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**Shaping corporate responsibility
in Latin America to address the
challenges of climate change and
the energy transition**

**Moldando a responsabilidade
corporativa na América Latina
para enfrentar os desafios
das mudanças climáticas e da
transição energética**

Daniel Iglesias Márquez

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INTERDISCIPLINARY APPROACHES TO BUSINESS &
HUMAN RIGHTS: AN ASSESSMENT OF THE FIELD 10+
YEARS FROM THE UNGPs

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Shaping corporate responsibility in Latin America to address the challenges of climate change and the energy transition*

Moldando a responsabilidade corporativa na América Latina para enfrentar os desafios das mudanças climáticas e da transição energética

Daniel Iglesias Márquez**

Abstract

The climate emergency in the Americas requires urgent action by states and corporations to address the negative consequences of climate change on human rights. This article focuses on the corporate responsibility to respect human rights and the environment in the context of the climate emergency and the energy transition in Latin America through a critical and qualitative analysis of the implementation of the standards of the Inter-American Human Rights System. These seek to ensure, through state action, an enabling environment in which corporations take into account their climate impacts as part of their responsibility to respect human rights and, at the same time, prevent and remedy the adverse consequences of their energy transition commitments, plans, and projects on human rights and the environment.

Keywords: business; human rights; climate change; energy transition; climate litigation; climate due diligence.

Resumo

A emergência climática nas Américas exige ações urgentes dos estados e das empresas para enfrentar as consequências negativas das mudanças climáticas sobre os direitos humanos. Este artigo foca na responsabilidade corporativa de respeitar os direitos humanos e o meio ambiente no contexto da emergência climática e da transição energética na América Latina, por meio de uma análise crítica e qualitativa da implementação dos padrões do Sistema Interamericano de Direitos Humanos. Esses padrões buscam garantir, por meio da ação estatal, um ambiente em que as empresas considerem seus impactos climáticos, prevenindo e remediando as consequências adversas de seus compromissos de transição energética sobre os direitos humanos e o meio ambiente.

Palavras-chave: empresas; direitos humanos; mudança climática; transição energética; litígios climáticos; diligência climática.

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** Assistant Professor of Public International Law and International Relations at the University of La Laguna. This paper has been developed within the framework of the research project “Challenges of the European Energy Transition: Human Rights, Responsible Business Conduct, and Socio-Environmental Conflicts in the Global South” (ICI02724000017), funded by the International Catalan Institute for Peace, and the R&D project “PID2023-146791NB-I00: State Sovereignty over Natural Resources and the Global Race for Strategic Minerals for the Energy Transition: The Basis for a Sustainable and Just Future?” funded by MICIU/AEI/10.13039/501100011033/FED-ER/UE.
Email: diglesim@ull.edu.es

1 Introduction

Latin America as a region is highly exposed and vulnerable to climate change. Its negative consequences are amplified by inequality, poverty, population growth, and high population density, as well as changes in land use, particularly deforestation, land degradation, and national and local economies' high dependence on natural resources for the production of goods.¹ This highlights the need for urgent mitigation and adaptation measures to address the climate emergency. These measures should focus on protecting human rights and the environment, seeking to implement responses to climate change and its effects that are environmentally and socially just and equitable.

The urgent need to address the climate emergency is not only incumbent on states but also on other actors that have historically contributed and continue to contribute to climate change, such as corporations. These actors affect the global climate system through greenhouse gas emissions generated by their activities, business relationships, products, and services. Advances in climate science have been able to quantify the historical contribution of different corporate actors to the climate crisis, as well as to associate these emissions to specific extreme weather events that have direct effects on the enjoyment of human rights. Thus, it has been possible to establish a link between companies' activities and the increase in global atmospheric CO₂, surface temperature, sea level, and ocean acidification.² Scientific evidence has shown that 90 fossil fuel and cement companies, known as «Carbon Majors», have been responsible for 63% of cumulative global emissions between 1751 and 2010.³ Several of the *Carbon Majors*, such as *Pemex*, *Petroleos de Venezuela*, *Petrobras*, *Cemex*, and *PetroEcuador*, are based in Latin American countries. Others, such as BP,

Shell, Total and RWE and Repsol, are based in the Global North but have operations in the region.

Although international climate change laws do not impose direct obligations on companies, Decision 1/CP.21 accompanying the adoption of the Paris Agreement encourages the private sector to increase its efforts and support measures to reduce emissions, increase resilience, and reduce vulnerability to the adverse effects of climate change. Though still in a limited way, more and more companies in the region have established commitments, plans, and targets for net zero emissions or policies and actions. These will contribute to the transformation of the energy sector through the implementation of renewable energy projects or the extraction of «transition minerals» as a key strategy to address climate change.⁴ However, many of these climate and energy transition commitments, policies, and actions towards a decarbonized and resilient economy have mainly followed wealth accumulation patterns, reproducing the negative impacts of traditional fossil fuel extractivist models on human rights and the environment.

In short, it is not only historical and current corporate emissions that have a negative and disproportionate impact on nature and the enjoyment of human rights, but also corporate energy transition projects that aim to address climate change. This research addresses how Latin American states, in compliance with their obligations under the Inter-American Human Rights System (IAHRS), must ensure that companies take into account their climate impacts as part of their responsibility to respect human rights. It also analyzes how states should ensure that corporate climate actions, commitments, and energy transition projects are fair, inclusive, and based on human rights and environmental protection. This work aims to explore the Inter-American Standards on Business and Human Rights through a deductive analysis, reviewing their implementation by IAHRS states to create an enabling environment in which companies can fulfill their responsibility to respect human rights and protect the environment in the context of the climate emergency and energy transition in Latin America.

Therefore, the hypothesis of this research is that Latin American states, through the implementation

¹ CASTELLANOS, Edwin *et al.* (ed.). *Climate Change 2022: impacts, adaptation and vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge/New York: Cambridge University Press, 2022. p. 1689-1816.

² FRUMHOFF, Peter C.; HEEDE, Richard; ORESKES, Naomi. The climate responsibilities of industrial carbon producers. *Climatic Change*, v. 132, p. 157-171, 2015.; MARJANAC, Sophie; PATTON, Lindene. Extreme weather event attribution science and climate change litigation: an essential step in the causal chain? *Journal of Energy and Natural Resources Law*, v. 36, n. 3, p. 265-298, 2018.

³ HEEDE, Richard. Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers: 1854–2010. *Climatic Change*, v. 122, p. 229-241, 2014.

⁴ UNITED NATIONS. *Theme Report on Energy Transition. Towards the Achievement of SDG 7 and Net-Zero Emissions*. New York: Department of Economic and Social Affairs, United Nations, 2021.

of Inter-American standards, can establish an effective normative framework that ensures companies take into account the climate impacts of their activities, and that their actions related to the energy transition are fair, inclusive, and environmentally respectful. This would contribute to addressing the climate emergency and safeguarding human rights in the region.

To this end, this research first explores climate change and corporate responsibility as issues that are part of the regional agenda established by the Organization of American States (OAS). Second, it examines the IA-HRS approach to climate change and the complex relationship between business and human rights. Third, it analyzes and discusses the implementation of Inter-American Standards on Business and Human Rights in the context of the climate emergency and the energy transition in Latin America. Finally, final considerations and conclusions are provided on the issues addressed in this research.

2 Climate change, human rights, and corporate responsibility on the regional agenda

Climate change and the corporate responsibility to respect human rights and protect the environment form part of the Latin American regional agenda. However, they have not always been addressed in a coordinated manner, but rather in a fragmented way without considering how they are interrelated. In this sense, the OAS, as a political forum that brings together most of the countries in the Latin American region, has played an important role in advancing cooperation and policies on climate change.⁵ Since the late 1990s, the OAS General Assembly has adopted several resolutions calling on the organization's member states to implement actions and coordinate efforts to address the impacts of climate change in the region.

In 1999, the OAS General Assembly adopted Resolution AG/RES. 1674 (XXIX-O/99) on climate change in the Americas, which recognized, on the one hand, that climate change is a common concern for humanity

and, on the other hand, the urgent need for all OAS member states to start planning for adaptation to climate change and to adopt measures to mitigate the possible adverse effects of climate change in the Americas.⁶ This was also addressed in Resolution AG/RES. 1736 (XXX/O/00), on the socioeconomic and environmental effects of climate change in the countries of the Hemisphere, which instructed the General Secretariat to mobilize resources to assist member states in their efforts to adapt to climate change.⁷ Resolution AG/RES. 1864 (XXXII-O/02) urged member states to develop strategies to mitigate and adapt to climate change through development policies and planning initiatives.⁸

The OAS General Assembly has considered the impacts of climate change as a threat that jeopardizes the necessary conditions for the enjoyment of human rights in the region. In this sense, Resolution AG/RES. 2349 (XXXVII-O/07), on water, health and human rights, encouraged actions to address the effects of climate variability and change on water resources, drinking water supply, and sanitation, with special emphasis on the prevention of risks associated with environmental management, as well as the degradation of watersheds and wetlands.⁹ Even more relevant is Resolution AG/RES. 2429 (XXXVIII-O/08), which explicitly recognized the relationship between climate change and human rights, expressing concern about the effects of this anthropocentric phenomenon on the full enjoyment of human rights and urging states to increase their resilience to climate change.¹⁰

Thus, Resolution AG/RES. 2588 (XL-O/10), on climate change in the countries of the Hemisphere, recognized that climate change not only degrades the quality of life and the environment of present generations, but also of future generations, and therefore recommended increasing efforts to mitigate greenhouse gas (GHG) emissions.¹¹ In this regard, Resolution AG/

⁵ OAS. *Climate Change: a comparative overview of the rights based approach in the Americas*. Washington D.C.: Department of Sustainable Development of the General Secretariat of the Organization of American States, 2016.

⁶ ASAMBLEA GENERAL DE LA OEA. *Los cambios climáticos en las Américas*. AG/RES. 1674 (XXIX-O/99). 1999.

⁷ ASAMBLEA GENERAL DE LA OEA. *Los efectos socioeconómicos y ambientales del cambio climático en los países del Hemisferio*. AG/RES. 1736 (XXX-O/00). 2000.

⁸ ASAMBLEA GENERAL DE LA OEA. *Los efectos socioeconómicos y ambientales del cambio climático en los países del Hemisferio*. AG/RES. 1864 (XXXII-O/02). 2002.

⁹ ASAMBLEA GENERAL DE LA OEA. *El agua, la salud y los derechos humanos*. AG/RES. 2349 (XXXVII-O/07). 2007.

¹⁰ ASAMBLEA GENERAL DE LA OEA. *Derechos humanos y cambio climático en las Américas*. AG/RES. 2429 (XXXVIII-O/08). 2008.

¹¹ ASAMBLEA GENERAL DE LA OEA. *El cambio climático en*

RES. 2649 (XLI-O/11) emphasized that OAS member states face significant risks caused by the adverse effects of climate change and, therefore, share the responsibility to find equitable and effective solutions under the principle of common but differentiated responsibilities and their respective capabilities. The Assembly resolved that states should work to strengthen climate resilience and promote capacity building and information exchange related to this global crisis.¹²

More recently, in Resolution AG/RES. 3001 (LIII-O/23) «Toward Improved Climate Financing», the OAS General Assembly recognizes that Latin American countries are continually and increasingly affected by extreme weather events. It is also deeply concerned by the conclusions of the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC), which clearly states that «the scope and magnitude of the impacts of climate change are greater than those estimated in previous assessments» and that ecosystems and human systems are being greatly affected, especially in the regions of Central and South America. Therefore, the General Assembly has encouraged OAS member states and permanent observers to scale up the provision and mobilization of climate finance in compliance with the commitments of the Paris Agreement.¹³

In October 2023, within the framework of the OAS, the member states adopted the Nassau Declaration (CIDI/RIMDS-IV/DEC. 1/23) and the Inter-American Climate Change Action Plan 2023-2030 (CIDI/RIMDS-IV/doc. 7/23 rev.2), which contain a set of commitments and strategic guidelines that seek to promote actions to develop innovative solutions to climate change. The Declaration recognizes the need to make concerted efforts for climate action in the Americas, in coordination with the private sector, among others. Thus, the OAS has proposed strengthening the implementation of climate mitigation actions by reducing, sequestering, and eliminating GHG emissions through fair energy transitions towards clean, renewable, affordable, reliable, sustainable, and modern energy technologies, moving away from emission-intensive energy sources. It also promotes the protection of human rights defenders, particularly indigenous peoples and lo-

cal communities. The Inter-American Plan of Action, which serves to implement the Nassau Declaration, contains a series of actions to accelerate transitions to clean, sustainable, renewable, and equitable energy in Latin America.

While the Nassau Declaration emphasizes collaboration with the private sector for climate action, previous General Assembly resolutions do not mention the role of the private sector, including business, in combating climate change, nor do they address the extent to which states should involve companies in climate action to address the negative impacts of GHG emissions. In this regard, while several companies in the region are committed to the fight against climate change, empirical evidence shows that climate action is not yet an integral part of the business strategy of Latin American companies. Although many companies state their commitment to contribute to Goal 13 of the Sustainable Development Goals (SDGs), few actually have an emissions reduction target, plan, or commitment to reach carbon neutrality by 2050. They also rarely report annually on their emissions and their contribution to the SDGs.¹⁴

In relation to the corporate responsibility to respect human rights and the environment, since 2001 the OAS has also served as a multi-stakeholder forum to discuss the impact of business on human rights and the environment, as well as to promote the implementation of corporate social responsibility guidelines, tools, and practices.¹⁵ The General Assembly has also adopted several resolutions calling on states to address the environmental impacts of business activities. For example, Resolutions AG/RES. 2483 (XXXIX-O/09) and AG/RES. 2687 (XLI-O/11) encouraged OAS member states that actively exploit their natural resources to promote best practices in environmental protection among companies in the natural resource extraction and manufacturing sectors. Resolution AG/RES. 2554 (XL-

los países del Hemisferio. AG/RES. 2588 (XL-O/10). 2010.

¹² ASAMBLEA GENERAL DE LA OEA. *El cambio climático en los países del Hemisferio*. AG/RES. 2649 (XLI-O/11). 2011.

¹³ ASAMBLEA GENERAL DE LA OEA. *Hacia un mejor financiamiento climático*. AG/RES. 3001 (LIII-O/23). 2023.

¹⁴ LIBÉLULA. *Reporte de acción climática empresarial de Latinoamérica 2022*. Available at: <https://nexosmasuno.com/wp-content/uploads/2023/03/Reporte-de-Accion-Climatica-Empresarial-de-Latinoamerica-2022.pdf>. Access on: 4 Oct. 2024.

¹⁵ See: ASAMBLEA GENERAL DE LA OEA. *Promoción de la Responsabilidad Social de las Empresas en el Hemisferio*. AG/RES 2.123 (XXXV-O/05). 2005.; ASAMBLEA GENERAL DE LA OEA. *Promoción de la Responsabilidad Social de las Empresas en el Hemisferio*. AG/RES 2.194 (XXXVI-O/06). 2006.; ASAMBLEA GENERAL DE LA OEA. *Promoción de la Responsabilidad Social de las Empresas en el Hemisferio*. AG/RES 2.336 (XXXVII-O/07). 2007.; ASAMBLEA GENERAL DE LA OEA. *Promoción de la Responsabilidad Social de las Empresas en el Hemisferio*. AG/RES 2.483 (XXXIX-O/09). 2009.

O/10), on promoting corporate social responsibility in the Hemisphere, called on member states to support initiatives to strengthen their capacity to manage and develop natural resources in an environmentally sustainable and socially responsible manner.

None of the OAS General Assembly resolutions on corporate responsibility referred to climate change explicitly. However, at its fifty-first session in 2021, the General Assembly approved Resolution AG/RES. 2969 (LI-O/21), known as the «Inter-American Business Charter», which seeks to strengthen OAS instruments bolstering the role of the private sector in the integral development of the Southern Hemisphere. Paragraph 30 of Chapter VII of this Resolution, on fostering sustainable development and building resilience, asserts that member states should promote the adoption of strategies and policies for the incorporation and disclosure of climate and environmental risks in investment decisions consistent with the goals of the Paris Agreement and contribute to the implementation of nationally determined contributions (NDCs).¹⁶

3 The intersection between climate change, business, and human rights: an inter-American perspective

A greater understanding of the complex relationship between climate change, business, and human rights has been reached in the IAHRs. The General Assembly has requested the Inter-American Commission on Human Rights (IACHR, an advisory body to the OAS), on the one hand, to contribute to efforts to determine whether there is a link between the adverse effects of climate change and the full enjoyment of human rights (AG/RES. 2429 (XXXVIII-O/08) and, on the other hand, to conduct a study on inter-American business and human rights standards (AG/RES. 2887 (XLVI-O/16)).

Regarding climate change, the IACHR published Resolution 3/2021 «Climate emergency: scope of inter-American human rights obligations», which is part of the mandate received by the OAS General Assembly to determine the possible existence of a link between the

adverse effects of climate change and the full enjoyment of human rights.

With a view to the future advisory opinion on climate emergency and human rights requested by Colombia and Chile from the Inter-American Court of Human Rights (IACHR Court) in 2023, Resolution 3/2021 is a first step that clarifies and systematizes the human rights obligations of IAHRs states in the context of the climate crisis. One of the central themes of Resolution 3/2021 is corporate responsibility to respect human rights and remedy possible environmental and climate violations (paragraphs 42 to 47), since it recognizes that a significant part of global GHG emissions are caused by the activities, products, and services of companies. As such, Resolution 3/2021 reaffirms the obligation of IAHRs states to prevent and remedy human rights impacts associated with business activities in light of the climate crisis.

IAHRs bodies have recognized that climate change is a business and human rights issue.¹⁷ Therefore, they have encouraged states to implement business and human rights policy and regulatory frameworks that include climate change as a key issue. In early 2020, the IACHR and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights (REDESCA) published the report «Business and Human Rights: Inter-American Standards», also requested by the OAS General Assembly in 2016 in its Resolution AG/RES. 2887 (XLVI-O/16). The report establishes limits, guidelines, targets, and creation standards that outline the minimum actions that both states and companies ought to take to respect and guarantee human rights in the context of business activities, in compliance with the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man, and inter-American case law. The Inter-American Standards on Business and Human Rights have quickly become prominent in the IAHRs, as they have been used to determine state responsibility in cases like *Buzos Miskitos (Lemoth Morris et al.) v. Honduras*, *Vera Rojas et al. v. Chile* and *La Oroya v. Peru*.

¹⁶ ASAMBLEA GENERAL DE LA OEA. *Carta Empresarial Interamericana*. AG/RES. 2969 (LI-O/21). 2021.

¹⁷ IACHR. *Climate Emergency: Scope of Inter-American Obligations Regarding Human Rights*, Resolution 3/2021. 2021.; IACHR COURT. *Environment and Human Rights (State Obligations Regarding the Environment in the Context of the Protection and Guarantee of the Rights to Life and 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)*. Advisory Opinion OC-23/17, Series A No. 23, 2017.

The report «Business and Human Rights: Inter-American Standards» by the IACHR and its REDESCA identifies twelve fundamental inter-American criteria in business and human rights. These criteria—including the right to a healthy environment—should be applied when developing legal frameworks, strategies, and mechanisms in this area. The IACHR and its REDESCA emphasize that only states must take into account and respect the right to a healthy environment, the sustainable use and conservation of ecosystems, and biological diversity when exercising their regulatory, oversight, and judicial functions. This implies that states must implement strategies and policies based on human rights and with a gender perspective to reduce GHG emissions and the effects of climate change, including companies' legal responsibilities and due protection of environmental defenders.¹⁸ The IAHRs also recognizes the obligation of states to use all means at their disposal to prevent activities under their jurisdiction, including extractive activities or renewable energy projects, from causing significant damage to the environment.¹⁹

Climate change and environmental degradation are also considered as one of the six top priority contexts in the area of business and human rights. The IACHR and its REDESCA have expressed concern that a significant portion of global emissions are caused by corporate activities, products, and services. In this regard, they recognize that extractive or mining activities and deforestation in the region are the main causes of the climate crisis and its effects on the rights of present and future generations, especially vulnerable persons. This context raises the need for concrete mitigation actions by both states and companies and, in turn, climate action must be consistent with the human rights framework.²⁰

Under the Inter-American Standards on Business and Human Rights, states must ensure that both public and private entities reduce GHG emissions and are accountable for any harm they may cause to the climate. Likewise, under Article 26 of the American Convention on Human Rights, which establishes an obligation to

cooperate for the realization of economic, social, and cultural rights, states must coordinate efforts to develop strategies against climate change. This cooperation involves governments sharing expertise and technology to reduce GHG emissions, as well as establishing responses to determine the role of business in the fight against climate change.

4 Inter-American business and human rights standards in the context of the climate emergency and energy transition

In light of the above, the implementation of inter-American business and human rights standards is vital in the context of the climate emergency and the energy transition in the Americas. These standards must guide state action and intervention to ensure companies operating in the region identify and report climate risks in their decisions, meeting the goals of the Paris Agreement and respecting the rights recognized in the IAHRs. They must encourage states to ensure corporate accountability in respecting human rights and redressing negative impacts in the context of the climate emergency. From a climate justice perspective, the Inter-American Standards on Business and Human Rights contain guidance and recommendations for states to adopt actions and measures aimed at achieving a fairer, more inclusive, and equitable distribution of the burdens and benefits of business-driven measures to address climate change.

4.1 Policy coherence as a catalyst for the climate dimension of the business and human rights agenda

Most Latin American states have adopted climate policy and legislative frameworks to comply with their climate commitments. Similarly, business and human rights have gradually become a matter of interest for the region's states, and policies and legislative proposals are being adopted to ensure respect for human rights in business activities. However, in practice, government departments, agencies, and other state institutions in charge of climate policy and regulating business activities have shown a lack of coordination and collaboration.

¹⁸ IACHR. *Business and Human Rights Report: Inter-American Standards*. Washington, D.C.: IACHR, 2019. par. 19.

¹⁹ IACHR COURT. *Environment and Human Rights (State Obligations Regarding the Environment in the Context of the Protection and Guarantee of the Rights to Life and 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)*. Advisory Opinion OC-23/17, Series A No. 23, 2017.

²⁰ IACHR. *Business and Human Rights Report: Inter-American Standards*. Washington, D.C.: IACHR, 2019.

In this regard, the UN Working Group on Business and Human Rights has expressed that «[h]uman rights and climate change are governed in many States by separate sets of laws, rules and institutions».²¹ This creates a lack of coherence and common objectives between climate change policies and laws and business and human rights developments. Even if the actions, policies, climate programs, and energy transition projects of states—and companies—reflect the urgency of the climate emergency, they may not necessarily take into account the adverse effects on human rights.

Resolution 3/2021 establishes that states:

should adopt and implement policies aimed at reducing greenhouse gas emissions that reflect the highest possible ambition, foster resilience to climate change and ensure that public and private investments are consistent with low-carbon and climate-resilient development.²²

In this regard, the Inter-American Standards on Business and Human Rights suggest that:

all public policies and normative frameworks implemented for mitigation, adaptation, and resilience to climate change, as well as facing significant environmental damages, must be carried out with a rights-based approach, and include the impacts and infringements produced by businesses, including financing and investment agents.²³

In terms of policy coherence, the United Nations Guiding Principles on Business and Human Rights, endorsed by the governments of the region, calls for states to ensure that government departments, agencies, and other state institutions that shape business practices are aware of and observe the state's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training, and support (Guiding Principle 8).

The Guiding Principles therefore suggest a greater involvement of all departments, agencies, and authorities responsible for attracting foreign investment and encouraging business development in promoting respect for human rights, as these institutions have little or no knowledge of or uptake of human rights considera-

tions. In its visits to Latin American states, the Working Group has identified the need for greater coherence in the government ministry and department policies, particularly the policies of institutions dealing with human rights issues and those that shape business practices.

The region is also facing the challenge that the departments, agencies, and authorities in charge of climate change policies must align corporate responsibility policies and include them in their mandates to respect human rights. National Action Plans (NAPs) are an ideal way for governments to achieve or enhance coherence and coordination in climate and business and human rights policies. According to the Working Group, NAPs are a useful policy tool to foster «greater coordination and coherence within Government on the range of public policy areas that relate to business and human rights».²⁴ Climate change should be included in the various public policy areas on business and human rights. In this regard, Resolution 3/2021 states that in national action plans on business and human rights:

States should take into consideration the role of business and its contribution to the increase of GHGs, leading to the aggravation of the climate crisis and the concomitant limitation to the effective enjoyment of human rights. Such plans should expressly state that the duty of companies to respect human rights includes the adoption of human rights and environmental policies.²⁵

The Latin American NAPs adopted so far refer to climate change expressly, such as Colombia's second NAP,²⁶ or lay out some policy coherence measures related to climate change, such as the first NAPs of Chile and Peru.²⁷ In Colombia, the fight against climate change is considered as part of the state's commitment to

²⁴ WORKING GROUP ON BUSINESS AND HUMAN RIGHTS. *Guidance on National Action Plans on Business and Human Rights*. Geneva: Human Rights Council, 2016.

²⁵ IACHR. *Climate Emergency: Scope of Inter-American Obligations Regarding Human Rights*, Resolution 3/2021. 2021. par. 43.

²⁶ COLOMBIA. *National Action Plan on Business and Human Rights 2020/2022: Together We Make It Possible Resilience and Solidarity*. 2020. Available at: <https://derechoshumanos.gov.co/Areas-Trabajo/Empresas-DDHH/Paginas/300121-Descripcion-PNA-Empresas-DDHH.aspx>. Access on: 4 Oct. 2024.

²⁷ CHILE. *First National Action Plan on Human Rights and Business of Chile*. 2017. Available at: https://www.subrei.gob.cl/ejes-de-trabajo/comercio_y_asuntos_laborales/planes-de-acci%C3%B3n. Access on: 4 Oct. 2024; PERU. *National Action Plan on Business and Human Rights 2021-2025*. 2021. Ministry of Justice and Human Rights. Available at: <https://observatorioderechoshumanos.minjus.gob.pe/plan-nacional-de-accion-sobre-empresas-y-derechos-humanos/>. Access on: 4 Oct. 2024.

²¹ UNITED NATIONS GENERAL ASSEMBLY. *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: extractive sector, just transition, and human rights*. A/78/155, 2023.

²² IACHR. *Climate Emergency: Scope of Inter-American Obligations Regarding Human Rights*, Resolution 3/2021. 2021. par. 1.

²³ IACHR. *Business and Human Rights Report: Inter-American Standards*. Washington, D.C.: IACHR, 2019. par. 246.

clean and sustainable growth, which stems from the economic and social reactivation roadmap derived from the COVID-19 pandemic.²⁸ However, no specific policy or legislative action or measure has been adopted for the prevention and redress of human rights impacts associated with GHG emissions from business activities. Although references to climate change are limited in Chile's second NAP, it lays out measures such as the implementation of a national just transition strategy and the improvement of human rights risk prevention in territories with substantial development of renewable energy projects.²⁹

Meanwhile, in Peru's NAP, one of the actions of Objective 3 of Strategic Guideline No. 2, on the design of public protection policies to prevent human rights violations in the business environment, expressly provides for incorporating the approach of the Guiding Principles and responsible business conduct in actions related to climate change, biological diversity, and environmental land use planning in the next National Environmental Action Plan and in the National Environmental Policy. The purpose of this is to associate climate change issues with business and human rights expressly. In this way, these public policies will encourage companies to take into account the issues arising from climate change, threats to biodiversity and environmental land management in their due diligence processes throughout the supply chain.³⁰

NAPs are therefore public policy tools that help ensure that state entities and sub-state agencies have relevant knowledge about the human rights obligations and responsibilities of states and companies in the context of the climate emergency. Following the Inter-American Standards on Business and Human Rights, future NAPs in the region could be more closely related to nationally determined contributions and contemplate

training related to human rights standards and their relationship to the goals of the Paris Agreement.

4.2 Corporate due diligence in the climate emergency and energy transition

Although renewable energy projects in Latin America can contribute positively to achieving the goals of the Paris Agreement, empirical evidence has shown that some of these projects generate adverse impacts on human rights and the environment. In the region, several hydro-power, wind, and solar projects have been associated with cases of human rights abuses.³¹ Latin America is not only the region with the highest percentage of renewable energy participation but also with the highest number of complaints in this sector. The development of renewable energies in the region is replicating the negative impacts that have characterized the extractivist model.

New renewable energy technologies and infrastructure require the supply of key raw materials such as cobalt, copper, lithium, manganese, nickel, and zinc. The exploration and extraction of strategic minerals for the energy transition is often carried out by transnational mining companies, whose operations are also associated with negative impacts on people and the environment.³²

²⁸ COLOMBIA. *National Action Plan on Business and Human Rights 2020/2022: Together We Make It Possible Resilience and Solidarity*. 2020. Available at: <https://derechoshumanos.gov.co/Areas-Trabajo/Empresas-DDHH/Paginas/300121-Descripcion-PNA-EmpresasyDDHH.aspx>. Access on: 4 Oct. 2024.

²⁹ CHILE. *Second National Action Plan on Human Rights and Business of Chile*. 2022. Available at: https://www.subrei.gob.cl/ejes-de-trabajo/comercio_y_asuntos_laborales/planes-de-acci%C3%B3n. Access on: 4 Oct. 2024.

³⁰ PERU. *National Action Plan on Business and Human Rights 2021-2025*. 2021. Ministry of Justice and Human Rights. Available at: <https://observatoriorederechoshumanos.minjus.gob.pe/plan-nacional-de-accion-sobre-empresas-y-derechos-humanos/>. Access on: 4 Oct. 2024.

³¹ UNITED NATIONS GENERAL ASSEMBLY. *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: extractive sector, just transition, and human rights*. A/78/155, 2023. In Yucatan, Mexico, for example, communities and civil society have denounced the negative impacts of the development of solar energy projects such as the lack of free, prior and informed consultation, deforestation and land grabbing. See: HUDLET VÁZQUEZ, Karen; HODGKINS, Chelsea. *(In)justicia energética en América Latina*. Center for Information on Business and Human Rights, 2021. In La Guajira, Colombia, wind energy projects are mainly located in collective territory of the Wayuu indigenous people, exacerbating the situation of vulnerability of the communities. It is alleged that these projects have been implemented without respecting the rights to collective property, consultation and free, prior and informed consent of indigenous peoples. See: GONZÁLEZ POSSO, Camilo; BARNEY, Joanna. *El viento del Este llega con revoluciones*. Multinacionales y transición con energía eólica en territorio Wayúu. Bogotá: Indepaz, 2019.

³² In Ecuador, the Mirador copper mining project, owned by the Chinese company ECSA, has been linked to forced relocations, community divisions and harassment. See: CICDHA. *Human Rights and Chinese Business Activities in Latin America: Cases from Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Peru, and Venezuela*. 2022. Available at: <https://www.business-humanrights.org/en/latest-news/global-sociedad-civil-latinoamericana-recomiendan-informe-sombra-ante-el-epu-que-china-elabore-plan-nacional-sobre-empresas-y-derechos-humanos/>. Access on: 4 Oct. 2024. In Peru, the Falchani and Macusani lithium and uranium mining projects planned in Puno are owned by the Canadian company Ameri-

Therefore, an enabling framework for the respect of human rights and the environment is urgently needed in the context of the energy transition. In this regard, Resolution 3/2021 states that companies should: implement human rights due diligence processes (including human rights impact assessments) to identify, prevent, mitigate and account for how they address their environmental impact on human rights.³³

The implementation of due diligence processes is still limited in business practice. According to the *2020 Corporate Human Rights Benchmark*, 46.2% of 229 companies assessed from five different sectors scored zero points for due diligence.³⁴ This is because, in the absence of a legally binding requirement, only a minority of well-intentioned companies or those facing consumer scrutiny choose to improve their due diligence processes. Thus, the Inter-American Standards on Business and Human Rights call for states to adopt legislation imposing binding provisions on corporate human rights due diligence. This legislation should include minimum operational guidelines on how companies should conduct human rights impact assessments throughout their global supply chain and corporate structure. The adoption of these laws is therefore part of the IAHRs states' obligation to protect human rights in mining activities for energy transition purposes.

In the context of the energy transition, human rights due diligence laws not only create a regulatory framework for companies in the energy sector to prevent and account for the negative impacts of their renewable energy projects, but should also address the social and environmental impacts of strategic minerals extraction, such as pollution, overuse of water resources, loss of biodiversity, workplace safety issues, land rights abuses, and lack of consultation with indigenous communities.

can Lithium through two subsidiaries: Plateau Energy and Macusani Yellowcake S.A.C. Both open-pit mining projects could generate significant environmental and health impacts. These include impacts on the biodiversity of the high Andean ecoregion and local water sources, as well as on human health. See: DHUMA; EARTH-RIGHTS INTERNATIONAL. *El rostro del litio y uranio en Puno: La cultura, salud, derechos de las comunidades y medio ambiente en riesgo*. Lima, Puno: DHUMA; EarthRights International, 2022.

³³ IACHR. *Business and Human Rights Report: Inter-American Standards*. Washington D.C.: IACHR, 2019. par. 46.

³⁴ WORLD BENCHMARKING ALLIANCE. *Corporate Human Rights Benchmark 2022: Insights Report*. 2022. Available at: https://assets.worldbenchmarkingalliance.org/app/uploads/2022/11/2022-CHRB-Insights-Report_FINAL_23.11.22.pdf. Access on: 4 Oct. 2024.

Through these laws, participation and consideration of stakeholder and rights-holder interests can also be ensured when implementing renewable energy and strategic mineral extraction projects.³⁵ This is therefore a useful tool for Latin American states to put human rights at the center of the energy transition and distribute the burdens and benefits of this process in a fair, inclusive, and equitable manner when regulating business activity.

In countries like Germany, France, Norway, and the Netherlands, mandatory due diligence laws have been adopted, and similar proposals exist in other European countries.³⁶ In May 2024, the Corporate Sustainability Due Diligence Directive was adopted, marking a milestone in the field of business and human rights, as it represents the first binding regional legislation on the subject.³⁷ One of the positive aspects of the Directive is its explicit references to climate change, making it a crucial legislative tool to ensure the business transition toward a decarbonized economy.

Article 22 of the Directive stipulates that Member States must ensure that companies adopt and implement a transition plan for climate change mitigation, aiming to ensure, through their best possible efforts, that the company's business model and strategy are compatible with the transition to a sustainable economy and the limitation of global warming to 1.5°C, in line with the Paris Agreement. This plan must include specific climate-related targets with defined deadlines for 2030 and five-year intervals up to 2050, an explanation and quantification of the investments and financing supporting the implementation of the transition plan, and a description of the role of administrative, management, and supervisory bodies concerning the plan. While this provision promotes corporate climate action, it should be noted that the mitigation plan is not part of the due diligence obligations that companies must fulfill, nor

³⁵ IGLESIAS MÁRQUEZ, Daniel. *La participación significativa de las partes interesadas en los procesos de debida diligencia en Derechos Humanos*. Guía práctica. Madrid: OXFAM, 2023.

³⁶ IGLESIAS MÁRQUEZ, Daniel; DEL VALLE CALZADA, Estrella; MARULLO, María Chiara. *Hacia la diligencia debida obligatoria en derechos humanos: Propuestas regulatorias y lecciones aprendidas*. Coruña: Colex, 2024; DEVA, Surya. Mandatory human rights due diligence laws in Europe: A mirage for rightsholders? *Leiden Journal of International Law*, Leiden, v. 36, n. 2, p. 389-414, 2023.

³⁷ BUENO, Nicolás; BERNAZ, Nadia; HOLLY, Gabrielle; MARTÍN-ORTEGA, Olga. The EU Directive on Corporate Sustainability Due Diligence (CSDDD): the final political compromise. *Business and Human Rights Journal*, p. 1-7, 2024.

does it generate any liability for failure to create or implement it.

To date, due diligence laws are yet to be adopted in Latin America. Mexico and Peru have proposals from political parties and civil society, respectively.³⁸ In Mexico, the political party Movimiento de Regeneración Nacional (MORENA) proposed a bill for the General Law of Corporate Responsibility and Corporate Due Diligence in 2020.³⁹ In Peru, civil society published a Peruvian bill to regulate business activity and due diligence in human rights and environment in 2020.⁴⁰ Neither of these proposals have begun the legislative process in their respective countries.

The Mexican initiative aims to require micro, small, medium, and large enterprises to institutionalize a due diligence process to prevent, mitigate, identify, account for, and have processes in place to redress human rights violations or impacts. This initiative places special emphasis on mining and energy companies, among others, which will be subject to the highest standard of due diligence. The Peruvian bill, while not containing a particular approach like the Mexican initiative, covers both national companies and companies with foreign capital, private or public, regardless of factors such as size, location, structure, sector of activity, or owners, whose activities or operations are carried out and have an impact on the national territory of Peru. These companies must, among other things, prepare a Business Plan for human rights and environmental protection and a Corporate Policy Report. Both proposals, therefore, would lay down an enabling regulatory framework for renewable energy and strategic mineral extraction projects to be carried out respecting human rights and the environment.

³⁸ GUAMÁN, Adoración; TOLE MARTÍNEZ, Julián. Iniciativas legislativas y leyes de debida diligencia empresarial en derechos humanos: visiones del Sur y experiencias del Norte. *Anuario Mexicano de Asuntos Globales*, v. 1, n. 1, p. 299-328, 2022.

³⁹ See: MARTÍNEZ CÁZARES, Germán. *Proyecto de decreto por el que se crea la Ley General de Responsabilidad Empresarial y Debida Diligencia Corporativa*. 2023. Available at: https://www.senado.gob.mx/65/gaceta_del_senado/documento/112449. Access on: 4 Oct. 2024.

⁴⁰ See: BILL regulating business activity and human rights and environmental due diligence. Available at: <https://derechosnemergencia.dhperu.org/wp-content/uploads/2022/11/PROYECTO-LEY-DEBIDA-DILIGENCIA.pdf>. Access on: 4 Oct. 2024.

4.3 Corporate climate litigation in Latin America

Since the adoption of the Paris Agreement, climate litigation has increased exponentially around the world.⁴¹ Latin America is no exception, as countries such as Brazil and Mexico are among the jurisdictions, apart from the United States, with the highest number of cumulative climate litigation cases.⁴² More than 80 cases are documented in the region involving material issues of climate change science, policy, and law, without counting cases in which climate change is a peripheral issue.⁴³ In this context of growing climate litigation in the region, IACHR Resolution 3/2021 declares:

States should adopt immediate measures to guarantee access to justice in environmental and climate matters of a judicial or administrative nature in accordance with the guarantees of due process, eliminate all barriers to its exercise and ensure free technical and legal assistance.⁴⁴

At the same time, it is a priority to strengthen the capacities of all judicial operators, justice assistants, the Public Prosecutor's Office, and control bodies to prevent, investigate, and punish situations of threats or violations of human rights related to climate change.

Today, climate litigation is pushing states to drive legislative and policy changes in adaptation and mitigation efforts and positively influence future climate negotiations. It is also increasingly focusing on companies as a strategy to make them bear the cost of damages and adaptation measures for their contributions to climate change, strengthen their climate commitments and policies in line with the goals of the Paris Agreement, or be held accountable for circulating misleading information about their climate action.⁴⁵

⁴¹ See: MOREIRA, Danielle de Andrade; GARRIDO, Carolina de Figueiredo; NEVES, Maria Eduarda Segovia Barbosa. Litigância climática e licenciamento ambiental: consideração da variável climática à luz dos tratados internacionais sobre o clima. *Revista de Direito Internacional*, Brasília, v. 19, n. 1, p. 61-79, 2022.

⁴² UNEP. *Global Climate Litigation Report: 2023 Status Review*. Nairobi: UNEP, 2023.

⁴³ SETZER, Joana; HIGHAM, Catherine. *Global trends in climate change litigation: 2023 snapshot*. Londres: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science, 2023.

⁴⁴ IACHR. *Business and Human Rights Report: Inter-American Standards*. Washington, D.C.: IACHR, 2019. par. 36.

⁴⁵ IGLESIAS MÁRQUEZ, Daniel. La responsabilidad de las empresas de respetar los derechos humanos en el contexto de la crisis climática. *Revista de Direito Internacional*, Brasília, v. 16, n. 3, p. 50-74, 2019.

In the Latin American region, several precedents have emerged in litigation against companies where climate change is used as the main argument or as a peripheral argument. For example, in Brazil, the case of São Paulo's Public Ministry against airlines in which a public civil action was brought to claim compensation for damages caused mainly by GHG emissions resulting from airline activities at the region's international airport. The airlines were requested to implement reforestation measures for the absorption of GHGs,⁴⁶ but the case was dismissed by the court.

Another category of climate litigation is just transition cases, where questions are raised about the fairness and equity of measures taken by states and companies in implementing their actions towards energy transition.⁴⁷ Considering the high number of transition and strategic mineral extraction projects in Latin America, this type of litigation has been on the rise in the region since 2016.⁴⁸

For example, the construction of large-scale wind farms by the French energy company EDF on the lands of the Zapotec indigenous people of Unión Hidalgo in Oaxaca, Mexico, has given rise to various intertwined actions, given that these projects do not benefit these communities and affect their individual and collective rights, particularly the right to free, prior, and informed consultation. In 2018, the project was suspended and a consultation procedure was ordered to be carried out

meeting the highest standards to guarantee the rights of indigenous peoples in terms of free, prior, and informed consent.⁴⁹ Although the authorities attempted a consultation process, the organizations, as well as some special UN procedures,⁵⁰ have raised serious doubts about the neutrality, legitimacy, and appropriateness of such process, mired by confrontation and the insecurity of the people opposing the project. This case has been brought before French civil courts and the National Contact Point of the Organization for Economic Cooperation and Development (OECD), in both cases for the lack of an adequate due diligence process.⁵¹

Climate litigation therefore has the transformative potential to ensure that companies consider and address their climate impacts and even greater climate ambition through a variety of avenues.⁵² It can also reinforce and redress corporate climate policies and actions by putting human rights at the center in a manner that is fair, equitable, and inclusive for people in vulnerable situations. Despite the transformative potential of climate litigation to influence the corporate behavior and action regarding the climate and their energy transition policy, the various practical and procedural hurdles should not be overlooked.

Existing legal and policy frameworks on climate change and energy transition do not provide effective access to justice and redress.⁵³ In the Latin American region, some practical obstacles to climate litigation include *locus standi* requirements that make it very difficult for civil society organizations to bring actions on behalf

⁴⁶ See: Public Ministry of the State of São Paulo v. United Airlines and Others (Airline Companies Case). Available at: <https://climatecasechart.com/non-us-case/public-ministry-of-the-state-of-sao-paulo-v-klm/>. In a similar vein, the Brazilian Attorney General's Office filed a public civil action against Siderúrgica São Luiz Ltda. for climate damage allegedly caused by the continued use of illegally sourced coal in its units in the State of Minas Gerais. The case sought measures to compensate for GHG emissions and compensation for damages caused by the illegal activity. See, Federal Environmental Agency (IBAMA) v. Siderúrgica São Luiz Ltd. and Martins. Available at <https://climatecasechart.com/non-us-case/federal-environmental-agency-ibama-v-siderurgica-sao-luiz-ltda-and-martins/>.

⁴⁷ SAVARESI, Annalisa; SETZER, Joana. *A first global mapping of rights-based climate litigation reveals a need to explore just transition cases in more depth*. 2022. Available at: <https://www.lse.ac.uk/granthaminstitute/news/a-first-global-mapping-of-rights-based-climate-litigation-reveals-a-need-to-explore-just-transition-cases-in-more-depth/>. Access on: 4 Oct. 2024.

⁴⁸ SETZER, Joana; HIGHAM, Catherine. *Global trends in climate change litigation*. 2023 snapshot. Londres: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science, 2023.

⁴⁹ See, *amparos* 376/2018, 377/2018 and 554/2018 issued by the First District Court in Federal Matters in the State of Oaxaca, Mexico.

⁵⁰ See, Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Mexico, A/HRC/39/17/Add.2.; Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Mexico, A/HRC/35/32/Add.2.

⁵¹ BAILEY, Chloé; LAVITE, Cannelle; ALIBERT, Clara; TORRES, Guillermo; BADER, Michael. *De los derechos a la realidad: garantizar una aplicación de la ley francesa del deber de vigilancia centrada en las personas*. Lecciones aprendidas del caso Unión Hidalgo vs. EDF. Berlin: European Center for Constitutional and Human Rights, 2023.

⁵² See: PIRES, Julia Stefanello; PAMPLONA, Danielle Anne. *Perspectivas da litigância climática em face de empresas: o caso Milieudefensie et al. v. Royal Dutch Shell*. *Revista de Direito Internacional*, Brasília, v. 19, n. 1, p. 145-163, 2022.

⁵³ UNITED NATIONS GENERAL ASSEMBLY. *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: extractive sector, just transition, and human rights*. A/78/155, 2023.

of people affected by climate change impacts or by an energy transition project, the absence of independent public actors to defend environmental climate issues through litigation, language restrictions for affected non-dominant communities, evidentiary obstacles (burden of proof), ignorance of climate issues by judicial actors, and ineffective mechanisms to enforce and monitor compliance with judgments. In addition, there are—sometimes multiple—legal and practical barriers in cases related to companies. According to the IACHR,⁵⁴ in many cases involving companies, «access to justice is not guaranteed, so people and communities in these contexts often have a low probability of obtaining effective remedy.» Among other reasons, this is due to the lack of political will to address cases involving large companies, coupled with the power of corporate influence or «corporate capture» or corruption. In many cases, the costs of accessing redress mechanisms can be high, and although free legal advice is available for some processes, it is not available beyond family or criminal matters, which do not necessarily cover business and human rights issues.

The implementation of the Inter-American Standards on Business and Human Rights could support climate litigation against companies, as well as eliminate or reduce the obstacles identified in this type of litigation in Latin America. Likewise, these Standards consider it a priority for states to guarantee access to justice and redress for climate-related damage. In this regard, states must establish accessible, affordable, timely, and effective mechanisms to challenge actions or omissions related to climate change and the energy transition that affect human rights in order to seek redress for damage arising from climate risks and corporate policies. In relation to the burden of proof, under the Inter-American Standards, states should evaluate the procedural rules applicable to evidence and the evidentiary stage where evidentiary obstacles are found, in order to balance the asymmetries and thus facilitate access to justice and adequate remedies. To this end, dynamic procedural burdens would allow the reversal of the burden of proof when key information in the case cannot be obtained without the company's cooperation or when it provides elusive or ambiguous answers to the accusations made against it. Likewise, in litigation against companies, plaintiffs should be offered legal aid and other finan-

cing systems, allowing class actions and public-interest litigation. In turn, access to information must be ensured through mandatory disclosure legislation and procedural rules for obtaining evidence held by companies, including the reversal of the burden of proof where the company has knowledge or control of all or part of the information relevant to resolving a claim.⁵⁵

5 Conclusions

The fight against climate change and the negative impacts of the energy transition on people and the Earth system requires a multi-stakeholder and multi-level response. This article reaffirms that the responsibility of business to respect human rights includes a climate dimension. The fight against climate change in the Americas requires, on the one hand, greater climate ambition on the part of companies to prevent both the erosion of human rights and the risks associated with their climate impacts and, on the other hand, business responses to climate change mitigation and adaptation to be equitable, fair, inclusive, and based on human rights and environmental protection.

Climate change and the corporate responsibility to respect human rights and the environment have led to the creation of regional agendas on these key issues in the Americas. However, these agendas have developed in parallel with some sporadic convergences. In this regard, the IAHRs, under the mandate of the OAS General Assembly, has contributed with significant advances to the interplay between business, human rights, and climate change with a regional perspective. In this sense, the analysis in this article sets out a proposal based on inter-American standards for a framework that would enable state action so that companies can fulfill their responsibility to respect human rights and protect the environment in the context of the climate emergency and the energy transition in the Americas.

In relation to the IAHRs obligations, state intervention is essential to ensure that companies in the region increase their climate ambition and to prevent and redress not only the climate impacts of business activities that affect human rights but also to address the negative consequences of corporate responses to climate chan-

⁵⁴ IACHR. *Business and Human Rights Report*: Inter-American Standards. Washington D.C.: IACHR, 2019. par. 131.

⁵⁵ IACHR. *Business and Human Rights Report*: Inter-American Standards. Washington D.C.: IACHR, 2019. par. 131.

ge, especially in energy transition actions and projects, which are reproducing the negative effects of extractivist models.

The enabling environment proposed in this article is based on greater coherence between the business and human rights agenda and the climate change agenda. In this sense, NAPs can help integrate the two areas. These are policy tools that states in the region have committed to develop and have the potential to include expectations for companies to respect human rights in the context of climate change and to put human rights at the center of energy transition actions and projects. In this sense, the energy transition in the Americas must involve not only emissions reductions, but must also be fair and respectful of human rights.

Within this context, states in the region must implement a smart combination of voluntary and mandatory measures to ensure that companies respect human rights taking the climate emergency into account. In this regard, due diligence laws should urge companies to consider the climate impacts associated with their business activities. Potential laws in the region should explicitly include the climate impacts and responsibilities of companies, or extend general due diligence obligations to cover GHG emissions as well. This is not only because of the implications of climate change for the region but also because it is a mandate established in the Inter-American Standards, which refer to climate change as a fundamental issue that is inextricably linked to business and human rights. Likewise, human rights and environmental due diligence is a fundamental piece of the puzzle to better integrate human rights considerations in renewable energy and strategic mineral extraction projects for the energy transition.

Finally, access to justice is key in the context of the climate emergency and energy transition in the Americas. Climate litigation has proven to be a strategy with significant potential to redirect companies' climate ambition, as well as to address the negative impacts of renewable energy and mineral extraction projects. However, to ensure that climate litigation has a positive impact and influence on companies operating in the region, state intervention in reducing and eliminating procedural and practical obstacles in these types of cases is a challenge yet to be overcome.

References

- ASAMBLEA GENERAL DE LA OEA. *Carta Empresarial Interamericana*. AG/RES. 2969 (LI-O/21). 2021.
- ASAMBLEA GENERAL DE LA OEA. *Derechos humanos y cambio climático en las Américas*. AG/RES. 2429 (XXXVIII-O/08). 2008.
- ASAMBLEA GENERAL DE LA OEA. *El agua, la salud y los derechos humanos*. AG/RES. 2349 (XXXVII-O/07). 2007.
- ASAMBLEA GENERAL DE LA OEA. *El cambio climático en los países del Hemisferio*. AG/RES. 2588 (XLI-O/10). 2010.
- ASAMBLEA GENERAL DE LA OEA. *El cambio climático en los países del Hemisferio*. AG/RES. 2649 (XLI-O/11). 2011.
- ASAMBLEA GENERAL DE LA OEA. *Hacia un mejor financiamiento climático*. AG/RES. 3001 (LIII-O/23). 2023.
- ASAMBLEA GENERAL DE LA OEA. *Los cambios climáticos en las Américas*. AG/RES. 1674 (XXIX-O/99). 1999.
- ASAMBLEA GENERAL DE LA OEA. *Los efectos socioeconómicos y ambientales del cambio climático en los países del Hemisferio*. AG/RES. 1736 (XXX-O/00). 2000.
- ASAMBLEA GENERAL DE LA OEA. *Los efectos socioeconómicos y ambientales del cambio climático en los países del Hemisferio*. AG/RES. 1864 (XXXII-O/02). 2002.
- ASAMBLEA GENERAL DE LA OEA. *Promoción de la Responsabilidad Social de las Empresas en el Hemisferio*. AG/RES 2.123 (XXXV-O/05). 2005.
- ASAMBLEA GENERAL DE LA OEA. *Promoción de la Responsabilidad Social de las Empresas en el Hemisferio*. AG/RES 2.194 (XXXVI-O/06). 2006.
- ASAMBLEA GENERAL DE LA OEA. *Promoción de la Responsabilidad Social de las Empresas en el Hemisferio*. AG/RES 2.336 (XXXVII-O/07). 2007.
- ASAMBLEA GENERAL DE LA OEA. *Promoción de la Responsabilidad Social de las Empresas en el Hemisferio*. AG/RES 2.483 (XXXIX-O/09). 2009.
- BAILEY, Chloé; LAVITE, Cannelle; ALIBERT, Clara; TORRES, Guillermo; BADER, Michael. *De los derechos a la realidad: garantizar una aplicación de la ley francesa*

del deber de vigilancia centrada en las personas. Lecciones aprendidas del caso Unión Hidalgo vs. EDF. Berlin: European Center for Constitutional and Human Rights, 2023.

BILL regulating business activity and human rights and environmental due diligence. Available at: <https://derechosenemergencia.dhperu.org/wp-content/uploads/2022/11/PROYECTO-LEY-DEBIDA-DILIGENCIA.pdf>. Access on: 4 Oct. 2024.

BUENO, Nicolás; BERNAZ, Nadia; HOLLY, Gabriele; MARTIN-ORTEGA, Olga. The EU Directive on Corporate Sustainability Due Diligence (CSDDD): the final political compromise. *Business and Human Rights Journal*, p. 1-7, 2024.

CASTELLANOS, Edwin *et al.* (ed.). *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge/New York: Cambridge University Press, 2022.

CHILE. *First National Action Plan on Human Rights and Business of Chile*. 2017. Available at: https://www.subrei.gob.cl/ejes-de-trabajo/comercio_y_asuntos_laborales/planes-de-acci%C3%B3n. Access on: 4 Oct. 2024.

CHILE. *Second National Action Plan on Human Rights and Business of Chile*. 2022. Available at: https://www.subrei.gob.cl/ejes-de-trabajo/comercio_y_asuntos_laborales/planes-de-acci%C3%B3n. Access on: 4 Oct. 2024.

CICDHA. *Human Rights and Chinese Business Activities in Latin America: Cases from Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Peru, and Venezuela*. 2022. Available at: <https://www.business-humanrights.org/en/latest-news/global-sociedad-civil-latinoamericana-recomienda-en-informe-sombra-ante-el-e-pu-que-china-elabore-plan-nacional-sobre-empresas-y-derechos-humanos/>. Access on: 4 Oct. 2024.

COLOMBIA. *National Action Plan on Business and Human Rights 2020/2022: Together We Make It Possible Resilience and Solidarity*. 2020. Available at: <https://derechoshumanos.gov.co/Areas-Trabajo/Empresas-DDHH/Paginas/300121-Descripcion-PNA-Empresas-DDHH.aspx>. Access on: 4 Oct. 2024.

DEVA, Surya. Mandatory human rights due diligence laws in Europe: A mirage for rightsholders? *Leiden*

Journal of International Law, Leiden, v. 36, n. 2, p. 389-414, 2023.

DHUMA; EARTHRIGHTS INTERNATIONAL. *El rostro del litio y uranio en Puno: La cultura, salud, derechos de las comunidades y medio ambiente en riesgo*. Lima, Puno: DHUMA; EarthRights International, 2022.

FRUMHOFF, Peter C.; HEEDE, Richard; ORESKES, Naomi. The climate responsibilities of industrial carbon producers. *Climatic Change*, v. 132, p. 157-171, 2015.

GONZÁLEZ POSSO, Camilo; BARNEY, Joanna. *El viento del Este llega con revoluciones. Multinationales y transición con energía eólica en territorio Wayúu*. Bogotá: Indepaz, 2019.

GUAMÁN, Adoración; TOLE MARTÍNEZ, Julián. Iniciativas legislativas y leyes de debida diligencia empresarial en derechos humanos: visiones del Sur y experiencias del Norte. *Anuario Mexicano de Asuntos Globales*, v. 1, n. 1, p. 299-328, 2022.

HEEDE, Richard. Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers: 1854–2010. *Climatic Change*, v. 122, p. 229-241, 2014.

HUDLET VÁZQUEZ, Karen; HODGKINS, Chelsea. *(In)justicia energética en América Latina*. Center for Information on Business and Human Rights, 2021.

IACHR COURT. *Environment and Human Rights (State Obligations Regarding the Environment in the Context of the Protection and Guarantee of the Rights to Life and 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)*. Advisory Opinion OC-23/17, Series A No. 23, 2017.

IACHR. *Business and Human Rights Report: Inter-American Standards*. Washington, D.C.: IACHR, 2019.

IACHR. *Climate Emergency: Scope of Inter-American Obligations Regarding Human Rights*, Resolution 3/2021. 2021.

IGLESIAS MÁRQUEZ, Daniel. *La participación significativa de las partes interesadas en los procesos de debida diligencia en Derechos Humanos*. Guía práctica. Madrid: OXFAM, 2023.

IGLESIAS MÁRQUEZ, Daniel. La responsabilidad de las empresas de respetar los derechos humanos en el

- contexto de la crisis climática. *Revista de Direito Internacional*, Brasília, v. 16, n. 3, p. 50-74, 2019.
- IGLESIAS MÁRQUEZ, Daniel; DEL VALLE CALZADA, Estrella; MARULLO, María Chiara. *Hacia la diligencia debida obligatoria en derechos humanos*: Propuestas regulatorias y lecciones aprendidas. Coruña: Colex, 2024.
- LIBÉLULA. *Reporte de acción climática empresarial de Latinoamérica 2022*. Available at: <https://nexosmasuno.com/wp-content/uploads/2023/03/Reporte-de-Accion-Climatica-Empresarial-de-Latinoamerica-2022.pdf>. Access on: 4 Oct. 2024.
- MARJANAC, Sophie; PATTON, Lindene. Extreme weather event attribution science and climate change litigation: an essential step in the causal chain? *Journal of Energy and Natural Resources Law*, v. 36, n. 3, p. 265-298, 2018.
- MARTÍNEZ CÁZARES, Germán. *Proyecto de decreto por el que se crea la Ley General de Responsabilidad Empresarial y Debida Diligencia Corporativa*. 2023. Available at: https://www.senado.gob.mx/65/gaceta_del_senado/documento/112449. Access on: 4 Oct. 2024.
- MOREIRA, Danielle de Andrade; GARRIDO, Carolina de Figueiredo; NEVES, Maria Eduarda Segovia Barbosa. Litigância climática e licenciamento ambiental: consideração da variável climática à luz dos tratados internacionais sobre o clima. *Revista de Direito Internacional*, Brasília, v. 19, n. 1, p. 61-79, 2022.
- OAS. *Climate Change: a comparative overview of the rights based approach in the Americas*. Washington, D.C.: Department of Sustainable Development of the General Secretariat of the Organization of American States, 2016.
- PERU. *National Action Plan on Business and Human Rights 2021-2025*. 2021. Ministry of Justice and Human Rights. Available at: <https://observatoriorederechoshumanos.minjus.gob.pe/plan-nacional-de-accion-sobre-empre-sas-y-derechos-humanos/>. Access on: 4 Oct. 2024.
- PIRES, Julia Stefanello; PAMPLONA, Danielle Anne. Perspectivas da litigância climática em face de empresas: o caso Milieudéfensie et al. v. Royal Dutch Shell. *Revista de Direito Internacional*, Brasília, v. 19, n. 1, p. 145-163, 2022.
- SAVARESI, Annalisa; SETZER, Joana. *A first global mapping of rights-based climate litigation reveals a need to explore just transition cases in more depth*. 2022. Available at: <https://www.lse.ac.uk/granthaminstitute/news/a-first-global-mapping-of-rights-based-climate-litigation-reveals-a-need-to-explore-just-transition-cases-in-more-depth/>. Access on: 4 Oct. 2024.
- SETZER, Joana; HIGHAM, Catherine. *Global trends in climate change litigation: 2023 snapshot*. Londres: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science, 2023.
- UNEP. *Global Climate Litigation Report: 2023 Status Review*. Nairobi: UNEP, 2023.
- UNITED NATIONS GENERAL ASSEMBLY. *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: extractive sector, just transition, and human rights*. A/78/155, 2023.
- UNITED NATIONS. *Theme Report on Energy Transition. Towards the Achievement of SDG 7 and Net-Zero Emissions*. New York: Department of Economic and Social Affairs, United Nations, 2021.
- WORKING GROUP ON BUSINESS AND HUMAN RIGHTS. *Guidance on National Action Plans on Business and Human Rights*. Geneva: Human Rights Council, 2016.
- WORLD BENCHMARKING ALLIANCE. *Corporate Human Rights Benchmark 2022: Insights Report*. 2022. Available at: https://assets.worldbenchmarkingalliance.org/app/uploads/2022/11/2022-CHRB-Insights-Report_FINAL_23.11.22.pdf. Access on: 4 Oct. 2024.

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