

1

BOOKLETS ON CLIMATE JUSTICE

RETROSPECTIVE ON CLIMATE LITIGATION IN BRAZIL

April
2021

- Political parties filed two important cases at the STF (Federal Supreme Court) concerning the Fundo Clima (Climate Fund) and the Fundo Amazônia (Amazon Fund)
- Civil society organisations, in collaboration with political parties, file a climate action at the STF calling for the implementation of a deforestation plan
- Civil class action reinforces Federal Prosecutor requests to guarantee the combat of deforestation in the Amazon Region
- The STJ (Superior Justice Tribunal) upheld the annulment of the injunction that suspended the deadlines for the acquisition of Decarbonisation Credits (CBios) in an action involving the RenovaBio programme.
- The São Paulo government was sued for funding fossil fuels
- Civil class action, against the state and Ibama, calls for annulment of the dispatch issued by the president of Ibama to allow exportation of native timber without controls
- Rural workers to receive a health-risk premium for excessive heat relative to 12 months of each year worked
- Climate emergency requests in Brazilian cities
- What happened in the world with climate justice in 2020, and what can we expect in Brazil for 2021?

This publication aims to provide a brief analysis of the principal climate lawsuits underway in Brazil, and to inspire civil society organisations to further litigate in this growing and much-needed field. This booklet is the first of a series that Conectas Human Rights will be releasing in conjunction with the *Instituto Clima e Sociedade* (iCS).

In this first edition, we will present an analysis of the principal cases in 2020. We will also provide a brief analysis of international litigations and how Brazil's cases will impact our judiciary in 2021. If you would like to contribute with information about climate lawsuits in Brazil or overseas, please reach out to us.



contato@conectas.org

CONTRIBUTORS

Conectas Human Rights

Executive Director: Juana Kweitel

Program Director: Camila Asano

Legal and financial Director: Marcos Fuchs

Coordination:

Administrative-financial Coordinator: Fernanda Mioto

Coordinator of the strengthening democratic spaces program: Camila Asano

Coordinator of the fighting institutional violence program: Gabriel Sampaio

Coordinator of the defense of socioenvironmental rights program: Julia Neiva

Coordinator of communication and engagement: Leonardo Medeiros

Deliberative Council: Theo Dias (Chairman), Anamaria Schindler, Andre Degenszajn, Denise Dora, Douglas Belchior, Flavia Regina de Souza, Hélio Menezes, Malak Poppovic, Margarida Genevois, Marcelo Furtado, Oscar Vilhena, Renata Reis, Silvio Almeida, and Sueli Carneiro.

Fiscal Council: Emilio Martos, Heloísa Motoki, Luigi Puntel.

Booklet on Climate Justice No. 1

Authors: Gabriel Mantelli and Thaynah Gutierrez

Technical review: Julia Neiva

Layout: Joana Resek

Proofreading: Renato Barreto

Translation: Jane do Carmo

Translation review: Ari J. Moore

Support: Instituto Clima e Sociedade

Conectas Human Rights. 2021





SUMMARY

1

/page 4

Political parties filed two important cases at the STF (Federal Supreme Court) concerning the Fundo Clima (Climate Fund) and the Fundo Amazônia (Amazon Fund)

2

/page 6

Civil society organisations, in collaboration with political parties, file a climate action at the STF calling for the implementation of a deforestation plan

3

/page 7

Civil class action reinforces Federal Prosecutor requests to guarantee the combat of deforestation in the Amazon Region

4

/page 8

The STJ (Superior Justice Tribunal) upheld the annulment of the injunction that suspended the deadlines for the acquisition of Decarbonisation Credits (CBios) in an action involving the RenovaBio programme.

5

/page 9

The São Paulo government was sued for funding fossil fuels

6

/page 10

Civil class action, against the state and Ibama, calls for annulment of the dispatch issued by the president of Ibama to allow exportation of native timber without controls

7

/page 11

Rural workers to receive a health-risk premium for excessive heat relative to 12 months of each year worked

8

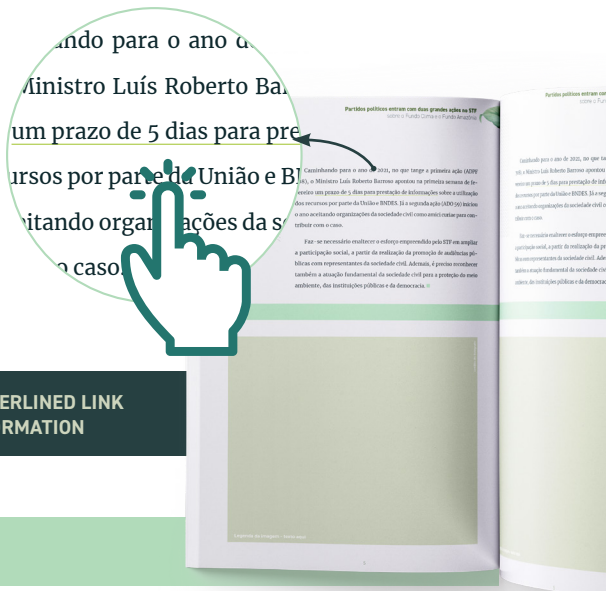
/page 12

Climate emergency requests in Brazilian cities

9

/page 13

What happened in the world with climate justice in 2020, and what can we expect in Brazil for 2021?



CLICK THE UNDERLINED LINK FOR MORE INFORMATION



1

POLITICAL PARTIES FILED TWO IMPORTANT CASES AT THE STF (FEDERAL SUPREME COURT) CONCERNING THE FUNDO CLIMA (CLIMATE FUND) AND THE FUNDO AMAZÔNIA (AMAZON FUND)

In 2020, two major climate cases were filed at the Federal Supreme Court (STF): ADPF 708 and ADO 50.



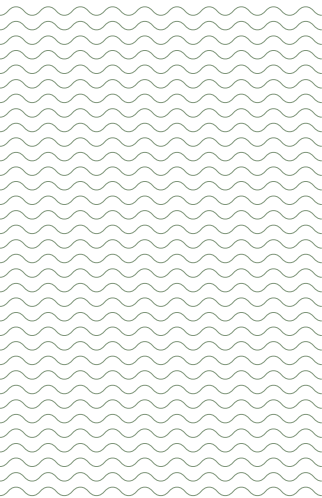
2020

TWO CLIMATE LITIGATION CASES HAVE REACHED THE FEDERAL SUPREME COURT (STF):

- **ADPF 708** is related to the Climate Fund, rapporteur is Justice Luís Roberto Barroso.
- **ADO 59** is related to the Amazon Fund, filed by the same set of parties, rapporteur is Justice Rosa Weber.

The first ([ADPF 708](#)) concerns the Climate Fund, with Justice Luís Roberto Barroso serving as rapporteur. The action was filed by a group of political parties including PSB, PSOL, PT, and Rede Sustentabilidade. One of its objectives was to encourage usage of the budget already allocated for the [Fundo Nacional sobre Mudança do Clima \(National Fund for Climate Change\)](#) as the fund was sitting unused, with no projects approved despite adequate resources.

The second ([ADO 59](#)) concerns the Amazon Fund. This was filed by the same group of parties with Justice Rosa Weber in the role of rapporteur. The action sought to provide up-to-date data on the increase in deforestation of the Amazon region and stressed [the Fund's importance in combating this situation](#). It claimed that managing bodies of the fund had been eliminated, and that the Fund was not carrying out the functions for which it was created. In both cases, the STF convened public hearings to gather information and to listen to different sectors of society.



Regarding the first case (ADPF 708), in the first week of February 2021, Justice Luís Roberto Barroso set a deadline of 5 days for information to be provided on the use of funds by the government and the BNDES (Brazilian Development Bank). At the beginning of the year, the second case (ADO 59) accepted civil society organisations as *amici curiae* (“friends of the court”) to contribute to the case.

It is important to highlight the effort made by the STF in increasing social participation by promoting public hearings with representatives of civil society. Also worth mentioning are the crucially important activities of civil society in safeguarding the environment, public institutions and democracy. ■



Christian Braga / Greenpeace

The protection of the Amazon is directly related to the climate agenda. Keeping forests standing is a fundamental right.

2



CIVIL SOCIETY ORGANISATIONS, IN COLLABORATION WITH POLITICAL PARTIES, FILE A CLIMATE ACTION AT THE STF CALLING FOR THE IMPLEMENTATION OF A DEFORESTATION PLAN

Like the first two cases, ADPF 760 was filed by political parties, but with the participation of 10 organisations that endorsed the filing. The organisations also expressed interest in being included as *amici curiae*, highlighting the importance of civil society organisations in gathering data and carrying out analyses that complement and strengthen cases such as these.

The focus of this case is the PPCDAm (Action Plan for the Prevention and Control of Deforestation in the Amazon Region), an important mechanism for controlling deforestation. This action denounced the serious, irreparable damage caused to fundamental rights, which have resulted from acts committed by the State and other federal bodies to impede the execution of existing policy. The effects include a significant reduction in monitoring and control of deforestation in the Amazon Region, among other consequences. ■

Deforestation is one of the major causes of greenhouse gas emissions in Brazil.



Victor Moriyama / Greenpeace

3



CIVIL CLASS ACTION REINFORCES FEDERAL PROSECUTOR REQUESTS TO GUARANTEE THE COMBAT OF DEFORESTATION IN THE AMAZON REGION

The Federal Prosecutor's Office (MPF), also concerned with deforestation in the Amazon Region, requested that the judiciary impose command and control measures to contain growing deforestation by environmental offenders – loggers, illegal miners, land grabbers etc - through a public action, in the ten areas with the highest crime rate in the Amazônia Legal region. In 2020, an injunction was granted in response to the Federal Prosecutor's request for urgent protection, prior to the civil class action. The injunction was suspended by the Federal Regional Tribunal of the 1st Region (TRF1), with the Federal Prosecutor filing an appeal soon after. In addition to the effect of increased deforestation, the MPF stressed that environmental offenders in the rainforest represent a public health risk to the people of the Amazon, particularly during the pandemic. ■



AMAZON

THE FEDERAL PUBLIC MINISTRY HAS REQUESTED FROM THE FEDERAL COURTS, BY MEANS OF A CIVIL CLASS ACTION

- command and control measures to contain the growing deforestation by environmental offenders - loggers, gold miners, land grabbers, etc.

4

THE STJ (SUPERIOR JUSTICE TRIBUNAL) UPHELD THE ANNULMENT OF THE INJUNCTION THAT SUSPENDED THE DEADLINES FOR THE ACQUISITION OF DECARBONISATION CREDITS (CBIOS) IN AN ACTION INVOLVING THE RENOVABIO PROGRAMME.



Decarbonization of the economy is an important step towards ensuring climate justice.

On November 18th of 2020, the Association of Fuel Distributors (Brasilcom) issued a writ of mandamus, aimed at a 25% reduction in the fuel distributors' annual goal to acquire 14.5 million Decarbonisation Credits (CBios). These credits refer to sales of ethanol and biodiesel by plants and distilleries.

The writ contested and sought to modify the individual goals of distributors in the RenovaBio programme (National Policy for Biofuel). It is important to note that annual national goals for decarbonisation of the fuel sector are the primary tool employed by RenovaBio. The STJ ruling was fundamental, both in upholding the annulment of the injunction that suspended deadlines for the acquisition of Carbon Credits for Decarbonisation (CBios), and in ensuring that the request to cut the goal by half was not codified. The ruling will support other judiciary measures against RenovaBio that may be necessary in the future. ■

5



THE SÃO PAULO GOVERNMENT WAS SUED FOR FUNDING FOSSIL FUELS



Youth and younger generations are leading climate mobilization efforts inside and outside the courts

The movement Famílias pelo Clima (Families for Climate) entered into litigation against the São Paulo state government over the IncentivAuto programme, launched during the administration of the current governor, João Dória in 2019, to provide tax incentives to automobile manufacturers setting up in the state.

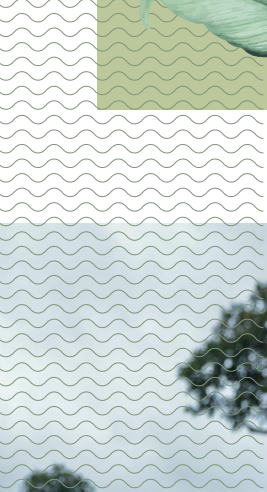
This action is strategically innovative for civil society because it centers families and children in pushing for the preservation of state legislation to safeguard the environment, such as state law nº 13.798/2009 that articulates the state's obligation regarding the challenges of climate change and reaffirms the fundamental right of future generations.

This case is in progress at the 6th Civil Court of the São Paulo Central Forum and illustrates the importance of holding public authorities accountable for the effects of climate change, and the need for better transparency platforms to monitor public policy. ■

6



CIVIL CLASS ACTION, AGAINST THE STATE AND IBAMA, CALLS FOR ANNULMENT OF THE DISPATCH ISSUED BY THE PRESIDENT OF IBAMA TO ALLOW EXPORTATION OF NATIVE TIMBER WITHOUT CONTROLS



Felipe Werneck/Ibama

Mechanisms to confront illegal activities that combine environmental law and climate litigation are strategic and innovative.

The Brazilian Association of Members of the Public Prosecutor's Office of the Environment (Abrampa), political parties, and non-governmental organisations filed three cases at the Federal Supreme Court (STF) and Federal Justice against the environmental policy promoted during the last administration of the Ministry of Environment.

Legal justification is based on a compilation of records by the *Observatório do Clima* (Climate Observatory) – a network made up of 50 civil society organisations – and suggests infractions concerning the export of timber without controls and the freezing of resources from the Amazônia and Climate Funds.

The first was a civil class action against the state and Ibama (Brazilian environmental agency). It calls for annulment of the dispatch issued by the Ibama president allowing for the exportation of timber without controls. The second and third ones claim that lack of action by the state was unconstitutional, and, like those outlined above, demand the resumption of Amazon Fund and Climate Fund operations. ■

7



RURAL WORKERS TO RECEIVE A HEALTH-RISK PREMIUM FOR EXCESSIVE HEAT RELATIVE TO 12 MONTHS OF EACH YEAR WORKED

In July 2020, the second round of the 18th district's Regional Labour Tribunal (TRT) ordered the agro-industry to pay a health-risk premium to rural workers for every 12 months of work. The ruling included payments of labour-related compensation between the months of January and June for each year worked.

The action was filed by a sugarcane worker who claimed to work outdoors, full-time with no protection from excessive heat and its related harms. When assessing the case, the rapporteur, Judge Geraldo Rodrigues, concluded that the granting of a health-risk premium because of heat was legally justified by TRT-18. It is well known that climate change has led to more extreme temperatures around the globe, and is creating adverse conditions therein for humanity. ■

Centralizing people in the climate debate is necessary to guarantee respect for human rights.



8



CLIMATE EMERGENCY REQUESTS IN BRAZILIAN CITIES

Climate emergency requests have become more common in a number of cities around the world. The voices of these movements have also been echoing in Brazil, where there have been nationwide moves around these requests. In this vein, congressman Alessandro Molon of the PSB (Brazilian socialist party) presented Bill of Law nº 3961/2020, with the goal of declaring Brazil to be in a state of climate emergency until there are actions to reduce the impact of anthropogenic climate change.

In 2019, the city of Recife was the first Brazilian city to declare, “Recognition of the Global Climate Emergency by the Municipality of Recife.” At the signing event, the then-mayor also announced the launch of Recife’s plan for mitigating the effects of climate change, entitled “Analysis of Risk and Climate Vulnerabilities and the Coping Strategy of the Municipality of Recife.” The plan set out 14 mitigation strategies discussed with members of the public and a PCR technical group in order to increase the robustness of Recife’s most critical infrastructure. The report includes six principal points of vulnerability to the future consequences of climate change: flooding, landslides, transmittable diseases, heatwaves, meteorological drought, and rises in sea level.

Last year, in the city of Uberlândia, a group of 14 citizens filed a case demanding government action to minimise climate-related effects and to promote ecological equilibrium. Among the requests is one for the implementation of specific, municipal-level public policies to protect the environment, and for preventative measures to be taken against the consequences of climate change on the city’s populace. ■

The climate crisis demands emergency institutional responses



Barbara Veiga / Greenpeace

9



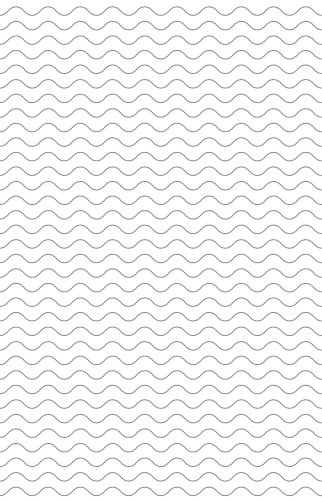
WHAT HAPPENED IN THE WORLD WITH CLIMATE JUSTICE IN 2020, AND WHAT CAN WE EXPECT IN BRAZIL FOR 2021?

We saw a worldwide increase in the use of climate litigation as a means of both advancing pro-climate policies and halting environmentally destructive ones. According to a [report produced by the Grantham Research Institute on Climate Change and the Environment at the London School of Economics](#), in May of 2019, climate litigation lawsuits were identified on 6 different continents. In addition to cases appearing before judiciaries, other mechanisms were also deployed, from complaints made at National Contact Points for the OECD Guidelines for Multinational Enterprises to those made at the United Nations Committee on the Rights of the Child and to UN Special Rapporteurs.

According to available data, the USA currently has the highest number of climate litigation cases in the world. Nevertheless, because of its pioneering style in the use of strategic litigation to gain visibility for climate change, the European continent is today one of the principal battlegrounds for climate litigation.

In 2019, a highly favourable ruling on climate was the famous court case *State of the Netherlands vs Urgenda Foundation*, which successfully sought an injunction to force the Dutch government to reduce emissions. In 2020, the last important case did not have the same result. *Greenpeace Nordic vs Norway* – in which a group of young people and NGOs requested the suspension of an authorization to exploit oil and gas in the Arctic due to its deleterious impact on the climate – was rejected by the Norwegian constitutional court.

On the issue of climate policies, during the Covid-19 pandemic, countries' leaders met to redefine possibilities for economic recovery while taking into account the need for climate protection. To this end they put together [The Platform for Redesign 2020](#) following an initiative by the Japanese Ministry for the Environment, and with the support of the UNFCCC. Among the recommendations agreed upon, [5 pillars stand out](#):



• **PEOPLE MUST BE AT THE HEART OF ACTIONS FOR A GREEN AND RESILIENT RECOVERY;**

• **GOVERNMENTS MUST RAMP UP THEIR INVESTMENT IN A GREEN RECOVERY;**

• **BUILDING RESILIENCE IS KEY FOR AN EFFECTIVE RECOVERY;**

• **GLOBAL CRISES ARE OFTEN INTERLINKED, ACROSS SECTORS AND BORDERS AND**

• **INTERNATIONAL COOPERATION AND SOLIDARITY ARE CRITICAL.**

If we truly want to recover in a way that responds to climate and socio-environmental crises and to move forward with the agenda of the Sustainable Development Goals (SDGs), we must gather evidence and gain public and political support at an even faster pace. We understand that it is key to think not just in terms of an absolute green recovery, but also in terms of a racially, socially, and economically inclusive green recovery, especially following a pandemic that exacerbated so many existing issues of systemic inequality.

For 2021, in light of changes in leadership in the National Congress, which will increase the support base of the current president, we foresee significant setbacks. So, while we are celebrating an increase in the possibility for dialogue with the judiciary by means of climate litigation court cases, we also need to remain vigilant of activities taking place at the legislative level which are now likely to further strengthen the setbacks initiated at the beginning of the current government's administration. ■



contato@conectas.org

follow our social networks

 [/conectas](#)

 [@conectas](#)

 [@conectas](#)

 [conectas.org](#)