



The Amazon rainforest on the Urubu River. Photo by Andre Deak via Flickr.

Climate litigation is gaining momentum in Brazil as a tool to protect the Amazon rainforest from illegal deforestation. A [new wave](#) of cases differs from [traditional](#) environmental lawsuits by highlighting the connections between preserving the Amazon and the climate, the grave risk of greenhouse gas emissions caused by deforestation, and the critical role of the forest as a major global carbon sink.

The timing of these climate disputes is not accidental. The movement follows a worldwide upsurge in climate change-related cases, which have [more than doubled](#) since 2015. The new wave of litigation also arose from the urgency of combating the rise in deforestation under the right-wing-oriented President Jair Bolsonaro, who left the government in January 2023 for the return of President Luiz Inácio Lula da Silva (Lula). Lula, who served as President of Brazil from 2003 to 2010 (and is the first President in the country to return for a third term), is known for [supporting policies](#) to protect the environment and disenfranchised social groups. Deforestation in the Amazon decreased [significantly](#) (by over 70%) during Lula's last two terms, while it [jumped](#) (about 60%) under President Bolsonaro.

The first results of this wave of Brazilian climate litigation bring good news. And somehow [historical](#). The most emblematic decision came from the Federal Supreme Court, the highest Court in the Brazilian legal system, which ruled in July 2022 that the Paris Agreement is a [human rights treaty](#). The Brazilian court became the [world's first](#) to give this status to the

Paris Agreement, setting an important precedent for Brazil and the world. “Treaties on environmental law are a type of human rights treaty, and, for that reason, enjoy supranational status. There is, therefore, no legally valid option to simply omit to combat climate change,” the ruling said. This “supranational status” means that these treaties are above the “regular” laws in the legal hierarchy. Accordingly, any Brazilian law or decree contradicting the Paris Agreement may be invalidated.

With this ruling, the Federal Supreme Court resolved the first climate dispute in its history, in which 10 of the 11 ministers followed the opinion of the rapporteur, Luís Roberto Barroso, in the judgment. The court also ordered the State, considered remiss, to release the resources of the [Climate Fund](#), a government program that aims to mitigate the impacts of climate change. The fund was set up in 2009 as part of Brazil’s [national climate policy plan](#) and became inoperative in 2019 when President Bolsonaro stopped preparing annual plans and disbursing resources to support the mitigation projects. The decision was made in a lawsuit filed by four political parties (PSB et al. v. Brazil) to oblige the federal government to re-establish the mechanism and to prohibit the restriction of the revenues that make up the Climate Fund.

This landmark case makes Brazil join Colombia as the only two countries in Latin America to have the Federal Supreme Court explicitly recognize the need for action on climate change. In [Future Generations v. Ministry of the Environment](#) and Others, from 2018, Colombia’s highest court ruled in favor of a group of 25 children and youth recognizing that their “fundamental rights of life, health, the minimum subsistence, freedom, and human dignity are substantially linked and determined by the environment and the ecosystem.” It further recognized the Colombian Amazon as a “subject of rights” in the same manner that the Constitutional Court recognized the Atrato River, and ordered the government to formulate and implement action plans to address deforestation in the Amazon. Due to the global nature of climate change, these two cases are likely to influence not only Latin American countries but also others around the world.

A decision from an appeals court in the case of the Institute of Amazonian Studies against the Brazilian State ([IEA v. Brazil](#)) is also noteworthy. In a lawsuit filed in October 2020, rooted in domestic statutes, constitutional rights, and climate science, the IEA aimed to make the Brazilian government comply with its own climate policies and to get the judiciary to recognize the fundamental right to [climate stability](#) for present and future generations. Even though a final decision is not expected anytime soon, the Appeal Court contributed to the subject of climate change in Brazil, with potential consequences for future lawsuits, by outlining the differences between climate litigation and conventional environmental cases. The decision also included a lengthy discussion of climate litigation’s unique nature and

importance. Such explicit acknowledgment can raise [awareness](#) of the climate crisis and affect how a court treats scientific evidences. Moreover, climate cases have a broader scope than environmental cases, also focusing on intergenerational and global issues, and for now, it seems that the Brazilian Judiciary has been very sensitive to these arguments.

In yet another sign of goodwill on the part of the judiciary towards climate problems, the Federal Supreme Court decided to hear seven environmental cases on the same day in March last year, called the “Green Agenda” or “Green Package.” Two cases directly raise climate claims, while the other five deal with environmental issues that indirectly have climate implications. It was the first time that the court had an entire day dedicated to environmental cases, and it shows the [deliberate effort](#) to ensure an environmental agenda in the country.

The results of the litigation have been very encouraging. For example, the court overturned the decrees of President Bolsonaro that excluded [the public](#) from the deliberative council of official bodies related to the environment and the Amazon rainforest. It also barred the [automatic granting](#) of environmental licenses to medium-risk companies, stating that the licensing now must follow the procedures of the current environmental legislation. Additionally, the Supreme Court [determined](#) that the federal government shall adopt all of the administrative tasks necessary to reactivate the [Amazon Fund](#), and considered that the decrees that altered the functioning of the Fund and interrupted the funding of new projects were unconstitutional. The government created the Amazon Fund (which differs from the Climate Fund) to raise donations so that investments can be made to prevent, monitor, and combat deforestation. Norway and Germany are some of the most important donors, but they froze fund transfers during President Bolsonaro’s government in retaliation for the environmental policy in practice.

After these positive outcomes, climate litigation has even more reason to grow in Brazil, targeting the government and private actors. Also, the new government’s “zero tolerance” policy against deforestation, especially in Amazon, will likely lead to more enforcement actions and prosecutions against companies that illegally harm the environment, including agrobusiness. Expectations so far are optimistic.

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