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## Brazil, Amazon, World: Crimes Against Humanity



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Every day brings new horrors with news of the climate catastrophe but, since this is an inseparable part of the *Totentanz* phase of capitalism, it's difficult to see around a much-promoted Apocalyptic vision that suggests that our whole species is responsible and therefore we can't do anything about it. In this murder of the political imagination (and hence of the future), we're at best cocooned in lies like the greening of oil companies and probably too worn down to howl in rage at the bloody cynicism. It's evidently not in the nature of the neoliberal system to abound in organizations that protect human rights but the ones we have might be the best chance there is to do something, however imperfect they are, precisely because human rights are both universal and a legitimate claim. Maybe we should be digging around in laws and constitutions to find out what rights are

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enshrined in them, learn how our governments, toadying servants of the masters of capitalism, are stripping them from us, and then begin the clawback?

Take Article 10 of the Bill of Rights of the New Hampshire Constitution (1784) for starters: “The doctrine of nonresistance against arbitrary power, and oppression, is absurd, slavish, and destructive of the good happiness of mankind”. Then, the *Grundgesetz*, the constitutional law of Germany (1949), recognises in Article 20 (4) the “right to resist any person seeking to abolish this constitutional order, if no other remedy is available.” We have come to this. We’re in an almost full-blown form of fascism that has taken the whole planet to the brink of extinction. There is no “other remedy” or notable institutional effort to counter the erosion of constitutional rights. Surely unity based on upholding principles of justice has to be stronger than the veneer of unity derived from submission to authority. Article 1 of the Universal Declaration of Human Rights stresses that human beings are endowed with “reason and conscience”. If we don’t uphold human rights, “reason and conscience” are empty words. But they can also be our strength because, as Thomas Paine knew a long time ago, “We have it in our power to begin the world over again”.

We can claim our rights, and the rights of all those who haven’t got voices to claim them. And also start to deal with the evildoers. Some of today’s worst crimes are happening in Brazil, perpetrated by the world’s worst (genocidal and ecocidal) criminals. With impunity. Some progress to protect the Amazon and its peoples was made in Brazil after the dictatorships when the new Constitution (1988) codified Indigenous rights, including the right to tribal homelands. Since so much of the Amazon is Indigenous territory and, owing to the people’s understanding of the inseparable relations of human and natural existence, Indigenous sovereignty became an essential part of Brazilian environmental policy. Indigenous people represent about 5% of the world’s population. Fighting for their ancestral lands, they are also trying to protect some 85% of the planet’s biodiversity. Hence, the crimes of ethnocide and ecocide are closely linked. And the rise of fascistoid forms of power should tell us—if only we are able to look carefully enough—that the rights and wellbeing of any one person critically depend on the rights and wellbeing of others.

Jair Messias Bolsonaro (“only God will remove me from power”) is widely known for his sociopathic views and attempts to put them into action. He’s so given to bizarre statements that they tend to focus attention on him and distract from the fact that the appalling environmental and human rights situation of Brazil today (and here, people scavenging through animal carcasses for food, is just one example) isn’t the product of a

monstrous individual but of a monstrous government made up of neoliberal political forces and agents working with powerful criminal organisations in favour of private and corporate interests. Important players among these interests are those exploiting the Amazon. To give an idea of the general scale of destruction of the rainforest, nearly a million square kilometres have been lost since 1988, which amounts to a rate of 200,000 acres every day. Once a major carbon sink, the ten-million-year-old rainforest now emits more carbon than it stores. In other words, it aggravates rather than eases the global climate crisis. In Brazil, despite all the scientists' warnings about the extreme gravity of the climate crisis, the rate of deforestation is fast increasing, to such an extent that in July this year 2,095 km<sup>2</sup>, an area bigger than the city of São Paulo, was deforested.

Needless to say, attacks on the rainforest entail systematic attacks on the Amazon's Indigenous peoples. There are many reports of these crimes committed by the Bolsonaro government and its henchmen (including the "bible, bullet, and beef caucus", militiamen, wildcat miners, and through "infrastructure development, murder of Indigenous leaders, and "assimilation" plans for Indigenous peoples, for example). By 2016, some 34,000 square miles of the Brazilian Amazon had lost its previously protected status or seen protections reduced but the worst attacks began after 2016 when the Bolsonaro government radicalised the crimes that had begun with Michel Temer, who usurped the presidency from Dilma Rousseff, in what Temer himself admitted was a "coup". Since January 2019, the Bolsonaro government has cut funds for the enforcement of Brazil's strict environmental laws. Indigenous groups are fighting for their land and lives and are in great danger doing so. The current government encourages land grabbers and environmental corruption, which intensifies assaults on Indigenous communities. Illegal land grabbing has resulted in around half of the region's deforestation.

Like other observers, Dr. Paulo Moutinho, an ecologist working in the Amazon who co-founded the Amazon Environmental Research Institute (IPAM), has noted that a large proportion of illegal deforestation, gold mining, and land grabbing are directly tied to political corruption. Local government corruption enables companies or individuals to use forged paperwork to cut down trees illegally in protected areas. In the first seven months of the Bolsonaro administration, Amazon deforestation increased by 92 percent (compared with the same period in 2018). Satellite data shows that the 2021 Amazon fire season could be worse than the terrible fire seasons of 2019 and 2020. As many reports have shown, the Bolsonaro government and its spreaders of fake news and conspiracy theorists (the *gabinete do ódio*), literally fanned the flames, claiming that NGOs had

started the fires as part of an internationally orchestrated plot (by Emmanuel Macron and Pope Francis, *inter alia*), in messages designed to whip up ultra-nationalist support for deforestation and the agribusiness. From the election campaign to the present day, Bolsonaro and his government have consistently relied on concerted lying in their public communications, to the point of deploying ethnocidal “health policy” tactics in the Amazon.

But all these attacks don’t mean that Indigenous Brazilians aren’t still risking their lives to defend their land, and one of the strategies is appealing to the law. In 2012, the Mundurucu people sued to stop the construction of mega-dams and waterways in the Tapajós River Valley. Federal prosecutors filed in support of the Mundurucu and called for the suspension of the largest dam’s environmental license. The whole infrastructure plan was suspended, thus conserving 7% of the Amazon Basin. The constitution has been the main tool for Indigenous groups to fight back at the national level against infringements on their rights since it guarantees a “balanced environment” and a mandate for the government to demarcate, identify, set aside all Indigenous territories, as a result of which some 40% of the more than 1,200 Indigenous territories in Brazil were demarcated. But the progress was reversed when Bolsonaro took office.

Indigenous chiefs have linked the killings of Indigenous land defenders to a “state policy” implemented by the Bolsonaro government to “plunder the wealth of the Amazon” and have asked the International Criminal Court (ICC) to open an investigation into whether these actions constitute crimes against humanity. Prosecution of Bolsonaro and members of his coterie is impossible in Brazil because the only person who can investigate is the Chief Prosecutor, a Bolsonaro stalwart, and the ICC exercises jurisdiction if and when nations fail to do so themselves.

The Bolsonaro government’s destruction of the Amazon and the threat posed by climate change have prompted calls for designation of a new international crime called “ecocide”. The Bolsonaro government’s actions in the Amazon are cited as a prime example of ecocide happening in real-time. Supporters of the campaign hope that at least one of the court’s 123 member countries will start a formal process to amend the court’s founding treaty, the Rome Statute, by formally requesting that ecocide be added as the court’s fifth prosecutable crime. For the purposes of the Statute, ‘ecocide’ is defined as “unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.” However, there are some major problems to be overcome. The first is political will. Any

change to the ICC's mandate has to be approved by a two-thirds majority of member states. But ecocide is intimately linked with capitalist expansion and the relationship between powerful people and the natural world. Indeed, most governments, in the name of progress, foster some or other form of large-scale environmental destruction, so much of the harm done is "legal", expressing a commitment to capitalism and consumerism. Furthermore, three geopolitical heavyweights, the US, China, and Russia are not ICC members. Nevertheless, the current court structure does allow for the prosecution of people from non-ratifying states as the ICC is a court of last resort and the principle of universal jurisdiction can be applied, as long as a crime actually exists. The crimes do exist and everyone's now feeling their effects. Recognition of a global crime of ecocide could inform national laws in countries (and groups) that are committed to fighting climate change. Such changes may eventually lead to a standalone international environment court. Ecocide could be an early step towards a new way of human understanding of and coexistence with nature.

So far, the ICC's jurisdiction is limited to genocide, war crimes, crimes against humanity, and the crime of aggression, although environmental destruction in times of conflict is deemed to be a war crime within the jurisdiction of the court. In 2016, the Office of the Prosecutor of the International Criminal Court, headed by Fatou Bensouda, published a policy paper that urges prioritising and investigating cases of environmental damage, illegal exploitation of natural resources, and criminal dispossession of land, committed in the context of the crimes provided in the Rome Statute. This opened the way for cases like Bolsonaro's to be brought before the ICC. Moreover, the Office agreed to give "particular" consideration to such crimes. It is hoped that Karim Asad Ahmad Khan, the court's new prosecutor may authorise an investigation related to environmental destruction because the Bolsonaro government's crimes against humanity—murders and the forced displacement of Indigenous groups—are inextricably linked with the Amazon's deforestation. In other words, deforestation is now being associated with crimes against humanity, defined legally as widespread or systematic attacks against a civilian population, with knowledge of the attacks.

In theory, the court represents advancement of the rule of law, where no individual is too powerful, or above the law, and no victim is below the law or powerless to access justice. The court is seen as a forum where victims can be heard, recognised, and where they can seek redress. Unfortunately, the process for listing ecocide as an international crime could take years and, if successful, the resulting ecocide law will not apply retrospectively so it

is unlikely that Bolsonaro or his partners in crime could be charged with ecocide for any acts he has taken up to the date the law goes into effect. Nevertheless, if the ICC adopted ecocide as a crime within its jurisdiction or took up a case like that of Bolsonaro and his government, the mere prospect of court action or an impending international crime should have a deterrent effect on polluting businesses, financial institutions and politicians like Bolsonaro. It would also encourage more citizens and groups to claim the human rights we have been promised and to take action to end the impunity of the criminals who are destroying the planet. The crimes the court prohibits are an affront to humanity in general and, if the Bolsonaro government's environmental harm were treated as ecocide, he and his abettors would be permanently associated—formally—with the ultimate act of evil, the crime against humanity.

In January 2021, two Indigenous leaders, Almir Narayamoga Suruí and Raoni Metuktire, filed an Article 15 Communication, a legal document asking the prosecutor to open an investigation. They see the ICC as their last and best hope. The 68-page request detailed the Bolsonaro government's environmental and Indigenous policies, ecological damage, and the murder, forced displacement, and persecution carried out against Brazil's Indigenous population. Fifty years after the 7,000-page Figueredo Report documenting horrendous crimes against Brazil's Indigenous peoples (and now apparently “lost”), Suruí and Metuktire found that the justice system declined to carry out any meaningful investigation. They describe government-fostered actions as crimes against humanity which is one of the crimes in the ICC jurisdiction. They also argue that further destruction of the Amazon poses a threat to humankind. This is the third time in two years that Indigenous groups have accused Bolsonaro of committing international crimes with his actions against Indigenous peoples and environmental policies.

Another Article 15 Communication (November 2019) submitted by Brazil's Human Rights Advocacy Collective (CADHu) and the Arns Commission asked the prosecutor to “establish an innovative construal” of the law in order to recognise that Indigenous ways of life depend on specific links between human and non-human lives, while also pointing out that the Bolsonaro government's actions amount to genocide, or certain acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group. The document listed thirty-three facts showing that, on the pretext of generating “development” of the Amazon region, the Bolsonaro government turned the attacks on its Indigenous inhabitants and their lands into an intentional official policy aiming to violate the rights of this population. In the light of the climate crisis and the



Amazon's once crucial, and now lost, role in storing carbon, policies causing mass ecological harm are effectively an attack on individuals in the areas concerned and the rest of humanity. For the time being, the only way the court can hold Bolsonaro's government accountable is if he has committed acts that fall within one of the court's four existing crimes. The charges so far presented against it allege that he has. Would it be possible to organise an avalanche of Article 15 Communications from the United States, Europe and elsewhere in the world, because this is a global threat?

The class action lawsuit is another way of proceeding with large-scale litigation in cases where individual plaintiffs, especially in human rights cases, are poor and marginalised with no or little access to a just legal system in their own countries. Group litigation can be brought in three international institutions: the United Nations Human Rights Committee, the European Court of Human Rights, and the Inter-American Commission on Human Rights. The UN Human Rights Committee provides a forum for individuals who have been victimised by state actors. Theoretically, the humblest individuals can bring claims directly before these institutions, a right of individual action that is rare in international law because most international institutions limit the right of petition to state actors. Nevertheless, they do have the authority to review state compliance with treaty obligations and to issue findings of compliance or noncompliance.

The question is, can "we, the people" wake up to what the New Hampshire Constitution was saying 237 years ago, that "nonresistance ... is absurd, slavish, and destructive of the good happiness of mankind", and not only that, but destructive of the whole planet? We need to protest, resist, fight, organise to demand the rights that are theoretically universal for humans, and to denounce the criminals and their crimes with all the national and international legal mechanisms we have available, and, especially in the case of the Amazon, bringing as evidence all the science concerning the symbiotic relations between humans and nature. Almost a quarter of a millennium after Tom Paine, David Graeber also knew what we should all know, though it's not exactly a truth taught in schools: "The ultimate hidden truth of the world is that it is something we make, and could just as easily make differently."

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