

**YOUR EXCELLENCY FATOU BENSOUA, PROSECUTOR OF THE
INTERNATIONAL CRIMINAL COURT**

PARTIDO DEMOCRÁTICO TRABALHISTA – PDT, registered under Federal Tax CNPJ/MF No. 00.719.575/0001-69, having its registered office at SAFS - Quadra 02 - Lote 03 (behind the Itamaraty annex building), Plano Piloto - Brasília/DF, ZIP Code 70042-900, herein, represented by its national president, **CARLOS ROBERTO LUPI**, Brazilian, single, administrator, bearer of identity card No. 036289023, registered under Federal Tax Number CPF/MF No. 434.259.097-20, with email address: clupi@uol.com.br and its registered office at SAFS - Quadra 02 - Lote 03 (behind the Itamaraty annex building), Plano Piloto - Brasília/DF, ZIP Code 70.042-900, respectfully comes, through its undersigned Counsel, constituted by power of attorney attached (**doc. 01**), before Your Excellency, based on articles 15.1 and 53 of the Rome Statute, to present

COMPLAINT

against **JAIR MESSIAS BOLSONARO**, Brazilian President, brazilian, married, with address at Palácio da Alvorada, SPP Zona Cívico- Administrativa, Brasília, Distrito Federal, ZIP Code 70.150-000, for the crime against humanity described in article 7, item “k”, of the Rome Statute, endangering the Brazilian people and the world population, as will be duly proved in the following topics.

I. PRELIMINARY STATEMENTS

I.I LEGAL COUNSEL AND NOTICES

The present legal counsel will assist the Plaintiff regarding numerous criminal attitudes engaged by Mr. Jair Messias Bolsonaro, President of the Federative Republic of Brazil. The Plaintiff, Partido Democrático Trabalhista (PDT) will be represented in this complaint by the following attorneys, duly registered in the Brazilian Bar Association - OAB: **WALBER DE MOURA AGRA** (registered under OAB/PE No. 757-B), **MARA DE FÁTIMA HOFANS** (registered under OAB/PE No. 68.152), **MARCOS RIBEIRO DE RIBEIRO** (registered under OAB/PE No. 62.818), **IAN RODRIGUES DIAS** registered under OAB/DF No. 10.074), **ALISSON EMMANUEL DE OLIVEIRA LUCENA** (registered under OAB/PE No. 37.719) and **NARA LOUREIRO CYSNEIROS SAMPAIO** (registered under OAB/PE No. 29.651).

The address chosen to receive notifications regarding this procedure is the office of the National Office of the Partido Democrático Trabalhista (PDT), located at SAFS - Quadra 02 - Lote 03 (behind the Itamaraty annex building), Plano Piloto - Brasília/DF, ZIP Code 70.042-900. Notifications can also be sent to the following e-mail addresses: walberagraadvogados@gmail.com and walberagraadv@uol.com.br.

II. STATEMENT OF FACTS

It is common knowledge that the world is facing an unprecedented health emergency, caused by the COVID-19 pandemic. The level of spread of SARS-CoV-2 reaches critical rates in Brazil and in all other countries. It is so definitely true that on January 30, 2020, the World Health Organization (WHO) declared that the outbreak of the COVID-19 constitutes a Public Health Emergency of International Concern (PHEIC) - the highest level of WHO alert, as predicted by the International Health Regulations (IHR).

PHEIC means, under the terms of article 1 of the International Health Regulations¹, “an extraordinary event that is determined to constitute a public health risk to other States through the international spread of disease; and to potentially require a coordinated international response”.² On March 11, 2020, the World Health Organization (WHO) declared COVID-19 as a pandemic.

According to data made available by the World Health Organization (WHO) on May 31, 2020, there are 5,934 936 confirmed cases in the world and 367,166 deaths due to COVID-19. Here is the number of cases and deaths by Region.³

In Brazil, the infection curve grows in alarming proportions, which is why a state of public calamity was decreed (Legislative Decree No. 06, of 03/20/2020).⁴ There are several measures taken by States and Municipalities trying to avoid the chaos that could arise if the guidelines issued by the world health authorities are not followed by the population. Even so, according to IRRD data, in Brazil, until May 31, 2020, 514.849 cases of COVID-19 were confirmed and 29.314 deaths by the disease were recorded.⁵

The recommendation of the World Health Organization (WHO) is to have social isolation and voluntary quarantine as measures to reduce contagion rate of COVID-19. In a speech during the extraordinary and virtual summit of the G20, the Director-General of WHO, Tedros Adhanom Ghebreyesus, reinforced the thesis that “social isolation is a tool to fight coronavirus, in which the best and only way to protect life, livelihoods and savings is to stop the virus”.⁶ Likewise, the former Minister of Health, who was the minister at the beginning at the time of the COVID-19 outbreak, Luiz Henrique Mandetta, who was fired by the Brazilian President for strictly following WHO recommendations, also indicated social isolation as the most effective way to contain the contagion progress from COVID-19.

¹ Available at: < [https://www.who.int/dg/speeches/detail/who-director-general-s-statement-on-ihr-emergency-committee-on-novel-coronavirus-\(2019-ncov\)](https://www.who.int/dg/speeches/detail/who-director-general-s-statement-on-ihr-emergency-committee-on-novel-coronavirus-(2019-ncov)) > . Accessed on 06 May, 2020.

² Available at: < <https://apps.who.int/iris/bitstream/handle/10665/246107/9789241580496-eng.pdf;jsessionid=7088CE624FBA4C901FD01C94725B5AC7?sequence=1> > . Accessed on 06 May, 2020

³ Available at: < https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200531-covid-19-sitrep-132.pdf?sfvrsn=d9c2eaef_2 > . Accessed on 01 June, 2020.

⁴ Available at: < http://www.planalto.gov.br/ccivil_03/Portaria/DLG6-2020.htm > . Accessed on May 6, 2020.

⁵ Available at: < <https://www.irrd.org/covid-19/#brasil> . > Accessed on May 6, 2020.

⁶ Available at: < <https://noticias.uol.com.br/ultimas-noticias/agencia-estado/2020/03/26/oms-reforca-proposta-de-isolamento-social-contra-coronavirus.htm> > . Accessed on May 6, 2020.

*The Epidemiological Bulletin of the Brazilian Health Ministry, dated April 9 (nine), 2020, informs that “the Health Ministry considers the social distancing strategies adopted by states and municipalities, contribute to avoid the collapse of local healthcare systems, as it has been noted in countries like USA, Italy, Spain, China and recently in Ecuador. The measures of extended social distance must be maintained until the equipment’s supply (beds, PPE, respirators and laboratory tests) and health teams (doctors, nurses, other health professionals, etc) are available in sufficient quantity”.*⁷

Nevertheless, since this scourge’s beginning in Brazil, Mr. Jair Messias Bolsonaro downplays the outbreak in order to discredit all scientifically proven studies on COVID-19. As if that were not enough, He still acts with discrepancy regarding the guidelines established by the World Health Organization (WHO) and urges the population to return to normal, as a way to save the country's economy.

This has to do with the Brazilian President mirroring the advertising campaign “Milan does not stop”, which, opposed to all the guidelines of the health authorities of the world, encouraged the inhabitants of the city of Milan to return to normal activities, even in the midst of to the COVID-19 pandemic.⁸ The city’s mayor, Giuseppe Sala, said he acknowledged the mistake when he released the campaign video that said the city could not stop.⁹ **The experience of other countries fighting COVID-19 has demonstrated that a large part of the population will have contact with the virus, but it is imperative to take sanitary measures that reduce the contagion speed, specifically to prevent the healthcare system from collapsing, which is already happening in Brazil.**

⁷ Available at: < <https://www.saude.gov.br/images/pdf/2020/April/09/be-covid-08-final-2.pdf> > . Accessed on April 22, 2020.

⁸ Available at: < <https://oglobo.globo.com/mundo/apos-5402-mortes-prefeito-de-milao-admitiu-erro-de-ter-apoiado-campanha-para-cidade-nao-parar-24332774> > . Accessed on March 27, 2020.

⁹ Available at: < <https://noticias.uol.com.br/saude/ultimas-noticias/redacao/2020/03/27/prefeito-admite-erro-ao-apoiar-campanha-milao-nao-para-imitada-no-brasil.htm> > . Accessed on March 27, 2020.

Attention may be drawn to the multiple episodes that show the occurrence of a crime against humanity committed by Mr. Jair Messias Bolsonaro, the Brazilian President:

a) On March 15, 2020, the Brazilian President attends and urges the population to participate in a demonstration against the National Congress and the Federal Supreme Court;¹⁰

b) On March 24 (twenty-four), 2020, the Brazilian President announced, in an official statement in the media, that the Brazilian population should return to normal;¹¹

c) On March 25 (twenty-five), 2020, the Federal Government launched on its social media the advertising campaign “Brazil cannot stop”, with the purpose of urging society to return to normal, despite having planned to broadly launch the advertising on March 28 (twenty-eight), 2020. It should be mentioned that the Federal Government would invest the amount of approximately R\$ 4.8 million reais to produce the advertising campaign, which was prevented by a court order made ¹² in the records of Public Civil Action Case No. 5019484-43.2020.4.02.5101 / RJ;¹³

d) Also on March 25 (twenty-five), 2020, the Federal Government issued Decree No. 10292, which included among the essential services the functioning of churches and lottery houses, in order to have a free movement of people in these places, even when there are local prohibitions determined by mayors and state governors;¹⁴

¹⁰ Available at: <<https://www1.folha.uol.com.br/poder/2020/03/bolsonaro-deixa-isolamento-do-coronavirus-e-de-carro-participa-de-ato-pro-governo-na-esplanada.shtml>>. Accessed on April 20, 2020.

¹¹ Available at: <<https://brasil.elpais.com/brasil/2020-03-25/em-cadeia-de-tv-bolsonaro-minimiza-coronavirus-para-insuflar-base-radical.html>>. Accessed on April 20, 2020.

¹² Judicial decision available at: <<https://www.jota.info/wp-content/uploads/2020/03/evento-4-despdec1.pdf>>. Accessed on April 20, 2020.

¹³ Available at: <<https://www.youtube.com/watch?v=hQQZE7LQIGk>>. Accessed on April 20, 2020

¹⁴ Available at: <http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/decreto/D10292.htm>. Accessed May 6, 2020.

e) On March 26 (twenty-six), 2020, the Brazilian President published on his official Facebook page a video of a motorcade protest held in Camburiú (SC), against social isolation, with the following caption: “The people want to work.”¹⁵

f) On March 29 (twenty-nine), the President walked the streets of Brasília (DF) in order to encourage people to return to work. The fact resulted in an order, requested by the Federal Prosecutor’s Office, determining a fine of R\$ 100.000,00 (one hundred thousand reais) in case of order infringement, but even so, the President failed to comply with the court order made in the records of Public Civil Action No. 5002814-73.2020. 4.02.5118/RJ, pending before the 1st Federal Court of Duque de Caxias (RJ)¹⁶, that have determined that the Union should abstain “from adopting any incentive for non-compliance with the social isolation recommended by WHO (World Health Organization).”¹⁷

g) Em 9 (nove) de abril de 2020, o Presidente da República foi às ruas em Brasília (DF), o que inevitavelmente atraiu aglomeração de pessoas, em descompasso com as determinações encetadas contra o novo coronavírus; On April 9 (2020), the Brazilian President went to Brasília streets, which inevitably caused an agglomeration, disrespecting the decisions initiated against COVID-19;¹⁸

h) On April 11, 2020, President Jair Bolsonaro visited the construction site of a field hospital in Águas Lindas de Goiás, in the surroundings of Brasília (DF), which caused an agglomeration in the place;¹⁹

¹⁵ Available at: <<https://www.facebook.com/watch/?v=237367117652507>>. Accessed on April 20, 2020.

¹⁶ Decision available at: <<https://www.conjur.com.br/dl/decisao-juiz-loterica-igreja2.pdf>>. Accessed on April 20, 2020.

¹⁷ Available at: <<https://noticias.uol.com.br/colunas/rubens-valente/2020/03/30/bolsonaro-coronavirus-justica.htm>>. Accessed on April 20, 2020.

¹⁸ Available at: <<https://veja.abril.com.br/blog/radar/bolsonaro-e-vaiado-ao-passear-em-padaria-de-brasilia-vai-para-casa/>>. Accessed on April 20, 2020.

¹⁹ Available at: <<https://g1.globo.com/jornal-nacional/noticia/2020/04/11/bolsonaro-descumpre-medidas-de-distanciamento-social-pelo-terceiro-dia-seguido.ghtml>>. Accessed on April 20, 2020.

i) On April 19 (nineteen), 2020, President Jair Bolsonaro participated in a protest demanding military dictatorship and against social isolation and the democratic institutions;²⁰

j) On May 3, 2020, the Brazilian President attended an anti-democratic act against the National Congress and the Federal Supreme Court, in Brasília (DF).

²¹On the occasion, Jair Messias Bolsonaro, one more, criticized social isolation and restrictive measures adopted by local governments;²²

l) On May 11, 2020, the Federal Government issued Decree No. 13.344/2020, including the beauty salons, barber shops and gyms among the list of essential services.²³

There is no doubt that the irresponsible speeches made by the Brazilian President concerning COVID-19, influence the behavior of citizens for noncompliance with the measures necessary to combat COVID-19. In this regard, there is a graph that relates the increase of cases and deaths resulting from COVID-19 in Brazil with the speeches of Jair Messias Bolsonaro. In this graph, cases begin to be counted from February 26 (twenty-six), the date of the first diagnosis of COVID-19 confirmed in Brazil. ²⁴ See the mentioned graph below:

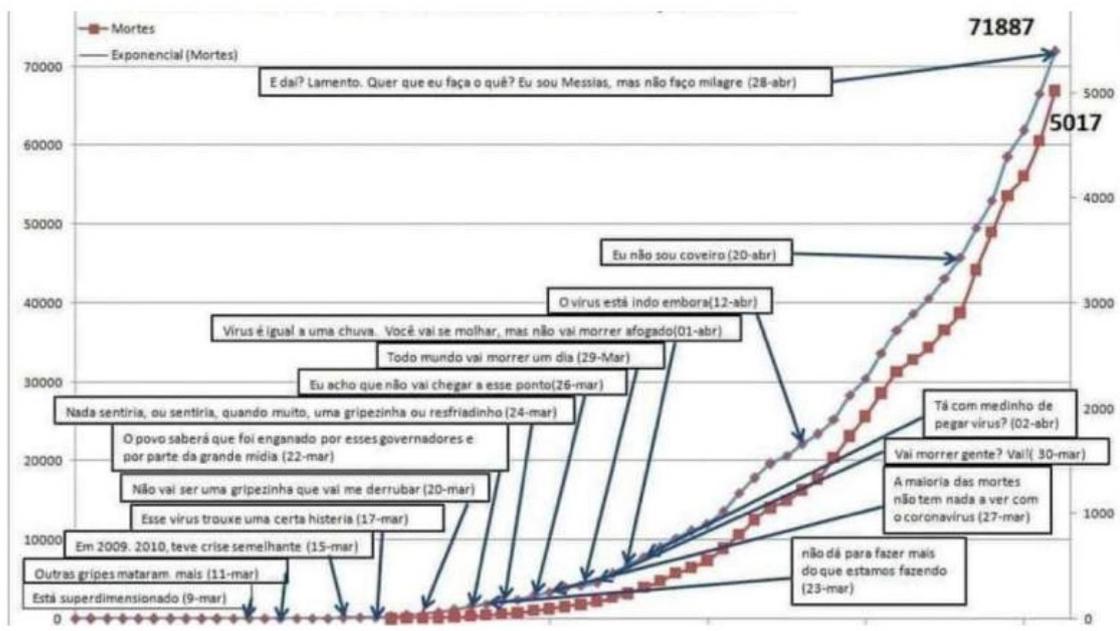
²⁰ Available at: <<https://www.opovo.com.br/coronavirus/2020/04/19/bolsonaro-desrespeita-quarentena-e-participa-de-protesto-elhan-isolamento.html>>. Accessed on April 20, 2020.

²¹ Video of the act available on the President's official Facebook page: <<https://www.facebook.com/211857482296579/videos/2907182709398401/>>. Accessed May 6, 2020.

²² Available at: <<https://g1.globo.com/fantastico/noticia/2020/05/03/bolsonaro-volta-a-apoiar-ato-antidemocratico-contr-o-stf-eo-congresso-em-brasilia.ghtml>>. Accessed May 6, 2020.

²³ Available at: <http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/decreto/D10344.htm#art1>. Accessed on May 12, 2020.

²⁴ Available at: <<https://jc.ne10.uol.com.br/politica/2020/04/5607630-grafico-que-relaciona-os-casos-de-coronavirus-no-brasil-com-falas-de-bolsonaro-viraliza-no-whatsapp.html>>. Accessed on May 6, 2020.



While almost all world leaders comply with the guidelines based on scientific studies, Jair Messias Bolsonaro puts the life of the Brazilian population at risk, insisting to express that COVID-19 is just a “little flu”.²⁵ In-between, the health care system in Brazil is already collapsed, with no structure to properly serve the people affected by the most critical condition of the disease, notably the phase of Severe Acute Respiratory Syndrome (SARS).

It must be noted that in the States of Espírito Santo, Pará and Ceará, 70% (seventy percent) of ICU (Intensive Care Unit) beds are occupied. In the States of Pernambuco, Rio de Janeiro and Amazonas, the situation is collapsing, with waiting lines for hospital admission and occupation above 90% (ninety percent).²⁶ The State of Amazonas, for example, has the most critical numbers in Brazil of cases and deaths due to COVID-19.²⁷ It should also be mentioned that the State of São Paulo reached 3.045 deaths from COVID-19 on May 6 (six), 2020. Still according to the data released by São Paulo’s State Government, hospitals have 86% (eighty-six percent) of ICU

²⁵ Available at: <<https://time.com/5816243/brazil-jair-bolsonaro-coronavirus-governors/>>. Accessed on May 6, 2020.

²⁶ Available at: <<https://exame.abril.com.br/brasil/com-sus-a-beira-do-colapso-proposta-de-fila-unicas-utis-ganha-forca-2/>>. Accessed on May 6, 2020.

²⁷ Available at: <<https://noticias.uol.com.br/saude/ultimas-noticias/redacao/2020/04/22/coronavirus-amazonas-incidencia-brasil.htm>>. Accessed on May 6, 2020.

beds occupied by patients infected with the COVID-19.²⁸ In the State of Pernambuco, 99% (ninety-nine percent) of ICU beds are already occupied.²⁹

It is noteworthy, moreover, that besides the erratic conduct by the President, will also be applied criminal liability for omission. It is worth mentioning, in the absence of action regarding his primary duty to act, since Mr. Jair Messias Bolsonaro occupies the highest position of the Brazilian Executive Branch. The omission concerns the underreporting of cases of COVID-19, either due to the lack of tests, or due to the devastating failure in the information provided by the Federal Government. It is advisable to highlight that there are countless suspected deaths from COVID-19, but without confirmation, due to the lack of test kits and the delay in the results disclosure, these cases are not even counted by the Health Ministry.³⁰

On April 22 (twenty-two), 2020, the current Health Minister declared that Brazil will not adopt as a strategy the mass testing, explaining, at the time, the following: *“What I am showing is, more than that anything, the wisdom of having the data and interpreting the data, and taking actions from it, will make all the difference”*.³¹ However, no action is being duly taken by the President. It must be noted that an analysis made from records not processed by the Brazilian health system showed that the deaths caused by COVID-19 in the city of São Paulo were actually 168% above the official number, which strongly shows the underreporting.³²

As can be seen, the criminal acts of the Brazilian President are diverse and repeated, intentionally causing great suffering and seriously affecting the health and

²⁸ Available at: < <https://noticias.uol.com.br/saude/ultimas-noticias/redacao/2020/05/06/covid-19-sp-passa-dos-3-mil-mortos-e-tem-86-dos-leitos-de-uti-ocupados.htm> > . Accessed on May 6, 2020.

²⁹ Available at: < <https://www.folhape.com.br/noticias/noticias/coronavirus/2020/05/05/NWS,139508,70,1668,NOTICIAS,2190-PERNAMBUCO-TEM-OCUPACAO-NAS-UTIS-ESTADUAIS.aspx> > Accessed on May 6, 2020.

³⁰ Available at: < <https://www.bbc.com/portuguese/brasil-52059165> > . Accessed on March 27, 2020.

³¹ Available at: < <https://g1.globo.com/bemestar/coronavirus/noticia/2020/04/22/nao-tem-teste-em-massa-diz-ministro-da-saude-sobre-como-sera-avaliado-o-avanco-do-coronavirus-no-brasil.ghtml> > . Accessed on May 6, 2020.

³² Available at: < <https://g1.globo.com/bemestar/coronavirus/noticia/2020/04/29/subnotificacao-4-indicadores-de-que-ha-mais-casos-de-covid-19-no-brasil-do-que-o-governo-divulga.ghtml> > . Accessed on May 6, 2020.

physical integrity of the Brazilian population. Mr. Jair Messias Bolsonaro's petty attitudes only safeguard the shady interests of capital, so it must be clear that the COVID-19 pandemic bill cannot be paid with the lives of others, in an obvious disregard for individual and social rights. That being the context, it is not necessary to undertake Herculean efforts to see that the Brazilian President has no limits to patently violate the rights of people, which incurs, therefore, a clear violation of the legal assets protected by art. 7.1, "k", of the Rome Statute.

III. LEGAL ARGUMENT

III.I INTERNATIONAL CRIMINAL COURT JURISDICTION

Minister Enrique Ricardo Lewandowski states that the creation of the International Criminal Court under the Rome Statute was an important advance, since it was the first time in the history of the relationship between States that the necessary consensus was reached to be brought to trial by a permanent international court: politicians, military chiefs and ordinary people for committing crimes of highest scale.³³ Considering the preamble of the Rome Statute states that "the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,".

According to art. 1 of the Rome Statute, the International Criminal Court is a permanent institution, having power to exercise jurisdiction over persons for the most serious crimes of international concern, and shall be complementary to national criminal jurisdictions. Brazil signed the Statute on February 12, 2000, ratified on June 6, 2002, after being approved by the National Congress.³⁴ Brazil's submission to the International Criminal Court was adopted in the Brazilian Constitution through Constitutional Amendment No. 45/2004, which included Paragraph 4, in the article 5, of the Brazilian Constitution of 1988.

³³ LEWANDOWSKI, Enrique Ricardo. O Tribunal Penal Internacional: de uma cultura de impunidade para uma cultura de responsabilidade. **Revista Estudos Avançados**, São Paulo/SP, v.16, n. 45, p. 187 – 197, mai./ago. 2002. P. 187.

³⁴ Decree No. 4.388, of september 25, 2002. Available at: < http://www.planalto.gov.br/ccivil_03/decreto/2002/d4388.htm > . Accessed on May 6, 2020.

Additionally, according to arts. 5 to 8 of the Rome Statute, four of the most serious crimes of international law are subject to the jurisdiction of the International Criminal Court, namely: crime of genocide, crimes against humanity, war crimes and crime of aggression. Therefore, it is unquestionable that this International Criminal Court have power to exercise jurisdiction regarding the criminal facts which will be covered herein.

III.II ISSUES OF ADMISSIBILITY (ARTICLE 17 OF THE ROME STATUTE)

The content of the article 17 of the Rome Statute states that the International Criminal Court shall determine that a case is inadmissible if: a) The case is being investigated or prosecuted by a State which has jurisdiction over it, **unless the State is unwilling or unable genuinely to carry out the investigation or prosecution**; b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute; c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3 of the Rome Statute; and d) The case is not of sufficient gravity to justify further action by the Court.

In the present assumption, it is observed that this International Criminal Court may decide on the admissibility of the situation taken into consideration, given that, in addition to the case not having been the subject of an investigation or criminal procedure within the scope of Brazil's domestic jurisdiction, there is no desire to undertake an investigations for a subsequent trial in which the Brazilian President can be held responsible in the criminal sphere.

Better explaining: in Brazil, the President has prerogatives and immunities the process aimed at its criminal liability for a common crime. The Brazilian Federal Constitution of 1988 granted the President three important procedural immunities, namely: a) the charges will only be accepted after prior authorization by the Chamber of Deputies, by two-thirds (2/3) two of its members (Article 86 of Brazilian Federal Constitution of 1988); b) in the event of common offenses, The President shall not be

subject to arrest as long as no sentence is rendered (Article 86, Paragraph 3 of Brazilian Federal Constitution of 1988); and c) during his term of office, he cannot be held liable to acts outside the performance of his functions (Article 86, Paragraph 3 of Brazilian Federal Constitution of 1988).

It is a good idea to highlight that according to **article 27, item 1 of the Rome Statute**, the “Statute shall apply **equally to all persons without any distinction based on official capacity**. In particular, **official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence**”. Therefore, “Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person” (article 27, item 2 of the Rome Statute).

Accepting the accusation by the Chamber of Deputies, the Brazilian President will be submitted to trial before the Supreme Federal Supreme Court for being the most conducive court to deliberate on a crime committed by the highest office in the country (article 86 of the Brazilian Federal Constitution of 1988). **The information, in the case of crimes of unconditional criminal prosecution, will be offered by the Attorney General. It is up to him, on a discretionary basis, to decide on its admissibility. If the Attorney General chooses to file the investigation or pieces of information, it will not be possible to file an appeal, since it is the *dominus litis* of criminal prosecution.**³⁵The procedural rules for charging common crimes are provided for in Law No. 8.038/90 and in articles 230 to 246 of the Court Rules of the Federal Supreme Court.

Specifically regarding the means of public provocation of the Prosecution, for the purpose of investigating a common offense committed by the Brazilian President, there is the *notitia criminis*, the knowledge of the commission of a crime, which must be filed with the Supreme Federal Court. After assignment the judge-rapporteur will determine

³⁵ AGRA, Walber de Moura. **Curso de direito constitucional**. 6. Ed. Rio de Janeiro: Forense, 2010. P. 543.

the forwarding of the pieces of information to the Attorney General's Office, under the terms of article 230-b of the STF Internal Regulations.

Nestor Távora and Rosmar Rodrigues de Alencar states that “the Public Prosecutor, while facing a criminal complaint that contains sufficient elements revealing probable cause will exempt the need for an investigation, offering a prompt complaint; in the face of deficient complaints, it may be requested for the police agents to take action. The judge, on the other hand, facing the criminal complaint presented to him, may send it to the Public Prosecutor, for appropriate measures, or request the start of a police investigation ”.³⁶

Still, according to article 1 of Law No. 8.038/90, “in the case of crimes of public criminal prosecution, the Public Prosecutor's Office will have a fifteen days period to offer a complaint or request the filing for the investigation or the information pieces”. If the Public Prosecutor's Office requests the above mentioned filing there is no alternative for the Judge-Rapporteur other than determining the respective filing, pursuant to article 3, item I, of Law No. 8.038/90. It is worth saying that the Attorney General's discretionary power makes it impossible for the Brazilian population to seek domestic reliefs to hold the President of the Republic liable for crimes committed against the community.

After all these initial statements, it is important to point out the charges made against Mr. Jair Messias Bolsonaro, which has been filed before the Supreme Federal Court, at the Attorney General's request.

On March 30, 2020, the parties: Partido Democrático Trabalhista(PDT), Partido dos Trabalhadores (PT), Partido Socialismo e Liberdade (PSOL), Partido Comunista do Brasil (PCdoB), Partido Socialista Brasileiro (PSB) and Rede Sustentabilidade present criminal complaint against Mr. Jair Messias Bolsonaro, President of the Federative Republic of Brazil, reporting the crimes described in articles **132, 268, 286 and 319** of the **Brazilian Penal Code**. The crimes above mentioned are indicated below, therefore putting some context.

³⁶ TÁVORA, Nestor; RODRIGUES ALENCAR, Rosmar. **Curso de direito processual penal**. 11. Ed. Salvador: JusPodvim, 2016. P. 158.

Article 132 - Exposing the life or health of others to direct and imminent danger:

Penalty - detention of 3 (three) months to one (1) year, if the fact does not constitute a more serious crime.

Article 268 - Violating determination of public authorities, to prevent introduction or spread of contagious disease:

Penalty - detention of 1 (one) month to one (1) year and a fine.

Sole paragraph: The penalty is increased by one third, if the agent of the crime works in the public health system or is a doctor, pharmacist, dentist or nurse.

Article 286 - Publicly provoking a commission act of a crime:

Penalty - detention, of 3 (three) months to 6 (six) months, or fine.

Article 319 - Delaying or cease from doing, wrongfully, any official act, or practice official act, unlawfully, to satisfy personal interest or conviction:

Penalty - detention of 3 (three) months to one (1) year and a fine.

The factual scenario that supported the aforementioned criminal complaint is limited to the non-compliance with sanitary measures, exposing the population's life and health to the risks inherent to the critical effects of COVID-19. Additionally, the Brazilian President, taking advantage of his duties described in article 84, item VI, of the Brazilian Federal Constitution, editing decrees against scientific studies and international knowledge that show that social isolation is the most effective measure to prevent the rise of the infection curve of COVID-19. For example, Decree No. 10.282/2020 (as amended by Decrees No. 10.292 and 10.344), which provides, as essential, the activity of lotteries, churches, beauty salons, barber shops and gyms, as outlined below:

Article 3 The measures foreseen in Law No. 13.979, of 2020, must safeguard the exercise and operation of public services and essential activities referred to in Paragraph 1.

Paragraph 1. Public services and essential activities are those essential to meeting the urgent needs of the community, therefore considered those that, if not met, endanger the survival, health or safety of the population, such as:

XXXIX - religious activities of any nature, in accordance with the determinations of the Ministry of Health

XL - lottery houses.

LVI - beauty salons and barber shops, in accordance with the Ministry of Health's determinations; and

LVII - sports academies of all kinds, in accordance with the determinations of the Ministry of Health.

Even so, **the Federal Prosecutor's Office determined the case file to be closed**, which was accepted by the Minister Marco Aurélio, Judge's rapporteur of Petition 8759/DF, at the Federal Supreme Court, in a single judge decision made on April 13, 2020.

On March 25, 2020, Federal Deputy Reginaldo Lázaro de Oliveira Lopes, presented a criminal complaint against Mr. Jair Messias Bolsonaro, for the crime described in article 268 of the Brazilian Penal Code (Pet. 8744 / DF). The pace of the events that occurred in Brazil resulted in successive additions promoted by the plaintiff in this petition, notably to include the occurrence of the crime described in article 286 of the Brazilian Penal Code. Likewise, **the Federal Public Prosecutor's Office ordered to close the investigation**, in a statement launched on the records on April 7, 2020. The request for closing has not yet been analyzed by the Judge-Rapporteur.

On March 21 (twenty-one), 2020, the lawyer André Magalhães Barros also presented a criminal complaint against Mr. Jair Messias Bolsonaro, regarding the crime provided in article 268 of the Brazilian Penal Code (Pet. 8740/DF). **The Federal Prosecutor's Office determined the case file to be closed**, which was accepted by the Minister Marco Aurélio, in a single judge decision made on April 8, 2020.

It should also be noted that on March 25, 2020, the Coordination and Review Chambers of the Federal Prosecutor's Office and Office of the Attorney General for

Citizens' Rights, by their representatives, presented to the Federal Attorney General, through Joint Memorandum No. 38/2020, a proposal for a recommendation to the Federal Government, specifically to the Brazilian President, "that the implementation and execution of healthcare actions, as well as the transmission of pronouncements and related information, by any and every authority of the Federal Executive Branch, to be made in a coherent manner and based on the guidelines issued by the national health authorities and the World Health Organization, as well as based on the National Contingency Plan for Human Infection by COVID-19, from the Ministry of Health, duly compatible with the Public Health Emergency of International Concern - PHEIC, declared by the WHO".

In the order No. 1622/2020 made on March 26 (twenty-six), 2020, the Federal Attorney General decided to close said file, considering that the Public Prosecutor's Office "does not have the task of defining the best strategy for implementation of government action plans and health services appropriate to Brazilian geopolitical and socio-cultural circumstances ", as outlined below:

"(...) Nor is there any evidence of a possible criminal offense by the President, a situation that, if existed, could trigger the jurisdiction established in article 102, I, b, of the Federal Constitution. Furthermore, from a material point of view, the actions of the Brazilian Prosecutor's Office finds limits in the Constitution and the regulations, and cannot be involved in political nature acts, except when relevant legal effects in disagreement with the Constitution are produced, qualified, by the rule, for harmful effects. The statements of the President, as head of state and government, boast an undeniable political - and not administrative - dimension, being certain that political control, in a Democratic State, assumes a balance between the structural powers of the Republic and the Prosecutor's Office. Observing the system of checks and balances established in the Constitution, the decisive guidance regarding the political functions exercised by the President is reserved to the National Congress, and not to the Prosecutor's Office. In a critical environment marked by the acknowledgement of the COVID-19 pandemic and the existence of scientific uncertainties that naturally resulted from the exceptionality experienced, the Public Prosecutor's Office does not have the task

of defining the best strategy for implementing government action plans and health services appropriate to Brazilian geopolitical and socio-cultural circumstances ”.

In this regard, it is noted that this due to the inaction of the Federal Attorney General **the case has not yet been the subject of an investigation or criminal proceeding in the Brazilian justice system**. It is worth saying that it is not that domestic justice has no interest in managing the investigation or the procedure, or is unable to do so. The point is that, according to the jurisprudential magisterium of Minister Celso de Mello, “it is not for the Judiciary branch, the anomalous substitution to the state prosecuting body, to evaluate whether the information elements in the criminal complaint prove to be sufficient, or not to justify the formation of the *opinio delicti* by *Parquet* and to authorize, consequently, the complaint offer, therefore,, the accusatory system gives the Prosecutor’s Office, exclusively, in the public criminal prosecution, the formation of the *opinio delicti*, separating the function of accusing to the function of judgement ”. ³⁷

On the other hand, It must bear in mind that the case is serious enough to justify further intervention by the International Criminal Court, since the COVID-19 pandemic is a matter of interest to the entire international community, since the crimes committed by Mr. Jair Messias Bolsonaro affect not only the Brazilian population, but also citizens worldwide, which is why this complaint meets all the admissibility requirements established in the Rome Statute.

III.III. CRIME AGAINST HUMANITY DESCRIBED IN ARTICLE 7.1, K, OF THE ROME STATUTE

The scenario experienced in the COVID-19 pandemic is not an unusual case, as similar situations have already occurred in other moments in the history of humanity, such as the black plague, smallpox and the Spanish flu. History, writes Machiavelli, seems to walk in repetitive cycles, which are renewed in movements of revolution around themselves.³⁸ Notwithstanding the occurrence of catastrophes due to massive

³⁷ PET 8830 MC/DF, Rel. Min. Celso de Mello.

³⁸ MAQUIAVEL, Nicolau. **Vida e Obra. O Príncipe**. Translation by Olívia Bauduh. São Paulo: Nova Cultural, 1999. P. 15.

infections by microbiological organisms, it has always been necessary to bridge the leap from individual care to collective care. To control the scourge, men must make rational efforts in order to prevent the growth of the infection curve and the number of deaths. It would be the intuitive and rational reaction to safeguard human life.

It was echoing Oscar Wilde's noteworthy anti-mimesis aphorism; "Life imitates Art far more than Art imitates Life" that Albert Camus highlighted in his novel "The Plague", by the way of thinking of its character Rieux, according to which "The essential thing was to save the greatest possible number of persons from dying and being doomed to unending separation. And to do this there was only one resource: to fight the plague. There was nothing admirable about this attitude; it was merely logical."³⁹ In the present case, the Brazilian President goes diametrically opposite to the path designed by the World Health Organization (WHO) and all other countries, an attitude which has severely compromised the physical integrity of the Brazilian population.

While the world and Brazil reach an alarming number of infections and deaths as consequence of the COVID-19, Mr. Jair Messias Bolsonaro directs presidential acts to urge the population to "return to normal", in the same way as was done in Italy. But not solely that. The Brazilian President's criminal behaviour and his omissions uprighted the infection curve, increasing the number of deaths and the death rate as he promoted the collapse of the Brazilian healthcare system, as stated previously. It is worth mentioning that **Brazil has reached the milestone of ten thousand deaths caused by COVID-19, according to the Brazilian Health Ministry statement.**⁴⁰

The Rome Statute, in its Article 7 enumerating crimes against humanity, foresees:
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.

³⁹ CAMUS, Albert. **A peste**. Rio de Janeiro: Record, 2012. p. 119.

⁴⁰ Available at: < <https://www.correiobraziliense.com.br/app/noticia/brasil/2020/05/09/interna-brasil,853111/covid-19-brasil-ultrapassa-10-mil-mortes-com-155-939-casos-confirmad.shtml> > . Accessed on May 12, 2020.

It should be emphasized that according to article 21.1.c of the Rome Statute, the International Criminal Court can use elements of domestic law from signatory states, provided that those elements are compatible with the Statute, International Law, and internationally recognized rules and standards. It should also be highlighted that the plaintiff can use, to clarify this legal controversy, crime's definitions from the Brazilian Penal Code.

Of all Fundamental Rights, the guarantee to life, health and well-being are essential conditions, since they constitute a *sine qua non* for the exercise of all others. The COVID-19 pandemic context and its consequences have emphasized the importance of complying with the domestic and international human rights obligations, particularly those regarding Economic, Social, Cultural and Environmental, in all political and economic decisions adopted by states.

For the States, the duty to promote and encourage the disclosure of the adequate means of prevention and treatment aiming the use of the best practices and scientific technologies directly applicable to the fight against the spread of the viral pathogen. The United Nations has repeatedly recognized and reaffirmed by treaties and conventions the relevance of protecting Economic, Social and Cultural Rights for Democracy, Democratic State and Sustainable Development. Health is a human right recognized in the International Legal System of Human Rights, as well as in the domestic legal system of Brazil.

Pandemics have the power to seriously affect the right to health, either directly or indirectly, by the health risk inherent to the means of transmission of the infection and the high social incidence capable of disrupting healthcare systems, saturating the hospital assistance services and basic care. The right to health, as defined by article 6 of the International Covenant on Civil and Political Rights (adopted in the Brazilian Legal System through Decree No. 592 of July 6, 1992), is inherent to the human person and deserves legal protection. In Brazilian legal System, it is guaranteed by article 6 of the Brazilian Constitution.

The International Covenant on Economic, Social and Cultural Rights (adopted in the Brazilian legal system, through Decree No. 591, of July 6, 1992) dissects the Right to Health to recognize the general right to enjoy the highest possible level of physical and mental health. Within the possibilities of Brazil, although considering a context of extremely high demand for goods and services for the prevention and treatment necessary for adequate procedures regarding the COVID-19 pandemic, efforts and organization have not been made, notably due to the absence of strategic planning for the prevention and treatment of the infection, as recommended by the World Health Organization (WHO).

Furthermore, the Universal Declaration of Human Rights itself establishes in Article 25 the right to health and in Article 28 the right to have fully realized the rights and freedoms established therein. It is to say, to all people, that for the simple inherent condition of being human, the right to life, health and personal integrity, in the best governmental capacity, aiming to ensure that these rights are effectively guaranteed and not mere symbolism.

Additionally, the Protocol of San Salvador provides that everyone has the right to health, understood as the highest level of physical, mental and social well-being. In order to the right to health to be effectively provided, signatory States commit to recognize health as a public good and, particularly, to adopt the following measures to ensure that right: **a)** Primary health care, that is, essential health care made available to all individuals and families in the community; **b)** Extension of the benefits of health services to all individuals subject to the State's jurisdiction; **c)** Universal immunization against the principal infectious diseases; **d)** Prevention and treatment of endemic, occupational and other diseases; **e)** Education of the population on the prevention and treatment of health problems, and **f)** Satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.(article 10 of the Protocol of San Salvador).

The Right to Health includes adequate and timely attention and care, as well as the availability, accessibility, adaptation and quality of healthcare services, goods and facilities, including medicines and the benefits of scientific progress on an equal and non-discriminatory basis. The foregoing is enclosed in the American Declaration of the

<p>Published at the Federal Register of 24.3.2020 - Extra Edition A</p>	<p>the Crisis Committee for Supervision and Monitoring of Covid-19 Impacts.</p>
<p>Bill No. 791, 2020</p>	<p>Amends Law No. 13,979, of February 6, 2020, to establish the National Committee for Bodies of Justice and Control to prevent or end litigation, including judicial ones, related to fighting the public health emergency arising from covid-19.</p>
<p>Ordinance No. 133, of 23.3.2020</p>	<p>Provides for the exceptional and temporary restriction to the entry of foreigners into the country from a list of nations, as recommended by the National Health Surveillance Agency - Anvisa</p>
<p>Provisional Presidential Decree No. 928, of 23.3.2020</p>	<p>Amends Law No. 13.979, of February 6, 2020, which provides for measures to deal with the public health emergency of international concern due to COVID-19, and revoke article 18 of the Provisional Measure No. 927, of March 22, 2020.</p>
<p>Provisional Presidential Decree No. 927, of 22.3.2020</p> <p>Published at the Federal Register of 22.3.2020 - Extra Edition - L</p>	<p>Provides for labor measures to deal with the state of public calamity recognized by Legislative Decree No. 6, of March 20, 2020, and the public health emergency of international concern resulting from COVID-19, and making other related provisions.</p>
<p>Decree No. 10.288, of 22.3.2020</p> <p>Published at the Federal Register of 22.3.2020 - Extra Edition - J</p>	<p>Regulates Law No. 13.979, of February 6, 2020, to define press activities and services as essential.</p>

<p>Ordinance No. 132, of 22.3.2020</p> <p>Published at the Federal Register of 22.03.2020 - Extra Edition - K</p>	<p>Provides for the exceptional and temporary restriction of foreigners entering the country, by land, regarding foreigners from the Oriental Republic of Uruguay, as recommended by the National Health Surveillance Agency - Anvisa.</p>
<p>Provisional Presidential Decree No. 926, of 20.3.2020</p> <p>Published at the Federal Register of 20.3.2020 - Extra Edition - G</p>	<p>Amends Law No. 13,979, of February 6, 2020, to provide procedures for the acquisition of goods, services and supplies intended to deal with the public health emergency of international importance resulting from COVID-19.</p>
<p>Decree No. 10.285, of 20.3.2020</p> <p>Published at the Federal Register of 20.3.2020 - Extra Edition - G</p>	<p>Temporarily reduces the Tax on manufactured products (IPI) rates on the products you mention.</p>
<p>Decree No. 10.284, of 20.3.2020</p> <p>Published at the Federal Register of 20.3.2020 - Extra Edition - G</p>	<p>Provides for the extension of the maturity date of air navigation tariffs, during the COVID-19 pandemic.</p>
<p>Decree No. 10.283, of 20.3.2020</p> <p>Published at the Federal Register of 20.3.2020 - Extra Edition - G</p>	<p>Creates the Autonomous Social Service called Agency for the Development of Primary Health Care - Adaps.</p>
<p>Decree No. 10.282, of 20.3.2020</p> <p>Published at the Federal Register of 20.3.2020 - Extra Edition - G and republished at Federal Register of 21.03.2020 - Extra Edition- H</p>	<p>Regulates Law No. 13.979, of February 6, 2020, to define public services and essential activities.</p>
<p>Resolution No. 352, of 20.3.2020</p> <p>Published at the Federal Register of 20.03.2020 - Extra edition G</p>	<p>Provides for prior authorization for the purpose of export (import) chloroquine and hydroxychloroquine and products subject to sanitary surveillance to fight Covid-19.</p>

<p>Resolution No.351, of 20.3.2020</p> <p>Published at the Federal Register of 20.03.2020 - Extra edition G</p>	<p>Provides for the updating of Annex I (Lists of Narcotic, Psychotropic, Precursor Substances and Others substances under Special Control) of Ordinance No. 344, from the Sanitary Surveillance Service, of May 12, 1998, and makes other provisions.</p>
<p>Legislative Decree No. 6, of 20.3.2020</p> <p>Published at the Federal Register of 20.3.2020 - Extra edition - C</p>	<p>Acknowledges, 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</p>
<p>Ordinance No. 454, of 20.3.2020</p> <p>Published at the Federal Register of 20.3.2020 - Extra edition- F</p>	<p>Declares, throughout the national territory, the situation of community transmission of COVID-19.</p>
<p>Ordinance No. 683, of 19.3.2020</p> <p>Published at the Federal Register of 20.03.2020</p>	<p>Provides for the institution of a technical committee for the creation of initiatives for the promotion and defense of Human Rights, considering the public health emergency situation of international concern resulting from COVID-19.</p>
<p>Deliberation No.185, of 19.3.2020</p> <p>Published at the Federal Register of 20.03.2020</p>	<p>Provides for the extension and interruption of deadlines for processes and procedures related to the bodies and entities of the National Traffic System and to public and private entities providing traffic-related services.</p>
<p>Resolution No. 349, of 19.3.2020</p> <p>Published at the Federal Register of 20.3.2020</p>	<p>Defines the extraordinary and temporary criteria and procedures for handling requests for regularization of personal protective equipment, medical equipment of the ventilator type and other medical devices identified as strategic by Anvisa, due to the public health emergency of international concern resulting from COVID-19 and other measures.</p>

<p>Ordinance No. 126, of 19.3.2020</p> <p>Published at the Federal Register of 19.03.2020 - Extra Edition - E e republished at the Federal Register - Extra Edition - D</p>	<p>Provides for the exceptional and temporary restriction on the entry of foreigners into the country from the nations listed and recommended by the National Health Surveillance Agency - Anvisa.</p>
<p>Ordinance No. 125, of 19.3.2020</p> <p>Published at the Federal Register of 19.03.2020 - Extra Edition B</p>	<p>Provides for the exceptional and temporary restriction on the entry of foreigners into the country from the nations listed and recommended by the National Health Surveillance Agency - Anvisa.</p>
<p>Provisional Presidential Decree No. 925, of 18.3.2020</p> <p>Published at the Federal Register of 19.3.2020</p>	<p>Provides emergency measures for the Brazilian civil aviation due to the COVID-19 pandemic.</p>
<p>Resolution No. 777, of 18.3.2020</p> <p>Published at the Federal Register of 19.03.2020</p>	<p>Grants petitions requests related to the General Management of Health Products Technology.</p>
<p>Resolution No. 776, of 18.3.2020</p> <p>Published at the Federal Register of 19.03.2020</p>	<p>Grants petitions related to the General Management of Health Products Technology.</p>
<p>Resolution No. 851, of 18.3.2020</p> <p>Published at the Federal Register of 19.03.2020</p>	<p>Provides for the Annual Program for the Application of the Special Deposits of the Workers Supporting fund, for the 2020 fiscal year.</p>
<p>Resolution No. 152, of 18.3.2020</p> <p>Published at the Federal Register of 18.03.2020 - Extra Edition D</p>	<p>Extends the deadline for the payment of federal taxes within the <i>Simples Nacional</i> taxation.</p>
<p>Ordinance No. 7, of 18.3.2020</p> <p>Published at the Federal Register of 18.03.2020 - Extra Edition B</p>	<p>Provides for measures to deal with the public health emergency provided for in Law No. 13.979, of February 6, 2020, in the Prison System.</p>

<p>Ordinance No. 120, of 17.3.2020</p> <p>Published at the Federal Register of 18.03.2020</p>	<p>Provides for the exceptional and temporary restriction on the entry of foreigners from the Bolivarian Republic of Venezuela into the country, as recommended by the National Health Surveillance Agency - Anvisa.</p>
<p>Resolution No. 1.338, of 17.3.2020</p> <p>Published at the Federal Register of 18.03.2020</p>	<p>Establishes a maximum interest ceiling per month for automatic-paycheck-deduction loan for social security benefits, and other measures.</p>
<p>Resolution No. 17, of 17.3.2020</p> <p>Published at the Federal Register of 18.03.2020</p>	<p>Grants temporary reduction of the Import Tax rate under the terms of article 50, paragraph d, of the 1980 Montevideo Treaty, internalized by Legislative Decree n° 66, of November 16, 1981, with the objective of facilitating the fight against the COVID-19 pandemic.</p>
<p>Resolution No. 348, of 17.3.2020</p> <p>Published at the Federal Register of 18.03.2020</p>	<p>Defines the extraordinary and temporary criteria and procedures for handling requests for the registration of medicines, biological products and products for <i>in vitro</i> diagnosis and post-registration change of medicines and biological products due to the international public health emergency arising from COVID-19.</p>
<p>Resolution No. 347, of 17.3.2020</p> <p>Published at the Federal Register of 18.03.2020</p>	<p>Defines the extraordinary and temporary criteria and procedures for exposure to the sale of antiseptic preparations or workshop sanitizers, due to the public health emergency of International concern related to SARS-CoV-2.</p>
<p>Normative Instruction No. 1.927, of 17.3.2020</p> <p>Published at the Federal Register of 18.03.2020</p>	<p>Amends Normative Instruction SRF No. 680, of October 2, 2006, which regulates customs clearance of imports.</p>
<p>Resolution No. 17, of 17.3.2020</p> <p>Published at the Federal Register of 18.03.2020</p>	<p>Grants temporary reduction of the Import Tax rate under the terms of article 50, paragraph d, of the Montevideo Convention, adopted by Legislative Decree No. 66, of November 16, 1981, aiming to facilitate the fight against the COVID-19 pandemic.</p>

<p>Ordinance No. 30, of 17.3.2020</p> <p>Published at the Federal Register of 17.03.2020 - Extra Edition C</p>	<p>Establishes protective measures within the scope of the Ministry of Defense and the Single Forces Commands to deal with the public health emergency of international concern resulting from COVID-19.</p>
<p>Ordinance No. 5, of 17.3.2020</p> <p>Published at the Federal Register of 17.03.2020 - Extra Edition C</p>	<p>Establishes the compulsory nature of the measures to deal with the public health emergency provided for in Law No. 13,979, of February 6, 2020.</p>
<p>Ordinance No. 373, of 16.3.2020</p> <p>Published at the Federal Register of 17.03.2020</p>	<p>Establishes guidelines regarding protective measures, within the scope of the INSS (National Social Security Authority), to deal with the public health emergency resulting from the COVID-19 pandemic.</p>
<p>Resolution No. 4.783, of 16.3.2020</p> <p>Published at the Federal Register of 17.3.2020</p>	<p>Establishes, for determined periods, percentages to be applied to the RWA (Risk-Weighted Assets) amount, for purposes of calculating the ACP(Principal Additional Capital) Conservation portion referred to in Resolution No. 4.193, of March 1, 2013.</p>
<p>Resolution No. 4.782, of 16.3.2020</p> <p>Published at the Federal Register of 17.3.2020</p>	<p>Establishes, for a determined period of time, due to the eventual impacts of Covid-19 on the economy, temporary criteria for characterizing the restructuring of credit operations, for the purposes of credit risk management.</p>
<p>Normative Instruction No. 21, of 16.3.2020</p> <p>Published at the Federal Register of 17.3.2020</p>	<p>Amends Normative Instruction No. 19, of March 12, 2020, which establishes guidelines to the bodies and entities of the Civil Personnel System of the Federal Public Administration - SIPEC, regarding the protection measures to face the public health emergency of international importance resulting from the COVID-19 pandemic.</p>
<p>Decree No. 10.277, of 16.3.2020</p> <p>Published at the Federal Register of 16.3.2020 - Extra Edition - C</p>	<p>Establishes the Crisis Committee for Supervision and Monitoring of the Covid-19 Impacts.</p>

<p>Ordinance No. 395, of 16.3.2020</p> <p>Published at the Federal Register of 16.3.2020 - Extra Edition - A</p>	<p>Establishes resources from the Public Health Actions and Services Funding Block - Medium and High Complexity Care Group - MHC, to be made available to the States and the Federal District, destined to health actions to fight the COVID 19 pandemic.</p>
<p>Provisional Presidential Decree No. 924 of 13.03.2020</p> <p>Published at the Federal Register of 13.3.2020 - Extra Edition B</p>	<p>Opens an extraordinary credit, for the Education and Health Ministries, in the amount of R\$ 5.099.795.979,00 , for the purposes specified.</p>
<p>Normative Instruction No. 20, of 13.3.2020</p> <p>Published at the Federal Register of 13.3.2020 - Extra Edition</p>	<p>Amends Normative Instruction No. 19, of March 12, 2020, which establishes guidelines to the bodies and entities of the Civil Personnel System of the Federal Public Administration - SIPEC, regarding the protection measures to face the public health emergency of international concern resulting from the coronavirus (COVID- 19).</p>
<p>Resolution No. 453, of 12.3.2020</p> <p>Published at the Federal Register of 13.3.2020</p>	<p>Amends Normative Resolution No. 428, of November 7, 2020, which provides for the List of Procedures and Events in Health in the scope of Supplementary Health, to regulate the mandatory coverage and the use of diagnostic tests for infection by COVID-19.</p>
<p>Resolution No. 346, of 12.3.2020</p> <p>Published at the Federal Register of 13.3.2020</p>	<p>Defines the extraordinary and temporary criteria and procedures for the certification of good manufacturing practices for the purposes of registration and post-registration changes to active pharmaceutical ingredients, medicines and health products due to the public health emergency of international concern of COVID-19.</p>
<p>Ordinance No. 356, of 11.2.2020</p> <p>Published at the Federal Register of 12.2.2020</p>	<p>Establishes the regulation and implementation of the provisions of Law No.11979, of February 6, 2020, which institutes the measures to deal with the public health emergency of international concern resulting from the coronavirus (COVID-19).</p>

<p>Ordinance No. 79, of 4.2.2020 Published at the Federal Register of 5.2.2020</p>	<p>Approves extraordinary conditions for conformity evaluation of activities in the countries affected by the COVID-19 pandemic.</p>
<p>Normative Instruction No. 19, of 12.3.2020 Published at the Federal Register of 13.3.2020</p>	<p>Establishes guidelines to the bodies and entities of the Civil Personnel System of the Federal Public Administration - SIPEC, regarding the protection measures to fight the public health emergency of international importance resulting from COVID-19.</p>
<p>Provisional Presidential Decree No. 921, of 7.2.2020 Published at the Federal Register of 10.2.2020</p>	<p>Opens an extraordinary credit, in favor of the Ministry of Defense, in the amount of R\$ 11.287.803,00 , for the specified purposes.</p>
<p>Law No. 13.979, de 6.2.2020 Published at the Federal Register of 7.2.2020</p>	<p>Provides for measures to deal with the public health emergency of international concern resulting from COVID-19.</p>
<p>Ordinance No. 188, de 3.2.2020 Published at the Federal Register of 4.2.2020</p>	<p>Declares public health emergency of international concern (PHEIC) due to Human Infection by COVID-19.</p>

There are also multiple rules, from the Brazilian States and Municipalities, which provide for measures to deal with the COVID-19. In some states in Brazil, more drastic measures are being taken, such as lockdown and vehicle rotation to reduce the circulation of people on the streets and maintain social isolation, respecting the guidelines of the World Health Organization.

Even so, the acts of the Executive Power, especially from the Brazilian President, are diametrically opposite to the recommendations of the World Health Organization (WHO) and International Treaties - even opposed to national rules - exposing the rights to life, health and integrity of its population, also affecting cross border communities. Mr. Jair Messias Bolsonaro disobeys all the recommendations for his simple pleasure of explaining that he has all power. However, it should be noted, to enhance the

arguments above exposed, that the **Superior Court of Justice** consolidated the understanding that **“Brazilian legislation is limited to establishing simple starting points, the main reference, but not the only one, for the judge. Inference from the broad and unavoidable constitutional protection of health, here there is a general implicit clause for that national standards, criteria and parameters must be read according to those agreed, including with the intervention of Brazil, by the international scientific community”**.⁴²

The Federal Supreme Court has consolidated precedent that, in matters of protection of the environment and public health, the principles of precaution and prevention must be observed. If there is any scientific doubt about the adoption of the sanitary distance measure - which there is not, since there is a technical-scientific consensus in this regard - the issue must follow the guiding principles in favor of the population's health. See the above mentioned precedent:

DIRECT ACTION FOR THE DECLARATION OF UNCONSTITUTIONALITY. ADMINISTRATIVE AND ENVIRONMENTAL. MEASURES TO CONTAIN DISEASES CAUSED BY AEDES AEGYPTI. [...]. NON-OBVIATION OF THE PRIOR APPROVAL OF THE SANITARY AUTHORITY AND THE ENVIRONMENTAL AUTHORITY. COMPLIANCE WITH THE CONSTITUTIONAL PROVISIONS REGARDING THE RIGHT TO HEALTH, THE BALANCED ENVIRONMENT AND THE PRINCIPLES OF PRECAUTION AND PREVENTION. PARTIAL PROCEDURE OF ACTION. 1. Despite

⁴²CIVIL AND ENVIRONMENTAL LAW PROCEDURE. MOTION TO STAY TAX EXECUTION. FINE. INFRINGEMENT. STATE LEGISLATION. IMPOSSIBILITY TO MOVE FACTS AND EVIDENCE. PRECEDENT NO. 7/STJ. LOCAL STANDARD. PRECEDENT NO. 280/STF. 1. Motion to the Tax Execution proposed for the collection of a fine for non-compliance with environmental rules of State Law No. 10.083/1998, sanctioned conduct due to exposing the population domiciled in the surroundings of the company to lead contamination. 2. Generic claims about disobeying article 535, II, of the Brazilian Civil Procedural Code do not overcome the obstacle of Precedent No. 284/STF, applicable by analogy. 3. It is not possible to appreciate, in a Special Appeal, the opposition to the article. 5, II, XXXIV and LV, and article 150, I, IV, LIV and XLV, of the Brazilian Federal Constitution, under penalty of usurpation of the jurisdiction of the STF. 4. It is not feasible to analyze the issues discussed in the Special Appeal, which seeks to remove the factual assumptions established by the judgment under appeal. Application of Precedent No. 7/STJ: "The claim for a simple reexamination of evidence does not entail any special appeal". There is no violation of art. 333 of the CPC. 5. Finally, the legal provisions of State Decree No. 8.468/1978 do not fall in the concept of "federal law" referred to in art. 105, III, of the Brazilian Federal Constitution, which is why the obstacle of Precedent No. 280/STF applies: "For offense to local law there is no extraordinary appeal". 6. Special Appeal denied. (STJ - Special Appeal No. 1310471 SP 2011/0293295-2, Judge-Rapporteur: Minister HERMAN BENJAMIN, Judgment date: 18/06/2013, Second Panel, Publishing date: 01/08/2013).

submitting the incorporation of the chemical dispersion mechanism by aircraft to fight the mosquito that transmits dengue, the chikungunya virus and the zika virus, to the authorization of the health authority and to the proof of the effectiveness of the practice in fighting the mosquito, the legislator assumed the mechanism without previous studies in compliance with the principle of precaution, which may lead to the violation of the environmental protection system contained in article 225 of the Brazilian Federal Constitution. **2. The establishment of legal provision of a measure without the previous demonstration of its effectiveness and safety may violate the precautions and prevention, an instrument for the full protection of the balanced environment and the right of all to protection by the Judiciary in matters involving disclosure the need to transfer the definitive locus to the technical field, is revealed in the recognition that the law, if absent previous studies that would attest the health is insufficient.** **3. The need for a minimum consensus of the scientific community, of the safety decision on environmental and sanitary issues, may contradict the constitutional provisions pointed out by the Plaintiff in her petition, therefore requiring a constitutional and adequate hermeneutics, to ensure the protection of life, health and of the environment.** (Direct Action for the Declaration of Unconstitutionality No. 5592, Judge-Rapporteur Judgment: Ministry Edson Fachin).

It remains therefore unquestionable that Mr Jair Messias Bolsonaro acted intentionally for the purpose of seriously affecting the physical integrity and physical health of the Brazilian population. This "desire" is spoken of intention, which is the **conscious will to practice a criminal conduct**. In the words of Nelson Hungria, "our criminal law conceives intention as a criminal intention. It is the same concept of *dolus malus* of Roman law, of the *Boser Vorsatz* of the Austrian Penal Code, of the malice of English law".⁴³ Here, the agent must be aware of what he does, so that he can be imputed the harmful result as an intentional act. The function of having an agenda is limited to reaching the objective elements of the offense, that is, the circumstances of

⁴³ HUNGRIA, Nelson. *apud*. NUCCI, Guilherme. **Código Penal Comentado**. 10. Ed. São Paulo: Revista dos Tribunais, 2010.P. 204.

the legal violation. Another important element for the characterization of a wrongful act is the will, since it is the engine of human activity capable of dominating the causal routes.

According to domestic criminal law, Mr. Jair Messias Bolsonaro, by taking to the streets to support the demonstrations and urging people to break the control measures directed by the health authorities, violates government determinations on measures to fight the COVID-19 and incurs in the crime established in article 268 of the Brazilian Penal Code, *in verbis*:

Article 268 - Violating determination of public authorities, to prevent introduction or spread of contagious disease:

Penalty - detention of 1 (one) month to one (1) year and a fine.

Sole paragraph: The penalty is increased by one third, if the agent of the crime works in the public health system or is a doctor, pharmacist, dentist or nurse.

Guilherme de Souza Nucci teaches that the "determination of the public authorities" is the order or resolution of the bodies vested with authority to perform the purposes of the State. It is an incomplete penal rule, that requires another further regulation to be applicable.⁴⁴ In Brazil, Law No. 13.979/2020 was published, which provides for measures to deal with the public health emergency of international concern resulting from the COVID-19.

Additional to this above mentioned law, the InterMinisterial Ordinance No. 5 establishes that non-compliance with the measures provided for in Law No. 11979/2020 will entail civil, administrative and penal liability for the offending agents. Therefore, when circulating through the streets and urging the interruption of social isolation, the Brazilian President commits the crime foreseen in article 268 of the Brazilian Penal Code. In this regard, Mr. Jair Messias Bolsonaro still drives the population to commit crimes, which is the criminal act established in article 286 of the Brazilian Penal Code.

⁴⁴ NUCCI, Guilherme. **Código Penal Comentado**. 6. Ed. São Paulo: Revista dos Tribunais, 2006.P. 921.

By doing so, Mr. Jair Messias Bolsonaro also incurs in article 132 of the Brazilian Penal Code, namely the crime of exposing the life or health of others to direct and imminent danger. The protected legal interest by the mentioned code is the life and health of any person, placed at risk by the willful misconduct of the agent, as stated below:

Article 132 - Exposing the life or health of others to direct and imminent danger:

Penalty - detention, from three months to one year, if the fact does not constitute a more serious crime.

For Julio Fabbrini Mirabete, “the criminal conduct is to create by any means a situation in which the life or health of others is exposed to danger. It is a crime of real danger, requiring the demonstration that the victim's life or health has suffered a direct and imminent risk ”.⁴⁵ On this case, it is clear that Mr Jair Messias Bolsonaro exposes the life and health of the Brazilian population to direct and imminent danger, resulting from the pandemic of the COVID-19.

Mr. Jair Messias Bolsonaro as the Brazilian President, is expected to have a conduct aimed at safeguarding human life, in order to set an example for all Brazilian citizens, who placed their trust in the polls in a guiding republican spirit to the fulfilment of the rights stamped in international treaties and declarations, as well as in the Brazilian Federal Constitution of 1988.

It is evident that either by erratic act of commission or act of omission, that Mr. Jair Messias Bolsonaro failed to act as a guarantor, in order to avoid the chaos created in Brazil by the COVID-19 pandemic. The reason for this is that Mr. Jair Messias Bolsonaro, as President, has a legal duty to avoid the result, under the terms of article 13, Paragraph 2 of the Brazilian Penal Code.⁴⁶

⁴⁵ MIRABETE, Julio Fabbrini. **Manual de direito penal**. 22. Ed. São Paulo: Atlas, 2004. P. 128.

⁴⁶ **Art. 13** - The result, on which the existence of the crime depends, is only attributable to whoever caused it. Cause is the act of commission or omission without which the result would not have occurred. **Paragraph 2** - The omission is criminally relevant when the omission should and could act to avoid the result. The duty to act rests with those who: **a)** have by law an obligation of care, protection or surveillance; **b)** otherwise, assumed the responsibility for preventing the result; c) with its previous behavior, created the risk of the result occurring.

Luiz Luisi asserts that “in this provision, our legislator referred not only to the law, but specified the duties of care, protection and surveillance, and adopting this wording it was not limiting the so-called formal theory, but accepting the documentary hypothesis. These are not just obligations under the law in the strict sense, but provisions that are effective in order to be able to constitute a legal binding. This is the case with decrees, regulations, ordinances, and even judicial sentences and judicial provisions, in general, and even with a legitimate order of higher hierarchical authority. Such duties may also derive from a criminal law, as well as an extra criminal law, both public and private ”. ⁴⁷

It is not at all unreasonable to recall that Mr. Jair Messias Bolsonaro, as the Brazilian President of the Republic, has the duty to act according to the principles of Public Administration, notably principle of legality and of supremacy of the public interest. However, the criminal conduct committed by Mr. Jair Messias Bolsonaro, incurs in the crime described in article 7.1, item k of the Rome Statute, being the Brazilian and world population as the victim.

IV. REQUESTS

Wherefore, the plaintiff **requests** Your Excellency:

a) To admit this complaint, aiming to start an investigation of the crimes against humanity committed by Mr. Jair Messias Bolsonaro (article 15.1 and article 53.1 of the Rome Statute);

b) To order Brazil to give additional information from the Federative Republic of Brazil, the organs of the United Nations and other reliable sources it deems appropriate (art. 15.2 of the Rome Statute

c) Take the testimony of Mr. Jair Messias Bolsonaro at the ICC headquarters, regarding the actions that contradict the guidelines of the World Health Organization

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(WHO) to fight COVID-19 that caused the increase of infections and deaths in the Brazil (article 15.2 of the Rome Statute);

d) That if, after collecting all evidence, it concludes that there is reasonable basis to proceed with an investigation, to submit of a request for authorization to the Pre-Trial Chamber (Article 15.3 of the Rome Statute);

e) That if there is no reasonable basis to open an investigation and if this determination is based solely on the provisions of subparagraph (c) of article 53.1 of the Rome Statute, to inform the Pre-Trial Chamber.

Respectfully submitted.

Brasília (DF), June 1, 2020.



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