British Institute of International and Comparative Law

Banks and Climate Litigation: Brazil Report

Alessandra Lehmen

Mission Statement

The British Institute of International and Comparative Law exists to advance the understanding of international and comparative law, and to promote the rule of law in international affairs.

Vision

To be a leading research institute of international and comparative law and to promote its practical application by the dissemination of research through publications, conferences and discussion.

Suggested Citation

Alessandra Lehmen, *Banks and Climate Litigation: Brazil Report* (British Institute of International and Comparative Law, 2026).

Table of Contents

Mission Statement 2
Vision 2
Acknowledgements 4

Introduction 5

I. Background on the Legal System 7
A. General Overview of the Legal System 7
B. The Climate Law Framework in the Jurisdiction 9

II. Relevant Cases, Trends and Literature 15
A. Key Relevant and/or Analogous Cases 15
B. Trends in Climate and Environmental Litigation 17
C. Relevant Literature and Doctrine 19

III. Causes of Action 22
A. Most Promising Causes of Action 22
B. Legal Bases and Doctrinal Foundations 23
C. Future Developments 34
D. Summary Assessment 35

IV. Procedures and Evidence 37
A. Standing and Jurisdiction 37
B. Litigation Costs and Timeline 39
C. Evidence 41
D. Court Processes and Early Case Termination 43
E. Section Summary 44

V. Remedies 45
A. Availability of Monetary and Injunctive Remedies 45
B. Punitive or Exemplary Damages 47
C. Innovative or Non-Traditional Remedies 47
D. Strategic Assessment of Remedies 48
E. Section Summary 49

Annex: Table of Causes of Action 51

Acknowledgements

This report forms part of BIICL's *Banks and Climate Litigation Project*. It was prepared by Alessandra Lehmen, dual-qualified attorney (Brazil and New York) and Law Professor.

The author gratefully acknowledges Prof. Caio de Souza Borges, Carolina Garrido, Klaus Ludwig Schilling Maciel, and Prof. Danielle de Andrade Moreira for their comments and feedback on an earlier draft of this report.

The project was led by Dr Ivano Alogna, Senior Research Fellow in Environmental and Climate Change Law and Director of the *Global Toolbox on Corporate Climate Litigation* at BIICL. The project benefited from the support of Dr Zhirou Li, Researcher in Banking and Climate Litigation, Crisela Bernardino, Research Fellow in Climate Change Litigation and International Law, and Dr Kate McKenzie, Research Fellow in Climate Change Law and Litigation, who contributed to the research coordination, review and development of the report series.

The views expressed in this report are those of the author and do not necessarily reflect those of BIICL.

Introduction

This report forms part of the British Institute of International and Comparative Law (BIICL)'s ***Banks and Climate Litigation Project***, which examines emerging legal pathways for climate litigation against banks and, separately, claims concerning other environmental impacts of activities or projects financed by banks, in selected jurisdictions. It builds on BIICL's 'Global Toolbox on Corporate Climate Litigation', applying a similar analytical focus to the banking sector.

Climate litigation continues to develop globally, with the Grantham Research Institute identifying 249 new cases in 2025.[1] To date, however, relatively few climate cases have been brought against banks. This is notable given the role that the banking sector plays in climate change and in the transition to a low-carbon economy through the allocation and pricing of capital. Through lending, banks directly provide capital to borrowers; through underwriting and other financial services, they can also facilitate access to capital markets. The availability, cost and conditions of finance can in turn help enable, constrain or shape capital expenditure on both high-emitting and low-carbon activities. In capital-intensive sectors, continued access to finance may therefore support the development, expansion or continuation of long-lived assets associated with future greenhouse gas emissions, although the real-world effect of any particular financing decision will depend on factors including the financing structure and the availability of alternative sources of capital. The scale of bank financing to the fossil fuel sector remains substantial. According to the *Banking on Climate Chaos 2026* report, the world's 65 largest banks committed $906 billion to fossil fuel companies in 2025, including $508 billion to companies expanding fossil fuel developments and related infrastructure.[2]

The project examines the potential causes of action that may arise in each jurisdiction, together with relevant procedural, evidentiary and remedial issues. Each national report reflects the particular features of the relevant legal system, existing and emerging litigation, and applicable legal and regulatory frameworks.

---

[1] Joana Setzer and Catherine Higham, *Global Trends in Climate Change Litigation: 2026 Snapshot* (Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science 2026) 6.

[2] Rainforest Action Network and others, *Banking on Climate Chaos: Fossil Fuel Finance Report 2026* (Banking on Climate Chaos Coalition 2026) 8.

In Brazil, climate litigation involving banks remains at an early stage. At the same time, Brazil's constitutional framework for environmental protection, its environmental liability regime, corporate law and an increasingly extensive body of climate-related financial regulation provide a number of potential legal avenues through which claims involving banks may develop.

Against this background, this report:

- provides background on the Brazilian legal system and its climate law framework (section I);
- summarises key relevant cases and developments in Brazilian climate litigation (section II);
- identifies and analyses five potential causes of action for climate litigation against banks in Brazil (section III); and
- examines procedural and evidentiary issues (section IV) and remedies (section V) relevant to those potential causes of action.

For analytical purposes, the project uses the term "Bank Climate Claims" broadly to refer to any form of litigation or complaint against banks that predominantly concerns climate change. This includes, without limitation, claims concerning a bank's alleged contribution to climate-related impacts through its financing activities, as well as claims concerning a bank's climate-related governance, risk management, disclosure and other legal obligations. The term "Bank Local Impact Claims" refers to any litigation or complaint against a bank concerning localised environmental impacts, other than climate-related impacts, arising from activities or projects financed by the bank. The category does not require the claim to have any climate-related dimension. These terms are analytical categories developed for the purposes of the project and do not represent established legal classifications.

I. Background on the Legal System

A. General Overview of the Legal System

Brazil adopts a civil law legal system, rooted in the Romano-Germanic tradition and heavily influenced by European continental law – particularly Portuguese, French, German, and Italian legal doctrine.

1. Primary Sources of Law

The apex of the legal hierarchy is the Federal Constitution of 1988, which is the supreme normative act and the parameter for constitutional review of all other norms. Below it, the system is structured around a dense body of codified legislation, including the Civil Code (2002), the Criminal Code (1940), the Code of Civil Procedure (2015), and numerous special statutes. Administrative regulations – such as decrees, ordinances, and resolutions issued by executive bodies and regulatory agencies – also play a significant role, particularly in regulated sectors. There is currently no specific federal environmental or climate law code, though the National Environmental Policy (PNMA, Law 6.938/1981) and the National Policy on Climate Change (PNMC, Law 12.187/2009) constitute the principal framework statutes in those areas. Custom and general legal principles function as supplementary sources, especially to fill legislative gaps.

2. Treaties, the Block of Constitutionality, and Control of Conventionality

The incorporation of international treaties into Brazilian domestic law follows an attenuated dualist framework: formal reception of international law into the domestic order – a dualist characteristic – with differentiated normative hierarchies – a mitigated monist characteristic, specifically with regard to human rights treaties. Treaties are signed by the Executive, approved by the National Congress through a legislative decree, ratified internationally, and finally promulgated by presidential decree, at which point they acquire domestic legal force.

The hierarchical status of a treaty within the domestic legal order depends on its subject matter. Ordinary treaties, once incorporated, rank as ordinary federal legislation, below the Federal Constitution and on a par with domestic statutes, as established by the Supreme Federal Tribunal in the landmark RE 466.343 decision (2008). Human rights treaties, however, occupy a privileged position: if not approved by the special quorum prescribed in Article 5, §3 of the 1988 Constitution, they nonetheless hold at minimum supra-legal status – above ordinary legislation

but below the Federal Constitution; if approved by three-fifths of the members of each chamber of Congress in two rounds of voting, they are elevated to constitutional status, equivalent to constitutional amendments. Notably, the *Supremo Tribunal Federal* (STF) has progressively extended supra-legal (and potentially constitutional) status to environmental and climate treaties, treating them as a species of the genus of human rights instruments. This was confirmed in ADPF 708 (2022), in which the Court recognized the Paris Agreement's supra-legal status and adopted a general approach to international environmental treaties as a species of the genus of human rights instruments – a development that builds on, but goes beyond, earlier case-by-case recognition of specific international instruments in prior STF rulings.

This mechanism underpins the concept of the block of constitutionality (*bloco de constitucionalidade*), which holds that the constitutional parameter for judicial review is not limited to the written text of the Federal Constitution itself, but extends to all norms of constitutional rank, including duly incorporated human rights treaties. Building on this framework, Brazilian courts have increasingly engaged in control of conventionality (*controle de convencionalidade*), a review mechanism through which domestic norms are assessed for compatibility not only with the Constitution but also with international human rights instruments. The doctrine was consolidated within the Inter-American human rights system – particularly in the IACtHR's decision in *Almonacid Arellano v. Chile* (2006) – and has since been progressively applied in Brazil, including through CNJ Recommendation No. 123/2022, which encourages judges to observe international human rights treaties, apply Inter-American Court jurisprudence, and exercise conventionality control in domestic adjudication. This form of control may be exercised either concentratedly by the STF or diffusely by any court, mirroring the dual structure of Brazil's existing system of constitutional review.

3. Role of Precedent and Judicial Interpretation

Traditionally, Brazil did not adopt a doctrine of binding precedent akin to the common law stare decisis. However, successive procedural reforms have progressively shifted this paradigm. The 2015 Code of Civil Procedure introduced a formal system of binding precedents (*precedentes obrigatórios*), requiring courts to follow decisions issued by superior tribunals – notably the STF and the Superior Court of Justice (STJ). The STF's rulings on constitutional matters in concentrated review (*ação direta de inconstitucionalidade*) carry *erga omnes* binding effect. Additionally, binding summary rulings (*súmulas vinculantes*) issued by the STF are

compulsorily followed by all judicial and administrative bodies, marking a meaningful convergence with common law approaches to precedent. STJ summary rulings (*súmulas*), which are thematic binding summaries of consolidated jurisprudence, also carry significant authority in environmental litigation; several directly relevant to the causes of action discussed in this report are cited in Sections III–V below.

B. The Climate Law Framework in the Jurisdiction

1. International Climate Regime

Brazil's climate obligations are anchored in the UNFCCC regime, whose core operative instrument is the Paris Agreement (2015). In ADPF 708, the STF treated the Paris Agreement as a human rights-related environmental treaty with supra-legal normative force, requiring that domestic norms be interpreted in conformity with it and elevating the legal weight of Brazil's NDC under domestic constitutional review. The ruling was directed at State conduct and does not directly establish the Agreement's horizontal effect on private law relationships; however, through the doctrine of indirect horizontal effect of fundamental rights, the Paris Agreement's treatment as supra-legal informs the interpretation of Article 225, which in turn bears on the civil law obligations of private actors including financial institutions.

2. Domestic Legal Framework

2.1 Constitutional Foundations: Article 225 of the Federal Constitution of 1988 enshrines the right to an ecologically balanced environment as a fundamental right, imposing on the State and private actors the duty to protect it. Brazilian constitutional doctrine treats the right to a stable climate as subsumed within the right to an ecologically balanced environment guaranteed by Article 225. Article 170(VI), in turn, requires that the economic order respect the principle of environmental protection and provides a complementary constitutional basis linking productive and financial activities to environmental obligations. Constitutional human rights norms — including the rights to life, health, and dignity — are increasingly interpreted by Brazilian courts as entailing climate-protective obligations for both public authorities and corporations.[3].

[3] The foundational constitutional basis is Article 5 of the Federal Constitution of 1988, which enshrines the rights to life (*caput*), health (read in conjunction with Article 6), and human dignity (Article 1(III))

2.2 NDC parameters: Brazil's latest NDC, submitted in 2024, commits the country to reducing net GHG emissions by 59–67% below 2005 levels by 2035, and reaffirms the goal of climate neutrality by 2050. These commitments can function as legal parameters against which domestic policy and corporate conduct may be assessed, including the conduct of financial institutions whose portfolios materially affect Brazil's ability to meet them.[4]

---

as fundamental rights binding on both state and private actors. The STF's reasoning in *ADPF 708* (Climate Fund Case, judgment of 1 July 2022) constitutes the leading authority for the proposition that these constitutional rights, read in conjunction with Article 225 and the Paris Agreement's supra-legal status, generate judicially enforceable climate obligations. Justice Barroso's majority opinion expressly framed the right to a stable climate as a precondition for the enjoyment of the fundamental rights to life and health, drawing on the Inter-American Court of Human Rights' Advisory Opinion OC-23/17 on the Environment and Human Rights (15 November 2017), which established that environmental degradation capable of affecting human life, health, and dignity engages State obligations under the American Convention on Human Rights. For the extension of these obligations to private corporations through the social function doctrine, see Articles 116 and 154 of Law 6.404/1976 (Corporation Law). For a broader Global South doctrinal context, see Peel, Jaqueline & Lin, Jolene, 'Transnational Climate Litigation: The Contribution of the Global South' (2019) 113 *AJIL Unbound* 679, 682–685.

[4] Article 4(2) of the Paris Agreement establishes that each Party 'shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve', together with the obligation to 'pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions'. The binding character of the obligation to prepare, communicate and maintain successive NDCs, distinctly from the nationally determined content of each NDC, has been increasingly clarified in recent international advisory opinions. The International Tribunal for the Law of the Sea, in its 2024 Advisory Opinion (Case No 31), addressed Article 4 in recognizing the obligation to prepare and communicate NDCs and the central role of the Paris Agreement within the international climate regime, while holding that obligations under UNCLOS are not satisfied by compliance with the Paris Agreement alone (paras 220–224). The Inter-American Court of Human Rights, in Advisory Opinion OC-32/25 (3 July 2025), addressed Article 4 more directly, linking NDC obligations to human rights duties and indicating that States must establish, communicate, and periodically update NDCs reflecting the highest possible ambition consistent with the 1.5°C goal, with implications for State responsibility in cases of non-compliance (paras 325–326). The Court further emphasized the need for coherence between domestic law and international climate commitments, including the avoidance of policies that may undermine mitigation objectives. Most comprehensively, the International Court of Justice, in its Advisory Opinion on the Obligations of States in Respect of Climate Change (23 July 2025), confirmed the binding procedural nature of Article 4(2) obligations to prepare, communicate and maintain successive NDCs, while characterizing the obligation to pursue domestic mitigation measures as a due diligence obligation of conduct, thereby rejecting interpretations of the Paris Agreement as merely discretionary (paras 235–236, 242, 245, 249). For the domestic constitutional elevation of the Paris Agreement and NDC commitments as legal parameters in Brazil, see *ADPF 708* (Climate Fund Case), STF, judgment of 1 July 2022, per Barroso J.

2.3 Infra-Constitutional Legislation

2.3.1 Specific Climate Legislation: The central instrument is the *National Policy on Climate Change* (PNMC, Law 12.187/2009), providing the framework for sectoral mitigation and adaptation plans and the National Climate Change Fund. The PNMC is currently being restructured, and the revised *Plano Clima* was published in full in 2026, introducing sectoral mitigation and adaptation plans. Two other 2024 laws are relevant for Brazil's climate governance: *Law 14.904/2024*, introducing national guidelines for climate adaptation plans; and *Law 15.042/2024*, establishing the Brazilian Emissions Trading System (SBCE), a cap-and-trade carbon market expected to become fully operational within five to six years, with potential implications for the financing of high-emitting activities and carbon credit markets.

2.3.2 Climate Obligations Derived from Other Legal Frameworks: A significant body of climate-relevant obligations arises from norms regulating different subject matters.

Article 12 of the National Environmental Policy Act (Law 6.938/1981) imposes a direct statutory obligation on governmental credit and production incentive entities – including public banks – prohibiting the granting of financing to potentially polluting or environmentally degrading activities absent proof of compliance with applicable environmental standards, including environmental licensing requirements, Forest Code obligations, and CONAMA standards. Its extension to private financial institutions is a doctrinal argument grounded in the broad 'indirect polluter' definition of Article 3(IV) rather than a plain reading of the statutory text. The STJ has confirmed that this chain of reasoning supports liability for 'those who finance so that others may act' (*quem financia para que façam*), treating the financing institution as an indirect polluter subject to the objective liability framework of Article 14, §1. The argument is on stronger ground for public financial institutions, to which Article 12 applies directly, and in cases where the institution had knowledge of ongoing non-compliance and continued to disburse credit. Extension to climate-specific obligations requires reading Article 12 in conjunction with the PNMC and Forest Code Article 1(I).

The General Environmental Licensing Act (Lei Geral de Licenciamento Ambiental – LGLA, Law 15.190/2025), in force since February 2026, introduced a provision of central importance for Bank Climate Claims. Article 58, reinstated by Congress on 27 November 2025 following a presidential veto, establishes that BCB-supervised financial institutions must require presentation of the applicable environmental

license before financing, but expressly provides that they have no ongoing inspection duty regarding the environmental regularity of the financed activity. Failure to require the license triggers only subsidiary liability – not the solidary liability previously applied by courts to indirect polluters – in proportion to the institution's contribution. Once the license has been required and presented, the institution is not liable for environmental damage arising from execution of the financed activity. This departure from prior jurisprudence narrows the civil liability cause of action against financial institutions for Bank Local Impact Claims involving licensed activities. Article 58 does not displace the broader PRSAC/GRSAC regulatory framework or the constitutional obligations under Article 225, which operate independently of the licensing regime. Law 15.300/2025 complements the LGLA by establishing the Special Environmental License regime for strategically designated activities and is challenged jointly in ADI 7.919.

The interaction between Article 12 and Article 58 raises a contested interpretive question. On one reading, Article 58 operates as a *lex specialis* governing the consequences of breach in the licensed activity context, leaving Article 12 intact as a condition precedent whose violation falls outside Article 58's protective scope. On another reading – consistent with the Presidential veto reasoning characterizing Article 58 as generating legal uncertainty – Article 58's liability limitation presupposes compliance with Article 12: an institution that grants credit in violation of the Article 12 condition has not satisfied the predicate for Article 58's protection and remains exposed to the pre-existing solidarity liability framework. The constitutional validity of Article 58 is contested before the STF in ADIs 7.913, 7.916, and 7.919, all challenging the provision as incompatible with Article 225, §3 of the Federal Constitution; no preliminary injunction has been granted to date. If struck down, the pre-existing framework will be restored.

The *Forest Code* (Law 12.651/2012), Article 1(I), imposes a duty to respect the integrity of the climate system. The *National Environmental Policy* (Law 6.938/1981), Article 14, §1, establishes strict objective liability for environmental damage, that can be interpreted as encompassing climate-related harm. Under Brazilian law, environmental harm (*dano ambiental*) does not require a breach of specific environmental legislation. Article 14, §1 of the National Environmental Policy Act establishes strict liability conditioned on proof of the harmful activity, the damage, and the causal nexus, irrespective of the legality or licensing status of the activity. Article 3(II) defines environmental degradation broadly as any adverse alteration of environmental qualities, and Article 3(III) defines pollution to

encompass harm to human health, welfare, and biota independently of any regulatory threshold being exceeded. A licensed activity causing environmental damage therefore remains subject to civil liability for reparation, subject to the specific and contested modification introduced by Article 58 of the LGLA for financial institutions in relation to licensed activities. The *Civil Code* (Law 10.406/2002), Articles 186 and 927, provides the general civil liability basis. The *Corporation Law* (Law 6.404/1976), Articles 116, 153, 154, 157, 158, and 159, establishes an interconnected framework of fiduciary duties and liabilities applicable to controlling shareholders, boards, and administrators, which may be interpreted as requiring incorporation of material climate risks.

It is also worth noting that claims for the civil reparation of diffuse environmental damage are deemed imprescriptible under STF and STJ jurisprudence (STJ, *Jurisprudência em Teses*, ed. 119; RE 654833/AC, STF, Tema 999) – a feature of particular strategic importance for historical climate harm claims involving financial institutions.

2.3.3 Regulatory Obligations. The CVM introduced TCFD-based climate risk reporting through Resolution 59/2021 and mandates ISSB-aligned sustainability reports (IFRS S1 and S2) from FY2026 through Resolution 193/2023, but Resolution CVM 244, of 29 May 2026, revoked art. 2 of Resolution 193 and returned listed-company reporting to a voluntary, comply-or-explain regime, with a duty to justify non-disclosure by market notice from 1 January 2027. BCB-regulated financial institutions must implement PRSAC policies and produce annual GRSAC Reports under CMN Resolutions 4.943–4.945/2021 and BCB Resolution 139/2021. The CBPS mandate survives for them: CMN Resolution 5.185/2024 remains in force and requires the institutions covered by arts. 9 and 10 of CMN Resolution 4.818/2020 to disclose a sustainability-related financial information report applying CBPS 01 and CBPS 02, from FY2026 for listed companies and leaders of S1 or S2 conglomerates and from FY2028 for the remaining institutions, with reasonable assurance by an independent auditor. CMN Resolutions 5.193/2024 and 5.268/2025 (partially rolled back by Resolution 5.303/2026), add a satellite-verified layer to rural credit compliance, requiring financial institutions to verify deforestation indicators through PRODES/INPE data. A Brazilian Sustainable Taxonomy was established by Decree 12.705/2025. The provisional entry into force of the EU-Mercosur Interim Trade Agreement on 1 May 2026 will intensify regulatory pressure from the EU's sustainability arsenal – CSDDD, EUDR, CBAM, and CSRD – on Brazilian supply chains and financial institutions with EU market exposure.

2.3.4 Voluntary and Contractual Commitments. Beyond binding law, climate obligations arise from voluntary instruments including GFANZ and NZBA net-zero commitments, SBTi target-setting, sustainability-linked financing covenants, and self-regulatory initiatives such as FEBRABAN Normative 026/2023 on deforestation-free cattle financing.[5] Brazil's sustainable debt market reached USD 67.8 billion in cumulative GSS+ issuances as of June 2025.[6] These instruments interact with legal liability frameworks by generating the evidentiary gap between disclosed commitments and actual conduct that underpins greenwashing and ESG breach claims, and by creating contractual exposure for breach of sustainability-linked covenants. The distinction between voluntary commitments and binding regulation is becoming progressively less clear as the PNMC revision, SBCE implementation, and expanding prudential expectations converge.

It is important to point out that the Brazilian climate regulatory framework is currently undergoing an important update. The PNMC revision, the new Climate Plan (*Plano Clima*), SBCE implementation, bifurcated ISSB adoption — mandatory for BCB-regulated institutions, voluntary for listed issuers generally, the Brazil Taxonomy, and expanding prudential expectations are converging to produce a normative landscape in which the boundary between voluntary and mandatory is progressively closing. As more instruments migrate from self-regulatory to binding status, the litigation exposure of financial institutions that have made public commitments inconsistent with their conduct will correspondingly expand.

---

[5] FEBRABAN Normative No. 026/2023, adopted in March 2023 by 21 signatory financial institutions including Banco do Brasil and BNDES, requires member banks extending credit to meatpacking plants and slaughterhouses in the Legal Amazon and the state of Maranhão to demand that their customers implement traceability and monitoring systems demonstrating — by December 2025 — the non-acquisition of cattle associated with illegal deforestation from direct and indirect suppliers, subject to administrative sanctions for non-compliance. The December 2025 deadline has now elapsed; no public compliance audit has been published by FEBRABAN to date, and the broader cattle traceability ecosystem in Brazil remains technically and operationally immature, with individual animal identification covering only a small fraction of the Amazonian herd and the state of Pará having postponed its own mandatory tracking requirement to 2030.

[6] Climate Bonds Initiative, *Brazil Sustainable Debt: State of the Market H1 2025* (Climate Bonds Initiative, November 2025) https://www.climatebonds.net/files/documents/publications/Brazil_Sustainable_Debt_H1_2025_02A.pdf accessed 28 April 2026. On the 2023 sovereign debut, see World Bank, 'Brazil Sovereign Sustainable Bond: Financing a Greener, More Inclusive, and Equitable Economy' (February 2024) https://www.worldbank.org/en/news/feature/2024/02/08/brazil-sovereign-sustainable-bond-financing-a-greener-more-inclusive-and-equitable-economy accessed 28 April 2026. The 2023 issuance reached 2.9 times oversubscription with more than 240 investor orders, resulting in the transaction being upsized from USD 1.5 billion to USD 2 billion.

II. Relevant Cases, Trends and Literature

A. Key Relevant and/or Analogous Cases

The Brazilian Climate Litigation Platform, maintained by JUMA/PUC-Rio, compiles all climate-related cases in Brazil, and identifies two climate-related cases involving banks as defendants as of this writing:[7] *AMOREMA and AMORETGRAP v Sustainable Carbon and Others* (Docket No. 1045416-11.2021.4.01.3900), which challenges "green land-grabbing" associated with carbon credit projects; and *Conectas Direitos Humanos v BNDES and BNDESPAR* (Docket No. 1038657-42.2022.4.01.3400), which seeks information and governance improvements with regard to the climate policies of the Brazilian development bank's equity investment arm.[8]

Conectas Direitos Humanos v BNDES and BNDESPAR (Docket No. 1038657-42.2022.4.01.3400)

The latter case – *Conectas* – is the first climate lawsuit in the world involving a development bank. It was highlighted by the United Nations Special Rapporteur on Human Rights and Climate Change, Ian Fry, in A/78/255 (2023), to illustrate the assertion that "Banks have become the target of climate change litigation for funding projects that are not consistent with reducing greenhouse gas emissions."

In *Conectas*, the plaintiff argues that the allocation of financial resources from public institutions to companies in the productive sector must comply with criteria of maximum return to the sustainable development of the country from an economic, social, and environmental point of view. The claim maintains that BNDESPAR invests public resources, that it maintains equity positions in sectors that are among the most

[7] The Brazilian Climate Litigation Platform (*Plataforma de Litigância Climática no Brasil*) is maintained by the Research Group on Law, Environment and Justice in the Anthropocene (JUMA) at PUC-Rio, with support from the Climate and Society Institute (iCS). Launched in August 2022, it compiles and categorises Brazilian climate litigation cases according to a published methodology. The Platform is accessible at https://juma.jur.puc-rio.br/en/base-dados-litigancia-climatica-no-brasil accessed 28 April 2026. For the most current survey of its data, covering 332 cases registered up to 18 August 2025, see Moreira, Danielle de Andrade et al., *Panorama da Litigância Climática no Brasil: Relatório 2025* (JUMA/PUC-Rio 2025), available at https://www.academia.edu/145389386 accessed 28 April 2026.

[8] The author is outside counsel to the Plaintiff in *Conectas*.

carbon-intensive in the Brazilian economy, and that these two circumstances require that the climate issue be incorporated into the defendants' operations in an effective and transparent way. An expert opinion rendered by the Center for Integrated Studies on Environment and Climate Change (Centro Clima/COPPE) of the Federal University of Rio de Janeiro and enclosed to the *Conectas* complaint, based on a sample covering 85% of BNDESPAR's investment portfolio as of March 2021, found that at least 65% of the assets held by BNDESPAR are concentrated in companies with intensive greenhouse gas emissions, across ten companies in the oil and gas, electricity, meat production, mining, and pulp and paper sectors, representing between 5% and 6% of Brazil's total GHG emissions according to the companies' own carbon inventories.

The legal basis for the claim includes Brazilian obligations under the Paris Agreement, as embodied in its submitted NDC; Articles 37, 170(VI), 174 and 225 of the Federal Constitution; Articles 3, 4(I), 6, 8 and 11 of the *National Policy on Climate Change* (Law 12.187/2009); Articles 116 and 154 of the *Corporation Law* (Law 6.404/1976); Articles 186 and 187 of the Civil Code; the UN Guiding Principles on Business and Human Rights; socio-environmental and climate standards issued by Brazilian regulators (BCB and CVM); and SDG 13. The case frames climate obligations of financial institutions in terms of ESG regulation, fiduciary duties under Brazilian corporate law, and double materiality – considering both how BNDESPAR affects climate change and how climate change affects BNDESPAR.

AMOREMA and AMORETGRAP v Sustainable Carbon and Others (Docket No. 1045416-11.2021.4.01.3900)

This public civil action, filed in 2021 before the Federal Court of Pará, challenges "green land-grabbing" associated with voluntary carbon credit projects in the Amazon, meaning the acquisition or appropriation of land, often from traditional and Indigenous communities, under the guise of conservation or carbon credit projects, generating adverse social and territorial impacts rather than genuine environmental benefits. The case involves financial intermediaries and carbon market participants and raises questions about the legal obligations of entities that certify, purchase, or finance carbon credits linked to projects with adverse environmental and social impacts. While not a conventional Bank Climate Claim, it establishes relevant precedent for the potential liability of financial actors whose activities are connected – even indirectly – to environmental harm and Indigenous

rights violations. It also signals the emergence of litigation targeting the intersection of climate finance and land rights.

B. Trends in Climate and Environmental Litigation

Climate litigation in Brazil has been gaining traction since 2020, when *ADPF 708* reached the STF, marking the opening of a second wave of climate cases. The current wave is characterized by expanding defendant categories, legal theories, and venues. The majority of high-profile cases have been directed against governmental entities at federal and state levels, reflecting the predominant role of the state in Brazil's climate governance architecture, though corporate and financial sector litigation is developing.

Conectas remains the only fully developed climate case filed against a financial institution in Brazil. It has attracted attention from civil society, academic institutions, and international bodies, and has laid doctrinal groundwork for future claims. Several factors account for the relative scarcity of Bank Climate Claims to date: the relative novelty of financed emissions as a litigation theory in Brazilian courts; the procedural complexity of establishing the causal nexus between financing decisions and climate harm; limited litigation funding for strategic climate cases; and the absence, until recently, of mandatory transition planning requirements that would create objective standards against which bank conduct could be measured.

That said, the conditions for expanded Bank Climate Claims are materializing. The BCB's GRSAC reporting requirements, mandatory CBPS-aligned disclosure by financial institutions from FY2026 under CMN Resolution 5.185/2024, and the rural credit satellite verification obligations under CMN 5.193/2024 and CMN 5.268/2025, among other regulations, create an increasingly dense normative landscape against which financial institution conduct can be assessed. Future Bank Climate Claims are likely to combine rights-based arguments with ESG-based obligations, fiduciary duty theories, double materiality analysis, and regulatory breach claims, drawing on multiple tested legal frameworks rather than relying on any single novel theory.

Carbon market litigation — spanning civil claims by traditional communities (*AMOREMA*), criminal enforcement (*Operação Greenwashing*), public law challenges to jurisdictional REDD+ contracts (the Pará ERPA case), and prospective SBCE regulatory claims — generates distinct but overlapping exposure for financial institutions that purchase, intermediate, or finance voluntary carbon credits, as analyzed in the key cases section above.

A further development is the constitutional challenge to the regulated carbon market (SBCE – Law 15.042/2024) filed by CNSeg (the Brazilian confederation of insurers), currently pending before the STF. Although not directed at banks, the STF's ruling on the constitutionality and scope of the carbon market regime could shape the regulatory environment for financial institution exposure in the SBCE context.

A significant emerging vector is greenwashing litigation. In January 2025, IDEC filed judicial inquiries (*interpelações judiciais*) against Localiza and GOL Linhas Aéreas – the first instances in Brazil of companies being formally questioned before courts about the alignment of their carbon offset programs with their sustainability claims, grounded in consumer protection and the principle of good faith under the Consumer Protection Code. In December 2025, IDEC escalated to a full public civil action against GOL, seeking BRL 5 million in collective moral damages and constituting the first greenwashing civil action brought by a consumer association in Brazil, on the basis that GOL had sold digital tokens as carbon credits in its "Meu Voo Compensa" program without adequate disclosure or environmental validity.[9] Although directed at a non-financial corporation, it establishes a potentially transferable litigation model: where a financial institution makes public net-zero commitments or sells green financial products backed by unsubstantiated or invalid carbon assets, the same consumer protection and ESG disclosure framework is engaged, alongside the fiduciary duty and regulatory breach causes of action discussed in Section III. As mandatory disclosure requirements multiply and the evidentiary gap between stated commitments and actual conduct becomes increasingly measurable, greenwashing claims against financial institutions could represent a growing category of Bank Climate Claims in Brazil.

A further trend worth noting is the emergence of climate damage claims specifically targeting illegal deforestation – a category distinct from broader governmental climate inaction cases and directly relevant to the civil liability cause of action against financial institutions. The MPF and IBAMA have filed a growing series of public civil actions against individual landowners and agribusiness actors in the Amazon for the climate damage caused by illegal deforestation, quantifying harm

[9] *IDEC v GOL Linhas Aéreas* (public civil action, TJSP, filed December 2025), available at Climate Change Litigation Database https://climatecasechart.com accessed 28 April 2026. The action challenges GOL's commercialization of digital tokens issued by Moss as carbon credits under the "Meu Voo Compensa" program, noting that Verra had prohibited tokenization of its certified credits since 2022 due to risks of double counting and lack of traceability. In January 2025, following the initial judicial inquiry, GOL removed the program.

in terms of GHG emissions released, carbon sink destruction, and collective moral damage. A notable example is *IBAMA v Dirceu Kruger* (Federal Court, Amazonas, 2024), in which a preliminary injunction froze BRL 292 million in assets and ordered implementation of carbon sinks pending trial; the MPF has similarly pursued a bloc of at least 22 related actions arising from Civil Inquiry No. 1.13.000.001719/2015-49, targeting illegal deforestation within the Antimary Agro-Extractivist Settlement Project (PAE) in Amazonas, each seeking reparation for material environmental damage, interim climate damage, and collective moral damage.[10] The scale of this litigation wave is significant: in Phase 4 of the Amazônia Protege Project, the MPF subsequently filed a further 195 ACPs incorporating the climate damage dimension of illegal deforestation, demonstrating growing prosecutorial systematization of climate harm claims arising from deforestation financing chains. These cases — directed at direct polluters rather than their financiers — are developing the factual and evidentiary methodology for quantifying climate damage from deforestation that, if extended upstream to financing entities through the shared responsibility doctrine, could form the basis of future Bank Local Impact Claims against Brazilian financial institutions that provided rural credit or project finance to the underlying activities.

C. Relevant Literature and Doctrine

The following sources, listed alphabetically, are recommended for their direct relevance to Bank Climate Claims and Bank Local Impact Claims, in Brazil or globally:

1. Burger, Michael, Wentz, Jessica & Horton, Radley, 'The Law and Science of Climate Change Attribution' (2020) 45(1) *Columbia Journal of Environmental Law* 57 — article on the legal admissibility and methodological requirements of climate attribution evidence in litigation contexts, examining how physical

[10] *IBAMA v Dirceu Kruger* (ACP, Federal Court of Amazonas, injunction of 12 July 2024), Climate Change Litigation Database https://climatecasechart.com/non-us-case/ibama-v-dirceu-kruger-illegal-deforestation-in-the-amazon-and-climate-damage/ accessed 28 April 2026; *MPF v Josafá de Moura Cunha* and related bloc of 22 actions arising from Civil Inquiry No. 1.13.000.001719/2015-49 (Federal Court of Amazonas, filed 2020–2024), documented in Sabin Center for Climate Change Law, 'December 2024 Updates to the Climate Case Charts' https://climate.law.columbia.edu/news/december-2024-updates-climate-case-charts accessed 28 April 2026. Each action in the bloc seeks: reparation of environmental damage; compensation for intermediate and residual material damage; compensation for climate damage; and collective moral damage.

science attribution findings can be translated into legally cognizable causal claims. Relevant to the central evidentiary challenge in Bank Climate Claims grounded in civil liability: establishing the causal nexus between a financial institution's financing conduct and resulting climate harm through attribution science

2. Climate Policy Initiative (CPI), *Landscape of Climate Finance in Brazil* (CPI/PUC-Rio, 5 November 2025) – a comprehensive mapping of climate finance flows in Brazil, combining public and private data to assess the scale, sectoral allocation, and effectiveness of financial resources directed toward mitigation and adaptation. The report identifies persistent gaps between climate investment needs and actual flows, highlights structural constraints in mobilizing private capital, and analyzes the role of public financial institutions in shaping market outcomes. Particularly relevant to Bank Climate Claims and Bank Local Impact Claims, it provides an empirical baseline for assessing whether financial institutions are contributing to, or failing to mitigate, climate-related risks, and supports arguments concerning misallocation of capital, insufficient alignment with climate targets, and deficiencies in climate-related financial governance.
3. Lehmen, Alessandra, 'The Role of Financial Institutions in Climate Litigation in Brazil,' in *The Role of Financial Institutions in Climate Litigation* (Brill, 2025) – a comprehensive doctrinal analysis of finance-related climate litigation in Brazil, with particular attention to *Conectas*, the concept of financed emissions, double materiality, and ESG-based causes of action against both public and private financial institutions.
4. Lehmen, Alessandra, Prado, Viviane Muller & Rossi, Livia Trabulsi, *Climate Stewardship in Brazil: A Guide for Investors* (LACLIMA & FGV Direito SP/NMFGV, 2022) – practitioner guide on climate stewardship obligations for institutional investors and shareholders under Brazilian law, providing the normative framework underlying the fiduciary duty and climate stewardship arguments. Prepared with the support of Investidores pelo Clima and Instituto Clima e Sociedade.
5. Moreira, Danielle de Andrade et al., *Panorama da Litigância Climática no Brasil: Relatório de 2025* (JUMA/PUC-Rio, 2025) – a current empirical survey of Brazilian climate litigation, compiled through the JUMA database maintained at PUC-Rio. Includes comprehensive case mapping, doctrinal analysis, and institutional actor profiling. An important primary reference for the Brazilian jurisdiction.
6. Network for Greening the Financial System (NGFS), *Climate-Related Litigation: Recent Trends and Developments* (NGFS, September 2023) – the current NGFS

review of climate litigation risk for financial institutions, documenting substantial expansion in scope, volume, and target diversity since the prior edition. Confirms 2023 as the year of the first climate litigation cases filed directly against credit institutions. The accompanying microprudential supervision report provides the regulatory framework for assessing supervisory expectations applicable to the ESG regulatory breach cause of action.

7. Sato, Misato, Gostlow, Glen, Higham, Catherine, Setzer, Joana & Venmans, Frank, 'Impacts of Climate Litigation on Firm Value' (2024) 7(11) *Nature Sustainability* 1461 – the first empirical study demonstrating that firms experience on average a 0.41% fall in stock returns following a climate-related filing or unfavorable court decision, rising to 1.50% for major emitters following adverse decisions. Provides quantitative foundation for arguments that Bank Climate Claims generate material financial risk for defendant institutions, directly relevant to the fiduciary duty and ESG regulatory breach causes of action.
8. Setzer, Joana & Higham, Catherine, *Global Trends in Climate Change Litigation: 2025 Snapshot* (Grantham Research Institute, June 2025) – an authoritative annual survey, covering developments through May 2025. Documents the acceleration of 'turning off the taps' cases against financial institutions, the growing role of Brazil among Global South jurisdictions, and the emergence of proportional causation doctrine across multiple jurisdictions.
9. Smoleńska, Agnieszka, Chan, Tiffanie, Poensgen, Ira & Higham, Catherine, *Banks and Climate Litigation Risk: Navigating the Low-Carbon Transition* (CETEx/Grantham Research Institute, June 2025) – a current bank-specific analysis of how credit institutions identify, manage, and mitigate climate-related legal risks, drawing on disclosure analysis of major EU banks. Identifies significant gaps in bank litigation risk management and proposes targeted prudential policy interventions. Directly relevant to the ESG regulatory breach and fiduciary duty causes of action, and to the assessment of litigation risk as a component of prudential supervision.
10. Solana, Javier, 'Climate Litigation in Financial Markets: A Typology' (2020) 9(1) *Transnational Environmental Law* 103 – an academic typology of climate cases in financial markets, providing the first systematic overview of eight categories of claim arising from financial institutions' roles as direct defendants, enablers of harmful activities, and risk-bearers. A key conceptual reference for the classification and analysis of Bank Climate Claims across jurisdictions.

III. Causes of Action

A. Most Promising Causes of Action

Five causes of action are identified below as offering the strongest prospects of success for Bank Climate Claims in Brazil, listed in order of their current doctrinal maturity and strategic viability.

1. Constitutional Climate Rights and Obligations and the Brazilian NDC (Articles 225 and 170(VI) of the Federal Constitution, combined with the Paris Agreement's supra-legal status in ADPF 708). Fact pattern: a financial institution maintains a portfolio significantly concentrated in carbon-intensive activities inconsistent with Brazil's NDC commitments, without adequate risk management or transition plans.
2. ESG Regulatory Breach and Supervisory Non-Compliance (CVM Resolutions No. 59/2021 and 193/2023 CVM Resolutions No. 59/2021 and 193/2023 (as amended by CVM Resolution No. 244/2026); CMN Resolution 5.185/2024; BCB/CMN regulations on social, environmental and climate risk). Fact pattern: a regulated financial institution fails to adequately disclose or integrate climate risks as required by the BCB and CVM regulatory frameworks.
3. Fiduciary Duty and Corporate Law Obligations (Corporation Law, Law 6.404/1976, Articles 116 and 154). Fact pattern: the controlling shareholder or board of a financial institution exercises its powers without due consideration of climate externalities, in breach of the social function of the company.
4. Civil Liability for Climate Harm (Civil Code, Articles 186 and 927; National Policy on Climate Change, Law 12.187/2009; Forest Code, Law 12.651/2012, Article 1(I)). Fact pattern: a financial institution finances activities that result in quantifiable climate-related harm – e.g., through deforestation-linked lending – and the causal nexus between the financing and the harm can be established through attribution science and financial analysis.
5. Greenwashing – Misleading Sustainability Claims (Consumer Protection Code, Law 8.078/1990, Articles 30, 36, and 37; Corporation Law, Law 6.404/1976, Article 157; CVM Resolutions No. 59/2021 and 193/2023 (as amended by CVM Resolution No. 244/2026); CMN Resolution 5.185/2024; CVM Resolution 175/2022; Civil Code, Articles 186 and 927). Fact pattern: a financial institution makes public sustainability commitments – including net-zero pledges, green product labels, ESG fund classifications, or carbon offset claims – that are demonstrably and materially inconsistent with its actual financing conduct, whether through misrepresentation in mandatory climate disclosures, misleading marketing of green financial products, or the use of unsubstantiated or invalid carbon credits to substantiate climate neutrality claims.

B. Legal Bases and Doctrinal Foundations

Cause of Action 1: Constitutional Climate Rights and Obligations and the Brazilian NDC

Article 225 of the Federal Constitution enshrines the right to an ecologically balanced environment as a fundamental right of all and a duty of both the State and the community, and Article 170(VI) requires that the economic order respect the principle of environmental protection. The STF's ruling in *ADPF 708* extended the normative reach of this provision by holding that the Paris Agreement, having been incorporated into Brazilian law by Legislative Decree No. 140/2016 and ratified by Presidential Decree No. 9.073/2017, holds at minimum supra-legal status – above ordinary legislation – and that its objectives inform constitutional interpretation under the *bloco de constitucionalidade* doctrine, though whether it attains full constitutional equivalence remains contested in doctrine. Brazil's NDC commitments, and the obligation to pursue progressively ambitious climate action, therefore constitute legal parameters against which the conduct of financial institutions may be assessed, with varying intensity depending on their public or private character.

Brazilian constitutional doctrine supports the extension of environmental protection duties to both public and private entities: Article 225 imposes this duty on the State and on "the community" (*coletividade*) alike, a term understood in Brazilian constitutional doctrine to encompass corporations. The distinction between public and private defendants does not determine whether the constitutional obligation applies, but affects the directness and strength of the claim. For public development banks – which are public entities managing public resources and subject to the principle of administrative legality under Article 37 of the Federal Constitution – the constitutional claim is more direct, since specific institutional duties attach to their conduct that do not apply to private actors in the same way. For private financial institutions, the most viable litigation structure would likely involve a composite claim combining Article 225 as an interpretive constitutional parameter with operative causes of action grounded in civil liability, ESG-related regulatory obligations, and corporate law. The constitutional duty would not itself ordinarily constitute the standalone cause of action, but rather elevate the interpretive standard applicable to each operative legal basis. Such claims would most naturally combine Cause of Action 2 (ESG Regulatory Breach) and Cause of Action 4 (Civil Liability), with Cause of Action 3 (Fiduciary Duty) added where the defendant is a listed institution, and

Cause of Action 5 (Greenwashing) where public sustainability commitments are demonstrably inconsistent with actual financing conduct.

The fact pattern most likely to support such a claim would involve a BCB-regulated private institution materially exposed to activities associated with persistent environmental illegality, severe regulatory non-compliance, or foreseeable climate-related harm; public climate commitments inconsistent with internal practices or financing decisions; and identifiable financed activities capable of being linked to concrete environmental or climate damage through theories of material contribution, facilitation, or deficient due diligence. Mere exposure to emissions-intensive sectors, without additional elements of foreseeability, control, knowledge, or regulatory breach, would likely be insufficient.

The most plausible claimants would include the Public Prosecution Service (*Ministério Público*) and civil society organizations satisfying the requirement of *pertinência temática* under the Public Civil Action framework. Shareholder derivative actions may additionally be available where the claim includes a fiduciary duty component under corporate law.

In C*onectas,* the plaintiff combined constitutional arguments with the Paris Agreement's domestic legal status, the PNMC framework, and the "alignment bullseye" framework of the Climate Policy Initiative and the Institute for Climate Economics (I4CE), supported by expert scientific and financial evidence demonstrating portfolio concentration in carbon-intensive sectors. The claim further establishes: (i) that the defendant's financing activities are materially inconsistent with Brazil's NDC targets or with the broader objective of limiting global warming to 1.5°C; and (ii) that this inconsistency constitutes an omission or commission violating the constitutional duty to protect the ecologically balanced environment.

Evidence required includes: portfolio analysis demonstrating the extent of financing to carbon-intensive activities; expert evidence on the alignment or misalignment of the portfolio with Paris-consistent pathways; scientific evidence on the contribution of financed activities to GHG emissions; and documentary evidence of the bank's internal climate policies and commitments relative to its actual conduct. The double materiality framework — examining both how the bank affects climate and how climate risk affects the bank's portfolio — is also relevant, as illustrated by the expert evidence in C*onectas*, which addressed both dimensions simultaneously.

Cause of Action 2: ESG Regulatory Breach and Supervisory Non-Compliance

CVM Resolution No. 59 (2021) introduced a comply-or-explain model, requiring listed companies – including publicly listed financial institutions – to periodically disclose climate-related information aligned with the TCFD framework (later incorporated by the ISSB IFRS S2 framework), or to provide a reasoned explanation for non-disclosure. *CMN Resolutions 4.943–4.945* (2021) and *BCB Resolution 139* (2021) require all BCB-regulated financial institutions to implement Social, Environmental and Climate Responsibility Policies (PRSAC) and to produce annual Social, Environmental and Climate Risks and Opportunities Reports (GRSAC Reports). *CMN Resolution 4.557* (2017), as amended by the 2021 package, encompasses climate-related risks as components of the broader institutional risk management framework.

CVM Resolution No. 193 (2023) marked a significant evolution, moving from comply-or-explain to a mandatory ISSB-aligned sustainability reporting model (IFRS S1 and S2), with voluntary adoption from FY2024 and mandatory application from FY2026, including a requirement for reasonable assurance by an independent auditor. Resolution CVM 244, of 29 May 2026, revoked that mandate for listed issuers, returning them to a comply-or-explain regime under which a company declining to file must justify the decision by market notice from 1 January 2027. The mandate survives, however, where it matters for Bank Climate Claims: CMN Resolution 5.185/2024 inserted Chapter III-A into CMN Resolution 4.818/2020, requiring BCB-regulated institutions to disclose a sustainability-related financial information report under CBPS 01 and CBPS 02 – the Brazilian applications of IFRS S1 and S2 – as an integral part of their annual consolidated financial statements, subject to reasonable assurance by an independent auditor, from FY2026 for listed institutions and leaders of S1 or S2 prudential conglomerates, and from FY2028 for the remaining covered institutions. For financial institutions, therefore, the evidentiary standard still shifts from whether the institution provided a reasoned explanation for non-disclosure to whether its disclosed sustainability information is accurate, complete, and independently verified – substantially lowering the evidentiary burden for greenwashing and ESG breach claims by anchoring them in audited, standardized reports. In sum, the assured, standardized baseline that CVM 244 removed for listed issuers generally remains in place for the regulated financial sector.

A Bank Climate Claim grounded in this cause of action is most viable where: (i) the defendant is a regulated financial institution subject to BCB and/or CVM supervision;

(ii) there is a demonstrable gap between the institution's disclosed climate-related policies and commitments and its actual financing conduct; and/or (iii) the institution has failed to implement the required risk management frameworks or to produce required climate disclosures. This cause of action has a rather objective and measurable character: ESG regulatory breach claims can be anchored to specific regulatory provisions and concrete evidentiary standards — the institution either produced its GRSAC Report in compliance with BCB Resolution 139/2021 or it did not; its CBPS-aligned sustainability report under CMN Resolution 5.185/2024 either accurately reflects portfolio emissions or it does not. This granularity reduces reliance on novel legal theories and grounds the claim in established regulatory obligations. Greenwashing exposure is particularly relevant: where a bank's public net-zero commitments or green product labels are demonstrably inconsistent with its actual financing conduct, the gap is increasingly measurable against a mandatory, assured, standardized baseline.

Evidence required includes: the institution's GRSAC Reports and ISSB-aligned sustainability disclosures; independent assurance reports; portfolio exposure data relating to fossil fuel and other high-emitting sectors; internal climate policies and net-zero commitments; and expert evidence assessing the consistency of disclosed practices with actual financing conduct and applicable regulatory standards. Standing would most naturally rest with the Public Prosecution Service and civil society organizations with *pertinência temática* under the Public Civil Action framework, in which proof of individualized economic loss is generally unnecessary. Where the claim is framed through corporate or securities law — particularly fiduciary duty or greenwashing theories — standing may additionally extend to shareholders or investors able to demonstrate harm linked to misleading disclosures or governance failures.

Cause of Action 3: Fiduciary Duty and Corporate Law Obligations

The *Corporation Law* (Law 6.404/1976) establishes, in Articles 116, 117, 153, 154, 157, 158, and 159, an interconnected framework of duties and liabilities applicable to controlling shareholders, boards, and individual administrators. Article 116, sole paragraph, and Article 154 require controlling shareholders and boards to exercise powers in furtherance of the company's social function, bearing duties to shareholders and the community — provisions increasingly interpreted as requiring incorporation of material climate risks into governance and investment decisions. Article 153 imposes on individual administrators a duty of diligence

equivalent to that of a prudent person managing their own affairs, a standard not met where material climate risks are knowingly disregarded. Article 157 requires prompt disclosure of material facts capable of influencing investor decisions, encompassing undisclosed climate risks and misleading sustainability commitments. Article 158 grounds personal civil liability for administrators who breach these obligations through *culpa*, *dolo*, or violation of law. Article 159 provides the procedural vehicle for derivative actions by the company or by shareholders holding at least five percent of share capital where the general meeting fails to act. Article 117, §1(a) prohibits the controlling shareholder from exercising control prejudicially to the company's interests, which may be engaged where financing decisions serve interests incompatible with the institution's stated climate commitments.

The social function provision has been increasingly interpreted by doctrine and regulators — and, in pending litigation, argued before courts — as requiring corporate decision-makers to incorporate material environmental externalities, including climate risks and impacts, into their governance and investment decisions. This interpretation draws support from the BCB's regulatory framework on climate risk management, which expressly requires financial institutions to assess and manage climate-related risks as components of sound governance.[1] In the broader environmental context, the STJ has confirmed that the social function of economic activity requires the internalization of environmental costs — holding, in the landmark *REsp 650.728/SC* (2ª Turma, Rel. Min. Herman Benjamin, DJe 2 December 2009), that liability extends to all those in the causal chain of environmental harm, and in *STJ Informativo 18/2024* reaffirming that externalizing environmental costs contravenes the social function of economic activity under Article 170(III) of the Federal Constitution. The express application of this principle to climate-specific governance decisions within the meaning of Articles 116 and 154 of the Corporation Law, however, has not yet produced binding judicial authority; *Conectas Direitos Humanos v. BNDES and BNDESPAR* (Federal Court of the Federal District, filed 21 June 2022) advances precisely this argument and remains pending, and its outcome will be the most direct judicial authority on the point.[2] The social function provision has increasingly been invoked as a basis for arguing that corporate decision-makers must take material environmental externalities — including climate-related risks and impacts — into account in governance and investment decisions. The argument is strongest where climate impacts can be connected to concrete legal and regulatory standards already incorporated into Brazilian law, including Article 225 of the Constitution, the National Environmental Policy Act, the National Climate Change Policy,

environmental licensing obligations, and the BCB's climate and environmental risk-management framework for financial institutions. In this context, the social function doctrine does not independently require financial institutions to maintain Paris-aligned portfolios, and mere misalignment with the Paris Agreement or Brazil's NDC would likely be insufficient, on its own, to establish breach of duty. The argument becomes stronger, however, where a financial institution has adopted public net-zero or Paris-alignment commitments, incorporated climate targets into governance instruments or disclosures, or continued financing activities associated with persistent environmental illegality or regulatory non-compliance. The climate stewardship guidance developed by LACLIMA and FGV Direito SP, applied in *Conectas*, further establishes expectations around climate stewardship as a component of the responsibilities of institutional investors and large shareholders.

Standing for claims grounded in this cause of action varies according to the procedural vehicle employed. A derivative action under Article 159 of the Corporation Law may be brought by shareholders collectively holding at least five percent of the company's share capital, meaning that the threshold may be satisfied through the aggregation of multiple shareholders' holdings rather than by a single investor alone. In practice, however, this may still present a coordination barrier in the context of large listed financial institutions with highly dispersed ownership structures, although institutional investors such as pension funds and asset managers remain the most plausible claimants. Furthermore, where the general meeting fails to act within three months of a resolution requesting action, any shareholder with the requisite threshold may proceed independently. A public civil action under Law 7.347/1985, grounded in the social function doctrine and its environmental and community dimensions, may be brought by the Public Prosecution Service, civil associations with institutional alignment,[11] and the OAB Federal Council — without any share ownership requirement — and is the more natural vehicle for claims brought by civil society actors on behalf of diffuse interests. For public development banks, a popular action (*ação popular*) under Law 4.717/1965 is additionally available to any Brazilian citizen, requiring no share threshold, to challenge administrative acts causing harm to the environment or public patrimony.

[11] Civil associations with institutional alignment (*pertinência temática*) are formally constituted legal entities whose articles of association include institutional purposes aligned with the subject matter of the claim — in the climate context, environmental protection, climate action, or sustainable development. Established climate and environmental NGOs satisfy this requirement straightforwardly, as long as they can prove one year of legal existence prior to filing.

For a Bank Climate Claim grounded in this cause of action, the claimant must establish: (i) that the defendant's controlling shareholders or board exercised their powers in a manner that failed to incorporate material climate risks and externalities; (ii) that this failure resulted in a breach of the social function obligation under Articles 116 or 154; and (iii) that harm – whether to the company's long-term value, to third parties, or to the environment – resulted from this breach. The claim is strongest where the defendant bank has made public climate commitments that are demonstrably inconsistent with its actual governance and financing decisions.

Evidence required includes: corporate governance documentation (board minutes, risk committee reports, investment policies); the bank's public climate commitments and sustainability reports; portfolio data demonstrating exposure to transition and physical climate risks; expert evidence on the materiality of those risks to the institution's long-term financial stability; and evidence of the gap between stated governance commitments and actual conduct.

Cause of Action 4: Civil Liability for Climate Harm

The civil liability framework applicable to environmental and climate harm in Brazil is rooted in Articles 186 and 927 of the *Civil Code* (Law 10.406/2002) and Article 14, §1 of the *National Environmental Policy* (Law 6.938/1981), which establishes strict objective liability for environmental damage – liability independent of fault, conditioned on proof of the harmful activity, the damage, and the causal nexus. The *Forest Code* (Law 12.651/2012), Article 1(I), imposes a duty to respect the integrity of the climate system, providing a specific normative foundation for climate harm claims against financing entities. The *PNMC* (Law 12.187/2009) further establishes the climate system as a common asset of all Brazilians and of humanity, reinforcing the *erga omnes* character of climate-protective obligations. Brazilian courts have long adopted a broad conception of causation in environmental civil liability, that could potentially be extended to climate cases. The aforementioned STJ formulation in the sense that liability extends equally to 'those who finance others to act' and 'those who benefit when others act' (*REsp 650.728/SC*, Herman Benjamin J., 2007) provides a doctrinal foundation for extending the causal chain upstream to financing entities.

The statutory basis for treating financial institutions as indirect polluters is Article 3(IV) of Law 6.938/1981, which defines 'polluter' broadly as any person – natural or legal, public or private – responsible directly or indirectly for environmental degradation. This provision, read together with Article 14, §1's strict liability regime,

has historically supported the extension of environmental civil liability upstream along financing chains without requiring proof of fault. As mentioned in Section I, Article 58 of the LGLA specifically modified this doctrine for financial institutions in relation to licensed activities, replacing the previously applicable joint and several liability with subsidiary liability conditioned on failure to require the applicable license — making the indirect polluter doctrine's scope for Bank Climate Claims dependent, in part, on the outcome of the pending constitutional challenges.

The central doctrinal challenge for a Bank Climate Claim grounded in this cause of action is the causal nexus between the defendant's financing activities and the resulting climate harm. Climate harm — understood as the contribution of financed GHG emissions to global warming and its consequences — is diffuse and cumulative, and Brazilian courts have historically, in general environmental cases, required a more direct linkage between conduct and damage than climate attribution science readily provides. Two approaches address this challenge. The first frames the claim around specific, identifiable financed activities with documented climate impacts — such as the financing of deforestation-linked agricultural expansion generating quantifiable GHG emissions — rather than aggregate portfolio-wide climate harm. The bloc of climate damage claims filed by the MPF and IBAMA in the Amazon (discussed in Section II.B) demonstrate the viability of claims that quantify climate harm from specific acts of illegal deforestation in tonnes of CO_2. The second draws on climate attribution science to establish probabilistic causal links between financed emissions and specific categories of harm, following the model developed in the *Milieudefensie v Shell* line of cases, though Brazilian courts have not yet been asked to apply attribution science at this level of methodological complexity. The reformulated second Shell case (filed 21 April 2026), which targets specific investment decisions to expand fossil fuel production rather than portfolio-wide emission reduction targets, illustrates that causally stronger climate claims focus on discrete, identifiable conduct rather than systemic portfolio conduct.

The two approaches described above address distinct causation hurdles that pull in opposite directions. Framing the claim around specific financed activities resolves the first hurdle — establishing the link between the defendant's financing and identifiable GHG emissions — but weakens the second, because the emissions attributable to any single financed project are insufficient to support probabilistic attribution of specific climate harm. Conversely, relying on aggregate portfolio-wide financed emissions strengthens the attribution analysis but makes the finance-to-emissions link more diffuse and legally contested. Claimants should therefore

calibrate their strategy to the relief sought. For conduct-based and injunctive relief — portfolio alignment, disclosure orders, cessation of specific financing — neither hurdle need be fully cleared: the legal basis is the bank's breach of applicable obligations independently of demonstrated harm, and attribution science is not required. For damages claims, deforestation-linked financing currently presents the most tractable causation structure: the finance-to-emissions link is documentable through satellite data and financing records, the emissions are quantifiable through established methodology, and the CNJ's *Manual Simplificado de Quantificação de Danos Ambientais* provides standardized quantification tools. For claims combining specific activity identification with aggregate attribution science, a court could in principle be asked to establish the finance-to-emissions link through identified activities while relying on the bank's aggregate financed emissions for the attribution analysis, although this approach requires doctrinal innovation that Brazilian courts have not yet been asked to undertake.

The applicable liability regime for claims involving licensed activities, as mentioned in Section I, was significantly modified by Article 58 of the General Environmental Licensing Act (Law No. 15.190/2025), which limits financial institutions' liability to subsidiary liability triggered only by failure to require the applicable environmental license, and only in proportion to the institution's contribution, departing from the broader joint and several liability previously applied by courts to indirect polluters. For Bank Local Impact Claims involving licensed projects, this narrows the practical scope of civil liability claims against financial institutions, although the provision's constitutionality is currently under challenge before the STF (ADIs 7.913, 7.916, and 7.919). Defendants in Bank Climate Claims would likely argue that fossil fuel and other emissions-intensive activities are generally conducted within the environmental licensing framework and therefore fall within Article 58's liability limitation. The counterargument, however, is that the provision should be interpreted narrowly as applying only to liability derived specifically from the financing of duly licensed activities, and not to broader claims grounded in independent regulatory breaches, deficient climate-risk governance, misleading disclosures, unlawful post-licensing conduct, or climate-related harms insufficiently addressed through the licensing process itself. The scope of the provision in cases involving licensed projects that subsequently violate environmental laws or licensing conditions also remains uncertain and will likely depend on future judicial interpretation.

Where strict liability under Article 14, §1 is unavailable or limited — whether by operation of Article 58 or by a court's characterization of the claim as falling outside

the environmental liability regime – the subjective liability framework of Articles 186 and 927 of the Civil Code applies, requiring proof of fault (*culpa* or *dolo*). In this context, evidence of the bank's internal knowledge of climate risk becomes legally material: where a financial institution demonstrably knew that a financed activity carried significant climate or environmental risk and proceeded without adequate due diligence, the foreseeability of harm supports a finding of negligence independently of the strict liability regime. Internal risk assessments, GRSAC Reports, and board-level climate risk documentation are accordingly relevant not only as regulatory compliance evidence but as indicators of subjective fault.

Bill (PL) 993/2026, filed on 6 March 2026, proposes to amend the National Environmental Policy (Law 6.938/1981) to introduce a statutory definition of climate damage. Prospectively, if enacted, PL 993/2026 would introduce a statutory contribution-based causation standard – liability for acts or omissions that "cause or contribute to" climate system damage – that would directly address the causal nexus challenge and provide an explicit legal basis for claims targeting the financing of activities that contribute to climate harm, whether or not those activities are licensed.

Evidence required includes: financing contracts and disbursement records linking the defendant to specific high-emitting activities; PRODES/INPE satellite data or equivalent scientific evidence establishing the climate impact of financed deforestation; GHG emissions data quantifying the contribution of financed activities to climate harm; expert climate attribution evidence; and evidence of the bank's internal knowledge of climate risk as a basis for establishing foreseeability.

Cause of Action 5: Greenwashing – Misleading Sustainability Claims

Greenwashing claims against financial institutions arise where there is a demonstrable and material gap between a bank's public sustainability commitments – including net-zero pledges, green product labels, ESG fund classifications, and carbon offset claims – and its actual financing conduct. This cause of action draws on multiple overlapping legal bases that do not require novel doctrinal extension, grounding claims in established consumer protection, securities, corporate, and civil liability frameworks.

The primary legal bases are: Articles 30, 36, and 37 of the *Consumer Protection Code* (Law 8.078/1990), which prohibit misleading advertising and require that offers and commercial communications be accurate, clear, and consistent with the product or service actually delivered – applicable where green financial products

are marketed to retail or institutional clients on the basis of unsubstantiated sustainability claims; Article 157 of the *Corporation Law* (Law 6.404/1976), which imposes on administrators of listed financial institutions a duty to disclose material facts capable of influencing investor decisions, encompassing misrepresentation or omission of material climate-related information; the *CVM Resolution No. 59* (2021) comply-or-explain framework and, for BCB-regulated institutions, the mandatory CBPS-aligned disclosure regime under CMN Resolution 5.185/2024 from FY2026, which require that disclosed sustainability information be accurate and, progressively, independently assured - creating an objective regulatory standard against which the accuracy of disclosed climate commitments can be assessed, the equivalent CVM mandate under Resolution No. 193 (2023) having been revoked for listed issuers by Resolution CVM 244 (2026); *CVM Resolution 175* (2022), which requires investment funds using ESG-related denominations to substantiate the environmental, social, or governance benefits claimed and to identify a responsible certifying entity; and Civil Code Articles 186 and 927, which ground civil liability for the unlawful act of misleading communication causing damage to investors, clients, or the public.

The practical strength of this cause of action lies in its evidentiary tractability. Unlike constitutional or civil liability claims, which require establishing a causal nexus between financing conduct and climate harm, greenwashing claims are anchored in the gap between what the institution disclosed and what it actually did – a gap that is increasingly measurable against mandatory, standardized, and independently assured reports. As CBPS-aligned disclosure becomes mandatory for financial institutions from FY2026 under CMN Resolution 5.185/2024, and GRSAC reporting continues to develop under BCB Resolution 139/2021, the evidentiary record available to plaintiffs should expand, lowering the threshold for establishing material misrepresentation.

The domestic litigation landscape is developing. *IDEC v GOL Linhas Aéreas* (TJSP, filed December 2025) – the first greenwashing civil action brought by a consumer association in Brazil – established the legal architecture applicable to climate-related sustainability claims, grounding liability in the Consumer Protection Code's prohibition on misleading advertising and seeking BRL 5 million in collective moral damages. Although directed at a non-financial corporation, the claim's structure is directly transposable to financial institutions: where a bank sells green bonds, ESG-labelled investment funds, or carbon-neutral financial products backed by unsubstantiated or invalid carbon assets – as occurred with credits from Operation

Greenwashing-linked projects purchased by a leading Brazilian bank — the Consumer Protection Code and CVM disclosure framework engage simultaneously. The collapse in value of investment funds backed by suspended carbon credit projects further demonstrates that greenwashing exposure generates direct, quantifiable financial losses to investors that may support parallel claims by shareholders and fund holders under the Corporation Law.

Standing for greenwashing claims is broad. Consumer associations and the Public Prosecution Service may bring public civil actions under Law 7.347/1985 on behalf of diffuse consumer and investor interests. The CVM retains administrative enforcement jurisdiction over listed financial institutions for disclosure-related violations. Individual investors and fund holders may bring individual claims for specific losses under the Civil Code. Shareholders holding at least five percent of share capital may bring derivative actions under Article 159 of the Corporation Law where administrator conduct resulting in greenwashing liability causes harm to the company's value or reputation.

Evidence required includes: the institution's public sustainability commitments, green product prospectuses, and ESG fund documentation; GRSAC Reports and ISSB-aligned sustainability disclosures; independent assurance reports; portfolio data on lending to high-emitting or deforestation-linked sectors; carbon credit acquisition and verification records; expert evidence on the materiality and accuracy of disclosed sustainability claims; and evidence of damage suffered by investors, clients, or the public as a result of reliance on those claims.

C. Future Developments

Several legislative and regulatory developments are likely to affect the causes of action discussed above. The ongoing revision of the PNMC and the recent restructuring of the *Plano Clima* could produce a more detailed framework for sectoral climate obligations, strengthening ESG regulatory breach and constitutional claims.

Mandatory CBPS-aligned disclosure by financial institutions from FY2026, under CMN Resolution 5.185/2024 and unaffected by the CVM's retreat in Resolution 244 (2026), should generate richer evidentiary material for greenwashing and ESG breach claims as the gap between disclosed commitments and actual conduct becomes measurable against an independently assured baseline.[1]

PL 993/2026, filed on 6 March 2026, proposes to amend the *National Environmental Policy* (Law 6.938/1981) to extend strict liability to climate system damage, introducing a statutory definition of climate harm, IPCC-recognized methodologies as the evidentiary standard, and a contribution-based causation standard – liability for acts or omissions that "cause or contribute to" climate harm. If enacted, this would substantially reduce the interpretive uncertainty surrounding the causal nexus standard in civil liability claims against financial institutions.[2]

The three international advisory opinions issued between May 2024 and July 2025 – by ITLOS, the IACtHR, and the ICJ – provide authoritative interpretive guidance on climate obligations that Brazilian courts may draw upon through the control of conventionality doctrine. Of particular relevance are the ICJ's reading of Article 4(2) of the Paris Agreement as imposing binding procedural obligations to prepare, communicate and maintain successive NDCs, while characterizing the obligation to pursue domestic mitigation measures, and the IACtHR's requirement in OC-32/25 that States ensure normative coherence between domestic law and international climate commitments – including in trade, investment, and finance policies – and its recognition that corporations bear responsibilities under international human rights law to address climate change.[12]

D. Summary Assessment

Brazil's legal system offers a pluralistic and increasingly dense framework for Bank Climate Claims, combining constitutional foundations, international treaty obligations, ESG regulation, corporate law, and civil liability. None of the five causes of action identified above is, in isolation, without doctrinal difficulty; all are legally viable in combination, and their deployment as a composite, multi-layered claim represents a more robust approach than reliance on any single theory.

Each cause of action presents a distinct profile of doctrinal maturity and evidentiary requirements. The constitutional environmental rights claim grounded in Article 225 and the Paris Agreement's supra-legal status as established in *ADPF 708* has the most developed domestic precedent, particularly against public financial institutions

[12] *Request for an Advisory Opinion submitted by the Commission of Small Island States* (Advisory Opinion) ITLOS Case No 31, 21 May 2024; IACtHR, Advisory Opinion OC-32/25 on the Climate Emergency and Human Rights, 3 July 2025, paras 325–326; ICJ, Advisory Opinion on the Obligations of States in respect of Climate Change, 23 July 2025, paras 235–236, 242, 245, 249.

whose conduct is directly governed by constitutional obligations; its extension to private banks requires mediation through civil liability and regulatory frameworks. The ESG regulatory breach claim is more objectively verifiable than the others and least dependent on novel legal theory, with its evidentiary foundation expected to strengthen as mandatory CBPS-aligned disclosure and independent assurance requirements expand across the regulated financial sector. The fiduciary duty claim offers a distinctive avenue grounded in the social function doctrine of Brazilian corporate law, with particular resonance where the defendant has made public climate commitments demonstrably inconsistent with its actual governance conduct. The civil liability claim faces a significant evidentiary hurdle in the causal nexus, though the first dimension of this hurdle — establishing the link between the financing and identifiable GHG emissions — is less acute for Bank Local Impact Claims and cases involving deforestation-linked financing, where PRODES/INPE satellite data, the CNJ's *Manual Simplificado de Quantificação de Danos Ambientais*, and established per-hectare emissions quantification methodology provide a more direct evidentiary path. The second dimension — attributing specific climate harm to the emissions of a single financed project or activity — remains challenging regardless of the financing context, given the small contribution of any individual project's emissions to cumulative global warming. The greenwashing cause of action is the most recent addition to the Brazilian litigation landscape but presents the most manageable evidentiary threshold, as it is anchored in the measurable gap between disclosed commitments and actual conduct rather than in the attribution of diffuse climate harm.

The causation standard remains the central doctrinal challenge across all five causes of action, and the most significant area requiring evidentiary innovation. A notable systemic strength is the breadth and flexibility of Brazil's standing rules, which permit NGOs, public associations, the Public Prosecution Service, and political parties — in addition to individuals — to file public civil actions on environmental and climate grounds, providing an unusually wide avenue for the types of claims analysed in this report.

IV. Procedures and Evidence

A. Standing and Jurisdiction

1. Standing

Brazil's standing rules for environmental and climate claims allow for participation of a wide array of actors, a product of the constitutional architecture of collective rights and the framework of the Public Civil Action Law (Law 7.347/1985) and the Consumer Defense Code (Law 8.078/1990).

For diffuse rights – such as the right to an ecologically balanced environment – standing extends to: the Public Prosecution Service (*Ministério Público*), which has a constitutional mandate to protect diffuse and collective interests; public civil associations with at least one year of legal existence whose institutional purposes are aligned with the subject matter of the claim (*pertinência temática*); the Public Defender's Office (*Defensoria Pública*); the federal and state governments and their direct and indirect entities; and the Brazilian Bar Association (*OAB*). Additionally, For constitutional claims before the STF – such as the ADPF – standing is governed by Article 103 of the Federal Constitution and extends to: the President of the Republic; the presiding officers of the Senate and the Chamber of Deputies; state Legislative Assemblies and the Governor of the Federal District; state Governors; the Attorney General (*Procurador-Geral da República*); the Federal Council of the Brazilian Bar Association (*CFOAB*); political parties with representation in the National Congress; and confederations of trade unions or class entities of a national character (*entidades de classe de âmbito nacional*), a category that encompasses professional bodies, employer associations, and sectoral organizations with national reach. This plurality of potential claimants is a structural advantage for strategic climate litigation: NGOs, scientific associations, environmental law clinics, and civil society coalitions can all bring public civil actions challenging the climate conduct of financial institutions.

Individual claimants may also file popular actions (*ação popular)* to challenge acts by public entities or their administrators that harm the environment – a cause of action potentially applicable to public financial institutions. Shareholders of listed financial institutions may bring derivative actions challenging climate-related governance failures under Corporate Law.

2. Jurisdiction, Potential Defendants, and Extraterritorial Reach

Federal courts have jurisdiction over cases involving federal entities and over matters governed by federal law where a federal interest is directly implicated. State courts retain residual jurisdiction over disputes involving private actors, including financial institutions, unless a specific ground for federal jurisdiction is established. Given that Bank Climate Claims in Brazil to date have targeted a federal development bank, federal courts have been the primary venue; however, as litigation expands to private commercial banks, state courts are likely to become increasingly relevant.

For claims against Brazilian subsidiaries of foreign financial institutions, Brazilian courts have jurisdiction over entities incorporated under Brazilian law, regardless of the nationality of the parent company. The fact that a subsidiary's financing decisions may be influenced or directed by a foreign parent does not extinguish Brazilian jurisdiction over the domestic entity. Piercing the corporate veil to reach the foreign parent is legally available under Article 50 of the Brazilian Civil Code (Law No. 10.406/2002) and Article 28 of the Brazilian Consumer Defense Code (Law No. 8.078/1990) in cases of abuse of legal personality, misuse of purpose, or commingling of assets, although this entails a relatively high evidentiary threshold in practice.

For claims against foreign parent entities whose financing activities affect Brazil, Brazilian courts may assert international jurisdiction under Article 21 of the Brazilian Code of Civil Procedure (Law No. 13.105/2015), including where the defendant is domiciled in Brazil, where the obligation is to be performed in Brazil, or where the harmful event occurred in Brazil. While Brazilian law does not expressly codify an "effects doctrine," its jurisdictional rules—particularly those allowing venue at the place where damage occurs—operate as a functional equivalent, and have been interpreted expansively in environmental and collective litigation.

For claims against Brazilian financial institutions for financing activities that cause harm in other jurisdictions, Brazilian courts may exercise jurisdiction under Article 21(I) of the Code of Civil Procedure where the defendant is domiciled in Brazil. However, the extraterritorial application of Brazilian environmental and climate law to financing activities with effects abroad remains an emerging and unsettled doctrinal area. While there is no consolidated jurisprudence on this point, comparative developments in corporate due diligence and supply chain liability—most notably the Corporate Sustainability Due Diligence Directive (CSDDD) —are

likely to exert normative influence and generate pressure for analogous developments in Brazilian law.

In practice, suing foreign parent entities in Brazilian courts entails significant procedural obstacles, including international service of process through letters rogatory and complex enforcement dynamics, that make domestic subsidiaries a more tractable target. IACtHR Advisory Opinion OC-32/25 (2025) has explicitly addressed parent company and subsidiary responsibility in the context of corporate climate obligations, providing an interpretive resource that Brazilian courts may engage through the control of conventionality doctrine.

B. Litigation Costs and Timeline

1. Costs and Cost Allocation

Brazilian procedural law follows a modified "loser pays" principle (*sucumbência*): the losing party bears the winning party's legal fees and court costs, as established by Articles 82 to 97 of the Code of Civil Procedure (2015). For public civil actions brought by the Public Prosecution Service or by civil associations in the public interest, however, the procedural cost regime is significantly more favourable: Law 7.347/1985 (Public Civil Action Law) exempts successful public civil actions from court fees and restricts adverse costs orders against associations acting in good faith. The Public Civil Action Law further provides that associations bringing environmental actions in the public interest are exempt from advances on expert evidence costs, with these borne by the State if the claimant prevails.

For individual litigants or associations not covered by the Public Civil Action Law exemptions, the risk of adverse costs orders is a relevant practical consideration in Bank Climate Claims. This risk can be mitigated through the strategic choice of claimant — using entities with exemption status — and through the careful calibration of claims to jurisdictions and venues where cost exposure is manageable. The financial exposure associated with expert evidence — which is likely to be substantial in cases requiring climate attribution science, financial portfolio analysis, and regulatory expertise — deserves particular attention in litigation planning.

2. Funding Mechanisms

Litigation funding for climate cases in Brazil remains underdeveloped by comparison with common law jurisdictions. The primary funding mechanisms available are: institutional support from NGOs and public interest law organizations, including international climate litigation networks; pro bono legal representation by law firms

with environmental and climate practices; third-party litigation funding by commercial funders, and, for constitutional claims before the STF, the possibility of filing without significant financial exposure given the amicus curiae and public interest character of the proceedings.

3. Overall Duration of Proceedings

Brazilian judicial proceedings are often subject to delay, although the progressive digitalization of the judiciary has generally contributed to greater procedural efficiency. Empirical data from the Conselho Nacional de Justiça (CNJ), as reported in *Justiça em Números 2025*, indicate persistently high case volumes and congestion rates across the judiciary, despite recent gains in productivity and reductions in backlog, reinforcing the structural nature of delays in complex litigation.[13] In this context, a first-instance federal court judgment in a complex public civil action may take approximately three to five years, and longer where extensive scientific, financial, or regulatory expert evidence is required. This reflects the duration of evidentiary phases, including expert appointments, production of technical reports, party submissions, and the scheduling of hearings.

Appeals to the Regional Federal Courts (*Tribunais Regionais Federais*) or State Courts (*Tribunais de Justiça*) and, subsequently, to the Superior Tribunal de Justiça or the Supremo Tribunal Federal may extend the total duration of proceedings by a further five to ten years in fully contested cases proceeding through all appellate levels, particularly in complex matters that reach both superior courts and involve interlocutory appeals or procedural incidents.[14] The ADPF 708, mentioned above, was resolved in approximately two years from filing to merits judgment, a comparatively rapid timeline largely explained by the fact that the case was brought directly before the Supreme Court (*Supremo Tribunal Federal*) through

---

[13] Conselho Nacional de Justiça, *Justiça em Números 2025* (CNJ 2025) https://www.cnj.jus.br/pesquisas-judiciarias/justica-em-numeros/ accessed 22 April 2026.

[14] Chambers & Partners, *Litigation 2026 – Brazil* (Chambers and Partners, December 2025) https://practiceguides.chambers.com/practice-guides/litigation-2026/brazil/trends-and-developments accessed 28 April 2026, reporting an average first-instance duration of two to three years for commercial disputes, with complex cases involving technical evidence taking longer, and a total average duration including appeals of six to eight years; DLA Piper, *Brazil Global Litigation Guide* (DLA Piper Intelligence, 2026) https://www.dlapiperintelligence.com/litigation/insight/handbook.pdf?c=BR accessed 28 April 2026, reporting an average high court appeal duration of 36 months. These figures reflect standard commercial litigation; public civil actions (*ações civis públicas*) involving scientific expert evidence – as Bank Climate Claims are likely to require – tend toward the upper end of these ranges given the volume and complexity of the evidentiary record.

an abstract constitutional review procedure, bypassing the ordinary multi-tiered judicial process.

Two instruments could provide a basis for urging expedited handling of climate cases: IACtHR Advisory Opinion OC-32/25 emphasizes the need for judicial celerity in climate litigation given the urgency of the climate emergency; and the *Pacto pela Transformação Ecológica entre os Três Poderes* (signed jointly by the executive, legislative and judicial branches) commits to promoting celerity and legal certainty in environmental and climate proceedings. The practical impact of these instruments on case timelines remains to be seen, but they provide persuasive authority that litigants may invoke.

C. Evidence

1. Evidence Processes

Brazil's procedural framework for evidence is governed by the Code of Civil Procedure (2015), Articles 369 to 484. Document production in Brazilian civil proceedings differs significantly from common law discovery: there is no general pre-trial discovery obligation. However, a party may request the court to order the opposing party to produce specific documents (*exibição de documentos*, Articles 396 to 404 CPC) where those documents are material to the claim and the requesting party can demonstrate their existence and materiality. In Bank Climate Claims, this mechanism is particularly valuable for obtaining the defendant's internal climate policies, risk management assessments, portfolio data, and GRSAC Reports – which, if not publicly available, can be ordered to be produced by the court.

For public institutions, the Access to Information Law (Law 12.527/2011) provides an additional, non-judicial channel for document production: any person may request access to information held by public bodies, subject to limited exceptions. This mechanism was used by Conectas to obtain documentary evidence about BNDESPAR's portfolio prior to litigation and can be deployed in future cases as a pre-litigation information-gathering tool.

Expert evidence plays a central role in complex environmental and climate claims.[15] Courts may appoint their own expert (*perito judicial*) to produce a court-

[15] See, generally, Wentz, Jessica A., Merner, Delta, Franta, Benjamin, Lehmen, Alessandra & Frumhoff, Peter C., 'Research Priorities for Climate Litigation' (2023)11(1) *Earth'sFuture* e2022EF002928 https://scholarship.law.columbia.edu/sabin_climate_change/198/ accessed 25 April 2026.

commissioned report, and each party may additionally retain party experts (*assistentes técnicos*) to comment on and challenge the court-appointed expert's findings. The court-appointed expert carries significant evidential weight. In *Conectas*, expert opinions from Federal University of Rio de Janeiro and Fundação Getulio Vargas regarding, respectively, BNDESPAR's portfolio concentration in carbon-intensive sectors and legal obligations to consider decarbonization were prepared beforehand and presented at the time of filing. Climate attribution science, financial portfolio analysis, and regulatory compliance assessment are all categories of expert evidence likely to be required in Bank Climate Claims.

A further procedural avenue of strategic relevance is the anticipatory production of evidence under Articles 381–383 of the CPC, which allows claimants — including the Public Prosecution Service and civil associations — to seek court-ordered production and preservation of documents prior to filing a substantive claim. In Bank Climate Claims, this mechanism could be used to obtain documentary evidence of financing structures, due diligence records, and ESG compliance materials held by financial institutions before the evidentiary phase of litigation, partially offsetting the structural informational asymmetry between claimants and defendants.

2. Burden and Standard of Proof

The general rule in Brazilian civil proceedings is that the burden of proof lies with the party who makes the factual allegation (Article 373 of the Brazilian Code of Civil Procedure (Law No. 13.105/2015)). However, Article 373, §1° of the Code expressly allows for the dynamic allocation of the burden of proof (*distribuição dinâmica do ônus da prova*), enabling the court to assign the burden to the party best positioned to produce the evidence, particularly where there is excessive difficulty for one party or greater ease for the other. In environmental liability cases, this flexibility is reinforced by the substantive regime: Article 14, §1 of the National Environmental Policy Act (Law No. 6.938/1981) establishes strict (objective) liability for environmental damage, meaning that the claimant need not prove fault, but only the harmful activity, the damage, and the causal nexus. In addition, Brazilian courts, particularly the Superior Tribunal de Justiça, have consolidated the understanding that, in environmental litigation, the burden of proof may be reversed or dynamically allocated where there is informational asymmetry or difficulty of proof, drawing on the precautionary principle and, by analogy, Article 6 (VIII) of the Brazilian Consumer Defense Code (Law No. 8.078/1990). This position is reflected, inter alia, in STJ case law recognizing the applicability of burden-shifting in environmental matters, such as REsp 1.114.398/PR, in which the Court affirmed

that evidentiary burdens may be reallocated to ensure effective environmental protection in situations of evidentiary imbalance. In practice, this allows courts to require defendants to demonstrate the environmental regularity or non-harmfulness of their activities, particularly where relevant information is under their control. STJ Súmula 618 (2018) consolidates this position, providing expressly that burden reversal applies in environmental degradation actions. IACtHR Advisory Opinion OC-32/25 further recognizes burden-shifting as an appropriate tool in climate litigation given its inherent evidentiary complexity – a position Brazilian courts may engage through the control of conventionality doctrine.

The main evidentiary challenge in Bank Climate Claims involving damages (see III.B(4)), as opposed to those involving adjustments of conduct, lies in establishing the causal nexus demonstrating a legally sufficient link between the defendant's financing activities and the resulting climate or environmental harm. While Brazilian environmental law accepts broad and even indirect causation, including joint and several liability (*responsabilidade solidária*) across actors in a causal chain, climate-related damages introduce additional complexity. Climate harm is typically diffuse, cumulative, and temporally extended, making it difficult to attribute specific portions of harm to particular financing decisions or institutions. As a result, claims framed around specific, traceable illegality (e.g. financing activities linked to illegal deforestation or embargoed areas) are currently more likely to satisfy the causal nexus requirement for damages than claims based on abstract or global financed emissions.

D. Court Processes and Early Case Termination

Brazilian civil procedure does not feature a general summary judgment mechanism equivalent to the common law rule. However, several procedural mechanisms allow for early termination or filtering of claims.

Under Article 332 of the CPC, a judge may dismiss a claim without summoning the defendant (*improcedência liminar do pedido*) where the claim contradicts a binding STF or STJ precedent, a *súmula vinculante*, or a repeated case ruling (*recurso repetitivo*). In Bank Climate Claims, this mechanism is unlikely to be applied adversely given the novelty of the legal theories involved. However, it could theoretically be invoked if a higher court issues a ruling unfavorable to climate litigation on standing or justiciability grounds.

Admissibility review in public civil actions involves an initial assessment by the judge of the adequacy of the claimant and the sufficiency of the factual and legal basis of

the claim (*condições da ação*). Challenges to standing — particularly regarding whether an association's institutional purposes are sufficiently aligned with the subject matter of the claim — are common defense strategies and have been litigated in Brazilian climate cases. Courts have generally construed these requirements broadly in environmental cases, consistent with the principle of maximum effectiveness of environmental protection.

Defendants in climate cases have also deployed procedural challenges based on the political question doctrine (lack of justiciability) and separation of powers arguments, asserting that climate policy is the exclusive prerogative of the executive and legislative branches. The STF's ruling in ADPF 708 narrowed the practical scope of these defenses for cases targeting specific statutory non-compliance, while leaving open questions for cases seeking broader policy mandates. Claims targeting concrete, objective obligations — specific financing activities inconsistent with applicable regulatory standards, specific disclosure failures, specific violations of the PNMC framework, etc. — rather than requesting the court to formulate climate policy are generally more impervious to separation of powers defenses.

E. Section Summary

The procedural and evidentiary framework for Bank Climate Claims in Brazil presents a mixed profile: significant structural strengths combined with material practical challenges.

A key strength is the breadth and flexibility of standing rules, which enable a wide array of parties to bring climate claims on behalf of diffuse environmental interests, substantially reducing the individual access barriers that constrain climate litigation in other jurisdictions. The Access to Information Law and the document production provisions of the CPC provide meaningful pre-litigation and in-litigation mechanisms for obtaining the evidentiary material needed to ground Bank Climate Claims. The availability of court-appointed expert evidence, combined with the capacity to present party expert evidence, supports the sophisticated scientific and financial analysis that such claims require.

Key challenges include the causal nexus standard — which requires innovative evidentiary strategies combining financial analysis, climate attribution science, and regulatory assessment — and the duration of proceedings, which may substantially delay the practical impact of a successful claim. The risk of adverse costs orders for claimants outside the Public Civil Action Law exemption regime is a secondary but material constraint on litigation strategy.

V. Remedies

A. Availability of Monetary and Injunctive Remedies

Brazilian law provides for a comprehensive range of remedies in environmental and climate cases, encompassing both monetary and injunctive relief. The *Public Civil Action Law* (Law 7.347/1985) expressly authorizes courts to order obligations to do (*obrigação de fazer*), obligations to refrain from doing (*obrigação de não fazer*), and payment of compensation for environmental damage to a dedicated environmental fund (*fundo de defesa de direitos difusos*).

Injunctive relief, including preliminary injunctions (*tutelas de urgência*) granted at the outset of proceedings without summoning the defendant, is available where the claimant demonstrates a probable right (*fumus boni juris*) and a risk of irreparable harm from delay (*periculum in mora*), as provided by Articles 294 to 311 of the Code of Civil Procedure (2015). In Bank Climate Claims, preliminary injunctions could order a financial institution to suspend new financing of specific carbon-intensive projects, produce climate-related information not yet disclosed, or implement interim risk management measures.

Monetary remedies for environmental damage are governed by the strict liability framework of the *National Environmental Policy* (Law 6.938/1981). Where the harmful activity causes quantifiable environmental or climate damage, the court may order the responsible party to repair or compensate for that damage. Compensation is paid to the National Environmental Fund or equivalent state funds, reflecting the diffuse nature of the environmental right being protected. Where identifiable individuals suffer specific personal harm, individual damages may also be claimed before ordinary civil courts.

Two recent developments strengthen the monetary remedies framework. First, the CNJ published in February 2026 the Simplified Manual on Quantification of Environmental Damages (*Manual Simplificado de Quantificação de Danos Ambientais)*, providing judges and practitioners with methodological guidance for the economic valuation of environmental damage, expressly incorporating the climate dimension of environmental harm and satellite-based assessment tools,

including PRODES/INPE data.[16] The Manual addresses a long-standing absence of shared quantification criteria in Brazilian courts and is directly relevant to Bank Climate Claims involving deforestation-linked financing. Second, the STJ's ruling in *REsp 2.200.069/MT* (1ª Turma, 13 May 2025)[17] established seven objective criteria for the recognition of collective moral environmental damage, holding that such damages are presumed (*in re ipsa*), do not require proof of subjective community suffering, and extend to all actors who contribute – directly or indirectly – to a single macro-environmental harm, with the quantum modulated by each party's degree of culpability. For Bank Climate Claims, the ruling's cumulative causation standard potentially encompasses financing entities as co-responsible actors, subject to the Article 58 LGLA subsidiary liability regime.

Disgorgement of profits attributable to a bank's financing of harmful activities is not expressly provided for in Brazilian environmental legislation, and its availability would depend on the specific legal basis invoked and the remedial approach adopted by the court. Nevertheless, the STJ has affirmed the cumulative nature of environmental civil liability: obligations to restore degraded areas do not preclude compensation claims, and defendants may additionally be required to surrender the economic gains unlawfully derived from environmentally harmful activity – a principle established in relation to direct polluters (*REsp 1.198.727/MG*; *REsp 1.145.083/MG*, Herman Benjamin J.) and not yet applied by Brazilian courts to financing entities as indirect polluters, though the broad conception of causation in Brazilian environmental law and the indirect polluter doctrine provide a doctrinal foundation for such an extension. This jurisprudence is closely connected to the polluter-pays principle, which the STJ has interpreted as requiring the internalization of the full social and environmental costs of economic activity, including costs

---

[16] Conselho Nacional de Justiça, *Manual Simplificado de Quantificação de Danos Ambientais* (CNJ/Fonamb, February 2026) https://www.cnj.jus.br/poder-judiciario/consultas-publicas/quantificacao-de-danos-ambientais/ accessed 27 April 2026. The Manual incorporates the *Conta Carbono Amazônia Legal* (CCAL) methodology for quantifying the climate damage associated with illegal vegetation suppression and builds on the CNJ's prior *Protocolo para Julgamento de Ações Ambientais*, which already required judges to consider the climate impact of environmental harm in their quantification.

[17] STJ, *REsp 2.200.069/MT*, 1ª Turma, 13 May 2025, Rel. Min. Regina Helena Costa, DJe 21 May 2025 https://processo.stj.jus.br/processo/julgamento/eletronico/documento/mediado/?documento_tipo=integra&documento_sequencial=313306829&registro_numero=202402661812&publicacao_data=20250521&formato=PDF accessed 27 April 2026. The decision consolidates a prior line of jurisprudence: *REsp 1.989.778/MT* (2ª Turma, 2023); *AgInt no REsp 1.701.573/PE* (2ª Turma, 2019); *REsp 1.058.222/SP* (Min. Herman Benjamin, 2011). STJ *Súmula 629* further confirms cumulation of obligations to do or not to do with monetary compensation in environmental cases.

externalized onto affected communities and future generations (AgInt no AREsp 1.750.009/PR, 2024).

Disgorgement-type remedies may also be conceivable in the context of fiduciary duty claims under the Corporation Law (Law No. 6.404/1976), particularly where controlling shareholders or directors derive personal benefit from conduct incompatible with the company's social function. In parallel, unjust enrichment (*enriquecimento sem causa*; Civil Code, art. 884) constitutes an autonomous cause of action that could potentially be invoked where a financial institution has profited from financing activities whose environmental and social externalities were borne by the community.

B. Punitive or Exemplary Damages

Brazilian civil law does not recognize punitive or exemplary damages in the common law sense. Compensation is, in principle, calibrated to the extent of the harm suffered (Article 944 Civil Code). However, the principle of full compensation (*reparação integral*) in environmental cases has been interpreted by Brazilian courts as encompassing not only direct material damage but also moral damage to the environment (*dano moral ambiental*) and the loss of ecological services during the period of degradation – a concept known as "damage of interregnum" (*dano de interregno* or *dano intermediário*).

A structural feature of Brazilian law reinforces the overall deterrent framework: civil, administrative, and criminal liability for environmental harm are expressly independent and cumulative under Article 225, §3 of the Federal Constitution and Law 9.605/1998. Accordingly, Bank Climate Claims pursued through civil litigation do not preclude parallel administrative sanctions by the BCB or CVM and, in appropriate cases, criminal enforcement.

Administrative sanctions under Brazilian environmental law – including substantial fines under Law 9.605/1998 (Environmental Crimes Law) and BCB supervisory penalties – can impose significant financial consequences on financial institutions in breach of applicable environmental and climate regulatory standards.

C. Innovative or Non-Traditional Remedies

Remedies for systemic environmental and climate harm have expanded in Brazil. A significant example is the structural remedy: a court order requiring a defendant to implement a specific plan or program of compliance, subject to judicial supervision. In the climate context, structural injunctions, such as orders requiring a defendant to

adopt and implement a climate transition plan, to align its financing portfolio with Paris-consistent pathways, or to conduct climate scenario analysis and disclose the results, represent a potentially impactful remedy, but may face both a more strict legal test and a higher evidentiary threshold.

Disclosure orders — requiring a financial institution to produce and publish GRSAC Reports, TCFD-aligned disclosures, or portfolio-level financed emissions data — are available under the Access to Information Law for public institutions and under the CPC document production provisions more broadly, and represent a less confrontational but strategically valuable remedy that creates the evidentiary foundation for future enforcement actions. Monitoring orders, requiring periodic judicial review of a defendant's compliance with an injunction or structural remedy, are available in principle and have been used in high-profile environmental cases. Mediation-based settlements — in which the defendant agrees to a package of voluntary commitments in exchange for the stay of proceedings — have also been used in Brazilian environmental litigation and represent an efficient alternative to protracted judicial proceedings.

D. Strategic Assessment of Remedies

The choice of remedy interacts directly with the choice of cause of action in Bank Climate Claims. Remedies requiring changes in conduct or climate governance — disclosure orders, compliance obligations tied to existing BCB and CVM regulatory requirements, structural injunctions framed around GRSAC production or ISSB-aligned reporting — present a more tractable basis for judicial intervention than broad portfolio alignment orders, since they anchor the court's mandate in specific, pre-existing regulatory obligations rather than requiring it to determine the appropriate level of climate ambition. The separation of powers objection is correspondingly weaker where the order does no more than require compliance with norms already enacted. Greenwashing claims are particularly well-suited to this remedial logic: where a financial institution's public sustainability commitments are demonstrably inconsistent with its actual conduct, a court order requiring disclosure or correction of misleading statements is both grounded in specific regulatory obligations and difficult to resist on justiciability grounds.

Preliminary injunctions should be deployed carefully, and only where two conditions are genuinely satisfied: effective urgency — harm occurring or imminent and not adequately addressed through final relief — and an evidentiary record robust enough to establish a probable right (*fumus boni juris*) with reasonable specificity.

Disclosure orders and interim risk management obligations present a lower threshold and are more likely to meet the *periculum in mora* standard than injunctions seeking suspension of specific financing operations, which require concrete evidence linking a specific transaction to imminent and quantifiable harm.

Monetary compensation to the National Environmental Fund performs a distinct doctrinal function: establishing civil liability precedent and creating a reputational cost for climate-harmful financing. Its practical availability, however, hinges primarily on the causal nexus between the defendant's financing conduct and the resulting environmental or climate harm — the central evidentiary challenge in Bank Climate Claims. The STJ's ruling in *REsp 2.200.069/MT* eases this burden in one respect: once environmental degradation is established, collective moral damages are presumed *in re ipsa*, without proof of subjective community harm, and all actors who contribute to a macro-environmental harm bear proportional liability. The CNJ's *Manual Simplificado de Quantificação de Danos Ambientais* further assists by providing standardized methodologies — including satellite-based and carbon accounting tools — for quantifying the damage once causation is established. The attribution question itself, however, remains the threshold obstacle: for deforestation-linked Bank Local Impact Claims, where the causal chain between financing and harm is more direct, monetary remedies are more readily available than in diffuse climate harm scenarios where attribution science must carry greater evidentiary weight.

An effective remedial approach therefore prioritizes conduct and disclosure remedies grounded in existing regulatory obligations; reserves preliminary injunctions for circumstances of genuine urgency with sufficient evidentiary support; and combines these with monetary compensation claims where the causal nexus between the defendant's financing conduct and identifiable environmental harm can be established with adequate specificity.

E. Section Summary

Brazilian law provides a comprehensive remedial toolkit for Bank Climate Claims, encompassing preliminary and structural injunctions, disclosure orders, monetary compensation for environmental damage, and ongoing judicial monitoring. Conduct and disclosure remedies grounded in existing regulatory obligations — GRSAC production, ISSB-aligned reporting, correction of misleading sustainability statements — present a tractable basis for judicial intervention, as they anchor the

court's mandate in pre-existing norms and are less exposed to separation of powers objections. Greenwashing claims are particularly well-suited to this remedial framework. Preliminary injunctions are available where the claimant can demonstrate effective urgency and a sufficiently robust evidentiary basis, though the threshold is demanding in complex commercial proceedings. Monetary compensation to the National Environmental Fund — including collective moral damages now presumed *in re ipsa* under *REsp 2.200.069/MT* and quantifiable through the CNJ's *Manual Simplificado de Quantificação de Danos Ambientais* — supplements injunctive relief by establishing financial accountability and deterrent precedent, though its availability depends primarily on the establishment of the causal nexus between the defendant's conduct and the resulting harm. The absence of punitive damages in the civil law tradition is partially offset by parallel administrative sanctions and by the principle of full compensation, which encompasses moral damage and ecological service losses. The deployment of multiple remedies, calibrated to the evidentiary strengths of each cause of action and the factual pattern of the claim, reflects the layered character of the Brazilian remedial framework as applied to Bank Climate Claims.

Annex: Table of Causes of Action

Cause of Action	Claimant (including the test for standing, if relevant)	Legal Grounds	Causation Standard	Remedies Sought	Assessment of Viability
1. Constitutional Climate Rights and Obligations and the Brazilian NDC Fact pattern: a financial institution maintains a portfolio significantly concentrated in carbon-intensive activities inconsistent with Brazil's NDC commitments, without adequate risk management or transition plans.	NGOs; Public Prosecution Service; civil associations; political parties with Congressional representation (via ADPF, ACP). Any Brazilian citizen via *ação popular* for public banks.	Art. 225 FC; ADPF 708 (2022); PNMC (Law 12.187/2009); Paris Agreement (supra-legal status); Art. 37 FC (public entities).	Portfolio inconsistency with NDC targets and/or sectoral targets established by the Plano Clima (2026); strict liability for environmental damage (Law 6.938/1981, Art. 14§1); omission or commission violating constitutional duty.	Structural injunction (portfolio alignment with regulatory obligations); disclosure orders; compensation to National Environmental Fund.	Strong for public development banks; more complex for private banks where constitutional duty must be mediated through civil liability and regulatory frameworks; requires robust expert evidentiary strategy on causation.

Cause of Action	Claimant (including the test for standing, if relevant)	Legal Grounds	Causation Standard	Remedies Sought	Assessment of Viability
2. ESG Regulatory Breach and Supervisory Non-Compliance Fact pattern: a regulated financial institution fails to adequately disclose or integrate climate risks as required by the BCB and CVM regulatory frameworks.	NGOs; civil associations; shareholders; Public Prosecution Service; CVM and BCB (administrative enforcement).	CVM Res. 193/2023, mandate revoked for listed issuers by CVM Res. 244/2026; CMN Res. 5.185/2024 (mandatory CBPS 01/02 disclosure by financial institutions with reasonable assurance, FY2026/FY2028); CMN Res. 4.943–4.945/2021; BCB Res. 139/2021 (GRSAC); CVM Res. 175/2022 (ESG fund labelling).	Objective breach of specific regulatory obligations; demonstrable gap between disclosed climate commitments and actual financing conduct; failure to produce required disclosures or implement PRSAC.	Compliance order; disclosure injunction; correction of misleading disclosures; administrative penalties; monetary compensation.	Considerable viability; most objectively measurable cause of action; growing stronger as mandatory CBPS-aligned disclosure and independent assurance requirements expand the evidentiary record for financial institutions.

Cause of Action	Claimant (including the test for standing, if relevant)	Legal Grounds	Causation Standard	Remedies Sought	Assessment of Viability
3. Fiduciary Duty and Corporate Law Obligations Fact pattern: the controlling shareholder or board of a financial institution exercises its powers without due consideration of climate externalities, in breach of the social function of the company.	Shareholders ≥5% share capital (derivative action, Art. 159 Corporation Law); Public Prosecution Service and civil associations (via ACP grounded in social function doctrine); any Brazilian citizen (*ação popular* against public bank administrators).	Corporation Law (Law 6.404/1976), Arts. 116, 117, 153, 154, 157, 158, 159; social function doctrine; climate stewardship guidance (see LACLIMA/FGV, 2022); BCB climate risk management framework.	Failure to incorporate material climate risks into governance and investment decisions; breach of social function (Arts. 116, 154); personal liability for administrators (Art. 158); gap between public climate commitments and actual governance conduct.	Corporate governance reform order; injunction against conduct inconsistent with stated climate commitments; compensation for harm to company or third parties; disgorgement of personal benefit.	Distinctive to Brazilian corporate law; strongest where public sustainability commitments demonstrably contradict actual conduct; personal liability of directors under Art. 158 is a meaningful deterrent.

Cause of Action	Claimant (including the test for standing, if relevant)	Legal Grounds	Causation Standard	Remedies Sought	Assessment of Viability
4. Civil Liability for Climate Harm Fact pattern: a financial institution finances activities resulting in quantifiable climate-related harm – e.g. through deforestation-linked lending – and the causal nexus between the financing and the harm can be established through attribution science and financial analysis.	Public Prosecution Service; NGOs; IBAMA; affected communities; individuals.	Civil Code (Law 10.406/2002), Arts. 186 and 927; Law 6.938/1981, Art. 14§1 (strict liability); Forest Code (Law 12.651/2012), Art. 1(I); PNMC (Law 12.187/2009); PL 993/2026 (if enacted: contribution-based causation standard).	Strict liability; causal nexus between financing and climate harm; climate attribution science; satellite-verified deforestation data (CMN 5.268/2025); subsidiary liability for licensed activities under Art. 58 LGLA (Law 15.190/2025), subject to pending constitutional review (ADIs 7.913, 7.916, 7.919).	Compensation to National Environmental Fund; collective moral damages (in re ipsa per STJ REsp 2.200.069/MT); injunction to cease financing harmful activities; restoration orders.	Causation is the threshold obstacle; strongest for deforestation-linked Bank Local Impact Claims where causal chain is more direct; Art. 58 LGLA weakens claim for licensed activities pending STF ruling; PL 993/2026 would substantially strengthen if enacted.

5. Greenwashing – Misleading Sustainability Claims Fact pattern: a financial institution makes public sustainability commitments – including net-zero pledges, green product labels, ESG fund classifications, or carbon offset claims – that are demonstrably and materially inconsistent with its actual financing conduct.	Consumer associations; Public Prosecution Service (via ACP); individual investors and clients; fund holders; shareholders ≥5% (derivative action, Art. 159 Corporation Law); CVM (administrative enforcement).	Consumer Protection Code (Law 8.078/1990), Arts. 30, 36, 37; Corporation Law, Art. 157; CVM Res. 59/2021; CVM Res. 193/2023 as amended by CVM Res. 244/2026; CMN Res. 5.185/2024 (mandatory CBPS disclosure with reasonable assurance for financial institutions); CVM Res. 175/2022 (ESG fund labelling); Civil Code, Arts. 186 and 927.	Demonstrable and material gap between disclosed sustainability commitments and actual financing conduct; misrepresentation in mandatory climate disclosures or green product marketing; use of unsubstantiated or invalid carbon credits to substantiate climate neutrality claims.	Correction and counter-advertising orders; disclosure injunctions; collective moral damages; compensation to affected investors and clients; administrative penalties; disgorgement of profits from misleading green products.	Rapidly growing category; evidentiary burden is the most manageable as mandatory assured disclosure expands; IDEC v GOL (2025) establishes domestic legal architecture directly applicable to financial institutions; likely to be the most dynamic litigation front in the near term.

Charles Clore House
17 Russell Square
London WC1B 5JP

T 020 7862 5151
E info@biicl.org

www.biicl.org

A company limited by guarantee
Registered in England No. 615025
Registered Charity No. 209425

British Institute of
International and
Comparative Law