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Development banks and climate change: the need to incorporate climate criteria into BNDESPAR's investment portfolio

— *Júlia Mello Neiva*

THE SOVEREIGNTY AND CLIMATE CENTER

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Executive summary

Brazil is the fifth largest global contributor to greenhouse gases and is already suffering dramatically from the impacts of climate change. Temperatures, rainfall, and rainfall regimes have changed throughout the country. Moreover, sandstorms, floods and landslides have become frequent in several states and have left a trail of destruction and death.

In this context of ecological collapse and climate emergency, companies in the intensive carbon sectors are among the main responsible for deforestation and fires. In Brazil, one of the ways to reverse this scenario is to readjust its economy, through financial institutions, and to effectively align with the commitments made by the country to meet the goals of the Paris Agreement and the National Policy on Climate Change (PNMC, in Portuguese), providing a fair and socially responsible transition.

In this article, I will deal especially with the role of the Brazilian Development Bank (BNDES, in Portuguese) and BNDESPAR (BNDES Participações S.A., in Portuguese)¹ to fulfill their responsibility to invest public resources in achieving the institutional mission of promoting sustainable national development, and to contribute to the confrontation of the climate crisis, based on inputs and opinions prepared for the public civil action (Conectas, 2022a) filed by Conectas Human Rights in the face of the BNDES system on this subject (Conectas, 2022b)

KEYWORDS

BNDES. BNDESPAR. Climate Crisis. Responsibility.

1. The BNDESPAR is a public company, created in 1982, and a subsidiary of BNDES. It has legal personality under private law, whose sole shareholder is the Brazilian Federal Government.

Development banks and climate change: the need to incorporate climate criteria into BNDESPAR's investment portfolio

Júlia Mello Neiva²

1. Introduction

This article deals with the relationship of sustainable national development, led by development banks, in the context of climate change. I will approach the role of the Brazilian Development Bank (BNDES) and BNDESPAR (BNDES Participações S.A.) to fulfill their responsibility to invest public resources in achieving the institutional mission of promoting sustainable national development, and to contribute to the confrontation of the climate crisis, based on inputs and opinions prepared for the public civil action filed by Conectas Human Rights in the face of the BNDES system on this subject.

In the second section, the article discusses the relationship between climate change and human rights. The third section deals with the relationship and duty of the BNDES system, including BNDESPAR, to combat the climate crisis and readjust the Brazilian economy to comply with national and international obligations in accordance with the Paris Agreement and the National Policy on Climate Change (PNMC). Then, the article brings to the fore the main points demanded in the lawsuit against BNDES and BNDESPAR, as I have mentioned. The fifth section presents final considerations on the subject, and in the last part, it gives recommendations on how the BNDES system, including the BNDESPAR system, must act to fulfill their mission.

Among the main recommendations presented here, I highlight that the actions of BNDES and BNDESPAR need to be accountable to society, explaining their choices and their criteria. To this end, BNDESPAR must adopt climate criteria in decisions on investment and divestment and on monitoring the progress, in terms of reducing emissions of the companies that are part of its portfolio and informing how it considers climate risks and opportunities in its investment, divestment and reinvestment decisions. It is also recommended that the bank make a Greenhouse Gas Emission Reduction Plan that guarantees an alignment of BNDESPAR's performance with Brazil's goals under the Paris Agreement and the PNMC rules. This plan should be built with the effective participation of representatives of civil society, public agencies and academia, as well as all traditional populations, peoples and communities that develop socioeconomic activities directly affected by climate change, including indigenous and *quilombola* peoples. It is important to recall that alignment with the climate

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transition is a constitutional, legal and conventional duty to pursue sustainable development and to maximize public resources and instruments.

2. Climate change and human rights

The climate crisis is a real and effective emergency for humanity. António Guterres, Secretary General of the United Nations (UN), recently stated that we are increasingly close to a climate catastrophe (G1, 2022). According to data from the System for Estimating Greenhouse Gas Emissions (SEEG), Brazil is the fifth largest global contributor to greenhouse gases (accounting for 3.2% of total emissions) (Observatório do Clima, 2021). And, in this context, it is increasingly approaching the point of no return³ in relation to the Amazon. As Txai Suruí, an indigenous and activist, recently stated: “Without the Amazon, we have no prospect of a tomorrow” (Arcoverde, 2022).

This perception that climate change is already occurring has been gradually observed by various sectors of society and governments. Risks that were predicted for an uncertain future, unfortunately, are happening more frequently. Torrential storms — such as the tragic ones in Bahia and Rio de Janeiro —, droughts — in the northeast, in the most central areas of the country, and in the Amazon — and other extreme conditions and socio-environmental disasters have left a trail of destruction and death.

“If current trends continue, the planet will continue to warm up and become a more unsafe place. Our future as humanity in connection with nature depends on the choices we make today.”

It is necessary to recognize the role of the IPCC (Intergovernmental Panel on Climate Change)⁴, which has contributed since 1988 with its accurate (and alarming) reports to demonstrate how emissions of greenhouse gases and other pollutants are changing the climate and, among other aspects, how the climate responds to human influence and what we can expect from different scenarios of additional increase in global warming⁵. They demonstrate that raising the planet’s average temperature by more than 1.5°C over the next 20 years will make extreme weather phenomena more frequent and violent and will negatively impact the enjoyment of several human rights, especially the right to life, health and food. If current trends continue, the planet will continue to warm up and become a more unsafe place. Our future as humanity in connection with nature depends on the choices we make today.

Several states have been committed to reducing gas emissions to fulfill their promises signed in the Paris Agreement, an instrument in which countries have committed to climate goals imposed by themselves⁶ and that depends on the use of domestic policies and instruments, as well as the control of private sector emissions. As it seems, it hasn’t been enough and there is a forecast of a 13% increase in greenhouse gas emissions by 2030 (Nações Unidas Brasil, 2021), even if the 191 State Parties to the Paris Agreement meet their climate targets.

In the case of Brazil, the country has regressed in combating greenhouse gas emissions and its goals will lead to increased emissions, according to the Emissions Gap Report 2021 (UNEP, 2021). The Nationally Determined Contributions (NDC), updated by Brazil in December 2020,

3. The point of no return, an expression that derives from the English term tipping point, is a maximum limit in which there is such an imbalance that it is impossible to return to a previous situation. In the case of the Amazon, the term has been used by several researchers to define a state in which the forest would be so deforested and destroyed, that it has gradually undergone a process of savannization, and this process may be irreversible.

4. The IPCC is a scientific-political organization created within the framework of the United Nations (UN) by the initiative of the United Nations Environment Programme (UNEP) and the World Meteorological Organization (WMO).

5. This is the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, known as AR6 and released on August 9, 2021. The report is one of the most up-to-date documents in the series of major documents that the IPCC has been producing since 1990, and reinforced the conclusions of previous reports that climate change is real and caused by human activities. About 517 scientists worked on the document, analyzing more than 14,000 scientific studies, and the text was approved by representatives of 195 governments. The first volume of the Sixth Report consisted of the executive summary of the volume The Physical Science Basis of Climate Change.

6. In this regard, the Paris Agreement provides for “nationally determined contributions”.

“Deforestation, combined with the institutional dismantling of environmental and control agencies, causes concrete dangers that intensify the climate crisis.”

“leads to an absolute increase” in emissions, adding about 300 million tons of CO₂ per year (Poder 360, 2021).

It is not surprising if we consider Brazil’s almost non-existent confrontation with climate change in recent years, due to a totally discontinued socio-environmental policy. Deforestation, combined with the institutional dismantling of environmental and control agencies, causes concrete dangers that intensify the climate crisis. A study by the National Institute for Space Research (INPE), published in 2021 in the journal *Nature*, concluded that due to deforestation and degradation processes, parts of the Amazon have lost their function as a carbon sink becoming, on the contrary, net carbon emitters (Gatti *et al.*, 2021). Deforestation in the country has increased exponentially in recent years. According to data from SEEG, linked to the Climate Observatory (2021), Brazil’s greenhouse gas emissions rose 9.6% in 2019 (Girard, 2020). And deforestation is the main source of emissions of these gases in the country (Escobar, 2020). Data from INPE (2020a) referring to 2020 show that deforestation rates in the Amazon increased by 9.5% in 12 months (Escobar, 2020), which is equivalent to a devastation of almost eight times the area of the city of São Paulo, about 11 thousand square kilometers of forest (INPE, 2020b). In the *cerrado*, the increase was about 13% (INPE, 2020c).

The *Pantanal*, the Amazon and the *Pampas* were the main biomes affected by the intense fire outbreaks suffered by the country (G1, 2020). Also, there was an increase of about 200% between 2019 and 2020 in the case of the *Pantanal* (Haje, 2020).

Another notable example of a setback is the stoppage, in 2019, of the Brazilian National Fund on Climate Change (Fundo Clima), the country’s main agency in tackling global warming. Its budget derives precisely from oil royalties and loans granted by BNDES. The federal government’s decision was questioned by the Brazilian Federal Supreme Court (STF), which has already recognized the need to assess the existence of an “unconstitutional state of affairs in environmental and climate matters”. The case was tried in July 2022, and the Supreme Court affirmed the importance of the National Fund on Climate Change for climate confrontation and stated that “the Executive Branch has a constitutional duty to make the resources of this Fund work and allocate annually for climate change mitigation purposes and its contingency is prohibited, due to the constitutional duty to protect the environment, international rights and commitments assumed by Brazil, as well as the constitutional principle of separation of powers” (Menegassi, 2022).

“The impacts caused by environmental degradation and climate change are strongly related to race, gender, age, geographical aspects, among others. People and communities in situations of diverse vulnerabilities are the main ones affected by socio-environmental and natural or human-caused disasters...”

At the international level, the UN has recognized the emergence of climate change and emphasized its unfair character in terms of related damage. “The worst impacts affect those who contributed least to the problem and who have less resources to adapt and deal with these impacts”, says the United Nations Rapporteur on Human Rights and the Environment (United Nations, 2019). This analysis of the various impacts for different groups was also recognized by the IPCC. The impacts caused by environmental degradation and climate change are strongly related to race, gender, age, geographical aspects, among others. People and communities in situations of diverse vulnerabilities are the main ones affected by socio-environmental and natural or human-caused disasters (IPCC, 2014). In the Brazilian case, civil society organizations, researchers, scholars, social and environmental movements have been denouncing that the increase in these rates in the country is the result of a policy of reversing the trajectory of environmental protection (Escobar, 2020), in the face of a framework of government omission and permissiveness.

This indicates that dealing with climate change also means understanding the impacts that such changes have on populations, so it is not just a strictly environmental issue and, clearly, it is not possible to separate them.

In this context, the main responsible for deforestation and fires are intensive carbon companies. One of the ways to reverse this scenario is for the country to re-engage its economy, effectively aligning the commitments made by the country to meet the goals of the Paris Agreement and the National Policy on Climate Change (PNMC), towards a fair and socially responsible transition.

After this contextualization, this text aims to analyze and discuss the role of the main state funders. In this sense, the institutional mission of BNDES and BNDESPAR must be remembered, namely: to fulfill its responsibility to use public resources to achieve its institutional mission of promoting sustainable national development, including contributing to the confrontation of the climate crisis (BNDES, 2021).

For this analysis, I will use inputs and opinions contained in the public civil action filed by Conectas Human Rights demanding transparency, information and responsibility in combating the climate crisis before BNDES and BNDESPAR.

3. The role of the BNDES and BNDESPAR System in combating the climate crisis

The BNDES was created by the Brazilian State in the early 1950s to finance national companies and to foster the economic and social development of the country in accordance with the policies and priorities of the federal government. The bank has two modes of operation: granting credit and buying shares. This last form of financial contribution is operationalized by BNDESPAR, a company created in 1982 and a subsidiary of BNDES — which, in turn, belongs entirely to the Federal Government. The BNDESPAR is a public company with legal personality under private law, whose sole shareholder is the Federal Government.

These two companies are the main financiers of the Brazilian economy and decisive agents for fulfilling national emission reduction targets to induce a fair transition in the most diverse sectors of the market. As public companies, BNDES and BNDESPAR also have an obligation to ensure maximum effectiveness in the design of their policies and to control the social, environmental and human rights impacts of their disbursements.

Nevertheless, BNDESPAR does not have a policy of action that includes climatic criteria nor does it disclose information on greenhouse gas emissions related to its investment portfolio. Some of its internal documents, such as the Reference Form, even state that the company's activity does not present socio-environmental risks. These are indications that BNDESPAR and its controller, BNDES, are disregarding the climate impacts of their business.

It is important to understand that climate damage, despite multilateral efforts, increases every day and that BNDESPAR's performance, as an important development instrument in the country, contributes to the aggravation of these damages by disregarding the climatic variable in its operations.

“Although BNDES has developed some initiatives to incorporate climate into its financing portfolio, BNDESPAR's investment portfolio is composed of large emitters of greenhouse gases in various economic sectors”

While BNDES operates essentially in financing and granting of credits to companies and projects, BNDESPAR operates in investments in equity positions, acquiring shares and debentures of publicly-held and closed-held companies. Although BNDES has developed some initiatives to incorporate climate into its financing portfolio, BNDESPAR's investment portfolio is composed of large emitters of greenhouse gases in various economic sectors (BNDES, 2022) (especially those of oil and gas, slaughterhouses, mining and electricity). As it is noticed, BNDESPAR's investment and divestment decisions have the potential to induce the main issuing sectors to align with Brazilian climate goals.

All countries have self-imposed climate targets, under the Paris Agreement, that depend on the effective use of domestic policies and instruments as well as private sector emissions. In this context, development banks have received greater scrutiny on the climate impacts of their activities, and the same applies to projects supported by the Green Climate Fund (GCF).

About 450 public development banks (IISD, 2020) — which together invest about 2.3 trillion dollars annually, which represents approximately 10% of all global investments from public and private sources — committed themselves in 2020 to use their considerable financial

power to contribute to the green economic recovery in response to the climate crisis and the pandemic (Finance in Common, 2020). The World Bank announced that 100% of its new operations will be aligned with the Paris Agreement from July 2023 on (The World Bank, 2021). And the United States Treasury issued guidelines opposing the financing of fossil fuels by the multilateral development banks of which it is a shareholder (Lawder, 2021).

In this sense, the BNDES System is a decisive agent in promoting the Brazilian economic transition. It is crucial that it uses its repertoire of company capitalization policies with a view to better achieving climate goals. It is worth mentioning that the BNDES System has sectorial intelligence, with project selection and evaluation teams organized according to the segments of the Brazilian economy.

Despite being public companies designed to foster the development of the country, BNDES and BNDESPAR have unfortunately contributed decisively to the worsening of the climate crisis and its effects on human rights.

The adoption of climate criteria to ensure a balanced environment is not optional because the Public Administration and State institutions, such as BNDES and BNDESPAR, have the prerogative to support the country in the fulfillment of its international commitments, constitutional guarantees and ordinary laws, including the one that instituted the PNMC. These companies cannot be part of the problem, they can and should be part of the solution.

Just as BNDESPAR managers are not free to ignore risks and failures in their decisions, nor can they disregard the legal parameters related to climate. The BNDES System is in a privileged position to induce the decarbonization of the Brazilian economy, leverage sustainable projects and, at the same time, reduce the economic risks associated with the transition and the climate emergency itself.

“The BNDES System is in a privileged position to induce the decarbonization of the Brazilian economy, leverage sustainable projects and, at the same time, reduce the economic risks associated with the transition and the climate emergency itself.”

4. Lawsuit demands commitment of BNDESPAR with climate goals

Conectas Human Rights (Conectas, 2022c), through a Public Civil Climate Action, argues in its lawsuit before the BNDES System that BNDESPAR does not have rules or protocols to assess the impacts of its investments in the worsening of the climate crisis — in violation of the commitments made by Brazil under the 2015 Paris Agreement and the PNMC, among other provisions.

Based on two technical opinions, Conectas requests that Justice oblige BNDESPAR and its controller, BNDES, to create rules and mechanisms that link their investments and divestments to reducing greenhouse gas emissions by the financed companies. In practice, a victory would lead BNDESPAR to refrain from investing in businesses that aggravate climate change.

The first opinion, prepared by the Climate Center of Coppe/UFRJ (Center for Integrated Studies on Climate Change and the Environment) and coordinated by professor Emilio Lèbre La Rovere, demonstrates that at least 65% of BNDESPAR’s assets are allocated to companies that are intensive in greenhouse gas emissions. The calculation was made from the analysis of reports published by the companies themselves and took as reference a sample of 85% of the investment portfolio of the state-owned company which was concentrated in ten companies from oil and natural gas, electricity, meat production, mining, paper and cellulose sectors until March 2021.

Coppe’s technical opinion also revealed that BNDESPAR is not very transparent and did not include climate criteria and risks in its investment and divestment analyzes. La Rovere was part of the IPCC group of scientists who won the Nobel Peace Prize in 2007 together with former Vice President of the United States, Al Gore.

The second opinion is signed by professor Mario Schapiro, from FGV São Paulo Law School, and maintains that BNDESPAR has a legal duty to contribute to the achievement of the climate goals and obligations established by Brazil under the Paris Agreement and the PNMC, in addition to the indirect duty to facilitate public control over its decisions and improve information governance.

The case relies essentially on three main instruments:

- 1) the United Nations Framework Convention on Climate Change (UNFCCC), which was operationalized through the 2015 Paris Agreement (replacing the Kyoto Protocol);
- 2) the Federal Constitution, especially the article 225 on the right of all to an ecologically balanced environment and the duty of the Government to preserve it for present and future generations; and the article 170, which supersedes the safety of the environment to economic and business interests; and
- 3) Law 12.187/09, which instituted the National Policy on Climate Change and, among other things, determined that the financial mechanisms and the credit and financing lines of public and private agents are PNMC instruments.

In addition to these provisions, the action refers to the Forest Code, which imposes the duty to respect the integrity of the climate system and to the international voluntary commitments such as the UN Guiding Principles on Business and Human Rights.

5. Conclusion

The climate transition will only be guaranteed when the climate becomes a public good of civil society, rejecting policies misaligned with the future of the planet. For the construction of a public good and the achievement of the corresponding social control, it is necessary to establish a system of public governance, based on art. 225 and 170, V of the Federal Constitution, also in the light of the Brazilian climate legal framework, in the establishment of goals, in the publicization of instruments and in the accountability of costs incurred and benefits achieved.

As stated by the IPCC (2021), the catastrophic scenario can only be reversed with “fast, deep and immediate” cuts in greenhouse gas emissions. BNDESPAR must and can contribute to these cuts.

6. Recommendations

- The activities of BNDES and BNDESPAR need to be accountable to society, explaining their choices and criteria;
- BNDESPAR must adopt climate criteria in decisions on investment and divestment and on monitoring the progress, in terms of reducing emissions of the companies that are part of its portfolio;
- BNDESPAR must make a Greenhouse Gas Emission Reduction Plan that guarantees an alignment of BNDESPAR's performance with Brazil's goals under the Paris Agreement and the PNMC rules. This plan should be built with the effective participation of representatives of civil society, public agencies and academia, as well as all traditional populations, peoples

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“The BNDES System needs to inform if and how it considers climate risks and opportunities in its investment, divestment and reinvestment decisions.”

and communities that develop socioeconomic activities directly affected by climate change, including indigenous and *quilombola* peoples;

- It is important that the system has the technical and governance conditions to assess the achievement of the goals established in the Greenhouse Gas Emission Reduction Plan, diagnosing the evolution of the national and global climate emergency plan and context;
- The System must maintain a qualified technical team, including engineering and data scientists teams, capable of gathering greenhouse gas emissions data and socio-environmental and climate impact metrics to support the work of the system;
- BNDESPAR’s investment decisions can and should induce the intensive carbon sectors to align with the goals of the Paris Agreement and the PNMC;
- Considering that the BNDES System has historically changed “market prices”, inducing entrepreneurs to make investments that would not be made without the Bank’s induction, it is argued that the most appropriate way to materially comply with the Paris Agreement and the PNMC is once again to induce behaviors for new productive specializations — in the specific case of BNDESPAR, through the acquisition of securities from companies —, and, therefore, the BNDES System is a decisive agent to promote the Brazilian economic transition. It is urgent and necessary, therefore, that it uses its repertoire of company capitalization policies with a view to better achieving climate goals;
- It is important to recall that alignment with the climate transition is a constitutional, legal and conventional duty to pursue sustainable development and to maximize public resources and instruments;
- The case of financing green segments and favorable to the climate transition tends to be favored if the BNDES financing goals are to be defined publicly, in annual or multiannual rituals. The BNDES System needs to inform if and how it considers climate risks and opportunities in its investment, divestment and reinvestment decisions;
- The System needs to incorporate climate criteria into the analysis of investments and divestments from the perspective of promoting sustainable national development and the transition to a low-carbon economy;
- The System needs to prepare and/or analyze inventories of Greenhouse Gas emissions from Scopes 1, 2 and 3, corresponding to its shareholdings, and analysis of the adequacy or inadequacy of its trajectories to the goals of the Brazilian NDC;
- BNDESPAR must provide for socio-environmental compensation, preferably aimed at supporting the containment of damage caused by climate change, whenever the goals are not met. ■

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