

GREENPEACE



CLIMATE COUNSEL



Observatório
do Clima
20 anos

ARTICLE 15 COMMUNICATION TO THE ICC

CRIMES AGAINST HUMANITY IN BRAZIL

Filing Parties:

Climate Counsel, Greenpeace Brazil, and Observatório do Clima

FREQUENTLY ASKED QUESTIONS







Q – Who filed the Communication and on behalf of which victims?

This Communication was filed on 9th November 2022 ('ICC Brazil Communication') by Climate Counsel in conjunction with Greenpeace Brazil and Observatório do Clima. These organizations are represented by lawyers Richard J Rogers, Paulo Busse and Suely Araújo respectively.

The lawyers act on behalf of specific victims from the group referred to as 'traditional peoples' in the Amazon, who live in the Amazon. However, the evidence necessarily includes crimes committed against a broad range of rural land users, from indigenous and *quilombolas* communities, to settlers, squatters, artisanal fishermen and riverside dwellers.

Q - What is the ICC and what is an 'ICC Article 15 communication'?

The International Criminal Court, or ICC, is the first and only permanent court that can investigate, prosecute, and adjudicate international crimes. It was set-up under the Rome Statute and currently has 123 states who have signed-up as State Parties. The court is based in The Hague, Netherlands.

An 'ICC Article 15 communication' refers to the process by which victims and civil society can engage with the ICC Prosecution. It is the term used for the legal document filed to the Prosecutor containing evidence and analysis of crimes under the Rome Statute. Communications are requests to the ICC Prosecution (i) to open a new investigation or (ii) to add certain evidence to an ongoing investigation. Once filed, the Prosecutor must then decide whether to investigate the crimes outlined in the communication.

Q – What crimes are alleged in the ICC Brazil Communication

The Communication alleges that a network of actors committed **crimes against humanity** against several groups of Brazilians in the Amazon, referred to collectively as **Rural Land Users and Defenders**. Crimes against humanity is one of the four atrocity crimes that can be tried at the ICC.



Q - What exactly is a crime against humanity?

Crimes against humanity are specific acts committed as part of a **widespread or systematic attack** directed against any civilian population and committed in furtherance of a state or organisational policy. The specific acts include crimes such as (but are not limited to):

- Murder;
- Other inhumane acts;
- Persecution.

The underlying acts must form a course of conduct, tied together by the policy.

Q - Does the ICC have jurisdiction to consider this ICC Brazil Communication?

Yes. Brazil ratified the ICC Statute on June 2002, giving the ICC jurisdiction over crimes of genocide, crimes against humanity, and war crimes committed since 1 July 2002 on its territory or by its nationals.

The alleged crimes took place in Brazil over the last decade and amount to a widespread and systematic attack against the civilian population, pursuant to an organisational policy.

Q - Is this a case of ecocide?

No (legally speaking). There is currently no international crime of ecocide. (However, some people describe mass of destruction of the Amazon rainforest as 'ecocide').

Q - Does the case allege genocide?

No. This ICC Brazil Communication does not allege the crime of genocide.



3D modelling by Interpret, BAIÃO MASSACRE, Pará State, May 2019

Q - Who are the alleged victims?

The victims are Rural Land Users and their Defenders based in Brazil's Amazon region.

Rural Land Users are from a variety of disadvantaged communities whose land has been ruthlessly exploited for profit. They include: traditional and indigenous communities, settlers, squatters, small landowners, *parceiros*, small tenants, rural workers/wage earners, miners, *caçaras*, *faxinalenses*, *geraizeiros*, shellfish gatherers, fishermen, *quilombolas*, retirees, artisanal fishermen and other riverside dwellers, rubber tappers, *vazanteiros*, extractivists (chestnut, palm, and coconut breakers), and others.

Defenders means persons defending the Rural Land Users through investigations, protests, and/or grievance mechanisms against commercial operations including agriculture, logging, and/or mining.

Q - What does the evidence show?

The evidence demonstrates that, for the period 2011 to 2021, a mass of 'violence against persons' and related 'violence against occupation and possession' have occurred in the context of more than 10,000 land-related conflicts and more than 2000 water-related conflicts. This has resulted in the following specific instances:

- a. Violence Against Persons: 430 murders; 554 attempted murders; 2290 death threats; 87 cases of torture; 1559 arrests (many of them unlawful); 2072 assaults; and 259 consequential deaths;
- b. Violence Against Occupation and Possession: 14,889 expulsions; 96,028 evictions; destruction of 31,463 homes; destruction of 33,185 gardens/ cultivation plots; destruction of 44,730 other assets; and 163,956 firearm-related threats.



The criminal acts can be further sub-divided into five categories of activity targeting Rural Land Users and Defenders:

- a. The **specific massacres** (with multiple murder victims) at Baião, Pará State, in 2019; Colniza, Mato Grosso State, in 2017; and Pau d'Arco, Pará State, in 2017;
- b. The **long-term targeting of particular groups**, including systematic violence against: the Guarani-Kaiowa People, Mato Grosso do Sul State, from 2011–2021; the 'Guardians of the Forest', Maranhão State, from 2013–2020 (including the Governador, Tenetehara, and Guajajara Guardians); the Gamela People, Maranhão State, in 2017; the Uru-Eu-Wau-Wau People, Rondônia State, from 2019–2020; and the Mundukuru People, Pará and Amazonas States, from 2019–2021;
- c. The **geographic 'hotspots'** of Areia, Pará State, from 2011–2018; Alto Turiaçu, Maranhão State, from 2014–2018; Terra Nossa Sustainable Development Project, Pará State, from 2017–2018; and Anapu, Pará State, from 2018–2020;
- d. The **targeting of individual Rural Land Users and Defenders** throughout the country, for example, the murder of José Cláudio Ribeiro da Silva and his wife Maria do Espírito Santo da Silva, Nova Ipixuna, State of Pará, in 2011; and
- e. **Violence and intimidation against public officials**—themselves 'Defenders' when acting in the interests of 'Rural Land Users'—including agents of ICMBio, IBAMA, and FUNAI.

As these examples demonstrate, hundreds of Rural Land Users and Defenders have been victimized in a sustained course of conduct, in furtherance of the perpetrators' policy, over the last decade. In other words, the data demonstrates the existence of a policy driven widespread or systematic attack against a civilian population.

Q – What is the criminal policy in this case?

This Network's attack was committed over the last decade, pursuant to an organizational policy **'to facilitate the dispossession of land, the exploitation of natural resources, and the destruction of the environment, irrespective of the law.'** This policy promoted and/or encouraged the commission of the underlying crimes set out in the ICC Brazil Communication.



Q - Who are the alleged perpetrators?

This ICC Brazil Communication focuses on the 'system' itself. The organized system is controlled by a **Network** made up of public and private-sector actors from multiple levels of Brazilian society, including politicians, civil servants, law enforcement officers, representatives of private commercial interests, and a rogues' gallery of criminal actors. It is for the ICC Prosecutor to determine which persons should be investigated and charged.

The Network - a kind of informal 'deep state' or 'agro-industrial complex' - is **motivated** by the rapacious and unfettered economic development of Brazil's Amazon Rainforest, which has resulted in crimes against humanity and massive environmental destruction.

The Network's **attack** has been enabled by the corporate capture and corruption of public institutions, and through concerted acts or omissions by the executive and legislative branches of government.

Q - Is the case against Bolsonaro?

The evidence suggests that certain members of the Bolsonaro administration are key actors within the Network and have been instrumental in promoting the criminal policy that has resulted in crimes against humanity. Therefore, these individuals, among others, would likely be persons of interest for the ICC Prosecution in any investigation.

Q - Does environmental destruction qualify as crimes against humanity?

Environmental destruction does not, in and of itself, amount to crimes against humanity. All international crimes require proof of mass harm to humans.

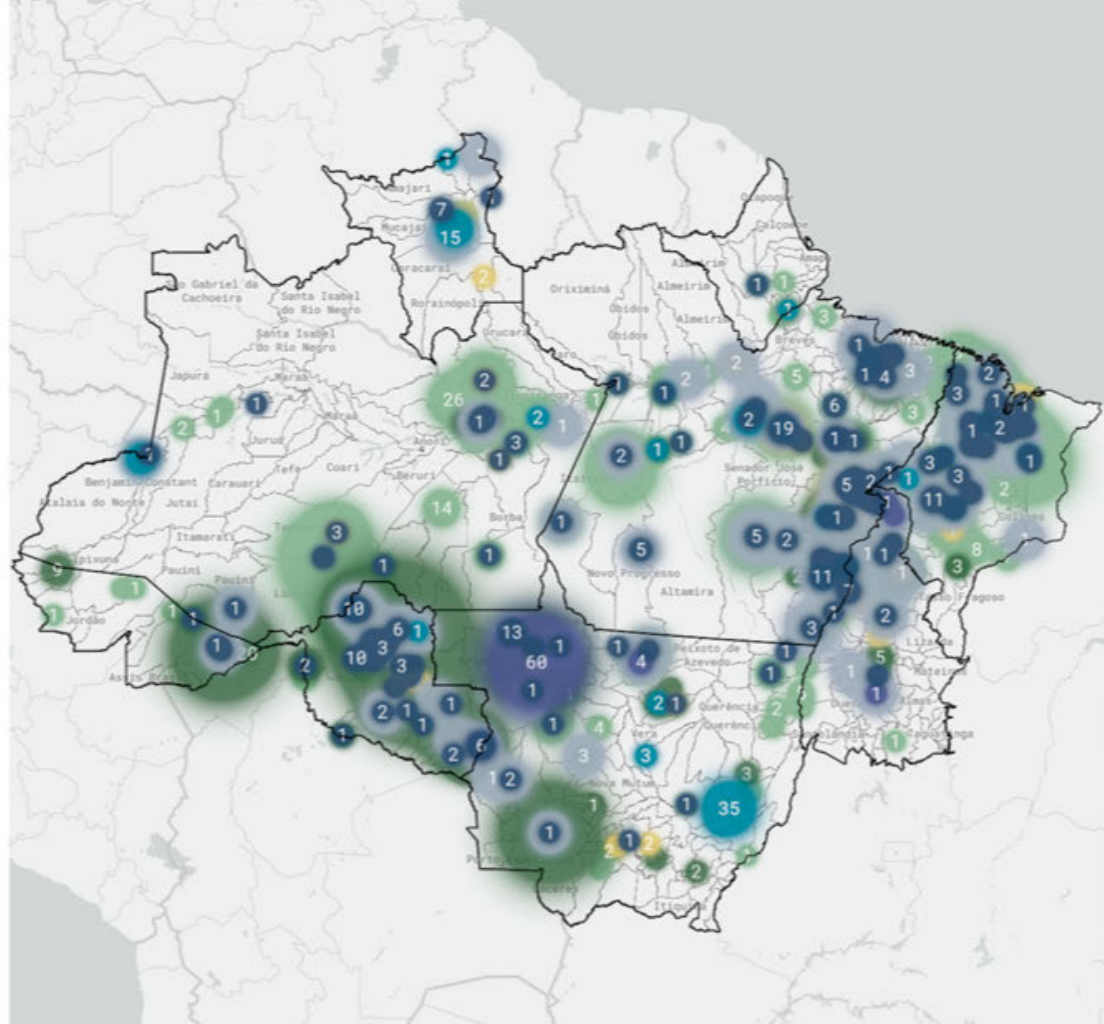
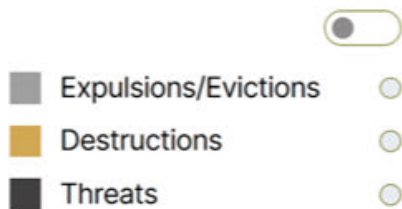
However, mass environmental destruction is very often accompanied by mass human rights violations, which can amount to crimes against humanity when committed as part of the overall 'attack.' As outlined in the ICC Brazil Communication, that is exactly what has happened in the Brazilian Amazon over the last decade.

In other words, environmental destruction is the **context** in which the crimes against humanity were perpetrated, as well as the primary **motivation**.

VIOLENCE AGAINST PERSONS



VIOLENCE AGAINST POSSESSION



Data Analysis and Mapping by Interprt, PARÁ STATE, May 2019

Q – What is the Digital Evidence Platform?

The Digital Evidence Platform www.brasil-crimes.org supports the ICC Brazil Communication by bringing together disparate forms of evidence - photographs, testimonies from survivors, 3D reconstruction of crime scenes, forensic evidence, visualizations of data, drone videos and satellite imagery analysis on the Amazon. It is intended to help viewers better appreciate the context, nature, and consequences of the crimes.

This Platform was designed and constructed by **INTERPT** - a group of architects and spatial designers dedicated to environmental justice – and uses images and footage by photojournalist and investigator, **Martin Middlebrook**, who visited the Amazon in 2021.

Q - Has the ICC already prosecuted crimes rooted in environmental destruction?

The ICC has only prosecuted a small number of atrocity crimes to date. None of these cases addressed crimes committed within the context of mass environmental destruction.

However, in its policy paper of 2017, the ICC Prosecutor undertook to prioritise *'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.'* **Policy Paper on Case Selection and Prioritization**. Therefore, the ICC Prosecutor should take into consideration the destruction of the Amazon when deciding whether to prosecute this case.

Q - What are the next steps for the ICC Prosecutor following this submission?

For the ICC to open an official investigation it must be satisfied that there is a “reasonable basis to believe” that crimes against humanity may have been committed. This is a relatively low threshold. At this initial stage the ICC Brazil Communication does not need to “prove” the commission of crimes against humanity or identify any particular perpetrators.

The Prosecutor has an obligation to examine the information received. This takes the form of a ‘preliminary examination’, which can lead to the opening of a full investigation.



Q - What might the impact be in Brazil?

If the ICC Prosecution announces that it will consider the case, the threat of an ICC investigation could have a significant deterrent effect on the commission of further crimes in the Amazon.

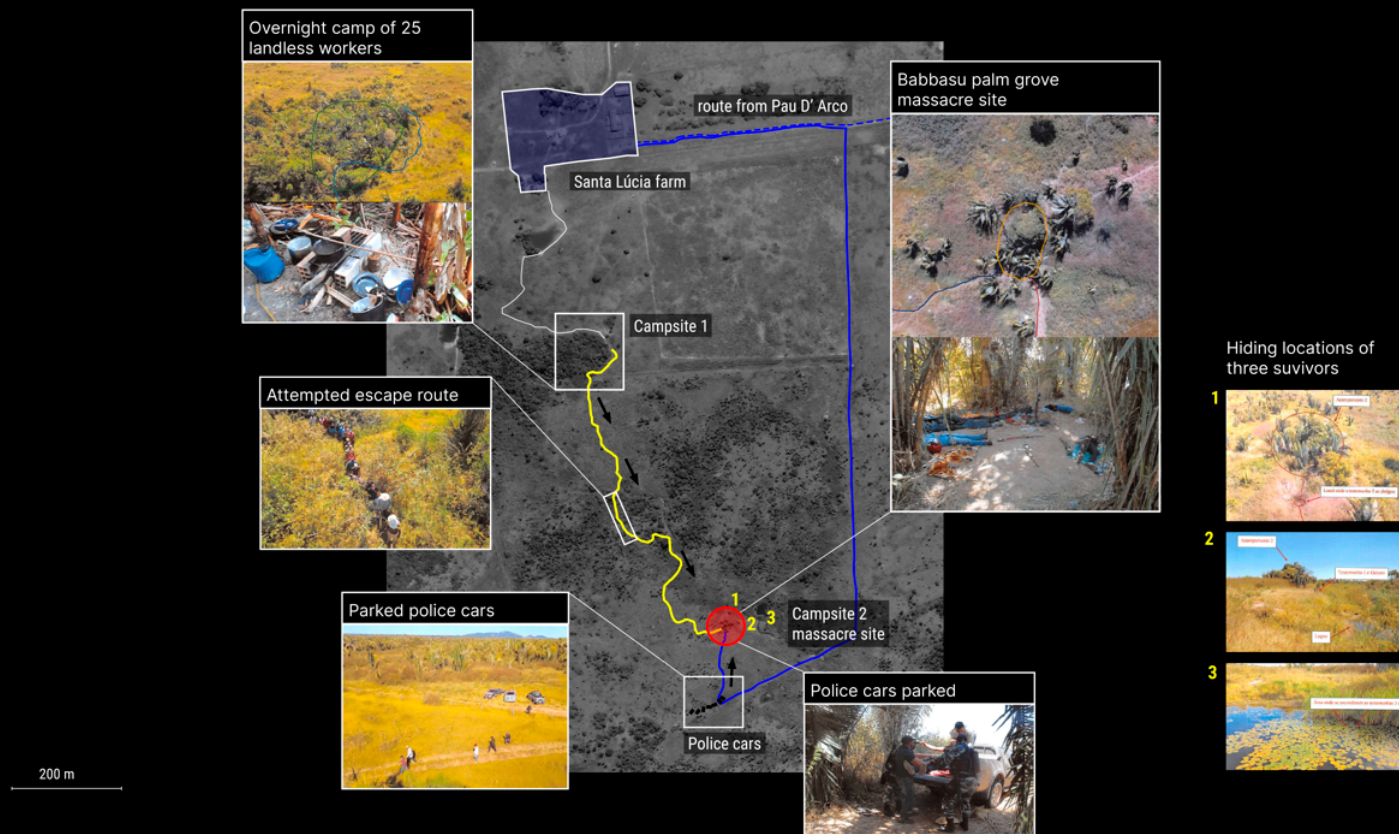
The ICC is just one potential avenue for accountability. The evidence in the ICC Brazil Communication can you used to pursue forms of justice in a range of fora, including Brazilian criminal and civil courts, regional and international human rights bodies and procedures, courts in third countries, and in states using targeted individual sanctions. The case can also help persuade (i) policy makers (in Brazil and abroad) to demand a cessation of the abuses, and (ii) businesses to undertake rigorous human rights and environmental due diligence before operating in the Amazon.

Q - Who are the filing parties?

Climate Counsel is a non-profit foundation based in the Hague, Netherlands. It is a team of former UN lawyers dedicated to environmental justice. With decades of experience at the UN international criminal tribunals, Climate Counsel uses its expertise in mass crimes to tackle the environmental crisis by investigating situations involving destruction of the natural environment and harm to dependent communities. Climate Counsel litigates on behalf of affected communities to bring perpetrators to justice and advocates for a new 'ecocide' law. Climate Counsel is represented by its founder, **Richard J Rogers**, who was a senior UN lawyer at several UN war crimes tribunals and is the founding Partner of Global Diligence LLP.

Greenpeace Brazil is part of a global network of independent campaigning organizations that use peaceful protest and creative communication to expose global environmental problems and promote solutions that are essential to a green and peaceful future. Greenpeace Brazil stands with Indigenous Peoples and Environmental Human Rights Defenders and is committed to protecting the environment, biodiversity, and all forms of life. Greenpeace Brazil is represented by Brazilian lawyer, **Paulo Busse**, who is a Brazilian lawyer specializing in criminal and environmental cases.

Observatório do Clima is the leading network of Brazilian civil society organizations dealing with the climate and environmental crises. It is dedicated to building a decarbonized, egalitarian, prosperous, and sustainable country. It does this by monitoring federal policy, producing technical and scientific knowledge, mobilizing stakeholders, and communicating the relevance and urgency of combating the climate crisis. The network was founded in 2002 in São Paulo with 26 organizations. It currently has 77 member organizations. Observatório do Clima is represented by Brazilian lawyers, Surly Araújo and Paulo Busse.



Data Analysis and Mapping by Interprt, , PAU D'ARCO MASSACRE, Pará State, May 2019

Q - Who are the supporting parties?

- The Comissão Pastoral da Terra (CPT)
- Instituto Zé Claudio e Maria
- Global Witness
- Greenpeace International

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