. The perpetrator was aware of the factual circumstances that established the character of the act. Note: in this item, it is necessary to fill in the subjective typicality, that is, the agent acts intentionally, whose conscious will, as in our country, must fill all the elements of the crime. The desire in this case, of course, is to damage. Just see the description of intent in article 30 of the RS, mainly in item 2.b. As stated, the only modality of intention of putting one at risk in international crimes exists in the Superior Responsibility. In that case it would be a rough comparison with the recklessness of common law.

4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population. Note: in item 4, isolated acts are excluded. An international crime is a conduct of results on a large scale, either because of its effects or because it is methodical, that is, it is part of an established plan. In other words, in the delirious wording of the petition, Mr. President was elected with the purpose of spreading an epidemic to kill the Brazilian population. In fact, he knew from the campaign that there would be a global pandemic.

5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population. Note: item 5 reinforces the requirement that the awareness includes the large-scale or methodical execution.

Nothing whatsoever written in the complaint fits the requirements of adequacy to the imputed crime. The narrative is in itself incompatible with the requirements of the Rome Statute for an international crime against humanity predicted at Article 7, 1, *k*, to exist.

In short, President Bolsonaro, in addition to not being carrying out a widespread and systematic attack against the population he governs, not least because the denunciation fails to describe it, is not inflicting any suffering on the same population, or on public health. On the contrary, he has established numerous measures to finance the expansion of the hospital network and tries to minimize the serious economic damage that the pandemic is causing. It is in this second part that many of the questions that come from the left, that is, from those who support the virus, lie. Quarantine implies suspension of economic activities and increased side effects such as preventable deaths from chronic diseases that following the motto #stayathome are taking too long to seek medical treatment. In addition, leads to the country's economic downturn, at a time it was still recovering from disastrous administrations by previous governments, marked by the most serious case of corruption the world has ever known, as Operation Car Wash demonstrated.



ACADEMICS FOR LIBERTY ASSOCIATION
AND
NATIONAL ASSOCIATION OF MP PRO-SOCIETY



Corruption at the highest degree simply destroyed the Brazilian economy, and the current President has been managing to rebalance economic relations. Returning to the state of devastated economy is an opportunity for the left to try to return to power.

In order to have an idea of the irresponsibility of the petition in knocking on the doors of this Court, Law 13,979, of February 6, 2,020, which the same complaint says was approved urgently by the Brazilian National Congress to deal specifically with the emergence of Covid-19, resulted from a joint project of the Supreme Federal Court and the President of the Republic. That way one sees that it brings to this Court a unique case of crime against humanity in full exercise of democracy, with the three powers of the Republic functioning. In addition, of course, to refer to a future extermination, which they hope will happen, unthinkable requirement for any jurist who undertakes work in field of international criminal law. It also speaks of Interministerial Ordinance no. 05, of March 17, 2,020, which establishes quarantine measures. In other words, the deranged petition demonstrates that the President's own government, appointed as the perpetrator of an international crime about to happen, at the same time issued rules aimed to control social contagion, which is exactly the opposite conduct to the crime pointed!

President Bolsonaro is not only concerned with public health, he is also trying to balance the fight against the pandemic with the needs of the country's economy, which is seriously shaken by successive corruption scandals, which have ruled out investments. In other words, it is necessary to balance the fight against the pandemic with the need to preserve jobs, an arduous task in any country, but infinitely more difficult in Brazil, in which opponents of the legitimately elected government try to sabotage the liberal-conservative guidance that enshrined victorious in the 2018 elections.

Considering that it is already known that the coronavirus arrived in Brazil in October/November of 2,019, it is not difficult to assume that the virus has spread throughout the whole Brazilian summer, considering the large flow of tourists at this time. The contamination spiraled on a large scale in February, when Carnival happened. Those who wish to now prolong the quarantine, knowing that the economy will go into complete destruction, should have asked for this measure before Carnival.

These are the clarifications made at that moment, in order to establish the necessary and prior contradictory, to demonstrate to Your Excellencies that not only there is no international crime against humanity to be inquire, but, moreover, that the authority appointed as the perpetrator of an international crime is, in reality, the victim of a crime provided for in the Brazilian Criminal Code, target of political persecution, so that it becomes clear to this court that the pandemic in the Brazil is being explored in political terms, being, perhaps, a unique example in the world, unfortunately.

From Brasília, Federal District, to Hague, The Netherlands, August 25, 2020.



**ACADEMICS FOR LIBERTY ASSOCIATION
AND
NATIONAL ASSOCIATION OF MP PRO-SOCIETY**



**VIVIANE COELHO DE SÉLLOS KNOERR
BAR of São Paulo State n.º 128.676
Lawyer of Academics For Liberty Association**

**DOUGLAS IVANOWSKI BERTELLI KIRCHNER
BAR of Federal District n.º 57.332
Lawyer of National Association of MP Pro-Society**