

POWER

New ICC complaint against Jair Bolsonaro unlikely to prosper

After a first attempt was turned down by judges in The Hague, the ABJD is lodging another complaint against Jair Bolsonaro to the ICC, for "crimes against humanity"



ICC headquarters at The Hague. Photo: Oliver de la Haye/Shutterstock

By **Raphael Tsavikko Garcia**

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In April 2020, the Brazilian Association of Legal Experts for Democracy (ABJD) filed a [complaint](#) against President Jair Bolsonaro at the International Criminal Court (ICC) in The Hague, accusing the head of state of committing "crimes against humanity." The ABJD said Mr. Bolsonaro "put the lives of the population at risk" by ignoring World Health Organization recommendations on Covid-19, and actively contributing to the spread of the coronavirus in Brazil.

The ICC turned the case down, saying the accusations didn't fit the description of genocide, crimes against humanity, or war crimes, established by the [Rome Statute](#).

But now that a Senate inquiry has found Mr. Bolsonaro [guilty of nine pandemic-related crimes](#) — including crimes against humanity — the association wants to take another go at holding him accountable for his actions. Today, the ABJD will file another request for the ICC to investigate Mr. Bolsonaro, in a petition shared with **The Brazilian Report**.

According to Charles Kurmay, the lawyer representing the association before the ICC, the ABJD "does not believe a matter is ever settled until it is settled correctly."



Mr. Kurmay tells **The Brazilian Report** that the country is "now seeing the dangerous consequences of the Brazilian government's propaganda machine." He mentions that the president's anti-vaccine statements, refusal to wear masks, and touting of unproven coronavirus treatments pushed the country's death tally to over 610,000.

"In article 7, the Rome Statute details what constitutes crimes against humanity," Mr. Kurmay argues. "It mentions inhumane acts causing great suffering, or serious injury to body or to mental or physical health. We believe that coronavirus propaganda fits that bill." In its latest complaint, the ABJD claims the president "caused widespread illness and deaths in violation of Article 7 of the Rome Statute."

"Our position is not that a poor health policy is causing deaths. It's the systemic propaganda as the attacking mechanism, which can now be objectively measured as causing hundreds of thousands of deaths."

Flávio Bastos Pereira, a Ph.D. in Economic and Political Law and a professor at São Paulo's Mackenzie University, agrees. "The president himself combatted social isolation measures, prescribed chloroquine over vaccines, and led an administration which bet on denialism as a course of action," he tells **The Brazilian Report**.



Jair Bolsonaro has rarely worn a face mask in public. Photo: Antonio Scorza/Shutterstock

A June 2021 study by epidemiologists at the Federal University of Pelotas estimated that [four in five Covid deaths](#) in Brazil could have been avoided if the government had adopted a different approach to the pandemic. "We could have saved over 400,000 lives," epidemiologist Pedro Hallal told the Senate's Covid inquiry, when revealing his findings.

Will this complaint go anywhere at the ICC?

Deisy Ventura, a Ph.D. in Law and professor at the Public Health Faculty of the University of São Paulo, explains that "the ICC can step in if a country's authorities can't or won't carry out an investigation into alleged crimes against humanity."

For her, Brazil fulfills the criterion, as Prosecutor General Augusto Aras has not shown any willingness to pursue a case against Mr. Bolsonaro. The president recently handed Mr. Aras a further two-year term as head prosecutor, and he still nurtures the dream of getting nominated to the Supreme Court.

However, while accusations against the far-right Brazilian president have piled up at the ICC, Jair Bolsonaro is unlikely to face prosecution from the international court.

Interviewed by BBC Brasil in July 2020, former ICC judge Sylvia Steiner explained that the court investigates crimes against humanity "carried out within a context of generalized or systematic attacks against the civil population."

She mentioned the case of the Darfur genocide in Sudan, which resulted in around 300,000 deaths between 2003 and 2016. The ICC issued an arrest warrant for former Sudanese President Omar Al Bashir, but he has yet to stand before the court and cannot stand trial.

"A mere [health] policy, even if disastrous, cannot necessarily be understood as a deliberate attack on a population," added Ms. Steiner.

"It is this particular contextual element which, at first glance, does not seem to be present in the disastrous policies the [Bolsonaro] government has followed during the pandemic."

However, Charles Kurmay is careful not to let the ABJD's latest complaint go misunderstood. "Governments can make mistakes, that is true and mistakes aren't crimes against humanity. But that's not what we are saying. We are saying systematic propaganda by a head of state designed to mislead the populous resulting in widespread illness and death is a crime against humanity."

This article was amended at 12:30, on November 11, 2021, to include further comment from Charles Kurmay.

#jairBolsonaro #justice #pandemic