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**Mr Ian Fry**

Special Rapporteur on human rights and climate change

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**Ref: Submission for Special Rapporteur’s call for inputs on the promotion and protection of human rights in the context of climate change - LACLIMA's International Climate Regime Working Group**

Dear Mr. Special Rapporteur,

This submission, signed by the International Climate Regime Working Group of the Latin American Climate Lawyers Initiative for Mobilizing Action (LACLIMA),[[1]](#footnote-1) presents contributions about the relationship between human rights and climate change in the Brazilian context.

**5. How are human rights considerations being incorporated into climate change litigation?**

The Inter-American Court of Human Rights has already acknowledged the interdependence and indivisibility between the protection of the environment, sustainable development, and human rights (paragraph 52). Further, the Court has recognized that the adverse effects of threats such as climate change undermine the effective enjoyment of human rights, including the right to life, health, food and water security, housing, and self-determination (paragraph 54).[[2]](#footnote-2)

Climate change has become an increasingly frequent topic in the Brazilian judiciary. In 2022, the Federal Supreme Court (STF, in the Portuguese acronym) saw seven climate cases, marking that year as “Pauta Verde” or the “Green Agenda.” One of these lawsuits is ADPF No. 708[[3]](#footnote-3), ruled on in 2022, which was filed by political parties to force the federal government to re-establish the funding mechanism and prohibit the freezing of revenues that make up the Climate Fund (an instrument to raise funds for actions that have the objective of mitigating climate change), which had been inoperative during the years 2019 and 2020. This decision by the Federal Supreme Court is a milestone for climate litigation and highlights the fact that human rights are being incorporated into litigation on climate change, making it clear that this type of meddling should not be repeated and emphasizing the importance of the Green Agenda in society.

ADPF No. 708 was also fundamental to promote knowledge and democratic processes related to climate change. Rapporteur Minister Luis Roberto Barroso held public hearings with a broad academic, scientific and non-governmental community, bringing forth a debate which included human rights. For instance, organizations with a focus on the rights of children and human rights more broadly (Instituto Alana and Conectas Direitos Humanos) participated in the public hearing and emphasized the importance of climate action to protect present and future generations, allowing them the enjoyment of their human rights.

Another important lawsuit was proposed by a group of young people, climate and human rights activists of Engajamundo and of Fridays For Future Brasil, young people being one of the groups most vulnerable to the impacts of climate change. This lawsuit was filed as a Popular Action, which may be filed by any citizen, and was aimed at the updated National Determined Contribution (NDC) which was less ambitious than the original NDC. The lawsuit still awaits a final decision; nonetheless, a preliminary result beyond the courtroom added pressure for Brazil to strengthen its NDC, as it ended up doing in 2022.

Thus, we can say that human rights considerations are being incorporated into litigation on climate change. Human rights organizations and political parties are also filing more climate lawsuits and participating in ongoing litigation as amicus curiae. This has stimulated more knowledge on climate litigation and climate change itself within politics and advocacy circles, leading to more climate advocacy cases, as well as legislative proposals and constitutional amendments that aim to increase the effectiveness of Brazil's normative legal guarantees.

**06. Are there issues with making the link between human rights and climate change litigation?**

The legal perspective on human rights in Brazil has an interesting evolutionary timeline. Human rights were first considered in law No. 4,319, on March 16, 1964, which created the Council for the Defense of the Rights of the Human Person and the Council for the Defense of Human Rights (Conselho de Defesa dos Direitos da Pessoa Humana - CDDPH, in Portuguese), a law that has already been revoked. The council from that law was transformed into the National Human Rights Council (Conselho Nacional dos Direitos Humanos, in Portuguese) by Law No. 12,986, on June 2, 2014. Nowadays, there are several laws that account for human rights, including the Paris Agreement, which has been incorporated into Brazilian law. Brazil’s constitution was even amended to include stronger adherence to international human rights treaties, considering them as constitutional amendments if they are adopted following the amendment procedure. If they are not, they are considered to be supralegal due to precedents set by the Brazilian Supreme Court (STF)[[4]](#footnote-4).

Brazil also has a strong framework of environmental laws and legal precedents for environmental protection. Although climate litigation is still in its initial phases, it has the advantage of building on affirmative jurisprudence. The environment is constitutionally protected by Article 225 of the Brazilian Constitution, which provides everyone the right to an ecologically balanced environment, an asset for common use by the people and essential to a healthy quality of life, imposing itself on the Public Power and to the community the duty to defend and preserve it for present and future generations.

The Eco-92 Conference in Rio de Janeiro introduced the principle of sustainable development, embodied in the necessary balance between socioeconomic growth and the adequate and reasonable use of natural resources. This new perspective demanded that states build more sophisticated public policies, attentive to the efficient management of raw materials, the diagnosis and control of environmental externalities, as well as the calculation of optimal levels of pollution. All these instruments align with the intergenerational justice perspective, as sustainable development establishes a bridge between the impacts caused by present generations and the way in which natural resources will be available for future ones.[[5]](#footnote-5) We can see some advances in the Brazil Supreme Court (STF) as lawmakers and justices understand the complex concepts behind climate change and how deeply connected it is to human rights. Human rights are complex in that they include Immigration and Refugee Rights, Water Access Rights, Housing Rights, Elders’ Rights, Women's Rights, LGBTQIA+ Community Rights, Children and Adolescents' rights, rights against racial, poor and living in the street people rights, and vulnerability citizens rights, democracy and the right of free association and corporate Right and all of those are interconnected with climate rights.

The UN is also helping. In the recently published Quarterly Report Q1 2023, UN Climate Change organized more than 10 mandated events to advance adaptation efforts, including a meeting of the Least Developed Countries Expert Group (LEG) that resulted in a work programme for 2023-24. The work programme will accelerate support to least developed countries (LDCs) in formulating and implementing their National Adaptation Plans (NAPs).

The connection between human rights and climate change litigation is not an obstacle in Brazil. STF has already identified the right to an ecologically balanced environment (Article 225 of the Constitution) as a human right in 1995. Moreover, recent climate litigation has recognized climate stability as part of an ecologically balanced environment, and thus, a human right.[[6]](#footnote-6)

**07. What do you think are the major barriers to initiating climate change litigation?**

Lack of information and access to justice, especially in terms of length and cost in filing lawsuits, are among the major barriers to initiating climate change litigation. On one hand, there are reduced legal barriers in Brazil, as the Law No. 4,717, of June 29, 1965 allows any citizen to propose a Popular Action, as long as he has a voter registration card or corresponding document. This allows them to be the author of a lawsuit with the aim of annulling any act of the public administration that has caused damage to government coffers, whether at the federal, state or municipal level. On the other hand, there are several costs which limit access to justice for the most vulnerable populations. For instance, registering documentation was not free in Brazil until Law No. 13,004, June 24, 2014. Additionally, citizens cannot litigate, in most cases, without potentially costly legal representation. Brazil's history with colonialism and slavery has historically created the conditions that limit educational attainment and therefore access to justice for those most impacted by environmental degradation and human rights violations. In turn, people whose voices are most necessary in affecting public policy and climate litigation are effectively shut out from these crucial processes.

Therefore, *yes*, there are problems with linking human rights and climate change litigation. The main difficulties faced in establishing this link are related to climate justice and intergenerational justice, as true justice deals not only with past, present and future generations, but with ancestry, ethnic diversity, and different privileges. If we do not protect indigenous peoples, riverside population, quilombolas, immigrants and refugees (including climate refugees), and children, they will undoubtedly be the ones most harmed.

**8. Are the barriers different in different parts of the world? What are they?**

Barriers to addressing climate change and implementing effective climate policies vary across regions, however, they can be classified as legal, economic, political, and social. Legal barriers: one legal barrier is the lack of comprehensive and enforceable international agreements on climate change. The interpretation and application of climate laws may vary between different jurisdictions, leading to legal inconsistencies and uncertainties. In Brazil for instance, the National Policy on Climate Change does not have an enforceable mitigation target. However, litigation has overcome that barrier by basing itself on the constitutional right of all to an ecologically balanced environment, as well as other enforceable provisions Furthermore, despite the lack of binding targets, both international treaties on climate change and the National Policy on Climate Change have been used as legal grounds for litigation.. Economic barriers: transitioning to a low-carbon economy requires significant investment. Some countries may face financial restrictions, making it difficult to transition to more sustainable practices. Political barriers: these can impede progress on climate legislation. Political will and leadership are crucial to enacting and enforcing effective climate laws, but conflicting agendas and short-term political considerations can impede progress. Social barriers: climate change is a global issue that requires collective action and public support. However, there may be social barriers such as lack of awareness - certain communities or industries may oppose climate policies due to perceived negative impacts on their livelihoods or economic interests. We will need to promote dialogue among stakeholders (governments, civil society, business) to overcome these barriers and develop effective climate laws and policies.

The issue of standing is not a barrier in Brazil, as all citizens have a right to an ecologically balanced environment and may file a Popular Action. Additionally, legally recognized non-profit organizations may file Public Civil Actions if their purpose includes a related matter, such as environmental protection or human rights.

**09. Is the judiciary in your country well equipped to understand the connection between human rights and climate change?**

It is unclear whether Brazil is well-equipped to understand such an important subject, as it was only in 1988 that the right to an ecologically balanced environment was enshrined in the constitution. However, climate change has recently attracted more attention due to its urgency. Therefore, it can be said that the Brazilian judiciary’s understanding of the connection between human rights and climate change is still in the process of being fully realized, despite the resolution of important climate litigation, such as the ruling of ADPF No. 708.

**10. How could this be improved?**

Improvement comes with time and good decisions. The protection of environmental law as a constitutional right in Brazil, as previously mentioned, is quite recent. Actions such as regulating, inspecting, supervising, mitigating, establishing goals and plans, and making information publicly accessible in an uncomplicated way must still be adopted by federated entities and private companies alike. This will make day-to-day activities such as riding a bicycle to work, or if necessary, a car fueled with ethanol, having your own vegetable garden, and simply engaging in more sustainable actions easier to be applied. It will also make clear to society the consequences of climate change, as environmental damage affects all human rights throughout the world, since full enjoyment of these rights depends on an appropriate environment.

**11. Are there particular issues with getting access to the courts?**

In Brazil, there are several obstacles in the way of accessing justice, involving not only the judicial sphere but also social and financial barriers. For example, the lack of recognition of state institutions as a means of achieving justice, popular distrust of legal institutions, non-universality of laws, and a lack of knowledge about the justice system. We can especially highlight the economic connection and the sociocultural impasses related to the right to access information, something that directly influences the growth of inequalities in the judicial process. Still, the procedural slowness, whose continuous growth of processes entails in the delay of the due obligations and judicial decisions.

1. This submission includes contributions from: Enéas Xavier de Oliveira Jr; Bruna Baltazar Pedicino; João Maria Botelho; Vitor Goulart Nery; Anna Cárcamo; Lais Paiva Siqueira; Manuella Gabrielly O. de Oliveira; Gysele Maria da Cunha Bastos. [↑](#footnote-ref-1)
2. Inter-American Court of Human Rights. Advisory Opinion OC-23/17, requested by the Republic of Colombia. “The environment and human rights” (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity: interpretation and scope of articles 4(1) and 5(1) in relation to articles 1(1) and 2 of the american convention on human rights). November 15, 2017. [↑](#footnote-ref-2)
3. In literal translation into English, the acronym “ADPF” stands for Argument of Noncompliance with a Fundamental Precept. [↑](#footnote-ref-3)
4. The recognition of the Paris Agreement as a treaty on human rights was yet another advancement resulting from the ruling of ADPF No. 708. [↑](#footnote-ref-4)
5. The Action for Declaratory of Constitutionality No. 42, ruled by the Supreme Court (STF).. [↑](#footnote-ref-5)
6. It was another advancement resulting from the ruling of ADPF No. 708.. [↑](#footnote-ref-6)