



# Unprecedented new case demands commitment from BNDESPar to climate targets

THE SUBSIDIARY OF THE BNDES (BRAZILIAN DEVELOPMENT BANK) HAS NO PROTOCOLS IN PLACE TO MONITOR ITS CONTRIBUTION TO TACKLING THE CLIMATE CRISIS; NEARLY 65% OF THE COMPANY'S INVESTMENTS ARE IN PROJECTS THAT EMIT LARGE AMOUNTS OF GHG (GREENHOUSE GASES)

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## SUMMARY

Conectas Human Rights has submitted to the Federal Courts of the Federal District, on June 21st 2022, a public civil action on climate against the BNDES (Brazilian Development Bank) and BNDESPar, the investment arm of the bank responsible for managing its shareholdings in various Brazilian companies. This is the first civil action on climate against a national development bank anywhere in the world.

The organization claims that BNDESPar, which is publicly owned, has no rules or protocols in place for assessing the impacts of its investments on the climate crisis - in violation of the commitments assumed by Brazil under the Paris Agreement of 2015 and the country's own PNMC (National Policy on Climate Change), among other provisions.

Based on two technical opinions, Conectas is asking the justice system to require BNDESPar and its controller, the BNDES, to create rules and mechanisms that bind their investments and divestments to the reduction of greenhouse gas emissions by the companies they finance. In practice, a victory would cause BNDESPar to stop investing in businesses that worsen climate change.

### 2.1 Why a public civil action on climate?

In recent years, the justice system has been urged increasingly more frequently to take a stand on the climate emergency. Worldwide, approximately 2,000 climate litigation cases have been filed. These are lawsuits that propose, through legal instruments, to ensure fundamental rights related to the preservation of the environment and the stability of the climate.

Many of these lawsuits had favorable outcomes and recognized the responsibility of public and private organizations for the rising average temperature of the planet and for the impacts caused by natural phenomena that are increasingly more extreme. In Brazil, according to the JusClima database maintained by the CNJ (National Justice Council), 19 climate litigation cases have already been filed to date.

This civil action is therefore part of a global movement to tackle climate change in which the Judiciary is playing a decisive role.

### 2.2 Why the BNDES and BNDESPar?

The BNDES was created by the Brazilian State in the early 1950s to finance domestic companies and, in doing so, promote the economic and social development of the country in accordance with the policies and priorities of the federal government.

The bank operates in two ways: extending credit and purchasing shares. The second type of financial support is handled by BNDESPar, a company created in 1982 and a subsidiary of the BNDES - which, in turn, is fully owned by the federal government.

**Currently, these two companies are the main financiers of the economy Brazilian.** This means, in practice, that they are decisive players for achieving the national targets to reduce emissions and for promoting the fair transition in a wide range of market sectors. As state-owned companies, the BNDES and BNDESPar also have the obligation to ensure maximum effectiveness in the design of their policies and to control the social, environmental and human rights impacts of their disbursements.

**In spite of this, BNDESPar does not have any working policy that encompasses climate criteria. Nor does it disclose information on the greenhouse gas emissions related to its investment portfolio.** Some of its internal documents, such as the Reference Form, even claim that the company's activity does not pose environmental and social risks.

**These are clear indications that BNDESPar and its controller, the BNDES, are blatantly disregarding the climate impacts of their business.**

### 2.3 Why now?

Brazil is the fifth largest global emitter of greenhouse gases (accounting for 3.2% of total emissions) and it already suffers dramatically from the impacts of climate change. Across the country, temperatures, rainfall and rainwater systems have been altered. Sandstorms have become more frequent in several states, as have floods and landslides - like the ones seen recently in the states of Minas Gerais, Bahia and Rio de Janeiro that left a trail of death and destruction.

Experts agree that these events should be analyzed within the context of the climate crisis. According to the IPCC (UN Intergovernmental Panel on Climate Change), an increase in the average temperature of the planet by more than 1.5°C in the next 20 years will make extreme climatic events more frequent and more violent and will negatively impact the fulfilment of a series of human rights, especially the right to life, health and food. **This catastrophic scenario can only be averted, according to the Panel, with “rapid, deep and immediate” cuts in greenhouse gas emissions.**

Despite this, reports show that, in recent years, **Brazil has taken a step backwards in the combat of climate change.** In December 2020, the country reviewed the targets assumed under the Paris Agreement, which are formalized in an instrument known as the NDC (Nationally Determined Contribution). In practice, this change will lead to an absolute increase in emissions of around 300 million tons of CO<sup>2</sup> per year.

Another notable example of a setback in this area is the suspension, in 2019, of the National Fund on Climate Change (Climate Fund), which is the country’s main body for combating global warming. Its budget comes from oil royalties and loans granted by the BNDES. The federal government’s decision was challenged in the Supreme Court, which has already recognized the need to assess the existence of an “unconstitutional state of affairs on environmental and climate matters”. There is still no date set for the judgment of the case.

### 2.4 Why is this important for human rights?

In the case filed with the Federal Courts, Conectas claims that climate change impacts the guarantee of various fundamental rights - among them the rights to life, health, adequate food, water, culture and, of course, a balanced environment for this and future generations. This is why the topic has become a key concern for the International Human Rights System.

Several studies on the subject also reveal that the climate crisis has a more profound impact on countries and population groups that are historically more susceptible to human rights violations due to racial, social and economic reasons.

Conectas maintains that the BNDES and BNDESPar, despite being state-owned companies designed to promote development in the country, have contributed decisively to the worsening of the climate crisis and its effects on human rights.

This has happened because most of the **investments of BNDESPar are allocated to companies with high GHG emissions in the oil and gas, meat production, mining and electrical energy sectors.** Meanwhile, these disbursements are not subject to specific and transparent climate policies or internal controls.

As far as Conectas is concerned, the adoption of climate criteria to guarantee a balanced environment should not be optional because the government and State institutions, such as the BNDES and BNDESPar, have the prerogative to support the country in compliance with its international commitments, constitutional guarantees and ordinary laws (among them, the law that established the National Policy on Climate Change - PNMC). In other words, these companies should not be part of the problem; they must be part of the solution.

Just as the administrators of BNDESPar are not free to ignore risks and failures in their decisions, reads an excerpt from the case, neither can they ignore climate-related legal standards.

Conectas also notes that the BNDES System is in a privileged position to promote the decarbonization of the Brazilian economy, support sustainable projects and, at the same time, reduce the economic risks associated with the transition and with the climate emergency itself.

### 3.1 Scientific basis

The case filed by Conectas is accompanied by two independent technical opinions. The first, prepared by the Climate Center of Coppe/UFRJ (Center for Integrated Studies on Environment and Climate Change) and coordinated by Professor Emilio Lèbre La Rovere, reveals that at least 65% of the assets held by BNDESPar are in companies that have intensive greenhouse gas emissions. The calculation was made from an analysis of reports published by the companies themselves and was based on a sample of 85% of the investment portfolio of BNDESPar that, until March 2021, was concentrated in ten companies from the oil and natural gas, electrical energy, meat production, mining and pulp and paper sectors.

The technical opinion from Coppe also reveals that BNDESPar is not very transparent and does not include climate criteria and risks in its investment and divestment analysis. La Rovere is one of the scientists on the IPCC (UN Intergovernmental Panel on Climate Change) who won the Nobel Peace Prize in 2007 together with the former vice president of the United States, Al Gore.

The second opinion was penned by Professor Mario Schapiro, of the FGV Direito law school in São Paulo, which claims that BNDESPar has the legal duty to help Brazil achieve the climate targets and obligations established under the Paris Agreement and the PNMC, as well as the indirect duty to facilitate public oversight of its decisions and to improve information governance.

### 3.2 Legal basis

The case is supported by three main instruments:

1. the United Nations Framework Convention on Climate Change, which was implemented by the Paris Agreement of 2015 (in replacement of the Kyoto Protocol);
2. the Brazilian Constitution, in particular articles 225 (on the right of everyone to an ecologically balanced environment and the duty of the State to preserve it for current and future generations) and 170 (which places the well-being of the environment above economic and business interests); and
3. Law 12,187/09, which established the PNMC (National Climate Change Policy) and, among other things, determined that the financial mechanisms and the credit lines and financing of public and private agents are subject to the policy.

In addition to these provisions, the case also draws on the Forest Code, which establishes the duty to respect the integrity of the climate and voluntary international commitments, such as the UN Guiding Principles on Business and Human Rights.

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### REQUESTS

The case filed by Conectas makes several requests in the form of urgent injunctions. This means that the organization is asking the Federal Courts to adopt the proposed measures immediately, before the judgment of the merit of the case. These requests can be divided into three major groups:

1. Publicly inform, within a period of 30 days, about the adoption of climatic criteria in investment and divestment decisions and about the monitoring of progress on the reduction of emissions by the companies in its portfolio;
2. Present, within 90 days, a Plan for the Reduction of Greenhouse Gas Emissions that guarantees alignment by BNDESPar with Brazil's targets under the Paris Agreement and the rules of the PNMC;
3. Install, within 60 days, a Climate Situation Room to assess the implementation of the Plan for the Reduction of Emissions transparently and with the participation of representatives of civil society, traditional peoples and communities, the Public Prosecutor's Office, the Public Defender's Office, academics and members of the Judiciary.

**PARIS AGREEMENT**

A legally binding international treaty with the goal of limiting the increase in global average temperature by 2100 to 1.5°C above pre-industrial levels, by reducing greenhouse gas emissions. It was adopted by 196 countries and came into effect in 2016.

**GHG - Greenhouse Gases**

Which contribute to global warming. The main gases are carbon dioxide (CO<sup>2</sup>), methane (CH<sup>4</sup>), chlorofluorocarbons (CFCs) and nitrous oxide (N<sup>2</sup>O).

**IPCC - Intergovernmental Panel on Climate Change of the United Nations**

A group formed by 195 international experts that produces scientific information about the planet's climate situation. Its work contributes to multilateral talks and policymaking aimed at mitigating global warming.

**NDC - Nationally Determined Contribution**

The commitment to reduce emissions assumed by each country under the Paris Agreement. They are self-determined, but should always be progressive. Currently, after the most recent update by the federal government, Brazil's target is now to reduce its emissions by 37% by 2025 and by 50% by 2030.

**PNMC - National Climate Change Policy**

Established by Law 12,187/09. One of the most important regulatory landmarks in Brazil on the topic. The policy was updated in 2019 to include and ensure

**UNFCCC - United Nations Framework Convention on Climate Change**

Adopted in 1992 and ratified by Brazil in 1998, it is the cornerstone of the international climate change regime. State signatories to the Convention meet periodically in Conferences of the Parties (COPs).

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## ABOUT CONECTAS

Conectas is a non-partisan and independent non-governmental organization founded and based in São Paulo and which for 20 years has been working to enforce and enhance human rights in Brazil and around the world, from a Global South perspective. We work to secure and enhance the rights of all people, especially the most vulnerable populations. We propose solutions, avert setbacks and denounce violations to create transformations. We are active in the National Congress, in the Judiciary and in the International Human Rights System, with a technical vision based on constructive dialogue. Since 2006, we have had consultative status in the United Nations. In 2021, we received, for the third time, the “Best NGOs” award, which recognizes the one hundred non-profit organizations in Brazil with the best practices in management, governance and transparency.

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