

EXECUTIVE SUMMARY

CLIMATE LITIGATION

IN BRAZIL

2024 REPORT

COORDINATION

DANIELLE DE ANDRADE MOREIRA



EXECUTIVE SUMMARY

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Technical Data Sheet

Coordination

Danielle de Andrade Moreira

Authors

Danielle de Andrade Moreira
Carolina de Figueiredo Garrido
Juliana Chermont Pessoa Lopes
Paula Máximo de Barros Pinto
Victória Lourenço de Carvalho e Gonçalves
Luciana Tse Chaves Garcia Rego
Maria Eduarda Garambone Sydenstricker
Ana Paula Ricci

Realization

Grupo de Pesquisa Direito, Ambiente e Justiça no Antropoceno (JUMA) – <https://www.juma.nima.puc-rio.br/>

Layout and design

Gabriel Garcia Tomaz

Data analysis

Amsatou Falilou Diop

English version

Jane Adlington

English review

Julian Cornelius

Supported by

Instituto Clima e Sociedade - iCS

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Executive summary

The results of the quantitative and qualitative analysis of 80 cases registered on the [Brazilian Climate Litigation Platform](#) (Platform) up until March 2024 are presented in the first edition of the report on climate litigation in Brazil. The report comprises an overview of climate litigation in the country and analyses the distribution and intersection of different categories according to a pre-established [methodology](#),¹ in order to classify climate actions into four groups: systemic cases,² routine cases,³ cases on environmental licencing directly linked to the climate issue and cases on civil liability for climate-environmental damage.

Some conclusions from the study are outlined below, focusing on the main data analysed throughout the report.

General conclusions:

- With 80 actions as of March 2024, Brazil is the jurisdiction in the Global South with the most reported cases and is the country in the world with the fourth highest number of climate cases (behind only the USA, Australia, and the United Kingdom);
- Of the 80 actions, the vast majority (64 cases) are ongoing and only 13 have been concluded and shelved. The remaining three cases are under seal;
- The main norm mobilised in Brazilian climate litigation is Article 225 of the Federal Constitution (mentioned in 74 cases), followed by the National Environmental Policy Act (PNMA)⁴ (mentioned in 48 cases). These norms are followed by the National Climate Change Policy Act (PNMC) and general references to the Federal Constitution (each mentioned in 44 cases). The emphasis on norms that do not express-

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1 Available only in Portuguese.

2 Systemic cases are seen as those aimed at prompting changes to public and private policy, filed by organisations or institutions and involving complex, broad discussions.

3 Routine cases are those that address a specific act or venture.

4 Portuguese terms translated into English by the authors – acronyms maintained in the original Portuguese.



ly mention climate change demonstrates that climate litigation in the country is directly associated with advances in Brazilian environmental law;

- There are two main types of actions mobilised in climate litigation: the Civil Public Action (ACP)⁵ (used in 50 cases) and a set of constitutional judicial review actions (ADPFs, ADIs, and ADOs,⁶ which total 17 cases);
- The Federal District (DF) is still the main jurisdiction where lawsuits are filed (with 21 cases). The states of Pará (with ten cases) and Amazonas (with nine cases) now occupy second and third places, respectively;
- Since the last edition of the [Brazilian Climate Litigation Bulletin in 2023](#), cases were registered for the first time in Maranhão, Paraíba and Tocantins. This represents a geographical expansion and means that now there is at least one case in each state of the Legal Amazon region;
- The Public Prosecutor's Office is the main plaintiff responsible for filing climate actions (with ten cases filed by State Public Prosecutor's Offices and 12 by the Federal Public Prosecutor's Office, totalling 22 actions), followed by organised civil society groups (with 21 cases) and political parties (with 14 cases);
- The government is still the main defendant, with federative entities, government agencies, state officials and legislative branch among the actors that are sued most, with a total of 82 occurrences⁷ on the

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5 A type of Brazilian class-action.

6 Claim for Noncompliance with a Fundamental Precept (ADPF), Direct Action of Unconstitutionality (ADI), and Direct Action for Unconstitutionality by Omission (ADO).

7 Some of the categories allow for the selection of more than one corresponding option, such as the identification of the type of plaintiff and defendant, the measures addressed and the greenhouse gas emission sector, among others. In these cases, the term “occurrences” is used to identify how many times the classification mentioned was applied in climate litigation as a whole, without necessarily corresponding to the number of cases included on the Platform. Conversely, there are categories in which the choice of one option necessarily entails the exclusion of the other, such as: the type of action, systemic or routine cases, the state of origin, among others.



defendant's side. However, the number of actions against companies has been growing in recent years (now totalling 31 cases), which may indicate a change in this profile;

- The number of occurrences for the classification of the type of defendant is much higher than the number of cases (131 occurrences in 80 cases), which indicates that it is common for climate litigation cases in Brazil to be filled against more than one type of defendant;
- In the vast majority of the actions, the plaintiff sought to achieve results that would contribute to the defense of the climate: there are 76 cases favourable to climate protection and only 4 cases against it;
- Mitigation is the main measure addressed (with 44 occurrences), followed by the growing demands for civil liability measures for climate damage (with 24 occurrences) and climate risk assessment (with 19 occurrences), the latter focusing on the instrument of environmental licencing;
- Adaptation is the least addressed measure, with occurrences in 12 cases. In 11 of these cases, at least one other measure is also mentioned;
- The total number of occurrences of measures addressed significantly exceeds the total number of cases (114 occurrences in 80 cases), indicating a tendency for litigation to demand more than one measure in the same case;
- Demands related to land use change and forestry come up in more than half of the actions (47 out of 80 cases), followed by the energy sector (mentioned in 25 cases);
- The Amazon has the highest number of occurrences in climate cases focused on a specific biome (34 cases), significantly more than any other biome;
- All climate cases that mention the Amazon address land use change and forestry, and are seldom associated with other greenhouse gas emission sectors;



- The main targets of climate cases concerning the Amazon are federative entities (15 occurrences), followed by companies (14 occurrences) and individuals (seven occurrences). There is a tendency for plaintiffs to hold private actors directly or indirectly accountable for deforestation, while public authorities are held responsible for omissions in their duty to monitor and safeguard the biome;
- Of the 80 actions, 45 address climate as the main issue or one of the main issues, while 35 address the topic contextually. Although substantial mentions of the climate issue still prevail, it is noteworthy that the last ten actions registered on the Platform address climate contextually (eight of which were proposed in 2023), indicating a possible profile shift;
- The majority of cases (44 out of 80 actions) do not address the issue of environmental and/or climate justice. There are 17 cases that mention the issue explicitly and 19 that mention it implicitly.

Conclusions regarding systemic and routine cases:

- For the first time, the number of routine cases (43 cases) has surpassed the number of systemic cases (37 cases). The last ten cases included on the Platform were routine ones (eight of them filed in 2023), indicating a possible shift in the litigation profile;
- Among the 37 systemic cases, the vast majority (at least 30) challenge setbacks, such as the dismantling of the environmental and climate regulatory framework or failure, insufficiency, or ineptitude in the implementation of public policies;
- Between 2019 and 2022, during the Bolsonaro administration, 32 systemic cases were filed, representing more than one-third of all cases on the Platform, and the majority of those classified as systemic (37 cases in total);
- Routine cases address a variety of issues; of note are those related to environmental licencing and civil liability for climate-environmental damage, but there are also some cases that address the carbon market and other topics;

- In systemic cases, a variety of procedural instruments are employed. Individually, the Public Civil Action (ACP) is the most used type for systemic cases (14 cases), but the combined total of constitutional actions (ADPF, ADI, and ADO) is higher (16 cases). In routine cases, there is a high number of ACPs (36 out of 43 cases);
- Systemic cases are mostly filed in the Federal District (20 out of 37 cases), while routine cases are spread across various jurisdictions, with the majority in Amazonian states. Pará (ten cases) and Amazonas (five cases) are the two main states with routine actions. The total number of routine cases in the states of the Legal Amazon region represents more than half of such cases (24 out of 43 cases);
- Political parties are the principal actors filing systemic cases (14 out of 37 cases). This is the only category with this profile, reflecting the list of entities authorised to file direct constitutional actions (concentrated constitutional review).⁸ Furthermore, government agencies (such as IBAMA)⁹ are the principal plaintiffs in routine cases (15 out of 43 cases). In both types of cases, organised civil society groups and the State and Federal Public Prosecutors' Offices are also significant plaintiffs;
- In systemic cases, public parties are particularly targeted and represent the four main types of defendant, with federative entities acting as defendants in over half of the actions (24 out of 37 cases), followed by state officials (12 cases), government agencies (11 cases), and the legislative branch (six cases);

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8 “Constitutional judicial review in Brazil is hybrid, bringing together the American and the European models. In the Brazilian legal system, constitutional issues may be raised within a concrete lawsuit before a court (American diffuse-concrete system) or ‘in abstract’ before the Supreme Court (European concentrated abstract system). [...] Concentrated control (abstract) review, concerning conflicts between federal or state laws (or other normative acts) and the Federal Constitution, only happens before the STF [Federal Supreme Court] and is marked by abstraction, generality, and impersonality”. (MOREIRA, Danielle de Andrade et. al. Rights-based Climate Litigation in Brazil: An Assessment of Constitutional Cases before the Brazilian Supreme Court. *Journal of Human Rights Practice*, 2023, huad023, <https://doi.org/10.1093/jhuman/huad023>).

9 Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis (The Brazilian Institute of Environment and Renewable Natural Resources).



- In routine cases, private parties stand out, with companies appearing as defendants in over half of these actions (27 out of 43 cases), followed by individuals (16 cases). The numbers concerning public parties are also significant, particularly among federative entities (16 cases) and government agencies (12 cases);
- Mitigation is the measure adopted in the vast majority of systemic cases (24 out of 37 cases). In routine cases, mitigation also ranks first, but is tied with civil liability for climate damage (both mentioned in 20 out of 43 cases), followed by climate risk assessment cases (a measure mentioned in ten cases);
- Systemic and routine cases tend to address the same greenhouse gas emission sectors, albeit in different ways. In both types of cases, the primary sector mentioned is land use change and forestry which appears in more than half of the actions (in 20 out of 37 systemic cases and in 27 out of 43 routine cases), followed by the energy sector (mentioned in 13 out of 37 systemic cases and in 12 out of 43 routine cases);
- In systemic cases, the main regulation invoked is Article 225 of the Federal Constitution (cited in 36 out of 37 cases), followed by general references to the Federal Constitution (cited in 31 cases). This reflects the significant presence of constitutional arguments in these cases, many of which are direct constitutional actions (concentrated constitutional review);
- In routine cases, the main regulation invoked is also Article 225 of the Federal Constitution (cited in 38 out of 43 cases), followed by the National Environmental Policy Act (PNMA), cited in 29 cases. This indicates that these cases tend to follow strategies already established in Brazilian environmental litigation.

Conclusions regarding cases on environmental licencing:

- There are 13 actions that address environmental licencing in direct connection with the consideration of the climate issue in the claims and/or cause of action;



- The vast majority of cases concerning environmental licencing are Public Civil Actions (ACPs) (11 out of 13 cases), with only one Citizen Suit (APop) and one Common Procedure Action (ProcedCom);
- There is a higher number of cases on environmental licencing in Rio Grande do Sul (six out of 13) due to the centrality on discussions concerning coal in the state;
- The vast majority of the cases (ten out of 13) involve the energy sector, followed by industrial processes (five cases). This is the only category with this profile concerning greenhouse gas emissions sectors, as these are cases related to the licencing of projects for the extraction and burning of fossil fuels for energy generation. It is also the only category where the land use change and forestry sector are not seen;
- Organised civil society groups are the main type of plaintiff in these cases (eight out of 13 cases), followed by the Public Prosecutor's Office, with the State Public Prosecutor's Office and the Federal Public Prosecutor's Office each responsible for two cases. This is the only category where civil society is the protagonist, with significantly more cases compared to other actors;
- The three types of defendants identified in these cases – government agencies, companies, and federative entities – feature in a similar number of actions, ten, nine, and eight respectively. It is noteworthy that in these cases, it is very common for more than one type of actor to be named as defendant in the same action, reflecting the nature of environmental licencing, which involves both public and private actors;
- All 13 cases support the need for the adoption of climate risk assessment measures, followed by mitigation measures (mentioned in seven of the cases). There are still no cases that include adaptation measures. This is a pertinent point that can – and should – also be evaluated within the scope of environmental licencing lawsuits;¹⁰

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10 In light of the socioenvironmental tragedy that struck the state of Rio Grande do Sul in May 2024 (after this study had been completed), with unprecedented rain and floods, it is expected that lawsuits pertaining to measures for adaptation to extreme climate events will see a significant increase.



- In the vast majority of environmental licencing cases (ten out of 13), climate is one of the main issues. Climate was a contextual argument in only three cases. The climate issues usually come up in association with other environmental impacts, such as air pollution, water related impacts, the participation of affected populations and consultation of indigenous peoples and traditional communities;
- The majority of cases (eight out of 13) make no mention of the concepts of environmental and/or climate justice. Three cases mention these themes implicitly and two explicitly, indicating that the approach to these concepts in climate-related environmental licencing cases is still in the early stages;
- All the cases mention Article 225 of the Federal Constitution and almost all (12 of the 13 cases) mention the National Environmental Policy Act (PNMA). Environmental licencing regulations are frequently cited (such as the CONAMA¹¹ Resolution 1/1986 which is cited in nine cases and the CONAMA 237/1997 which is cited in eight cases). Climate regulations are also cited: such as the National Climate Change Policy Act (PNMC) which is mentioned in 11 cases and the Paris Agreement which is cited in six cases.

Conclusions regarding cases on civil liability for climate-environmental damage:

- There are 24 cases that invoke civil liability for climate-environmental damage, considering its reparatory and/or preventive dimensions;
- Although some of these actions (11 cases) explicitly claim climate damages, there are cases where the climatic element of the environmental damage is not explored in detail, even though demonstration of the damage is based on issues related to greenhouse gas emissions and climate change;

¹¹ Conselho Nacional do Meio Ambiente (National Environmental Council).



- Government agencies are the main type of plaintiff (14 out of 24 actions), followed by the Federal Public Prosecutor's Office and the State Public Prosecutor's Office (responsible respectively for four and three actions);
- Most of the defendants are companies and individuals (15 and 8 cases, respectively). In a minority of cases, federative entities and government agencies act as defendants (five actions each);
- The main sector under scrutiny is land use change and forestry, addressed in the vast majority of cases (19 out of 24). This is followed by some mention of the energy sector (five occurrences), agriculture (four occurrences), and industrial processes (two occurrences).
- The biome that is mentioned most is the Amazon (14 occurrences in 24 cases);
- The two states with the most cases are Pará (with five actions) and Amazonas (with four actions). The total number of cases filed in the states of the Legal Amazon region accounts for more than half of the cases (16 out of 24 cases);
- In most cases, the climate issue appears as the main or one of the main issues addressed (in 19 out of 24 cases), confirming the centrality of the climate dimension in the treatment of environmental damage;
- Almost half of these cases explicitly mention environmental and/or climate justice (11 out of 24 cases), followed by eight cases with no mention and five which mention it implicitly;
- The main regulations invoked are Article 225 of the Federal Constitution (cited in all 24 cases) and the National Environmental Policy Act (PNMA) (cited in 23 cases). Following these, climate regulations such as the National Climate Change Policy Act (PNMC) (cited in 11 cases) and the Paris Agreement (cited in seven cases) are also frequently mentioned;



- The 11 cases that specifically address climate damage and its assessment focus on combating illegal deforestation—particularly in the Amazon—and have been filed against both the deforesters themselves (direct polluters) and those responsible for other activities in the deforestation chain (indirect polluters).
- These actions encompass all the impacts that a single polluting activity has on the environment, including on the climate (direct climate damage). They take into account the multifaceted nature of environmental damage and the need for full reparation;
- The profile of Brazilian climate actions regarding civil liability for climate-environmental damage indicates that the starting point for development of this issue lies in the legislative and jurisprudential advances of environmental law in the country, integrating them with the specificities of climate change.

