

Informative Note to the Prosecutor

**International Criminal Court
pursuant to Article 15 of the Rome Statute
requesting a Preliminary Examination into**

**Incitement to Genocide and Widespread Systematic Attacks
Against Indigenous Peoples by**

President Jair Messias Bolsonaro in Brazil

Submitted in November 2019

by the

Human Rights Advocacy Collective (CADHu)

and the ARNS Commission

São Paulo, Brazil

Table of Contents

I.	EXECUTIVE SUMMARY	3
II.	EXPERTISE AND INTEREST	7
III.	THE FACTS	9
	Dismantling Environmental Policies and Control and Oversight Structures	11
	Deforestation and Amazonia In Flames	15
	Indigenous Peoples and Traditional Communities: At-Risk Groups	21
IV.	CRIMINAL FRAMEWORK	27
	Responsibility For Incitement To Genocide And Effective Risk Of Its Materialisation	27
	Crimes against humanity	34
V.	JURISDICTION AND COMPETENCE.....	48
	Temporal Competence.....	48
	Territorial and/or Personal Competence.....	48
	Material Competence.....	49
VI.	COMPLEMENTARITY AND GRAVITY: NECESSARY EFFECTS OF THE JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT	50
	Absence of investigation by the Brazilian Justice System or Those of Other States Parties – Articles 17.1.a and c	51
	The Brazilian Justice System is not in a position to conduct an effective investigation of the acts undertaken by President Jair Messias Bolsonaro – Articles 17.1.b, 17.2.a and c and 17.3.....	53
VII.	INTERESTS OF JUSTICE	63
VIII.	REQUESTS.....	65

I. EXECUTIVE SUMMARY

1. Since taking office on January, 1st, 2019, the President of the Federative Republic of Brazil, Jair Messias Bolsonaro, has been establishing a context of incitement to commit crimes against humanity and to commit genocide of the indigenous peoples and traditional communities of Brazil.
2. This Informative Note presents specific activities dismantling public policies protecting social and environmental rights and environmental oversight structures in Brazil, together with indigenous land demarcation procedures.
3. Some examples of this are successive attempts to deplete the National Indian Foundation (FUNAI); the transfer of the Brazilian Forestry Service to the Ministry of Agriculture, Ranching and Supply (MAPA); the restructuring of the National Environment Council (CONAMA), limiting civil society representatives to 4 members (down from 22); budget funding allocated to the Ministry of the Environment (MMA); establishing a government unit to review environmental fines imposed previously; undermining the Amazonia Fund; persecution and dismissal of civil servants from social and environmental departments speaking out against these dismantling policies or questioning the official versions of facts (proffered with no real-life grounds or respect for the law). Added to this are attempts to stifle organisations and civil society through ordering the suspension of agreements and partnerships, including cooperation and development agreements reached with funds administered by the Ministry of the Environment (MMA), the Brazilian Institute for the Environment and Renewable Natural Resources (IBAMA), the Chico Mendes Biodiversity Conservation Institute (ICMBio) and the Rio de Janeiro Botanical Garden (JBRJ), blocking fund transfers.
4. This document will show how the systematic discourse of the government undermining the deployment of laws protecting the environment and scorning the indigenous peoples while downgrading the participation of civil society is spurring the incitement of violence against these peoples and the defenders of social and environmental rights. Since this Administration took office, several

indigenous leaders have been murdered. This discourse also reflects the President's disdain for scientific information when not aligned with his interests, explaining the refusal to provide data on outbreaks of fire in the Amazon Region disclosed by renowned scientific institutions monitoring this region for many years.

5. Everything described in this Informative Note has led to a context of extreme insecurity for social and environmental rights, with an upsurge in violence, expanding deforestation and more fires in the Amazon Region. This Informative Note is presented under the aegis of Article 15 of the Rome Statute, in order to assign responsibility for incitement to commit crimes against humanity and support for genocide against the indigenous peoples and traditional communities of Brazil, as set forth in this document.
6. Environmental degradation has a marked and disproportional effect on the indigenous peoples, whose physical existence and lifestyles depend on the forest, the land and the rivers in material, social and symbolic terms, as explicitly addressed in the UN Declaration on the Rights of the Indigenous Peoples (UNDRIP). This describes how these key elements in nature are essential for the "conditions of life" of the indigenous peoples, as their physical and social reproduction depends on them.
7. Environmental degradation is not a stand-alone phenomenon: attacks by armed groups, state and private infrastructure projects, illegal mining and agribusinesses encroaching on forests and demarcated lands are facts that are thrusting communities out of their age-old territories or forcing them to live under difficult conditions that include hunger, murders, violence and confinement in reserves. This is the context that is driving communities into forced displacement, while undermining their inherent sense of ethnic and community identity.
8. Systematic attacks on social and environmental human rights deriving from a set of steps introduced by President Jair Messias Bolsonaro have been encouraging crimes against humanity and the genocide of Brazil's indigenous peoples and traditional communities, as they can intentionally "destroy, in whole or in part, a

- national, ethnic (...) group” through killing leaders and members of traditional communities and indigenous peoples (Article 6.a of the Rome Statute); “causing serious bodily or mental harm to members of the group” (Article 6.b of the Rome Statute); or “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part” (Article 6.c of the Rome Statute).
9. Under the pretext of developing the Amazon Region, the Bolsonaro Administration is turning government policy into encouragement for attacks on Brazil’s indigenous peoples and their lands. It is not only omission on the part of the Government (which transmutes into acquiescence with the illegal acts taking place in the Amazon Region), it is also clear that there is a preconceived plan underpinning a policy of mistreatment and disrespect for the rights of this specific segment of the Brazilian population. This reflected in discourses portraying the indigenous lifestyle as a problem *per se* (needing to be “integrated into Brazilian society”), which is also hampering the national development plans that the President intends to promote through infrastructure projects, mining enterprises, logging activities and agribusiness ventures in forested regions.
 10. Perpetrated systematically across the board through a state policy of incitement, these acts constitute **crimes against humanity**, because they may lead to (i) extermination (Article 7.1.b of the Rome Statute) as the living conditions and lifestyles of the indigenous peoples are being destroyed by river pollution and invasion of their lands by wild-cat miners, loggers and land-grabbers; (ii) forcible transfer of populations (Article 7.1.d of the Rome Statute); (iii) persecution (Article 7.1.h of the Rome Statute), demonstrated by the rapid deinstitutionalisation of Brazilian indigenous policies and the degradation of their lands that the Government is deliberately and systematically failing to protect (similar to the destruction of homes and properties in the case law established by the International Criminal Court); and (iv) “Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health” (Article 7.1.k of the Rome Statute).

11. Although the facts presented here highlight a key element in the offences perpetrated by President Jair Messias Bolsonaro against the environment, whose consequences will be felt worldwide, this Informative Note is not intended to extend the types of crimes listed in the Rome Statute. Here, practices destroying the environment are elements of crimes of extermination perpetrated against human beings, as addressed in Article 7. This is because the means of existence of the indigenous peoples are grounded on their relationships to the land, the forest, wildlife and water. Consequently, trespassing on their lands, polluting rivers, illegal burn-offs in order to log timber and take possession of lands – which helps spread the flames through the forest – all contribute to putting these indigenous peoples at risk of falling victim to crimes against humanity.
12. The facts corroborating these statements have already occurred and continue to do so.
13. Grounded on Article 15 of the Rome Statute, and in view of the extremely serious situation of a State turning against its traditional communities, this Informative Note is thus intended to provide initial information as required to underpin the initiation of an inquiry investigating the perpetration of crimes falling under the jurisdiction of this International Criminal Court.
14. Let us turn to the facts.

II. EXPERTISE AND INTEREST

15. The Human Rights Advocacy Collective (CADHu) is a group of practitioners working *pro bono* to protect human rights in high-impact cases. Set up in 2012,¹ this Collective has handled major human rights cases in Brazil since then.
16. It obtained a collective *habeas corpus* for all women detained without final decisions, when pregnant or with children up to twelve years of age. This was the first collective *habeas corpus* acknowledged by the Federal Supreme Court, benefiting 15,000 women throughout Brazil (some 30% of the nation's entire female prison population). Thousands of women and their babies were released from prison through that lawsuit, which was acknowledged by the Inter-American Commission on Human Rights (IACHR) and UN Women.
17. In addition to the *habeas corpus*, this collective has always supported the freedom of the press and expression, ensuring the dissemination of information on companies sentenced for using slave labour, in partnership with the Reporter Brazil organisation. It has filed dozens of lawsuits defending journalists and press organisations in the course of its work, while also challenging censorship in education.
18. As a network of attorneys strategically set up to avoid retaliation, threats and intimidation, this is the status with which it submits this Informative Note.
19. A non-profit Association with no economic or political purposes, the ARNS Commission gathers together twenty leading names from the worlds of politics, law and academia, as well as intellectuals, journalists and social militants from different generations, with the common denominator of constantly defending human rights throughout their careers. Gathered together since February 2019 (prompted by the upsurge in hate speech throughout Brazil) this group of volunteers rises above party politics, working closely with thousands of human rights defenders all over Brazil, striving to prevent back slipping

¹ The Human Rights Advocacy Collective (CADHu) was set up by Professor Eloísa Machado, a human rights lawyer who lectures at the Getulio Vargas Foundation (FGV); in 2018 she won the Outstanding International Woman Lawyer Award, granted by the International Bar Association (IBA).

in terms of the rights achieved in Brazil since it returned to democracy after its brutal military dictatorship (1964 – 1985).

20. This group is named in honour of Cardinal Paulo Evaristo Arns (1921-2016), the Archbishop Emeritus of São Paulo who set up the Justice and Peace Commission in this city in 1972 (when Brazil's military dictatorship still ruled with an iron fist), offering succour to the victims of political and police repression in Brazil. Through this tribute, the Commission acknowledges his example of resistance, resilience and above all of hope for Brazilians in tempestuous times. The Cardinal also provided the lesson (replicated by the Commission) of working together, setting aside religious, political, social and ideological differences in order to foster human rights, just as he did during the darkest hours of Brazil's military dictatorship.
21. Bringing together old and new defenders of human dignity, the purpose of the ARNS Commission is to spotlight serious violations of human rights at the domestic and international levels, while fostering follow-up through the Courts. This Commission has been working seamlessly with countless organisations already protecting and researching human rights in Brazil, upholding the inviolability of human rights under the aegis of international treaties and conventions that the Brazilian State has agreed to respect.
22. Its purpose is to spotlight institutional acceptance of severe offences against human dignity, freedom and physical integrity, particularly when perpetrated by agents of the State against people and populations subject to discrimination, such as black and indigenous communities, runaway slave settlements (*quilombolas*), LGBT persons, women, young people, and urban or rural communities living in utter poverty.
23. The ARNS Commission acts through networking with outreach organisations and individuals, striving to detect these offences, providing support for public complaints, helping bring them before the Courts and international entities, taking specific steps focused on politicians, and mobilising society.

III. THE FACTS

24. The facts reported in this Informative Note portray a set of *measures*, *discourses* and *omissions* on the part of the President of Brazil Jair Bolsonaro, that are establishing a context of incitement to commit crimes against humanity and genocide against the indigenous peoples and traditional communities of Brazil.
25. *Measures* indicates official and unofficial acts dismantling public policies designed to protect social and environmental rights, defence against widespread political persecution of civil servants working at social and environmental entities, and attacks on indigenous lands demarcation procedures.
26. *Discourses* means statements by the President of Brazil Jair Bolsonaro that stimulate, encourage or assent to violence against indigenous peoples, traditional communities and the defenders of social and environmental rights.
27. The *measures* and *discourses* of the President of Brazil Jair Bolsonaro are ushering in a context of insecurity for social and environmental rights, stirring up disputes in the Amazon Region, with more deforestation and outbreaks of fire in Amazonia that are the peak (but not the end) of a wave of incitement that *per se* constitutes crimes under the Rome Statute, heightening the risk of the effective materialisation of even more serious offences: crimes against humanity and the risk of genocide for Brazil's indigenous peoples and traditional communities.
28. All this is worsened by *omissions* on the part of the President of Brazil Jair Bolsonaro, through failing to prevent and mitigate these risks.
29. Based on Article 15 of the Rome Statute, this Informative Note offers a historical overview of the *measures*, *discourses* and *omissions* of the President of Brazil Jair Bolsonaro from 1 January 2019 through to the current date, and consequently still under way. As mentioned above, these are acts that are still being committed, whose extent has not yet been defined, although it is already possible to identify a context offering a real risk of crimes being committed that fall under the jurisdiction of the International Criminal Court.

30. Jair Bolsonaro took office as President of Brazil on 1 January 2019, after a campaign that was already urging – in a manner aligned with earlier statements in his political career² – a ban on the demarcation of indigenous lands,³ a review of land demarcations already completed,⁴ fostering the “assimilation” of the indigenous peoples,⁵ the dismantling of entities engaged in implementing public policies reaching out to this segment of the population, such as the National Indian Foundation (FUNAI),⁶ and a commitment to the “economic development” of the Amazon Region, which is purportedly underexploited due to indigenous occupancy.⁷
31. During the past few months, campaign statements have become government policies, with worsening symptoms of a severe crisis for the environment and human rights, whose elements are presented below, depicting a context of real risk for Brazil’s indigenous peoples and traditional communities.

² “(The) Brazilian Cavalry was very incompetent. Competent indeed was the US Cavalry, which decimated its Indians in the past and today, does not have this problem in that country.” Statement by then Federal Congressman Jair Bolsonaro on 15 April 1998; transcript available at: <http://imagem.camara.gov.br/Imagem/d/pdf/DCD16ABR1998.pdf#page=33>.

³ “If I take office (as President of Brazil), there will no longer be a single centimetre of indigenous land.” Available at: <https://www.youtube.com/watch?v=sju-bpj0x-E> and <https://www.youtube.com/watch?v=zSTdTjsio5g>.

⁴ “In 2019, we will demarcate the Raposa Serra do Sol (indigenous reserve). We will give rifles and weapons to all the planters and ranchers”. Available at: <https://www.youtube.com/watch?v=jUgDXVbPHZs>

⁵ “We will integrate them with society. Like the Army is doing a great job with this, including Indians into the Armed Forces, right.” Available at: <https://www.youtube.com/watch?v=zykvBACfzGg>

⁶ “If elected, I will slash away at the National Indian Foundation (FUNAI) with a sickle, scything across its throat. There is no other way. It is no longer useful.” Available at: https://www.gazetaonline.com.br/noticias/politica/eleicoes_2018/2018/08/bolsonaro-quer-abolir-paulo-freire-do-mec-com-lanca-chamas-1014142306.html

⁷ “Regarding the Paris Agreement, for the past twenty years I have always noted outside pressures – that were even accepted in Brazil – calling for even more land to be demarcated for the Indians, for example, demarcating land for environmental reserves, among other agreements that I see as harmful for Brazil. Nobody wants to mistreat the *Indians*. Look, in Bolivia we now have an Indian who is the President. So why must we keep them shut away in reserves in Brazil, like animals in zoos?” And also “Indians are human beings, just like us. They want what we want, and we cannot use Indians – who are still in a situation that is inferior to us – to demarcate these vast tracts of land that I feel could indeed be new countries in the future, compliant with the UN determination. For example, is it justified to have a Yanomami reserve, for example, that is twice the size of Rio de Janeiro State, when it is home to perhaps nine thousand *Indians*? There is no justification for this.” Available at: <https://g1.globo.com/sp/vale-do-paraiba-regiao/noticia/2018/11/30/indios-em-reservas-sao-como-animais-em-zoologicos-diz-bolsonaro.ghtml>

Dismantling Environmental Policies and Control and Oversight Structures

32. Undermining Brazil's social and environmental policies began on the first day of the Administration headed by President Jair Messias Bolsonaro. On 1 January 2019, the indigenous lands were transferred from the National Indian Foundation (FUNAI) to the Ministry of Agriculture, Livestock and Supply (MAPA) through Provisional Measure N° 870,⁸ where they fall under the responsibility of the Land Ownership Affairs Bureau, now headed by Nabhan Garcia, a former president of the Rural Democratic Union (UDR), and a declared enemy of the indigenous peoples.⁹ At the same time, the President also shifted the Brazilian Forestry Service (which gathered together all data on native plantlife on private properties from properties) from the Ministry of the Environment (MMA) to MAPA. These data were important for IBAMA to plan, command and control actions. With this transfer, the Forestry Service was handed over to former Congressman Valdir Colatto, a long-time rural bench member well-known for his support of lifting the ban on hunting in Brazil. With this alteration rejected definitively by the Brazilian Congress in June 2019, the President then issued a new Provisional Measure on 18 June: Provisional Measure N° 886/2019,¹⁰ once again withdrawing the power to demarcate land from FUNAI, although leaving this entity with the Ministry of Justice.
33. Also on January 14, an order was issued through Circular Letter N° 5 issued by the Ministry of the Environment (Circular Letter N° 5/2019 MMA)¹¹ on the “examination and suspension for ninety days of the implementation of agreements and partnerships, including cooperation and development agreements with tertiary sector entities signed with Funds administered by the Ministry of the Environment (MMA), the Brazilian Institute for the Environment and Renewable Natural Resources (IBAMA), the Chico Mendes Biodiversity Conservation Institute (ICMBio) and the Rio de Janeiro Botanical Garden (JBRJ).” This step addressed the effective ongoing activities of important players engaged in environmental management at the federal level, thus depriving them of

⁸ Available at: http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2019/Mpv/mpv870.htm

⁹ <https://www.valor.com.br/politica/6045685/demarcacoes-na-agricultura-representam-conflito-de-interesses-diz-isa>

¹⁰ Available at: http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2019/Mpv/mpv886.htm

¹¹ Available at: <https://twitter.com/jnascim/status/1085339137929105414>

funding transfers for the duration of the suspension and indiscriminately submitting all organisations to assessment by the Ministry of the Environment.¹²

34. In February 2019, 21 of the 27 IBAMA Superintendents were dismissed.¹³ In April, the Environmental Conciliation Unit was set up by Decree N° 9,760/2019¹⁴, subsequently established by Joint Edict N° 1/2019,¹⁵ in order to review fines imposed by this entity, which is a matter that has been long been questioned publicly by President Jair Messias Bolsonaro¹⁶, regardless of any details on the circumstances under which they were applied¹⁷.
35. As a result of the restructuring process exemplified in these acts, by August 2019, environmental fines were down by 2.4%, with the sharpest drop (38.7%) for crimes against plantlife.¹⁸ More particularly, IBAMA operations were specifically disallowed by President Jair Messias Bolsonaro – such as the steps taken against illegal logging in the

¹² <https://oglobo.globo.com/sociedade/ministerio-do-meio-ambiente-suspende-todos-os-convenios-parcerias-com-ongs-23375022>, em <https://jornal.usp.br/atualidades/parcerias-com-ongs-ampliam-poder-de-acao-do-governo/> and em <https://piaui.folha.uol.com.br/idas-and-vindas-de-ministro-deixam-ambientalistas-preocupados/>

¹³ The Superintendents were dismissed (meaning the people heading up IBAMA at the State level, in charge of monitoring the environment and dealing promptly with environmental emergencies, including the prevention and control of forest fires) in the Federal District and the following States: Tocantins, Sergipe, Santa Catarina, Roraima, Rondônia, Rio Grande do Norte, Piauí, Pernambuco, Paraíba, Minas Gerais, Mato Grosso, Maranhão, Goiás, Espírito Santo, Ceará, Bahia, Amazonas, Amapá, Alagoas and Acre. Available at: <https://oglobo.globo.com/sociedade/exoneracao-de-superintendentes-do-ibama-uma-questao-de-alinhamento-com-novo-governo-diz-ministro-23492163> and <https://www1.folha.uol.com.br/ambiente/2019/02/ricardo-salles-exonera-21-dos-27-superintendentes-regionais-do-ib.shtml>

¹⁴ http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/D9760.htm

¹⁵ <http://www.in.gov.br/web/dou/-/portaria-conjunta-n-1-de-7-de-agosto-de-2019-210035607>

¹⁶ <https://www1.folha.uol.com.br/ambiente/2018/12/bolsonaro-diz-que-licenca-ambiental-atrapalha-obras-and-que-vai-acabar-com-capricho-de-fiscais.shtml>;

<https://www.rondoniagora.com/eleicoes/bolsonaro-diz-que-ibama-and-icmbio-vao-deixar-de-ser-industrias-de-multa-em-seu-governo>;

<https://www.correiopovo.com.br/not%C3%ADcias/pol%C3%ADtica/farra-das-multas-ambientais-vai-acabar-diz-bolsonaro-1.274062>

¹⁷ <https://www.nexojournal.com.br/expresso/2019/04/14/O-que-muda-com-o-decreto-de-Bolsonaro-sobre-multas-ambientais>

¹⁸ <https://epoca.globo.com/queimadas-disparam-mas-multas-do-ibama-despencam-sob-bolsonaro-23901139>

Jamari National Forest in Rondônia¹⁹ – in addition to violent retaliations that involved destroying equipment and threatening employees, as occurred at Espigão d'Oeste²⁰.

36. Brazilian President Jair Messias Bolsonaro has never hidden his position:

“I will no longer allow IBAMA to go out there issuing fines right and left, as well as ICMBio. This party is over.”²¹

37. Promulgated on 29 May, Decree N° 9,806/2019²² restructured the National Environment Council (CONAMA), cutting back its members from 96 to 23 and thus adversely affecting the participation of most States, while substantially curtailing the presence of municipalities and civil society. The proportion of members representing civil society in fact markedly lower than the previous figure: down from 22 to 4 seats on this Council.

38. Also in May, the budget funding allocated to the Ministry of the Environment was curtailed, with BRL 187,400,000 blocked, equivalent to 22.7% of its discretionary budget. Programmes adversely affected by this step include (i) climate change policies, which lost some 95% of their allocated BRL 11.8 million; (ii) forest fire prevention and control, with 38.4% of its budget blocked, equivalent to BRL 17.5 million; (iii) federal environmental licensing activities, which lost 42% of their budget allocations of BRL 7.8 million; and (iv) the conservation units support programme, with BRL 45,000,000 blocked, equivalent to 25% of its budget.

39. This dismantling of environmental policy entities has direct impacts on the lives of traditional communities. As an example, the recent oil-spill along the Brazilian coastline has been ignored by the Government, as President Jair Messias Bolsonaro eliminated (through Decree N° 9,759/19)²³ the committees and councils in charge of bringing the

¹⁹ <https://www1.folha.uol.com.br/ambiente/2019/04/bolsonaro-desautoriza-operacao-em-andamento-do-ibama-contramadeira-ilegal-em-ro.shtml>

²⁰ <https://veja.abril.com.br/politica/madeireiros-usam-discurso-do-governo-bolsonaro-para-intimidar-ibama/>

²¹ Speech given by the President of Brazil during the Agulhas Negras Military Academy Graduation Ceremony, with ripple effects caused by its publication in a large-circulation major newspaper: <https://g1.globo.com/rj/sul-do-rio-costa-verde/noticia/2018/12/01/bolsonaro-participa-de-formatura-de-cadetes-na-academia-militar-das-agulhas-negras.ghtml>

²² http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2019/Decreto/D9806.htm

²³ Available at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/D9759.htm

National Water Pollution by Oil Contingency Plan (PNC) into action.²⁴ This plan was activated only 41 days after the oil-spill, allowing the contamination to reach 286 places in 98 municipalities in nine States in Northeast Brazil.²⁵

40. Aligned with his policy of dismantling oversight structures, the President and his Ministers also took steps to weaken the Amazonia Fund. Set up to attract donations for investments assigned as grants for preventing, monitoring and combating forest clearing activities, it also supports the conservation and sustainable use of Legal Amazonia. Its operations were hampered through statements threatening to redirect its resources (which have also provided support for forest fire monitoring and prevention actions by IBAMA over the past few years) towards paying out compensation to farmers.²⁶
41. As the Fund governance does not allow resources to be used for land title legalisation, two donor countries (Norway and Germany) reacted to these statements, which were followed by institutional changes, such as the elimination of the Amazonia Fund Steering Committee (see OFA) through the promulgation of Decree N° 9,759/2019.²⁷ Funding transfers were suspended, and this initiative was threatened, with adverse effects on research projects, deforestation monitoring initiatives, projects generating income for local communities etc.
42. Still with regard to deforestation monitoring data, Brazil's National Space Research Institute (INPE) – a federal government institution that is an international benchmark for atmospheric and space science research, space engineering, meteorology, satellite imaging of the Earth and climate change studies – saw a sharp reduction in its staff, as President Jair Messias Bolsonaro did not agree with scientific data disclosed on

²⁴ <https://www1.folha.uol.com.br/poder/2019/05/bolsonaro-extingue-mais-de-50-conselhos-and-colegiados-criados-nos-governos-do-pt.shtml>

²⁵ Data for 31 October 2019 released by IBAMA and available at: http://www.ibama.gov.br/phocadownload/notas/2019/2019-10-31_LOCALIDADES_AFETADAS.pdf, consulted on 1 November 2019.

²⁶ Interview with TV Globo on the feature published in the Exame news magazine, available at: <https://exame.abril.com.br/brasil/o-que-and-o-fundo-amazonia-and-por-que-ele-virou-alvo-do-governo-bolsonaro/>.

²⁷ Available at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/D9759.htm

deforestation in Amazonia, showing that it had surged during the first half of July, outstripping the rate recorded for the same period the previous year²⁸.

43. With no scientific grounds whatsoever, President Jair Messias Bolsonaro stated (at a press conference with foreign journalists) that these data were “untrue”, firing INPE president Ricardo Galvão, a researcher with this Institute for more than forty years²⁹.

Deforestation and Amazonia In Flames

44. There can be no doubts that Amazonia is under threat from the worst forest fires for the past four years³⁰ in most of the States in this region: Acre, Amazonas, Mato Grosso, Rondônia and Roraima.³¹ Through to 14 August 2019, there were 32,728 outbreaks of fire in just the Amazon biome, up 60% over the mean for the previous three years during the same period.³²

Area	Outbreaks 1 January 2018 – 1 September 2018	Outbreaks 1 January 2019 – 1 September 2019	Percentage Variation
Brazil	54,942	91,891	67%
Legal Amazonia	35,128	65,518	86%
Amazon Biome	23,045	47,805	107%
Pantanal Biome	603	3,176	426%

²⁸ <https://exame.abril.com.br/brasil/desmatamento-no-brasil-dispara-em-julho-and-ameaca-acordo-comercial-com-ue/>

²⁹ <https://exame.abril.com.br/brasil/presidente-do-inpe-and-exonerado-apos-polemica-sobre-dados-de-desmatamento/>

³⁰ According to NASA, this is the worst fire since 2010. Further information available at: <https://earthobservatory.nasa.gov/images/145498/uptick-in-amazon-fire-activity-in-2019>, consulted on 1 November 2019.

³¹ https://ipam.org.br/wp-content/uploads/2019/08/NT-Fogo-Amazo%CC%82nia-2019-1_2.pdf

³² Ibid.

45. The **increase calculated** through data collected to early September indicates that the situation is becoming even more serious: up 86% in **Legal Amazonia** (Acre, Amapá, Amazonas, Mato Grosso, Pará, Rondônia, Roraima, Tocantins and part of Maranhão States, encompassing the Cerrado savannas and Amazon biomes); up 107% in the Amazon biome; and 426% in the Pantanal biome³³.
46. Looking at the historical datasets, these figures reflect the severity of the situation. Outbreaks of fire in 2019 throughout Brazil outstripped the mean for the past 22 years in January, February, April and August³⁴. In Legal Amazonia, these figures are higher than the twenty-year mean for February, April, May and August, while also exceeding the peaks for March and April³⁵.
47. The new data presented on November 18th 2019 confirm how serious the situation is: the Brazilian government released deforestation figures for the Amazon in 2019 (covering the period from August 2018 to July 2019) which show a 29.5% increase over the previous year, with a total of 9,762 km² cleared over such period, double the rate when Brazil's famous deforestation decline was recorded in 2012³⁶. Although this year's percentage increase is only slightly higher than those in the two years with similar percentages, it should be remembered that the PRODES data released on November 18, 2019 only cover the year through July 31st and the deforestation rate in the succeeding months has exploded to levels far above those for the same months in the previous year, as seen above (in August 2019 the deforestation rate was 222 % above the 2018 value, and the September value was 96 % higher).
48. However, such situation does not result only from the discourse or omissions. The government has performed recent significant changes to laws that will have a direct impact on the increase of deforestation. The main example of such fact is Law 13.874/2019.

³³ [Data available at:: http://queimadas.dgi.inpe.br/queimadas/portal-static/situacao-atual/](http://queimadas.dgi.inpe.br/queimadas/portal-static/situacao-atual/)

³⁴ [Data available at:: http://queimadas.dgi.inpe.br/queimadas/portal-static/estatisticas_paises/](http://queimadas.dgi.inpe.br/queimadas/portal-static/estatisticas_paises/)

³⁵ [Data available at:: http://queimadas.dgi.inpe.br/queimadas/portal-static/estatisticas_estados/](http://queimadas.dgi.inpe.br/queimadas/portal-static/estatisticas_estados/)

³⁶ <https://www1.folha.uol.com.br/ambiente/2019/11/desmatamento-na-amazonia-bate-recorde-e-cresce-295-em-12-meses.shtml>

49. Claiming to be taking action to reduce bureaucratic procedures for the promotion of business in the country, the Government has included provisions in a bill on economic freedom that authorize automatic deforestation actions by developers if environmental agencies delay to issue the relevant environmental licenses³⁷. Well, without enough personnel, it is obvious that any request will be approved by lapse of time.
50. Such point was considered controversial by the senators when the bill was voted. In order to have the bill passed, the Government offered an agreement in which Senator Eliziane Gama would withdraw any amendments she had submitted, upon a commitment that those specific provisions would be vetoed by the President. Although the agreement was accepted and the senator removed the amendments, the Government, in an unprecedented unimaginable act, breached the agreement made with the senators and kept the provisions that allow the tacit authorization for deforestation after a certain lapse of time without any response from de administration³⁸.
51. However, this is not a mere reiteration of policies or practices that are detrimental to the environment. Brazilian Amazonia is coming under heavy attack, at a time when 17% of the rainforest has already been devastated, with specialists setting the turning point at which it becomes savannah at losses of 20% to 25%³⁹.
52. In today's context, with mild droughts that are thus unable to justify these data alone, the upsurge in the number of fires indicates a strong link between deforestation practices⁴⁰ imposing pressures on this region, which are frequently associated with illegal logging, wild-cat mining, and land-grabbing. According to data produced by Government entities and social and environmental organisations⁴¹, the ten municipalities in Amazonia with the most outbreaks of fire also posted the highest deforestation rates. This coincidence –

³⁷<https://economia.estadao.com.br/noticias/geral,mp-da-liberdade-economica-institui-autorizacao-automatica-para-desmatamento,70002976840>

³⁸<https://www12.senado.leg.br/multimedia/evento/90146?h=20:03:15>

³⁹Data available at: <https://advances.sciencemag.org/content/4/2/eaat2340>

⁴⁰Data available at: https://ipam.org.br/wp-content/uploads/2019/08/NT-Fogo-Amazo%CC%82nia-2019-1_2.pdf

⁴¹https://ipam.org.br/wp-content/uploads/2019/08/NT-Fogo-Amazo%CC%82nia-2019-1_2.pdf

meaning more outbreaks of fire in recently cleared areas – indicated that they were quite probably deliberate⁴².

53. Technical entities state very firmly:

“The occurrence of more outbreaks of fire this year, with milder droughts, indicates that deforestation may be a factor fanning the flames, which is a hypothesis tested here with positive outcomes: the link between outbreaks of fire and deforestation recorded from the start of the year through to July is particularly strong (...). These clusters of outbreaks in newly-cleared areas, with mild droughts offer strong indications that the fires were set deliberately, in order to ground-clear newly-deforested areas.”⁴³

Table 1 – The ten municipalities in Amazonia with the most outbreaks of fire in 2019 and the area cleared between January and July 2019. Source: Amazon Environmental Research Institute (IPAM), with data from the INPE and the Deforestation Warning System, Institute of Man and the Environment in Amazonia (SAD/IMAZON)

Municipality	State	Outbreaks of Fire	Deforestation (km ³) January – July 2019
Apuí	AM	1754	151.0
Altamira	PA	1630	297.3
Porto Velho	RO	1570	183.5
Caracaraí	RR	1379	16.0
São Félix do Xingu	PA	1202	218.9
Novo Progresso	PA	1170	67.8
Lábrea	AM	1170	197.4
Colniza	MT	869	82.4
Novo Aripuanã	AM	665	122.3
Itaituba	PA	611	67.8

54. Provisional data from the Deforestation Real-Time Detection System (DETER)⁴⁴ indicate a 90% upsurge in deforestation in Amazonia during June 2019, compared to 2018. In July, this figure topped 278%⁴⁵. According to researchers observing deforestation

⁴² <https://www.bbc.com/portuguese/brasil-49443561>

⁴³ https://ipam.org.br/wp-content/uploads/2019/08/NT-Fogo-Amazo%CC%82nia-2019-1_2.pdf

⁴⁴ System allowing deforestation detection in real-time.

⁴⁵ <https://www1.folha.uol.com.br/ambiente/2019/08/desmatamento-na-amazonia-em-julho-cresce-278-em-relacao-ao-mesmo-mes-em-2018.shtml>; and <https://g1.globo.com/natureza/noticia/2019/08/07/area-com-alertas-de-desmatamento-na-amazonia-sobem-278percent-em-julho-comparado-ao-mesmo-mes-de-2018.ghtml>

dynamics in tropical regions, this information is a cause for concern over the next few months.

55. Data provided by the Institute of Man and the Environment in Amazonia (IMAZON) indicate that 802 km² were cleared in Legal Amazonia in September 2019, up 80% over the figures for September 2018.

“In Legal Amazonia, degraded forestlands covered 1,233 km² in September 2019, compared to 139 km² of forest degradation detected in September 2018, reflecting an increase of 787%. In September 2019, degradation was detected in the following States: Mato Grosso (55%), Pará (33%), Rondônia (6%), Acre (3%) and Amazonas (3%).”⁴⁶

56. Nevertheless, the response of President Jair Messias Bolsonaro was to discredit this official data, ordering a change in the methodology for calculating plant cover variations in the Amazon Rainforest, while also firing senior management at Brazil's National Space Research Institute (INPE), which is the government entity in charge of these activities, as explained above⁴⁷.

“These figures presented now are utterly irresponsible. I even say that if all these figures were true, Amazonia would have been cleared three times over the past twenty years.”⁴⁸

57. But at the same time, President Jair Messias Bolsonaro explicitly affirmed that he encouraged the burn-offs in Amazonia, as he did not agree with the policy adopted by previous Administrations⁴⁹.

58. The flames still spreading throughout this region are causing unparalleled harm to the environment and society that is almost irreversible. Imposing even heavier pressures on

⁴⁶ Data available at: <https://imazon.org.br/publicacoes/boletim-do-desmatamento-da-amazonia-legal-setembro-2019-sad/>

⁴⁷ <https://www.bbc.com/portuguese/brasil-49256294>

⁴⁸ <https://www1.folha.uol.com.br/ambiente/2019/08/bolsonaro-diz-que-dados-de-desmate-foram-espancados-para-atingir-governo.shtml>

⁴⁹ <https://exame.abril.com.br/brasil/a-investidores-bolsonaro-diz-ter-potencializado-queimadas-na-amazonia/>; and <https://catracalivre.com.br/cidadania/bolsonaro-assume-que-potencializou-queimadas-na-amazonia/>

the rainforest, they also add weight to frequently violent land disputes involving massive agribusinesses, huge infrastructure projects, land-grabbing, wild-cat mining and logging activities. All have heavy impacts on the rainforest and its peoples, and are now being either encouraged or ignored, in terms of their potential degradation⁵⁰.

59. A foretaste of the effects of this encouragement and omission is the episode known as the "**day of flames**" (10 August 2019) that has become a milestone in the history of land ownership disputes in Brazil.

"We must show the President (Jair Bolsonaro) that we want to work, and the only way to do so is by felling, clearing our grazing lands with fire ..."

51

60. This coordinated upsurge in burn-offs – effectively confirmed in at least Pará State⁵² – was highlighted by the press and known to Brazilian institutions, prompting inspections by IBAMA. However, this environmental agency merely reported attacks, feeling that it was unable to step up its oversight activities due to the lack of support from the Military Police and National Security Force.

"I stress that official requests have already been issued, seeking support from the National Security Force; however, no reply has been received so far."⁵³

61. The journalist who broke the news on the "day of flames" is being threatened⁵⁴. Two police inquiries are under way, set up to investigate the "day of flames", one at the Civil Police Station in Novo Progresso and the other at the Federal Police Station in Santarém, both conducted in secret. Brazilian President Jair Messias Bolsonaro is not being investigated in these inquiries. However, information disclosed by the press indicates that

⁵⁰ See the Human Rights Watch Report: Brazil: Criminal Networks Target Rainforest Defenders (*Máfias do Ipê*), which explores how violence and impunity are driving deforestation in Brazilian Amazonia. Available at: <https://www.hrw.org/pt/report/2019/09/17/333886>

⁵¹ <http://www.folhadoprogresso.com.br/dia-do-fogo-produtores-planejam-data-para-queimada-na-regiao/>

⁵² <https://noticias.uol.com.br/meio-ambiente/ultimas-noticias/bbc/2019/08/27/o-que-se-sabe-sobre-o-dia-do-fogo-momento-chave-das-queimadas-na-amazonia.htm>

⁵³ https://brasil.elpais.com/brasil/2019/08/27/politica/1566859677_529901.html

⁵⁴ <https://g1.globo.com/pa/para/noticia/2019/09/02/policia-identifica-responsavel-por-ameacas-a-jornalista-que-denunciou-dia-do-fogo.ghtml>

the people under investigation are local entrepreneurs and farmers communicating through WhatsApp groups, supported by local law enforcement⁵⁵.

62. Although all this information is being scientifically proven by Brazilian and international institutions, with photographs and videos published in the local and international press, and despite all the reports being presented by international entities⁵⁶. President Jair Messias Bolsonaro nevertheless stated at the UN General Assembly Opening Ceremony on 24 September 2019 that:

“(Amazonia) is not being devastated or consumed by fire, as wrongly stated by the media.”⁵⁷

63. In a meeting with business executives held on 30 October 2019 at the Future Investment Initiative Forum in Riyadh, Saudi Arabia, Brazilian President Jair Messias Bolsonaro reaffirmed that the indigenous peoples were to blame for the fires in Amazonia; on the same occasion, he stated that he himself had paved the way for these outbreaks, as mentioned above.⁵⁸ He also claimed that non-governmental organisations involved with the environment were behind the fires⁵⁹.

Indigenous Peoples and Traditional Communities: At-Risk Groups

64. The outcomes of the acts and facts described above are depleting the environment and affecting rainfall patterns elsewhere in Brazil. This environmental degradation is having severe and disproportional effects on the indigenous peoples of Brazilian Amazonia, whose physical existence and lifestyles are dependent on its forests, lands and rivers, in material, social and symbolic terms. Due to the material, social and symbolic dependence of this ecosystem, these communities are being heavily and disproportionately penalised

⁵⁵ <https://reporterbrasil.org.br/2019/10/investigacoes-apontam-fazendeiros-and-empresarios-de-novo-progresso-como-organizadores-do-dia-do-fogo/>

⁵⁶ <https://www.hrw.org/pt/report/2019/09/17/333886>

⁵⁷ <http://agenciabrasil.ebc.com.br/politica/noticia/2019-09/presidente-jair-bolsonaro-discursa-na-assembleia-geral-da-onu>

⁵⁸ Watch the full video of the speech given by the President of Brazil Jair Bolsonaro at: <http://www.diretodaciencia.com/2019/10/31/o-discurso-de-bolsonaro-em-riad-and-o-desmonte-da-politica-ambiental/>.

⁵⁹ Interview with the President of Brazil, reprinted by most of the Brazilian Press. The full video may be accessed here: <https://globoplay.globo.com/v/7860186/>.

through their exposure to environmental degradation and the violence of its perpetrators, without the people who are directly to blame being held liable for this threatened disappearance, while political decisions undermine the possibilities for preventing these conditions, assigning blame and ensuring reparations.

65. While there can be no doubt that the rights of Brazil’s indigenous peoples have been violated throughout the nation’s history, it is also true that direct attacks by President Jair Messias Bolsonaro are unprecedented in the history of Brazilian democracy. The *measures, discourses* and *omissions* described in this Informative Note clearly show that the Brazilian President is labelling its indigenous people as “enemies of the nation”, while blatantly breaching public policies designed to preserve their lands and lifestyles, thus helping ensure that environmental degradation and violence continue to increase, steadily worsened by the absence of steps focused on prevention, reparations and assigning responsibility.
66. The effects of this exposure to this environmental degradation (which is still under way) caused by the President of Brazil Jair Bolsonaro – of which these forest fires are only one aspect – were presented at the 41st Session of the UN Human Rights Council (UNHRC) on 27 June 2019, at a parallel event examining the Impacts of Forced Internal Displacement on Indigenous Peoples – International Protection and the Situation in Brazil⁶⁰. Under attack by armed squads, communities are being driven away from their traditional lands by State and private infrastructure projects, mining ventures and expanding agribusiness enterprises.
67. As shown, the “day of flames” was a watershed for the discourses, measures and omissions of the President of Brazil Jair Bolsonaro, which may be categorised as crimes against humanity, targeting Brazil’s indigenous peoples. On 27 August 2019, as fires raged across Amazonia, Brazil’s President met with State Governors and once again

⁶⁰ Information was monitored by the Lower House Human Rights and Minorities Commission: <https://www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-permanentes/cdhm/noticias/indigenas-brasileiros-apresentam-na-onu-os-problemas-causados-pelos-deslocamentos-forcados-cdhm-acompanha-as-demanda>.

indicated that demarcating indigenous lands was a problem hampering the nation's development⁶¹.

“Roughly what percent of your State – Acre – is taken up by that indigenous reserve?”

“So you can do nothing in 86% of your State. In 86%, you cannot... No human activity of ours can take place there?”

Governor: “We are subject to environmental constraints (...)”

“So, a State with 86% of its land blocked even for sustainable exploitation is unacceptable. (...) Many reserves have strategic assets, which somebody planned. The ‘Indians’ do not lobby, they do not speak our language, and today they manage to hold 14% of the nation’s territory. I will close with a brief historical overview of that. But the intention is, one of the intentions is to undermine our feasibility. (...)”

“With every respect for those who preceded me, this policy adopted in the past was irresponsible, in terms of this, using the ‘Indians’ as a mass tool for hampering progress in these States here (...)”

“Today, if wild-cat mining is illegal, we want to legalise it. What is legalising? It is listening to Parliament. I will not take any decision using a cheap pen, a ballpoint, right? And this here is fairly far advanced at the Ministry of Mines and Energy, we intend to present this proposal soon. (...)”

“Our feelings here, our decisions so far, but we will listen to the (State) Governors, and this will no longer be demarcated because, on the bottom line, this real psychosis has already gone too far, in terms of demarcations and expansion of lands here in Brazil. (...)”

⁶¹ Speech partially reproduced on the official website of the Brazilian Presidency: <https://www.gov.br/planalto/pt-br/acompanhe-o-planalto/discursos/2019/fala-do-presidente-da-republica-jair-bolsonaro-durante-reuniao-com-os-governadores-dos-estados-da-amazonia-legal-palacio-do-planalto>.

68. A gloomy report prepared by the UPR Collective that monitors the recommendations issued through the Universal Periodic Review (UPR) mechanism, summarises the *discourses, measures and omissions* of the President of Brazil Jair Bolsonaro targeting its indigenous peoples:

“The President compared Indigenous Lands (IL) to zoos, likening their inhabitants to animals held in captivity, declaring the need to integrate these peoples living in a “inferior situation” with the “real Brazil”. The Government has also steadily criticised the extent of the Indigenous Lands particularly in Brazilian Amazonia and the “losses” resulting from the impossibility of engaging in the economic exploitation of these territories, stating that it will not demarcate any indigenous lands and will propose that they be opened up for leasing, commercial and wild-cat mining activities. The Government has also disseminated a discourse presenting the indigenous peoples and communities living in utter poverty, manipulated by foreign non-governmental organisations that are “wasting” massive potential profits lying latent in their lands.”⁶²

69. A Public Note of Articulation issued by Brazil’s Indigenous Peoples (APIB) after this meeting denounced this “genocidal, ethnocidal, anti-ecological and anti-indigenous policy” urged by President Jair Messias Bolsonaro⁶³.

“While Amazonia burns, anti-indigenous President Jair Messias Bolsonaro continues to distil his ignorance and racism against the indigenous peoples of Brazil. Under the argument that we are protected by foreigners, he continues to preach his genocidal, ethnocidal, anti-ecological and anti-indigenous policy, this time at a meeting of State Governors that should be striving to work together, seeking solutions for Amazonia, rather than pushing outdated ideas that are mistaken and perverse, as is his habit, unfortunately.

⁶² Full text of the report is available at: <https://iddh.org.br/wp-content/uploads/2019/10/VERSÃO-WEB.pdf>.

⁶³ Full text of the note is available at: <http://apib.info/2019/08/27/nota-de-repudio-da-apib-articulacao-dos-povos-indigenas-do-brasil/>.

One of the outcomes of this anti-environment policy is precisely the huge upsurge in burn-offs in Brazil, up 82% over the same period last year, which is the sharpest increase and also the highest number of outbreaks recorded over the past seven years in Brazil, as disclosed through the Burn-Offs Programme conducted by the National Space Research Institute (INPE).”

70. There can be no denying that attacks by Brazilian President Jair Messias Bolsonaro have ratcheted up violence against the indigenous people. A report prepared by the Indigenous Peoples’ Missionary Council (CIMI) mentions that preliminary data for 2019 indicate an upsurge in trespassing and disputes over indigenous lands: 111 incidents were recorded on 76 Indigenous Lands in 2018, rising to 160 on 153 Indigenous Lands between January and September 2019⁶⁴. This report also states that speeches given by then-presidential candidate Jair Bolsonaro in 2018 were driving forces in boosting violence against Brazil’s indigenous peoples.
71. Several case studies have been collected this year of indigenous leaders killed in violent clashes, including indigenous leader Paulo Paulino Guajajara, head of the Guajajara people living on the Arariboia indigenous land in the Bom Jesus das Selvas region of Maranhão State, who was ambushed, shot in the face and killed by loggers. He was a member of the Forest Guardians group of indigenous forest rangers established to oversee and control their own lands, in response to a steady stream of trespassing loggers and land-grabbers, repelling these invaders themselves, as the State failed to protect these indigenous lands and their peoples⁶⁵.
72. Another appalling case was the murder of the Mariry village head, in July 2019. This Wajãpi tribesman was knifed to death in Amapá State by a group of heavily armed wild-

⁶⁴ Full text of the report and preliminary data for 2019 are available at: <https://cimi.org.br/wp-content/uploads/2019/09/relatorio-violencia-contr-os-povos-indigenas-brasil-2018.pdf>, accessed on: 1 November 2019.

⁶⁵ Full text of the note is available at: <https://www1.folha.uol.com.br/poder/2019/11/guardiao-da-floresta-lider-indigena-guajajara-and-morto-em-conflito-com-madeireiros-no-maranhao.shtml>, accessed on: 1 November 2019.

cat miners who invaded the village. Despite begging for help through social networks and institutions, no adequate response came from the State⁶⁶.

73. As shown, the *measures, discourses and omissions* of President Jair Messias Bolsonaro in terms of environmental rights in Brazil may be categorised as attacks on its civilian population, endangering its indigenous peoples and traditional communities. This is the context – with a looming risk of crimes against humanity and genocide – that paves the way for the possibility of this Office of the Prosecutor taking appropriate steps not only in mitigation, but also pursuing preventive actions in order to avoid the situation becoming even worse.

⁶⁶ Full text of the note is available at:

https://www.em.com.br/app/noticia/politica/2019/07/27/interna_politica,1072883/lider-indigena-and-morto-a-facadas-no-amapa-politicos-veem-acao-de-gari.shtml, and

https://brasil.elpais.com/brasil/2019/07/28/politica/1564324247_225765.html, accessed on: 1 November 2019.

IV. CRIMINAL FRAMEWORK

Responsibility For Incitement To Genocide And Effective Risk Of Its Materialisation

74. The first crime warranting attention due to the facts that are occurring in Brazil is addressed by Article 6 of the Rome Statute:

Article 6:

“For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(...)

(e) Forcibly transferring children of the group to another group”.

75. In the Krstic judgment (2 August 2001, § 550), the Trial Chamber defined genocide as "any criminal enterprise aimed at destroying, in whole or in part, a particular type of human group, as such, by certain means. The special intent required by the crime of genocide has a twofold element: the act or acts must be aimed at a national, ethnic, racial or religious group, the act or acts must seek to destroy all or part of that group". In the same judgment, the Chamber recognizes that customary international law limits the definition of genocide to acts aimed at the physical or biological destruction of all or part of a group. This was confirmed by the ICTR Trial Chamber in the Semanza judgment (15 May 2003, § 315). The Chamber recalled that the "crime of genocide is considered an integral part of customary international law which, moreover, is an imperative standard of law", Rutaganda judgment (6 December 1999, § 46) and Musema judgment (27 January 2000, §15)⁶⁷.

⁶⁷ Source: <https://guide-humanitarian-law.org/content/index/>

76. As stated in Article 30, 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. Thus, two elements must be completed for an offense to be constituted: a moral element and a material element.
77. Regarding the moral element, the crime of genocide presupposes an intention to destroy all or part of a specific group. This intention refers to the will of the perpetrators of the genocide to perform certain acts, such as murder or submission of the group to extreme conditions of existence, with the aim of eliminating the group⁶⁸. However, no premeditation is required, the specific intent may only appear during the commission of the crime⁶⁹.
78. The jurisprudence recognizes that, in most cases, genocidal intent is established by index evidence. This intention can be inferred from a number of facts and circumstances, including the general context of perpetration of other wrongdoings systematically directed against the same group, the scale of atrocities committed, the fact that the victims were systematically chosen because of their membership in a particular group, or the repetition of discriminatory acts of destruction. Evidence that limited and selective assistance has been provided to a few individuals generally does not preclude a reasonable inference of the requisite genocidal intent. When concluding factual evidence, to the fact that the accused was motivated by a genocidal intent, this conclusion must be the only reasonable inference that must be made in light of the totality of the evidence⁷⁰.
79. The ICTR Trial Chamber considers that, "for a crime of genocide to be established, one of the acts enumerated in Article 2.2 of the Statute must have been perpetrated against a national, ethnic, racial or religious group, specifically targeted as such, and third, that the act was committed with the intention of destroying the target group, in whole or in part."

⁶⁸ See ICJ, 26 February 2007, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia) and Montenegro), Judgment, Reports 2007, pp. 43

⁶⁹ See ICJ, 26 February 2007, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia) and Montenegro), Judgment, Reports 2007, pp. 43

⁷⁰ See ICTR, Nyiramashuhuko et al. (Butare), Judgment 24/06/2011, ICTR-98-42, Paragraph 5732.

It is this specific intent that distinguishes the crime of genocide from other common crimes such as the large-scale killing of civilians. See *Kayishema, Ruzindana* (May 21, 1999). Consequently, genocide requires a two-track analysis: the underlying prohibited acts and the specific intention of genocide or *dolus specialis* (*Bagilishema* case, June 7, 2000, § 55)⁷¹.

80. In the *Seromba* judgment (12 March 2008, § 175, 176), the ICTR Appeals Chamber held that the intent to commit genocide can be inferred from indirect evidence. The Chamber recalled that "the intentional element of the genocide can be inferred from certain facts or clues, including: (a) the general context of perpetration of other wrongdoings systematically directed against the same group, that these other acts were committed by the accused or by others, b) the scale of atrocities committed, c) their general character, d) their execution in a region or country, e) the fact that the victims were deliberately and systematically chosen because of their belonging to a particular group, f) the exclusion, in this respect, of members of other groups, g) the political doctrine that inspired the acts, h) the repetition of acts discriminatory destruction; and (i) the perpetration of acts that undermine the group's foundation or are considered as such by the perpetrators"⁷².
81. In *Gacumbitsi* (7 July 2006, § 40), the Trial Chamber added that the intent could also be inferred from "physically attacking the group or its property, the use of insulting members of the target group, the weapons used and the seriousness of the injuries sustained by the victims, the methodical nature of the planning and the systematic nature of the crime"⁷³.
82. In *Kayishema & Ruzindana* (21 May 1999, § 91), the Trial Chamber held that "for the crime of genocide to be established, the requisite *mens rea* must exist before the commission of the acts". More recently, in the *Simba* case (27 November 2007, § 266), the ICTR overturned this judgment, arguing that the intention of genocide does not need to be formed before the commission of genocidal acts, but rather to be present at the time of commission. Moreover, in the *Nchamihigo* case (18 March 2010, § 363), the ICTR Appeals Chamber found that evidence of a high-level genocidal plan was not required to

⁷¹ Source: <https://guide-humanitarian-law.org/content/index/>

⁷² Source: <https://guide-humanitarian-law.org/content/index/>

⁷³ Source: <https://guide-humanitarian-law.org/content/index/>

convict a person or persons accused of genocide or for incitement as a mode of responsibility to the commission of genocide⁷⁴.

83. For the material element, pursuant to Article 9, the Court examines the following elements of crimes⁷⁵.

Genocide by killing: the offense is constituted when the perpetrator killed one or more persons, such person or persons belonged to a particular national, ethnic, racial or religious group, when the perpetrator intended to destroy, in whole or in part, that national, ethnic, racial or religious group, as such and the conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

The acts are not limited to murder. They also include measures that do not necessarily involve immediate death but eventually cause the group to disappear as such. These are deliberate acts aimed at the total or partial deferred destruction of a group as such. It is in this context that the measures aiming to subject the group to the conditions of existence leading to its disappearance, but also steps aimed at preventing births within a group, the transfer of children and serious injury to the physical and mental integrity of group members, including rape.

Genocide by causing serious bodily or mental harm: the offense requires that the perpetrator caused serious bodily or mental harm to one or more persons, that such person or persons belonged to a particular national, ethnic, racial or religious group, that the perpetrator intended to destroy, in whole or in part, that national, ethnic, racial or religious group, as such, and that the conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction. For this offense, the main elements are the following: the perpetrator inflicted certain conditions of life upon one or more persons, such

⁷⁴ Source: <https://guide-humanitarian-law.org/content/index/>

⁷⁵ <https://www.icc-cpi.int/resource-library/Documents/ElementsOfCrimesEng.pdf>

person or persons belonged to a particular national, ethnic, racial or religious group, the perpetrator intended to destroy, in whole or in part, that national, ethnic, racial or religious group, as such, the conditions of life were calculated to bring about the physical destruction of that group, in whole or in part, and the conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Genocide by forcibly transferring children is characterised when the perpetrator forcibly transferred one or more persons, such person or persons belonged to a particular national, ethnic, racial or religious group, the perpetrator intended to destroy, in whole or in part, that national, ethnic, racial or religious group, as such, the transfer was from that group to another group, the person or persons were under the age of 18 years, the perpetrator knew, or should have known, that the person or persons were under the age of 18 years, the conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

84. Acts must target individuals not as individuals but as members of a national, racial, ethnic or religious group. The criteria for belonging to a national, racial, ethnic or religious group proposed by the Convention do not have a precise legal or scientific definition. These criteria have therefore been subject to interpretation by international tribunals. The existence of the group as such can be attested by the objective criteria laid down in the Convention: nationality, race, ethnicity and religion. But international criminal tribunals have also found that the definition of the group could be established using the subjective criteria of identification and stigmatisation of the group used by the perpetrators in particular. These criteria then cover the perception perpetrators of crimes have developed regarding the national, ethnic, racial and religious characteristics of the group concerned⁷⁶. These subjective criteria must, however, apply to a stable and durable group whose membership is by birth⁷⁷.

⁷⁶ See ICTR: Kayishema and Ruzindana case, 21 May 1999, and ICTY: Jelisic cases, 5 July 2001 and Susica Camp Case (Prosecutor v. Nolic), 4 February 2005.

⁷⁷ See Akayesu case, 2 September 1998

85. Decisions of the international criminal tribunals have stated that the intention to destroy must relate to a substantial part of the target group. In the Seromba judgment (13 December 2006, § 319), the ICTR Trial Chamber found that there was no quantitative threshold for victims to conclude genocide,⁷⁸ but the substantial part can be assessed on a quantitative basis (number of victims compared to group) or qualitative (status of victims within the group) (Jeliscic case) and must be evaluated in the context of what happens to the rest group⁷⁹. Indeed, a certain number of acts constituting genocide do not entail the immediate death of individuals but dooms the survival of the group in a more or less short time⁸⁰.
86. In the Seromba case (12 March 2008, § 161), the ICTR Appeals Chamber found that "committing genocide" is not limited to direct and physical perpetration; other acts may constitute direct participation in the *actus reus* of the crime, including by aiding and abetting, as well as direct and public incitement to commit genocide⁸¹.
87. In the case of Nahimana et al. (28 November 2007), the ICTR Appeals Chamber finds that anyone may be found guilty of the crime of direct and public incitement to commit genocide if he or she has directly and publicly incited to commit genocide (material element or *actus reus*) and whether it was intended to directly and publicly incite others to commit genocide (the intentional element or *mens rea*) (§ 677)⁸².
88. According to case law, because genocide is a mass crime, the acts must be part of an organisation or at least a "systematic" state or quasi-state context.⁸³ And targeting the leaders of a community can constitute genocide and may give rise to a presumption of genocide. To conclude the genocide, it is sufficient that the leaders were selected because of the impact that their disappearance would have on the survival of the group as such⁸⁴.

⁷⁸ Source: <https://guide-humanitarian-law.org/content/index/>

⁷⁹ Krstic case, ICTY, 19 April 2004

⁸⁰ See ICTR, Nyiramashuhuko et al. (Butare), Judgment 24/06/2011, ICTR-98-42, Paragraph 5732

⁸¹ See ICTR, Nyiramashuhuko et al. (Butare), Judgment 24/06/2011, ICTR-98-42, Paragraph 5732

⁸² See ICTR, Nyiramashuhuko et al. (Butare), Judgment 24/06/2011, ICTR-98-42, Paragraph 5732

⁸³ See ICTY, Nikolic, Trial Chamber Judgement, 20/10/1995, Paragraph 7 s., Karadzic and Mladic, 11/07/1996 Paragraph 92s., Tadic, 07/05/1997, Paragraph 643s

⁸⁴ See Tolimir, Judgment of 08/04/2015 (IT-05-88/2)

89. Any person may be found guilty of direct and public incitement to commit genocide who directly and publicly incites others to commit genocide, with the intention of directly and publicly inciting others to commit such a crime, such an intention assuming in itself the existence of a genocidal intent⁸⁵.
90. What we have here in this specific case is a set of acts and significant omissions by President Jair Messias Bolsonaro that constitute incitement, moving rapidly towards placing Brazil's indigenous peoples at effective risk of genocide. The inflamed rhetoric denigrating these communities, with a constant discourse of dehumanisation, ridicularisation and disparagement of their lifestyles has in fact legitimised violence against them, justifying public policies designed to remove or reduce the control these groups hold over their land.
91. By comparing '*Indians*' living on their own lands to animals kept in zoos,⁸⁶ President Jair Messias Bolsonaro clearly expresses his intention of belittling them, while building up grassroots support for a policy designed to shrink indigenous lands that have already been demarcated.
92. The statements of President Jair Messias Bolsonaro should prompt deep concern, as genocide is unlikely to occur without being preceded by a discourse of dehumanisation.
93. But the risk of genocide is not rooted only in discourse: dismantling environmental oversight and control policies and structures has also allowed an upsurge in violence throughout the forest, with indigenous leaders being murdered, directly impacting the survival of these groups over the long term.
94. Instead of protecting these communities, which are endangered by economic groups greedy for their land, the State is instead discriminating against them, leaving them even more vulnerable to abuse and attack.

⁸⁵ See ICTR, Nyiramashuhuko et al. (Butare), Judgment 24/06/2011, ICTR-98-42, Paragraph 5985

⁸⁶ <https://oglobo.globo.com/sociedade/bolsonaro-compara-indios-em-reservas-animais-em-zoologicos-23272902>

Crimes against humanity

95. The second Article warranting attention typifies crimes against humanity:

Article 7

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

(...)

(d) Deportation or forcible transfer of population;

(...)

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(...)

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

For the purpose of paragraph 1:

a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts mentioned in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack (...).

96. The core element in crimes against humanity is a “widespread or systematic attack directed against any civilian population”. As set forth in Article 7 of the ICC Statute, such an attack consists of “any course of conduct involving the multiple commission of acts mentioned in Paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organisational policy to commit such attack;” (Article 7(2)(a)). According to the ICC Elements of Crimes, there is no need for these acts to consist of a military strike.

Consequently, attacks need not involve the Armed Forces or occur within a context of hostilities.⁸⁷ According to the case law established by the International Criminal Court for the former Yugoslavia (ICTY), acts may involve a policy of mistreatments targeting a specific civilian population⁸⁸. Ever since the military judgments handed down after World War II, there has been no need for any link to an armed conflict in order to establish that crimes against humanity have occurred.

97. According to the ICC Elements of Crimes, the “organisational policy for such acts” means that the State or organisation is fostering or encouraging such attacks against the civilian population. Still according to the Elements of Crimes, in exceptional cases this policy may be deployed through an intentional absence of action by the State or organisation, which deliberately encourages such an attack⁸⁹.
98. There is no need for each act listed in Paragraph 1 of Article 7 to be committed in a widespread or systematic manner, but such acts should form part of an attack with these characteristics.⁹⁰ In other words, there is no need for individual acts to be widespread or systematic; instead, they should rather form part of a widespread or systematic attack. As decided in the Tadic case, it is possible for a single act – such as a murder – to be characterised as a crime against humanity, when committed within the context of a widespread campaign against a civilian population⁹¹.
99. The nexus between individual acts and an attack against a civilian population is important. Even if the ICC documentation does not stipulate the manner in which this nexus is established, the case law established by the Court offers some hints on this matter. There is circumstantial evidence indicating that this nexus may include: (i) similarities between acts perpetrated by the accused and acts occurring within the context of the attack; (ii) the

⁸⁷ See TPI, *Situation in Kenya* (Authorisation Decision), Paragraph 80.

⁸⁸ See ICTY, Kunarac (Trial Chamber Judgment), Paragraph 416; ICTY, Prosecutor v. Stakic, No. IT-97-24-T, Judgment, Trial Chamber, 31 July 2003, Paragraph 623.

⁸⁹ “A policy which has a civilian population as the object of the attack would be implemented by State or organisational action. Such a policy may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack. The existence of such a policy cannot be inferred solely from the absence of governmental or organisational action” (Elementos dos Crimes, p. 3).

⁹⁰ See ICTY, Prosecutor v. Mrksic (Vukovar Hospital Decision), Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, 3 April 1996 (PURL: <http://www.legal-tools.org/doc/9d99b6/>), Paragraph 30.

⁹¹ See ICTY, Tadic (Trial Chamber Judgment), Paragraph 649.

type of events and circumstances surrounding the acts of the accused; (iii) geographical proximity and close timing between acts perpetrated by the accused and the attack; (iv) the type and extent of the knowledge of the accused when the acts are committed⁹².

100. According to the ICC Statute, the attack must be “systematic” or “widespread”. There is no doubt that, under case law, one of these two elements is sufficient. This characteristic is what distinguishes crimes against humanity from ordinary crimes.
101. The term “widespread” has a quantitative meaning, referring to the scale of the attack or the number of people affected thereby⁹³.
102. The term “systematic” has been defined by the UN International Law Commission as “pursuant to a preconceived plan or policy. The implementation of this plan or policy could result in the repeated or continuous commission of inhumane acts. The thrust of this requirement is to exclude a random act which was not committed as part of a broader plan or policy”⁹⁴. Notwithstanding this definition, the case law established by International Criminal Tribunals have applied this category in a lighter and more elastic manner. In illustration, the case law established by the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) defines “systematic” as meaning “the organised nature of acts of violence and the improbability of their random occurrence”⁹⁵. The ICC itself handed down a similar decision on the situation in Kenya, in which it retrieved the case law established by two *ad hoc* tribunals, understood as being “systematic” in international criminal law. This Court reiterated that the ICTR defined “systematic” as: (i) being fully organised; (ii) following a regular pattern; (iii) based on a common policy; and (iv) involving substantial public or private resources. Meanwhile, the ICTY requires (i) a political plan or goal; (ii) interconnected crimes being committed on a large scale or on an ongoing basis; (iii) the use of significant public or private resources; and (iv) the involvement of senior political

⁹² See ICTY, Tadic (Trial Chamber Judgment), Paragraphs 629-633.

⁹³ See ICTY, Tadic (Trial Chamber Judgment), Paragraph 648; ICTY, Kayishema and Ruzindana (Trial Chamber Judgment), Note 30, Paragraph 123; Blaskic (Trial Chamber Judgment), Paragraph 206.

⁹⁴ International Law Commission, 1 YbILC 47 (1999).

⁹⁵ See ICTY, Kordic (Appeals Chamber Judgment), Paragraph 94; ICTY Blaskic (Appeals Chamber Judgment), Paragraph 101; ICTY, Kunarac (Appeals Chamber Judgment), Paragraph 94. ICTR, Muvunyi (Trial Chamber Judgment), Paragraph 512.

authorities or high-ranking officers⁹⁶. It is important to stress that the policy or plan is an element of the crime, serving as an indicator of the systematic nature of the attack⁹⁷.

103. Article 7 of the ICC Statute also mentions “any civilian population”. This category dated back to the appearance of crimes against humanity after World War II, related to the purpose of responding to attacks by Germany, initially against its own population and then against citizens of other countries unrelated to the war drive. Decades later, the ICTY specified in the Tadic case (1997) that “the inclusion of the word ‘any’ makes it clear that crimes against humanity can be committed against civilians of the same nationality as the perpetrator or those who are stateless, as well as those of a different nationality.”⁹⁸ Similarly, distinguishing crimes against humanity from war crimes and stressing that crimes against humanity occur when a State turns against its own nationals or the citizens of other states, Pre-Trial Chamber II affirmed that, in a decision that authorised an investigation of the situation in Kenya: “the term “civilian population” refers to persons who are civilians, as opposed to members of armed forces and other legitimate combatants” and that it “(c)onsiders that the potential civilian victims of a crime under Article 7 of the Statute are groups distinguished by nationality, ethnicity or other distinguishing features.”⁹⁹
104. In turn, this “State or organisational policy” dates back to practices performed or tolerated by the State or undertaken with the acquiescence of the actual or legal authority. This is an element distinguishing acts constituting crimes against humanity from common crimes, thus helping the Court define what constitutes the “interests of justice” for its own purposes, with the Court being endowed with global jurisdiction, necessarily supplementing national jurisdictions. The qualities of being systematic or widespread do not describe individual practices, but rather those of authorities behind the crimes¹⁰⁰.
105. According to Article 25(3) of the ICC Statute, “(a) person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

⁹⁶ Situation in Kenya (Authorisation Decision), Paragraph 96; Gbagbo (Confirmation Decision), Paragraph 223.

⁹⁷ See ICTY, Blaskic (Appeals Chamber Judgment), Paragraph 100.

⁹⁸ ICTY, *Tadić*, TC II, Opinion and Judgment, Case No. IT-94-1-T, 7 May 1997, Paragraph 635.

⁹⁹ Situation in Kenya (Authorisation Decision), Paragraphs 82 and 81, respectively.

¹⁰⁰ ICTY, *Tadic* (Trial Chamber Judgment), Paragraph 649;

(b) orders, solicits or induces the commission of such a crime which in fact occurs or is attempted.” In a dissenting opinion on the Gbagbo case, Judge Herrera Carbuccion understood this provision to mean: “although ordering requires a position of authority, soliciting and inducing refer to a situation where someone is influenced by another to commit a crime. While soliciting is equivalent to urging and advising, inducing entails the enticement of another person to commit a crime.” In the same Opinion, she also argues that: “instigation may be carried out verbally and/or by other means of Informative Note, depending on the position of the instigator. In Brđanin, the ICTY considered that the accused made several “inflammatory and discriminatory statements” in which he advocated the dismissal of non-Serbs from employment, stating that few non-Serbs would be permitted to remain on the territory. The ICTY determined in that case that, in view of the accused’s various positions of authority, those statements “could only be understood by the physical perpetrators as a direct invitation and a prompting to commit crimes.”¹⁰¹

106. Although the “State or organisational policy” element is not defined in the ICC Statute, Pre-Trial Chamber I specified in Katanga and Ngudjolo Chui that “such a policy may be made either by groups of persons who govern a specific territory or by any organization with the capability to commit a widespread or systematic attack against a civilian population. The policy need not be explicitly defined by the organizational group. Indeed, an attack which is planned, directed or organized - as opposed to spontaneous or isolated acts of violence - will satisfy this criterion.”¹⁰² In Bemba Gombo, Pre-Trial Chamber II affirmed that, for the purposes of crimes against humanity: “such a policy may be made by groups of persons who govern a specific territory or by any organization with the capability to commit a widespread or systematic attack against a civilian population. The policy need not be formalized. Indeed, an attack which is planned, directed or organized - as opposed to spontaneous or isolated acts of violence - will satisfy this criterion”¹⁰³. Pre-Trial Chamber II reaffirmed this understanding in the “State or organisational policy” in a decision authorising an investigation into a situation in Kenya¹⁰⁴.

¹⁰¹ ICC, The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé, Dissenting Opinion of Judge Herrera Carbuccion, ICC-02/11-01/15-1263-AnxC-Red, Paragraph 559 and 561-2.

¹⁰² ICC, Katanga and Ngudjolo Chui (Pre-Trial Chamber I Judgment), Paragraph 396.

¹⁰³ ICC, Bemba Gombo (Pre-Trial Chamber II, Judgment), Paragraph 81.

¹⁰⁴ ICC, Situation in Kenya (Authorisation Decision), Paragraphs 84-86.

107. Article 7 of the ICC Statute lists eleven acts that, when perpetrated in a widespread or systematic manner against a civilian population under a State or organisational policy, may constitute crimes against humanity. Of the eleven acts, four are particularly relevant in terms of crimes against humanity resulting from environmental crimes: (i) extermination (Article 7(1)(b)), (ii) deportation or forcible transfer of population (Article 7(1)(d)), (iii) persecution (Article 7(1)(h)), in the terms presented in the previous paragraphs, and (iv) “other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to mental or physical health” (Article 7(1)(k)), which is a type of residual clause in the rule allowing the Court to update it, keeping pace with changes in society.
108. According to the ICC Statute, “Deportation or forcible transfer” is understood as being the “forced displacement of persons through expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law” (Article 7(2)(d)). In the Elements of Crimes, deportation or forcible transfer has the following elements: (i) the perpetrator has deported or forcibly transferred, without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts; (ii) such person or persons were lawfully present in the area from which they were so deported or transferred; (iii) the perpetrator was aware of the factual circumstances that established the lawfulness of such presence; (iv) the conduct was committed as part of a widespread or systematic attack directed against a civilian population; and (v) 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, all with the intention that the conduct should be part of an attack of this type.
109. According to the ICC Statute, the “persecution of a group or collectivity” is taken to mean the “intentional and severe deprivation of fundamental rights contrary to international law by reasons related to the identity of such group or collectivity” (Article 7(2)(g)), including ethnic groups such as indigenous peoples. In the ICC Elements of Crimes, “persecution” comprises the following elements: (i) the perpetrator severely deprived one or more persons of fundamental rights, in breach of international law; (ii) the perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the

group or collectivity as such; (iii) such targeting was based on political, racial, national, ethnic, cultural, religious, gender-related reasons, as defined in Article 7, Paragraph 3, of the ICC Statute, or other grounds that are universally acknowledged as unacceptable under international law; (iv) the conduct was committed in connection with any act mentioned in Article 7, Paragraph 1, of the Statute or any crime falling under the jurisdiction of the Court; (v) the conduct was committed as part of a widespread or systematic attack directed against a civilian population; and (v) the perpetrator knew that the conduct was part of a widespread or systematic attack directed against a civilian population or had intended the conduct to be part of an attack of this type.

110. The indigenous peoples enjoy the same rights as assured to all citizens, under international human rights obligations contracted by the Brazilian State. Furthermore, they are also endowed with fundamental collective rights, listed in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007. Outstanding among these rights are: (i) Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture (Article 8)¹⁰⁵; (ii) Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development (Article 23)¹⁰⁶; (iii) (Article 26)¹⁰⁷; (iv) Indigenous peoples have the right to

¹⁰⁵ Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for: a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities; b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources; c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights; d) Any form of forced assimilation or integration; e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

¹⁰⁶ Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions/

¹⁰⁷ Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters, coastal seas and other resources and to uphold their responsibilities to future generations in this regard (Article 25)¹⁰⁸.

111. When drawing up a catalogue of rights, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) describes certain aspects of the lifestyles of different peoples, explaining the key elements encompassed by their different ways of life – particularly land and water – on which indigenous lifestyles depend in material, social and symbolic ways. This Declaration clearly shows that the link between the indigenous lifestyle, individual lives and societies is intrinsic, in terms of these elements, meaning that they are essential “life conditions” for indigenous peoples, whose physical reproduction depends on them, together with the social reproduction of their lives.
112. The statement in the previous paragraph – land and water are elements that are intrinsic to the existence of indigenous peoples – leads to the conclusion that their destruction could definitively eliminate the material, social and symbolic conditions needed for their lives, thus constituting “extermination” as defined in article 7 of the ICC Statute, without indicating the criminalisation of a new type of conduct.
113. The rights listed in the UN Declaration on the Indigenous Peoples is also important in terms of the possibility of persecution constituting a crime against humanity because, in the Kupreskic and others case, the International Criminal Tribunal for the Former Yugoslavia (ICTY) decided that expulsion, with destruction of homes and properties could constitute a severe and deliberate deprivation of fundamental rights, and consequently persecution, for these purposes. In addition to forbidding all types of transfer and assimilation, this Declaration includes a notable element of analogy with the understanding enshrined by the ICTY, which is the key role played by land in the Declaration, and consequently the severity of acts attacking lands, similar to the destruction of homes and properties.

¹⁰⁸ Article 25 Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

114. In order to establish crimes against humanity, the following subjective elements are required, in addition to the objective elements listed above: (i) the intention of engaging in conduct classified as criminal; and (ii) knowledge of a systematic and widespread attack against a civilian population.
115. With regard to the intention of engaging in conduct classified as criminal, this encompasses: (i) an awareness that a specific result will be achieved through acting in a certain manner or not acting; and (ii) the wish to achieve this outcome or the awareness that this will be the outcome, if everything occurs normally.
116. With regard to knowledge, this requires that the perpetrator be aware of the nexus between his/her own conduct and a systematic or widespread attack against a civilian population. The International Criminal Tribunal for the former Yugoslavia decided in the Tadic trial that the perpetrator of the crime had to be aware that an attack was under way on a civilian population, and that his act was a part of this; in the Blaskic trial, there had to be a risk of his act being part of an attack, with this risk accepted by the perpetrator¹⁰⁹. In turn, the ICC established that “knowledge” does not imply knowing the details¹¹⁰ of the attack on a civilian population, and, for a higher-ranked superior, this requirement may be met by the fact that he had sufficient elements to know that his subordinate had committed a crime, but did not take steps to halt them¹¹¹. This was clarified by the Trial Chamber, elaborating on the Elements of Crimes: “rather, what is required is that ‘(t)he perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population’. The EoC further stated that “(i)n the case of an emerging widespread or systematic attack against a civilian population, the intent clause of the last element indicates that this mental element is satisfied if the perpetrator intended to further such an attack”¹¹².

¹⁰⁹ Cassese, Antonio. *International Criminal Law*. 2nd ed. Oxford: Oxford University Press, 2008.

¹¹⁰ The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé, Dissenting Opinion of Judge Herrera Carbuca, ICC-02/11-01/15-1263-AnxC-Red, Paragraph 71.

¹¹¹ The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé, Dissenting Opinion of Judge Herrera Carbuca, ICC-02/11-01/15-1263-AnxC-Red, Paragraph 514.

¹¹² ICC, *Bemba*, TC III, Judgment pursuant to Article 74 of the Statute, Case No. ICC-01/05-01/08-3343, 21 March 2016, Paragraph 167.

117. With regard to persecution as a crime against humanity, in addition to these two elements, this requires a special type of offence, which is the intent to persecute or discriminate for political, racial, national, ethnic, cultural religious or gender-based reasons.
118. In 2016, the Office of the Prosecutor at the International Criminal Court published a Policy Paper¹¹³ explaining its stance on selecting cases. It is important to stress that this 2016 paper is not an expansion of the sphere of competence of the ICC, but rather a construal of existing crimes: consequently, any possibility of filing a suit involving the environment must slot into the existing juridical framework established by the Rome Statute. One of the changes mentioned in this document consists of the priority now given to the criminalisation of land expropriation causing forced displacement, for example, as well as offences against the environment and crimes against humanity when perpetrated under a State or organisational policy in order to pursue such policy. As set forth in this document, these practices do not *per se* constitute crimes against humanity, but are classified as such because their outcomes are typified in Article 7 of the ICC Statute.
119. This shift in the stance adopted by the Office of the Prosecutor allows a criminal prosecution of that may be classified as war crimes under Article 8 of the Statute, when perpetrated in the course of an international or non-international armed conflict. With this shift in orientation, this opens up the possibility of criminal prosecution for social and environmental crimes in times of peace, if perpetrated under the aegis of a State or organisational policy in order to pursue such policy, compliant with Article 7 of the Statute.
120. This is consequently an alteration introduced strictly within the designation of crimes against humanity as defined by the ICC Statute, in order to respond to a shift in social perception of the severity of social and environmental issues. However, this shift is not unknown in the history of this Court, instead dating back to possibilities opened up during discussions of the wording of the Rome Statute that examined the classification of large-scale environmental offences as international crimes. On that occasion, it was finally decided not to typify them due to the difficulties that seemed likely to arise in

¹¹³ ICC. The Office of the Prosecutor. Policy paper on case selection and prioritisation. The Hague, 15 September 2016, p. 5.

demonstrating the deliberate perpetration of such acts and the type of harm resulting therefrom that would give rise to liability under international law only when damages are direct.

121. However, these difficulties do not arise with the acts perpetrated by President Jair Messias Bolsonaro. The facts described above show that the Brazilian President has repeatedly issued statements since his election denigrating the indigenous peoples of Brazil, making no attempt to conceal his opinion that they are less than human due to their lifestyle, opposing the demarcation of their lands that he is portraying as extremely rich, in the hands of just a few people, stressing this with rising and disturbing insistence.
122. Updating colonial practices of the Brazilian State towards indigenous peoples, his words have had severe consequences: they clearly convey to certain groups constituting his electoral base that he knows they will be gearing up for a lengthy battle with the indigenous peoples, content to provide protection for acts that breach the law, such as permitting loggers, wild-cat miners and land-grabbers to encroach on indigenous lands, even if demarcated. One of the consequences of these intrusions that indigenous peoples are being forced to put their own lives at risk on the front line, in order to protect their ancestral lands against a State that is infringing on their rights and failing to defend them.
123. This deliberate negligence on the part of the President in protecting indigenous lands from encroaching wild-cat miners, loggers and land-grabbers is intentional and also criminal, as the President commands the Armed Forces, with Brazil's intelligence services and indigenous policy under his responsibility, falling under the aegis of the Federal Civil Service. With these resources, his failure to protect indigenous lands against trespassing loggers, land-grabbers and wild-cat miners appears clearly deliberate, at a time when they are under a rising wave of increasingly severe attacks.
124. Rather than assisting the indigenous peoples and legally imposing respect for their rights, President Jair Messias Bolsonaro is instead acting in ways that strip them of their humanity in the eyes of Brazilian society, as already mentioned, conveying his unwillingness to prosecute acts against them. The President has negated the possibility of

any institutional response to the criminal acts encouraged by his own words¹¹⁴. During the eight months of his Administration, he has systematically striven to dismantle institutions that could draw up and implement a policy for dealing with attacks on these indigenous peoples. One result of his *measures*, *discourses* and *omissions* has been to thrust them into disputes with loggers, land-grabbers and wild-cat miners eager to take over the lands held by the indigenous peoples.

125. Notwithstanding the widely known key role played by land in the physical, social and spiritual survival of the indigenous peoples, President Jair Messias Bolsonaro already expressed his intention of creating conditions that will allow commercial and wild-cat mining on these lands, together with large-scale cattle-ranching and the construction of infrastructure projects. Moreover, his support is not limited to speeches. He is also taking political steps in this direction, such as when he transferred the demarcation of indigenous lands from the Ministry of Justice to the Ministry of Agriculture during his first few days in office, for example, in order to subject them to the interests of agribusinesses, as described and proven in the facts set forth in this Informative Note.
126. It is thus important to stress that this is not a stand-alone act. For example, the President has deployed budget and administrative ploys to weaken the National Indian Foundation (FUNAI), as an alternative to its closure, which would be more expensive and demand greater political efforts.
127. Viewed from any angle, these are deliberate actions whose intentions have been explained by the current Land Ownership Affairs Secretary Nabhan Garcia (appointed to the Ministry of Agriculture by the President) at an event with rural landowners from southern Pará State, which is one of the areas with the most heated arguments between large-scale rural landowners and indigenous communities, where Conservation Units are fiercely disputed. His remarks become even more serious in view of the public support offered by President Jair Messias Bolsonaro (together with his sons and some of his Ministers) for arming civilians, particularly rural landowners, for whom the President even mentioned “exclusion from illegality” when defending their lands.

¹¹⁴ The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé, Dissenting Opinion of Judge Herrera Carbuca, ICC-02/11-01/15-1263-AnxC-Red, Paragraph 561-562.

128. Quite coherently, the President and some of his Ministers (including military officers who have served in this region) vociferously affirmed to Brazilian society that the indigenous people are incapable as autonomous agent – according to them, these communities are being manipulated by foreign NGOs interested in the wealth of the forest – reiterating their purported eagerness to become “integrated” with Brazilian society, although the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and a broad range of leaders are calling for demarcation as a crucial step that is urgently needed to preserve their traditional lifestyles.
129. President Jair Messias Bolsonaro and his Ministers have publicly and systematically attacked the transnational network built up by the indigenous peoples that they claim are jeopardising the territorial integrity of Brazil. This rhetoric draws attention, because international cooperation among associations striving to protect indigenous rights and inflows of foreign funding are both legal and peaceful in intent, with a lengthy track record that includes formal channels involving the Brazilian Government, such as the Amazonia Fund through which the Federal Civil Service allocates Norwegian and German funding through Brazil’s National Social and Economic Development Bank (BNDES) to environmental entities, State Administrations, universities and the tertiary sector.
130. Through this type of discourse, President Jair Messias Bolsonaro is portraying Brazil’s indigenous peoples to society in general as either sub- human or a potential threat to national sovereignty, with “integration” as the solution. This is how he justifies his attacks against a civilian population, alleging defence of Brazilian sovereignty, although (i) well aware that “integrating the *Indians*” – the civilian population in question – will lead to the disappearance of their lifestyles and (ii) encouraging this disappearance, which he feels falls below the lifestyle of Brazilian society, constituting a stumbling-block for his national development policy.
131. The attacks perpetrated by Brazil’s President through (i) speeches urging trespassers to encroach on indigenous lands; (ii) failure to comply with the obligation to comply to protect the community, investigating and making reparations for breaches of their rights; and (iii) the rapid de-institutionalisation of Brazil’s indigenous policy all constitute “attacks against a civilian population” as defined in Article 7 of the Statute. As shown in

the description of these facts, the living conditions and lifestyles of the indigenous peoples are being destroyed by river pollution and wild-cat miners, loggers and land-grabbers encroaching on their lands, which constitutes extermination as defined in Article 7 of the Statute. Meanwhile, statements by President Jair Messias Bolsonaro show that he believes that these ways of life are a reality that should be transformed as they are inherently bad, with this transformation taking place through “integrating the *Indian* into Brazilian society”. Finally, they constitute a stumbling block hampering the development of the nation which the President is eager to promote through infrastructure, mining, logging and agribusiness projects in rainforest areas.

132. An important element in this specific case is that indigenous ways of life are grounded on very specific links between human and non-human lives, the land itself, wildlife, plants and rivers. This means that it is not only encroachment on their lands and pollution of their rivers that can be classified as environmental crimes against humanity, but also illegal burn-offs for unlicensed logging activities and land take-overs that are spreading fire through the forest. It is not a matter of typifying a new type of conduct here, amending the Statute, but rather interpreting the facts and the rules in ways that are aligned with the Office of the Prosecutor, in order to categorise practices that destroy the environment as crimes of extermination against humanity, thus falling within the boundaries of Article 7.
133. It is known that these links are foreign to the worldview underpinning International Criminal Law but – as the indigenous peoples are the earliest victims of the crimes against humanity perpetrated by President Jair Messias Bolsonaro, this matter is seen as an opportunity to call upon the Court to establish an innovative construal that is nevertheless encompassed by the law that it must apply.

V. JURISDICTION AND COMPETENCE

134. Jurisdiction relates to whether a crime within the jurisdiction of the Court has been or is being committed. It requires an assessment of (i) temporal jurisdiction (date of entry into force of the Statute, namely 1 July 2002 onwards, date of entry into force for an acceding State, date specified in a UN Security Council referral, or in a declaration lodged pursuant to Article 12(3)); (ii) either territorial or personal jurisdiction, which entails that the crime has been or is being committed on the territory or by a national of a State Party or a State not Party that has lodged a declaration accepting the jurisdiction of the Court, or arises from a situation referred by the UN Security Council; and (iii) subject-matter jurisdiction as defined in Article 5 of the Statute (genocide; crimes against humanity; war crimes, and aggression).

Temporal Competence

135. According to Article 11 of the Rome Statute, the ICC has temporal jurisdiction “only with respect to crimes committed after the entry into force of the Statute.” Brazil was the 69th State to ratify the Rome Statute, depositing the instrument of ratification on 14 June 2002, before the Statute entered into force. Internally, the treaty was promulgated on 25 September 2002, through Decree N° 4.388
136. Consequently, the ICC has jurisdiction over Rome Statute crimes committed in Brazilian territory or by its nationals from 25 September 2002 onwards. Specifically, this Informative Note addresses acts committed by President Jair Messias Bolsonaro from 1 January 2019, onwards, and, accordingly, the Court has jurisdiction *ratione temporis*.

Territorial and/or Personal Competence

137. On the authority of Article 12 of the Rome Statute, a “State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in Article 5.” In this respect, the ICC may then exercise its jurisdiction territorially or personally, the basis being either the State on the territory of which the conduct in question occurred or the State of which the person accused of the crime is a national.

138. As set out above, the events in question occurred in Brazilian territory; moreover, it is alleged that the person responsible for such crimes is a national of a State that has accepted jurisdiction.

139. Hence, the crimes alleged in this Informative Note fall within both the territorial and personal jurisdiction of the Court.

Material Competence

140. The Court has jurisdiction *ratione materiae* over the commission of crimes against humanity by President Jair Messias Bolsonaro. Under Articles 5 and 7 of the Rome Statute, the ICC shall be limited to the most serious crimes of concern to the international community as a whole, having jurisdiction over crimes against humanity.

141. The information set forth in this Informative Note provides reasonable grounds for believing that crimes against humanity have been or are still being committed in Brazil

142. It is worth underscoring that this Informative Note presents evidence that crimes committed by President Jair Messias Bolsonaro are leading to the destruction of the environment in the Brazilian territory, as a result of a policy supported by President Jair Messias Bolsonaro, backed by his abuse of his official capacity that has caused irreversible impacts on communities located both inside the Brazilian Amazon forest and in other regions of the nation.

143. For this reason, the Court's subject-matter jurisdiction is triggered.

VI. COMPLEMENTARITY AND GRAVITY: NECESSARY EFFECTS OF THE JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT

144. This Informative Note refers to *measures*, *discourses* and *omissions* perpetrated by the President of Brazil Jair Bolsonaro against its indigenous peoples and traditional communities, which may cause “forced displacement of persons through expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law” (Article 7.1.d of the Rome Statute); being characterised as “persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender-related grounds ” (Article 7.1.h of the Rome Statute); “intentionally causing great suffering, or serious injury to body or to mental or physical health” (Article 7.1.k of the Rome Statute).
145. We issue a warning that these systematic attacks on social and environmental human rights are paving the way towards putting Brazil’s indigenous peoples and traditional communities at risk of genocide, as they deliberately “destroy, in whole or in part, a national, ethnic racial or religious group” through killing leaders and members of these groups (Article 6.a of the Rome Statute); “causing serious bodily or mental harm to members of the group” (Article 6.b of the Rome Statute); or “deliberately inflicting living conditions on the group that are calculated to bring about its physical destruction in whole or in part” (Article 6.c of the Rome Statute).
146. The facts in this Informative Note prove that President Jair Messias Bolsonaro perpetrated these acts through (i) statements urging violence against indigenous peoples and their extermination, linked to (ii) dismantling policies of providing protection for social and environmental rights and ensuring respect, protection and materialisation of the right to land, jeopardising the lives, safety and security of these indigenous peoples, with all this worsened by (iii) complicit agreement with deforestation and burn-offs of the Amazon Rainforest and (iv) failure to make reparations for damages and prevent further crimes.
147. The facts described in this Informative Note show that President Jair Messias Bolsonaro has encouraged violence against the indigenous peoples and the integrity of their lands

through his statements, culminating during the past few weeks (between 3 and 23 August 2019) with the Amazon Rainforest in flames.

148. Despite constant warnings about the outcomes of these facts and declarations about plans for the “day of flames”, President Jair Messias Bolsonaro has not acknowledged these violations and the severity of the facts, deliberately refusing to take steps. Instead, he failed to provide any effective responses, blaming non-governmental organisation working for the environment, despite a lack of any evidence, as diversionary tactic for shedding his responsibilities.
149. It was only on 25 August 2019 that President Jair Messias Bolsonaro called for an investigation to be opened by the Federal Police, with people selected by the Government.
150. All the steps taken after massive international mobilisation do not indicate any mitigation for the risk of genocide to which Brazil’s indigenous peoples are being exposed by the nation’s President. Even during the worst environmental crisis since democracy returned to Brazil in 1988, President Jair Messias Bolsonaro continued to state that it is indigenous lands that are the main problem in the Amazon Region.
151. The absence of investigations being conducted to assess the responsibility of President Jair Messias Bolsonaro for these events, and his political steering of investigatory procedures under way, meet the jurisdictional complementarity requirements laid down by this International Criminal Court.

Absence of investigation by the Brazilian Justice System or Those of Other States Parties – Articles 17.1.a and c

Issues of Admissibility

1. With regard to Paragraph 10 of the Preamble and Article 1, the Court shall determine that a case is inadmissible where:

(a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is genuinely unwilling or unable to carry out the investigation or prosecution; (...)

(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.

152. There are no criminal or civil investigations of the President of Brazil Jair Bolsonaro under way through the Brazilian Justice System, examining severe violations of social and environmental rights and crimes against humanity as reported herein.
153. Similarly, there are no criminal or civil investigations currently being conducted in another jurisdiction by a signatory State Party of this Court for crimes against humanity or genocide allegedly perpetrated by the President of Brazil Jair Bolsonaro.
154. Thus, the rule set forth in Article 17.1.a and c of the Rome Statute that establishes inadmissibility *nem bis in idem* is consequently not applicable.
155. So far, a preliminary investigation (police inquiry) is under way, conducted by the Federal Police in order to probe criminal acts involving deforestation and burn-offs in Amazonia, with no possibility of these analyses encompassing the President of Brazil Jair Bolsonaro, due to immunity for criminal acts and Parliamentary privilege laid down by the Brazilian Constitution.
156. As established by the ICC Appeals Chamber, the term ‘investigation’ must address the person identified as the perpetrator of a crime against humanity, for the purposes of defining complementarity, identifying such person as a suspect and taking direct steps to assess his/her responsibility, including witnesses and other evidence. It also stresses that the mere preparation for investigating other suspects does not provide sufficient reason for dismissing the jurisdiction of the International Criminal Court.¹¹⁵
157. No investigation has been undertaken by the Brazilian Attorney-General, whose investigatory procedures must be overseen by the Federal Supreme Court, for the crimes against humanity described in this Informative Note.

¹¹⁵ The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang, “Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled ‘Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute’”, ICC-01/09-01/11-307 OA, 30 August 2011, Paragraph 41.

The Brazilian Justice System is not in a position to conduct an effective investigation of the acts undertaken by President Jair Messias Bolsonaro – Articles 17.1.b, 17.2.a and c and 17.3

Issues of admissibility

1. With regard to Paragraph 10 of the Preamble and Article 1, the Court shall determine that a case is inadmissible where:

(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;

2. In order to determine unwillingness in a particular case, the Court shall consider, having regard the principles of due process recognized by international law, whether one or more of the following exist, as applicable:

(a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in Article 5;

(b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;

(c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.

3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

158. In addition to the non-existence of investigations being conducted under Brazilian jurisdiction, or that of other States Parties, in order to assess the criminal responsibilities of the President of Brazil Jair Bolsonaro, it is important to stress that the Brazilian Justice System lacks the legal, procedural and staffing conditions needed to assign criminal responsibility at any time severe violations of social and environmental human rights that are characterised as crimes against humanity. The Brazilian Justice System lacks the independence needed to investigate the nation’s President in the manner established by this Office (OTP):

“Independence in the proceedings at hand may be assessed in light of such indicators as, *inter alia*, the alleged involvement of the State apparatus, including those departments responsible for law and order, in the commission of the alleged crimes; the constitutional role and powers vested in the different institutions of the criminal justice system; the extent to which appointment and dismissal of investigators, prosecutors and judges affect due process in the case; the application of a regime of immunity and jurisdictional privileges for alleged perpetrators belonging to governmental institutions; political interference in the investigation, prosecution or trial; recourse to extra-judicial bodies; and corruption of investigators, prosecutors and judges.”¹¹⁶

159. This is due to the criminal immunity conferred on the nation’s President by Brazil’s 1988 Constitution and to an even greater extent by political interference in the position of the Attorney-General that is unparalleled in the constitutional history of Brazilian democracy, in addition to the absence of any provision in Brazilian Criminal Law typifying the offense of a severe violation of social and environmental rights.

160. The 1988 Constitution of the Federative Republic of Brazil that rules the nation’s entire legislative system endows its President with immunity against criminal law and political control over criminal investigations. Article 86¹¹⁷ of the Brazilian Constitution

¹¹⁶ Policy Paper on Preliminary Examinations, ICC-OTP November 2013, Paragraph 53.

¹¹⁷ Article 86. If charges against the President of the Republic are accepted by two- thirds of the Chamber of Deputies, he shall be submitted to trial before the Supreme Federal Court for common criminal offenses or before the federal senate for crimes of malversation.
Paragraph 1. The President shall be suspended from his functions:

subordinates the actions of the Federal Supreme Court – which is the jurisdiction empowered to hear and render judgment on common crimes committed by the President of Brazil (Article 102, I, b) ¹¹⁸ – to political control through the Lower House. Only through a two-thirds majority of its members can this Chamber authorise a criminal investigation targeting a Brazilian President. Furthermore, it assures full immunity for crimes committed under any Presidential functions (Article 86, §4).

161. As a result of this rule, no Brazilian President has ever been subject to a criminal investigation during his/her term of office, although all former Brazilian Presidents have been investigated after leaving office, with charges filed for acts committed during their mandates.
162. At the moment, there is political interference in the investigatory entities. The Federal Prosecutor's Office (MPF) is headed by the Attorney-General (Article 127 and 128, §1), who is empowered to undertake investigations and file criminal charges against the nation's President in the Federal Supreme Court. However, the Attorney-General is appointed by the President of Brazil (Article 84, XIV). ¹¹⁹

i – in common criminal offenses, if the accusation or the complaint is received by the Federal Supreme Court;

ii – in the event of crimes of malversation, after the proceeding is instituted by the Federal Senate. Paragraph 2. if, after a period of one hundred and eighty days, the trial has not been concluded, the suspension of the President shall cease without prejudice to the normal progress of the proceeding. Paragraph 3. In the event of common offenses, the President of the Republic shall not be subject to arrest as long as no sentence is rendered.

Paragraph 4. During his term of office, the President of the Republic may not be held liable to acts outside the performance of his functions.

http://www.stf.jus.br/repositorio/cms/portalStfInternacional/portalStfSobreCorte_en_us/anexo/constituicao_ingles_3ed2010.pdf

¹¹⁸ Article 102. The Supreme Federal Court is responsible, essentially, for safeguarding the Constitution, and it is within its competence:

I – to institute legal proceeding and trial, in the first instance, of:

b) in common criminal offenses, the President of the Republic, the Vice- President, the members of the National Congress, its own Justices and the Attorney-General of the Republic.

http://www.stf.jus.br/repositorio/cms/portalStfInternacional/portalStfSobreCorte_en_us/anexo/constituicao_ingles_3ed2010.pdf

¹¹⁹ Article 84. The President of the Republic shall have the exclusive power to:

XIV – appoint, after approval by the Senate, the Justices of the Supreme Federal Court and those of the Superior Courts, the Governors of the territories, the Attorney-General of the Republic, the President and the Directors of the Central Bank and other civil servants, when established by law;

http://www.stf.jus.br/repositorio/cms/portalStfInternacional/portalStfSobreCorte_en_us/anexo/constituicao_ingles_3ed2010.pdf

163. Despite the formal institutional guarantees provided to the Attorney-General, this Office is currently assailed by an unprecedented crisis due to interference planned by the President of Brazil Jair Bolsonaro. For the first time in Brazil’s democratic constitutional history, nominations put forward by this institution through internal elections have not been confirmed. Instead, the President announced that he will select someone with “political alignment”. In an interview on 14 August 2019, while the Amazon Rainforest burned, the President of Brazil Jair Bolsonaro said: “With every respect for the Attorney-General’s people, what we need is alignment with our flagship concepts. With the environmental issue (...), the difficulty is licensing. In order to build a hydro-power plant, the environmental licence is a hurdle.” In this same interview, the President of Brazil Jair Bolsonaro also said that “(the Federal Prosecutor’s Office) does not play around with the development of Brazil.”¹²⁰
164. Similarly, the President of Brazil Jair Bolsonaro has interfered in the direction of investigations undertaken by the Federal Police, to the benefit of his friends and relatives. The most recent episode involved the replacement of the Federal Police Superintendent in Rio de Janeiro State, where the President’s son (currently Senator) Flávio Bolsonaro and his aides are being investigated for corruption. Historically, Superintendents are selected by the Director-General of the Federal Police. When questioned, the President of Brazil Jair Bolsonaro stated in an interview held on 16 August 2019: “I am the one who gives the orders, I will make that quite clear.” In an interview on 22 August 2019, the President affirmed that “If I cannot replace the Superintendent, I will replace the Director-General. So that is it... There is no discussion about this.”
165. In reaction, the National Federal Police Inspectors Association released a public letter (known as the Letter of Salvador) revealing attempts to interfere in their work: “The Federal Police may not be subject to controversial declarations issued during demonstrations of power that might give rise to instabilities in an entity of the utmost

¹²⁰ Statement released by the Agência Brasil press agency, which is part of the Empresa Brasil de Comunicação (EBC) communications department linked to the Government Bureau through the Special Social Communications Bureau since 1 January 2019, when President Jair Messias Bolsonaro took office, pursuant to Decree Nº 9,660 promulgated on 1 January 2019. Available at: <http://agenciabrasil.ebc.com.br/politica/noticia/2019-08/bolsonaro-diz-que-novo-pgr-devera-ser-alinhado-com-o-governo>, consulted on 31 August 2019.

importance, whose members are dedicated and responsible technical experts who are very familiar with their institutional mission”¹²¹.

166. These facts demonstrate the absence of impartiality in the Brazilian Justice System for dealing with this issue, in the terms established by this Office (OTP):

“Impartiality in the proceedings at hand may be assessed in light of such indicators as, *inter alia*, connections between the suspected perpetrators and competent authorities responsible for investigation, prosecution or adjudication of the crimes as well as public statements, awards, sanctions, promotions or demotions, deployments, dismissals or reprisals in relation to investigative, prosecutorial or judicial personnel concerned.”¹²²

167. In addition to Presidential interference – announced by the President himself during interviews – in the spheres assigned to the Attorney-General and the Federal Police, the President of Brazil Jair Bolsonaro is also striving to avoid any responsibility. One of his earliest reactions to the flames sweeping through the Amazon Rainforest was to issue untrue statements blaming non-governmental organisations engaged in protecting social and environmental rights for these fires. He has never retracted these statements.
168. In a speech on 21 August 2019, the President of Brazil Jair Bolsonaro said that: “The issue of burn-offs in Amazonia could have been caused by NGOs, in my view, because they have lost money, so what is the intention? To cause problems for Brazil. Now there are almost twice as many (outbreaks) as there were recorded in previous years. Why is this? That money that came into the Amazonia Fund from Norway, from Germany, of which 40% went directly to NGOs (...). We cut off this money of theirs.” He then stated: “And I had the pleasure of replying politely to a question on this from Angela Merkel and Macron during the G20 meeting in Osaka. The guys were all over me, as though I were some other President of Brazil. I said: ‘It’s changed, it’s under new management. I will not demarcate a further thirty indigenous reserves, another fifty old runaway slave

¹²¹ Full text of the Letter of Salvador issued by the National Federal Police Inspectors Association, consulted on 31 August 2019 and available at: <https://adpf.org.br/v2/wp-content/uploads/2019/08/carta-de-Salvador-converted.pdf>

¹²² Policy Paper on Preliminary Examinations, ICC-OTP November 2013, Paragraph 54.

settlements, expand the Chapada dos Veadeiros (National Park) or set up more Environmental Protection Areas, because 61% of Brazil is already in this situation”¹²³.

169. The President authorised his backbenchers to set up an investigation committee in Brazil’s Legislative Branch, a Parliamentary Commission of Inquiry whose purpose is to examine the role played by non-government organisations in these facts. The main political coordinator is the President’s son, Senator Flávio Bolsonaro.
170. The justification for the Parliamentary Commission of Inquiry proposed by government backbenchers reflects the diversionary tactics deployed by the President of Brazil Jair Bolsonaro: “The real dimensions of these severe facts and the responsibility for them must be investigated independently. (...) We thus wish to link together two investigations into problems that are affecting Amazonia today, in parallel: on the one hand, deforestation and burn-offs that are causing massive repercussions, and on the other, the true role played by NGOs, including the exploitation of natural resources in this region”¹²⁴.
171. Thus, as clearly shown through these facts, everything demonstrates that information with warnings about deforestation and burn-offs in Amazonia has been ignored by institutions in the Brazilian Justice System, not prompting any type of preventive or repressive response. The only responses noted were diversionary, deployed to attack political adversaries. This is a situation that clearly indicates absurd suspicions raised as a smokescreen to shield President Jair Messias Bolsonaro against criminal responsibility¹²⁵.

¹²³ Full text of the speech available at: <https://www.gov.br/planalto/pt-br/acompanhe-o-planalto/discursos/2019/discurso-do-presidente-da-republica-jair-bolsonaro-durante-congresso-aco-brasil-2019-brasilia-df>, consulted on 31 August 2019.

¹²⁴ Full text available at: <https://congressoemfoco.uol.com.br/especial/noticias/senadores-pedem-criacao-da-cpi-das-ongs-na-amazonia/>, consulted on 31 August 2019.

¹²⁵ “Intent to shield a person from criminal responsibility may be assessed in light of such indicators as, manifestly insufficient steps in the investigation or prosecution; deviations from established practices and procedures; ignoring evidence or giving it insufficient weight; intimidation of victims, witnesses or judicial personnel; irreconcilability of findings with evidence tendered; manifest inadequacies in charging and modes of liability in relation to the gravity of the alleged conduct and the purported role of the accused; mistaken judicial findings arising from mistaken identification, flawed forensic examination, failures of disclosure, fabricated evidence, manipulated or coerced statements, and/or undue admission or non-admission of evidence; lack of resources allocated to the proceedings at hand as compared with overall capacities; and refusal to provide information or to cooperate with the ICC”. Policy Paper on Preliminary Examinations, ICC-OTP November 2013, Paragraph 51.

No investigation is attempting to clarify the responsibility of Brazil's President for his acts.

172. However, if looking at the investigations that are currently under way, the rule set forth in Article 17.1.b; 17.2 and 17.3 of the Rome Statute must be applied, because of the inability of the Brazilian Justice System to deal with this issue, due to the immunities granted to the President and political interference in official investigation agencies.
173. Consequently, even the investigation conducted through the above-mentioned police enquiry were to be considered as an effort put forth by the Brazilian Justice System to assess responsibilities for the facts described in this Informative Note, these efforts are not genuine, as the investigation is designed to shield the President of Brazil Jair Bolsonaro from any responsibility whatsoever.
174. As quite correctly pointed out by this Office (OTP):

“In relation to complementarity, the Office will determine whether any State is exercising its jurisdiction in relation to the same person for substantially the same conduct as that alleged before the Court, and if so, whether the national proceedings concerned are vitiated by an unwillingness or inability to investigate or prosecute genuinely. An assessment must be made in the light of the proceedings as they exist at the national level at the time and is potentially subject to revision based on any change of facts.”¹²⁶

175. The constitutional immunities regimen shows that the Brazilian Justice System is inherently incapable of examining crimes committed by the President of Brazil.
176. The explicit interference of the President of Brazil Jair Bolsonaro at the highest level in the Attorney-General's Office and Federal Police show that these institutions lack the *impartiality* and *independence* needed to undertake an effective and diligent investigation into presidential responsibility in this matter.

¹²⁶ Policy Paper on Case Selection and Prioritisation, ICC-OTP September 2016, Paragraph 41.

Gravity

177. A crime has occurred or is happening, with no single conclusion having been reached as yet on the outcome of the facts. However, this does not constitute a stumbling-block, due to the massive severity and material damages caused to indigenous peoples, with strong circumstantial evidence indicating a crime against humanity.
178. This Informative Note presents reasonable grounds¹²⁷ that indigenous peoples and traditional communities in Brazil are at risk of falling victim to crimes against humanity and genocide, with facts corroborating the statement having occurred and still occurring. Access to information has been hampered by the Brazilian State, and it is vital that an investigation be initiated by this Office of the Prosecutor, in order to establish a secure and transparent channel of communication for the impacts on endangered indigenous peoples and the extent of the devastation of the Amazon Rainforest. These acts are severe in scale, nature, impact and manner of perpetration¹²⁸.
179. The truth is that the effects of encouraging criminal acts against indigenous peoples, dismantling protective public policies and ignoring deforestation and burn-offs in Amazonia are already massive, although the true scope of their vastness still remains unknown.
180. Based on the elements gathered together so far, it may be stated that all Brazil's indigenous peoples are threatened by genocide through encouragement for acts of

¹²⁷ We use the reasonable basis concept as construed by Pre-Trial Chamber II (PTC) to establish the admissibility of a charge: "The 'reasonable basis' standard has been interpreted by Pre-Trial Chamber ("PTC") II to require that "there exists a sensible or reasonable justification for a belief that a crime falling within the jurisdiction of the Court 'has been or is being committed'."4 In this context, PTC II has indicated that all of the information need not necessarily "point towards only one conclusion."5 This reflects the fact that the reasonable basis standard under article 53(1)(a) "has a different object, a more limited scope, and serves a different purpose" than other higher evidentiary standards provided for in the Statute.6 In particular, at the preliminary examination stage, "the Prosecutor has limited powers which are not comparable to those provided for in article 54 of the Statute at the investigative stage" and the information available at: such an early stage is "neither expected to be 'comprehensive' nor 'conclusive', Available at: <https://www.icc-cpi.int/itemsDocuments/181205-rep-otp-PE-ENG.pdf>

¹²⁸ Regulation 29(2) of the Regulations of the Office of the Prosecutor; Policy Paper on Preliminary Examinations, ICC-OTP November 2013, Paragraphs 59-66; see also Situation in Georgia, "Decision on the Prosecutor's request for authorisation of an investigation", ICC-01/15-12, 27 January 2016, Paragraph 51.

violence, dismantling protective policies, attacks on land demarcation and ignoring deforestation and burn-offs in Amazonia.

181. The nature of these crimes is especially grave, as they are perpetrated against indigenous peoples who are particularly vulnerable. Attacks on indigenous lands are a direct way of fostering genocide, due to the close links between the survival of indigenous peoples and their ties to their ancestral homelands. The Earth is a key element for the reproduction of the lives, cultures, beliefs, practices and customs of indigenous peoples. Thus, in addition to direct threats of death and violations of the integrity of these indigenous peoples, the acts described in this Informative Note “impose living conditions on a group that are deliberately intended to cause its destruction”¹²⁹.
182. The facts described in this Informative Note show that Brazil’s indigenous peoples will become more vulnerable after deforestation and fires in Amazonia, due to the correlation between deforestation and the expansion of illegal activities that constantly trigger violent disputes between indigenous peoples and ranchers, planters, gun-slingers and land-grabbers. In the terms indicated by this Office (OTP):

“The impact of the crimes may be assessed in light of, *inter alia*, the increased vulnerability of victims, the terror subsequently instilled, or the social, economic and environmental damage inflicted on the affected communities. In this context, the Office will give particular consideration to prosecuting Rome Statute crimes that are committed by means of, or that result in, *inter alia*, the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land.”¹³⁰

183. In this Informative Note, we posit that destroying the environment paves the way for the crimes against humanity described above. Demolishing social and environmental policies, depleting official environmental agencies, encouraging deforestation, trespassing on indigenous lands, criticising the demarcation of indigenous lands, ignoring

¹²⁹ Policy Paper on Case Selection and Prioritisation, ICC-OTP September 2016, Paragraph 39.

¹³⁰ Policy Paper on Case Selection and Prioritisation, ICC-OTP September 2016, Paragraph 41.

forest fires and deploying diversionary tactics intended to mislead investigations conducted so far are acts placing indigenous peoples at risk of genocide.

VII. INTERESTS OF JUSTICE

184. In order to initiate an investigation of the facts, under the supervision of the Office of the Prosecutor of the International Criminal Court, Article 53 of the Rome Statute requires that the gravity of the fact be taken into consideration, together with the interests of the victims, in order to pursue the institutional mission of International Justice in terms of preventing serious crimes against human rights while also contesting impunity.

Article 53

Initiation of an Investigation

1. The Prosecutor shall, having evaluated the information made available to him or her, initiate an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute. In deciding whether to initiate an investigation, the Prosecutor shall consider whether:

(a) The information available to the Prosecutor provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed;

(b) The case is or would be admissible under Article 17; and

(c) Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.

185. The severity of the facts presented in this Informative Note offers encouragement and constitutes a tool supporting the genocide of indigenous peoples in Brazil, acknowledged by the Rome Statute as a crime against humanity.
186. Moreover, as this involves acts that are still unfolding, the initiation of an investigation by the Office of the Prosecutor at the International Criminal Court might well effectively **prevent further crimes against an extremely vulnerable population, while spurring the Brazilian Justice System to gear up its abilities to investigate and file charges for such crimes.**

187. There are other factors that warrant consideration by this Court. As this involves crimes against humanity perpetrated through destroying the environment, this Office (OTP) might well pursue a more advanced construal of ecocide. Furthermore, the particular context of perpetrating crimes against humanity in countries where democracy is a recent arrival, or that are in the process of returning to democracy, warrants attention from the International Criminal Court. Although endowed with their own justice systems, with reasonable respect for political adversaries and not engaged in armed conflicts, these countries have nevertheless seen extremely serious violations of human rights, including crimes against humanity. It is vital for the International Criminal Court to issue a statement on responsibility for such crimes in these contexts, encouraging these countries to comply with international standards for protecting human rights.

VIII. REQUESTS

188. We request this Office of the Prosecutor at the International Criminal Court to take this Informative Note into consideration, under the terms set forth in Article 15 of the Rome Statute:
- a) Pursuant to the presentation of information and reasonable grounds for believing that crimes that have and are still being committed that fall under the jurisdiction of the International Criminal Court, it should initiate an investigation, compliant with the terms set forth in Article 53 of the Rome Statute;
 - b) In view of the absence of domestic jurisdictional procedures able to prevent the perpetration of such crimes or assign the related responsibility to the President of Brazil Jair Messias Bolsonaro, this Informative Note should be deemed admissible, compliant with the terms set forth in Article 17 of the Rome Statute;
 - c) Due to the severity of the reported facts, their extent and continuation, as well as the interests of the victims, the proposed jurisdiction should be deemed valid, for proceeding with this investigation.

São Paulo and Rio de Janeiro, 27 November 2019

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ANNEX I - BRIEF EXPLANATION ON TERMS AND ACRONYMS

The Legal Amazon

A concept created by the Brazilian government in order to plan and promote social economic development of the states that comprise the Amazon region, which historically share the same economic, political and social challenges. The territorial limits are seen from a sociopolitical rather than a geographic perspective, that is, such limits are not defined by the Amazon biome. The Legal Amazon is an area of 5,217,423 km², which corresponds to 61% of the Brazilian territory. Besides containing the Brazilian Amazon biome, it also covers 20% of the Cerrado biome (Brazilian savanna) and part of Pantanal (the world's largest tropical wetland area). It encompasses all eight states of Acre, Amapá, Amazonas, Mato Grosso, Pará, Rondônia, Roraima and Tocantins and part of the state of Maranhão.

Brazilian Indigenous Peoples' Association - APIB

An association that embraces and is also a national reference of the Brazilian indigenous movement with the purpose of, in a nutshell, strengthen the articulation among different regions and indigenous organizations in the country by unifying indigenous peoples' struggles, the agenda of claims and demands for the indigenous movement and also aiming at mobilizing indigenous peoples and organizations in the country to prevent threats and attacks posed to indigenous rights.

National Human Rights Council - CNDH

Council instituted by Law 12.986/14 equally formed by representatives of government agencies and civil society members with the purpose of promoting and defending human rights by adopting preventive, protective, remedial and punitive actions for conducts or situations of threat or violation of such rights. The role of the entity is to ensure that human rights are effectively respected by public authorities as well as relevant public and private services.

Amazon Fund Guidance Committee - COFA

A Committee whose object is to set guidelines and criteria for the allocation of the funds from the Amazon Fund as well as to track information related to the use of such funds and to approve the Report on the Activities of the Amazon Fund. It is formed by representatives of the Federal Government (Ministries of Environment, Industry, Foreign Trade and Services, Foreign Affairs, Ministries of Agriculture, Science, Technology and Innovation, Office of the Chief of Staff and BNDES - the National Bank for Economic

and Social Development -), State Governments (of the nine states comprising the Legal Amazon) and the Civil Society (Brazilian Forum of NGOs and Social Movements for the Environment and Development - Fboms, the Coordination of the Indigenous Organizations of the Brazilian Amazon - COIAB, the National Confederation of Agricultural Workers – Contag, the Brazilian Society for the Advancement of Science - SBPC, the Brazilian National Confederation of Industry - CNI and the National Forum of Forest-Based Activities– FNABF).

National Environment Council - CONAMA

CONAMA is an advisory deliberative entity of the National Environmental System – SISNAMA instituted by law. The object of the Council is to propose guidelines for government policies on the exploration and conservation of the environment and natural resources as well as to provide support in the decision making process. Such Council has powers to, to the extent of its authority, set rules and standards compatible with an ecologically balanced environment, essential to a healthy quality of life.

DETER

A quick survey developed by INPE that sends warnings when evidence of changes in the forest coverage in the Amazon is detected in order to provide support for the inspection and control of forest clearing and degradation carried out by the environment enforcement agency IBAMA and other agencies connected to the theme.

National Forest (Jamari) - FLONA

Located in the State of Rondônia, this is the first conservation unit in the country where a forest concession was granted. Apart from the forest management, other activities are developed in the interior of FLONA Jamari, such as cassiterite mining, tours, plant extraction and recreational fishing.

NATIONAL PUBLIC SECURITY FORCE

A cooperation program among the States and the Federal Union created by a Decree of 2004 whose purpose is to carry out activities and services aimed at maintaining order, ensuring the security of individuals and property and also acting in emergency and public calamity situations. Military police officers, civil police officers, military firefighters and experts from Brazilian States and the Federal District form the National Public Security Force.

National Indian Foundation - FUNAI

FUNAI is a Brazilian agency established by Law 5.371/67 to handle issues related to indigenous communities and their lands such as:

- setting guidelines and ensuring compliance with the indigenous policy based on the principles of respect to Indians as individuals and tribal institutions and communities, and granting the permanent possession of the lands they inhabit as well as the exclusive usufruct rights over natural resources and the benefits resulting from the richness existing in such resources, among others;
- conducting surveys, analyses, studies and scientific research papers on Indians and indigenous social groups;
- providing Indians with medical-sanitary assistance and educational assistance;
- exercising police power in reservation areas as well as in matters related to the protection of Indians.

AMAZON FUND

Mechanism proposed by the Brazilian government during COP-12 in Nairobi (2006), aiming at the voluntary contribution of developing countries to reduce green house gas emissions resulting from deforestation and forest degradation. Raised funds are geared toward conservation, monitoring projects and to fight deforestation as well as to foster conservation and the sustainable use of the Legal Amazon. The fund's major donors have been the governments of Germany and Norway over the past years.

IBAMA – Brazilian Institute of Environment and Renewable Natural Resources

A federal agency instituted by Law 7.735/89, whose object it to exercise the power of environmental police as well as to enforce national environmental policy at the level of federal duties related to environmental licenses, environmental quality control, authorization for the use of natural resources and the inspection, monitoring and environmental control.

The duties related to the power of environmental police include the following tasks: implementation of a Federal Technical Register; environmental inspection and imposition of administrative penalties; generation and dissemination of information related to the environment, especially with respect to the prevention and control of deforestation, slash-and-burn farming practices, wildfires; support to environmental emergencies; performance of environmental education programs; preparation of the information system and establishing criteria to manage the use of wildlife, fishing and forest resources.

Chico Mendes Biodiversity Conservation Institute - ICMBio

A quasi-governmental agency established through Law 11.516/07, in charge of managing conservation units - UCs (federally protected areas which correspond to almost 9% of the Brazilian territory).

Its duties include competencies to propose establishing UCs, bringing them to conformity and managing them, apart from exercising the power of environmental police to protect such areas. The Institute inspects and imposes environmental administrative or compensatory penalties on those liable who fail to comply with required measures for the conservation or correction of environmental degradation, besides monitoring the public use and economic exploration of natural resources at the UCs where such uses are permitted, by enforcing policies for the sustainable use of renewable natural resources and for the support to extractive activities and traditional populations.

National Research Space Institute - INPE

INPE is a federal public institution, an international reference in the fields of [space](#) and [atmospheric sciences](#), [space engineering](#), meteorology, earth observation satellites and studies on climate change.

IPAM - Instituto de Pesquisa Ambiental da Amazônia

IPAM is a non-government, non-partisan and non-profit scientific organization that has worked for the sustainable development of the Amazon since 1995.

Rio de Janeiro Botanical Garden - JBRJ

JBRJ is a federal agency linked to the Environment and one of the world's leading research centers in the areas of botany and biodiversity conservation.

Ministry of the Environment - MMA

The Ministry has existed since 1992 and its mission should be to foster the adoption of principles and strategies for the knowledge, protection and recovery of the environment, the sustainable use of natural resources, valuation of the environment and the inclusion of the development in the formulation and implementation of public policies in a transverse shared form, on a participatory and democratic basis at all levels of the government and the society.

The ministry's main responsibilities include the following: (a) national policy for the environment and water resources; (b) policies for the preservation, conservation and sustainable use of ecosystems, biodiversity and forests; (c) proposition of strategies, mechanisms and economic and social instruments to improve the environmental quality and the sustainable use of natural resources; (d) policies for the integration of the

environment and production; (e) environmental policies and programs for the Legal Amazon; and (f) ecological-economic zoning.

Ministry of Agriculture, Livestock and Food Supply - MAPA

The ministry's role is to manage public policies, to stimulate the livestock industry, to foster the agribusiness and to set regulations and rules for related services of such industry.

Public Prosecutor's Office - MPF

The Public Prosecutor's Office is an independent body to which the Federal Constitution assigned the duty to defend the systems of law, the democratic regime and unavailable social and individual rights by inspecting public institutions. MPF is part of such institution responsible for the performance of such duties at the federal level (before the Federal Supreme Court, the Superior Court of Justice, the federal regional courts, federal and electoral judges). MPF's role also encompasses inspecting the enforcement of laws enacted in the country and those resulting from international treaties to which Brazil is a signatory.

Military Police

In Brazil, law enforcement institutions are established at the state level and subordinated administratively to the governors of each State of the Federation. The role of the Military Police is to preserve public order through ostensive police activity. It constitutes auxiliary and reserve military force for the Brazilian Army.

Secretariat of Land Affairs

This Secretariat was established by President Bolsonaro's Government at the level of the Ministry of Agriculture, Livestock and Food Supply in order to "manage public policies of all affairs related to agriculture, livestock, food supply, storage and distribution in small scale, besides setting guidelines for a rural extension policy."

Brazilian Forest Service - SFB

Established in 2006 to manage the concession of public forests, the main role of the agency today is the Environmental Rural Register (CAR), an electronic register mandatory for owners of rural property and one of the most important mechanisms to implement the Forest Code. CAR possesses a declaratory character and it identifies legal reserve areas and permanent preservation areas of rural properties in the country. Such register allows environmental agencies to be informed of landowners who have environmental liability and those who are complying with environmental laws.

Rural Democratic Union - UDR

UDR is a civil association founded in 1985 by owners of large landholdings whose purpose is to defend private property, and as an expression of rural landowners radicalization against land reform policy carried out by the federal government at the start of President José Sarney's tenure (1985-1990). UDR started a new political practice and it has worked as a reorganizer of new symbols of the class of large landowners and rural business owners. Among the main characteristics of UDR's practice and discourse the following can be highlighted: mass mobilization, revaluation of the rural activity and renewal of landowners' representation, uncompromising defense of land monopoly and use of violence as the main instrument for pressure against land reform and fights for land¹³¹.

Conservation Units - UCs

UCs is a designation given by Law 9.985/00 to natural areas subject to protection due to their special characteristics. Such areas are "territorial spaces and their environmental resources, including jurisdictional waters with relevant natural characteristics, legally instituted by the Public Power aiming at the conservation and defined limits, under the special management regime to which suitable guarantees of legal protection are applied" (art. 1st, I).

¹³¹ <http://www.fgv.br/cpd/doc/acervo/dicionarios/verbete-tematico/uniao-democratica-ruralista-udr>