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Climate Justice Litigation Against Transnational Corporations:

The interconnections between the web of life and the web of accountability

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Abstract

The worldwide impacts of climate change are defined as the worst threat humanity has ever faced. Through a decolonial lens, the present research aims to clarify if climate justice litigation provides a sufficient answer to the current lack of recognition of the interconnections between the web of life and the web of accountability, in which transnational corporations play a central role. To this end, the first chapter places the web of life in the dynamics of the current dominant socio-economic system, denouncing the destructive legacy of colonialism and capitalism. The second chapter introduces the climate governance scenario shaped by climate corporate (in)action, placing climate due diligence at the core of accountability for the private sector. The last chapter addresses the role of climate justice, particularly through litigation against transnational corporations. Lastly, it focuses on the promotion of an (un)just transition, grounded in decolonial epistemology. It concludes that climate change is a human-made product of a world shaped by the legacy of imperialism, colonialism and capitalism, which, in turn, are grounded in exploitation, extraction, misery, inequality and death. Legal frameworks and strategic litigation are not capable alone to bridge the gap between the web of life and the web of accountability. Societal change is crucial: the recognition of a common ground of responsibility of all humankind, differentiated by the roles played in the system, to promote a regenerative climate justice. Just transition means providing and adapting reconciliation to each singular context, as an inclusive approach grounded in environmental democracy.

Key words: climate change; climate justice; business and human rights; transnational corporations; climate due diligence; climate litigation; just transition.

List of Abbreviations

BHR	Business and Human Rights
CO ₂	Carbon dioxide
COP	Conference of the Parties
CSDDD	Corporate Sustainability Due Diligence Directive
CSR	Corporate Social Responsibility
EU	European Union
EUR	Euro
FAO	United Nations Food and Agriculture Organization
GDP	Gross Domestic Product
GHG	Greenhouse gas
HRDD	Human Rights Due Diligence
IACtHR	Inter-American Court of Human Rights
IGWG	Intergovernmental Working Group
IPCC	Intergovernmental Panel on Climate Change
IPEBS	Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services
MFS	Movement for Survival
NDCs	Nationally Determined Contributions
NGOs	Non-governmental Organizations
NYU	New York University
OECD	The Organization for Economic Co-operation and Development
TNC	Transnational Corporation
UN	United Nations
UNDP	United Nations Development Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNGPs	United Nations Guiding Principles on Business and Human Rights
USD	United States dollar
WHO	World Health Organization

"Finalmente, somos todos filhos de Gaia, produtos não acabados deste planeta maravilhoso. Existem, porém, alguns mais sensíveis, apaixonados, deslumbrados com as visões que Gaia lhes proporciona.

Emocionam-se ao contemplar uma bela paisagem, vivenciam imensamente a graça e a beleza de uma árvore vestida de mil flores, perfumada na primavera, morrem de amor por ela. Também são capazes de solidarizar-se com a figura simples e humilde de um cavalo atrelado a uma carroça. Pertencem eles à confraria privilegiada dos filhos diletos de Gaia, a Terra. Sentem-se parte integrante desta maravilhosa teia da vida com sua infinita variedade de formas. Neste estado de graça, eles se libertam para a alegria de viver e sentir a vida em sua magnífica plenitude. E são felizes no amor de Gaia, esses Guerreiros do Arco-íris."

"Finally, we are all children of Gaia, unfinished products of this wonderful planet. There are, however, some more sensitive, passionate, dazzled by the visions that Gaia provides them.

They are moved to contemplate a beautiful landscape, experience immensely the grace and beauty of a tree dressed in a thousand flowers, perfumed in spring. They fall in love with her. They are also able to sympathize with the simple and humble figure of a horse attached to a wagon. They belong to the privileged confraternity of the beloved sons of Gaia, the Earth. They feel as an integral part of this wonderful web of life with its infinite variety of forms. In this state of grace, they release themselves to the joy of living and feeling life in its magnificent fullness. And they are happy in the love of Gaia, these Warriors of the Rainbow."

Ion Trindade Martins, 2004.

I would like to acknowledge and dedicate this piece of research on climate justice to the so far registered 182 lives that were lost in my home state in Brazil, Rio Grande do Sul, in May, 2024, due to the current climate emergency we live in as a product of human violence against Nature.

ACKNOWLEDGEMENTS

As I have already said in the past, the task of studying, practicing, writing, teaching and even speaking of human rights, particularly in the context of our current climate emergency, means recognizing the urgent need to be in conflict with our preconceived knowledge and behaviors. As much as climate justice fascinates me, it brings me much fear and conflict in light of the astonishing reality that our own species is relentlessly working against the spread of more humanitarian and ecologically balanced practices. Yet, this conflict is what drives me. It fuels my desire to challenge the prevailing norms imposed upon us. My contribution to human rights is, therefore, a very small one compared to what it has contributed to my life in terms of sense of belonging, strength and liberation. This piece of research is my contribution to the Philosophy of Liberation within the human rights realm.

It is, however, extremely significant, even as a constant healing process I would say, to find my words in communion with human rights principles. During the last few months of this research in particular, finding my words has been even more difficult because of the indescribable suffering from having the climate emergency hit my home, my people and, somehow, myself in a different way. Days and nights that turned into weeks of agony for feeling so much but, above all, powerless.

Yet, somehow, writing this thesis became a pillar of my grieving process. It gave me comfort in the form of identification in the words of the brilliant authors I reference in this paper and from the people who were right there with me throughout the thinking process. It gave me hope from the achievements we can already see out there, in the world. It reminded me of my passion and that, after all, I might not be so powerless while I can still use my words. Once again, more-than-human rights empowered me.

I cannot imagine having finished my research without the support from the people in my life. My supervisor wisely guided me through my ideas and kindly understood my adverse circumstances. My sisters from EMA who experienced Montpellier with me became home away from home. My partner was for countless times my source of strength and love. My family was and has always been what keeps me grounded and, at the same time, gives me freedom to fly. My closest friends made me feel heard, understood and safe. My fellow climate activists were constant inspiration. For all of this, I am most grateful.

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1. Introduction

The current state of ecological collapse is better termed as "a human-induced unprecedented catastrophe". Climate change is everywhere nowadays. It is in the floods that submerged the state of Rio Grande do Sul in Brazil this year. It is in the wildfires raging across the western U.S. It is in the deadly rains and snowfall in Pakistan. It is in recent floods in southern Germany and heatwaves in Greece, Spain and Italy. It is in the forgotten heatwaves, heavy rains, floods, tropical cyclones and prolonged droughts in the African continent. It is in the extreme rainfall, drought, heat, wildfires and a record-breaking hurricane hitting Latin America and the Caribbean. It is in the expected "megadroughts" that last more than 20 years in Australia. It is in the floods as the leading cause of death in Asia. It is the constant state of fear, grief and disaster recovery the world lives in.

Climate change, as deadly as it is today, is also a human-made product, just like the millions of plastic ones discarded in the ocean. It manifests in complex ways but it derives from a clear pattern: human violence. Such a pattern is illustrated by the abusive way humans interact with others of the same kind and with Nature in all her diversity, leaving a path of destruction behind. Considering Earth's history, the human species are only recently inhabiting it. Yet, their legacy of imperialism, colonialism and, even more recently, capitalism is grounded in exploitation, extraction, misery, inequality and death. Humanity fails to realize that it is one of the products that the web of life has created on this planet, and not the contrary, that the planet was created solely for human exploitation and infinite gain¹.

One of Galeano's writings, "the four sentences that make Pinocchio's nose grows", summarizes some of the world's most vile and destructive narratives which the present research sheds light on: "we are all guilty of the ruin of the planet"; "it's green what is painted green"; "between capital and labor, ecology is neutral"; and, lastly, "nature is outside of us"². These lies interplay and mutually reinforce one another, creating the perfect scenario for perpetuating the traditional world's power dynamics and capitalizing on Nature while impoverishing the Global South. As Galeano rightfully denounced, this system of life that is offered as paradise, founded on

¹ Ion Trindade Martins, *Vida: uma abordagem ambientalista*. (Porto Alegre: Ediplat, 2004), p. 55.

² Eduardo Galeano, "Cuatro frases que hacen crecer la nariz de pinocho," El portal de la economía solidaria, april 29, 2010, ww.economiasolidaria.org/noticias/cuatro-frases-que-hacen-crecer-la-nariz-de-pinocho-eduardo-galeano/

the exploitation of others and the annihilation of Nature, is what is making our bodies sick. It is poisoning our souls and leaving us without a world³, and the urgency to contest it justifies the efforts employed in this research.

Regarding the first lie, communities of the Global South have been historically and systemically exploited for political and economic reasons. Latin America has been called by Galeano as the region of "open veins", and so is the African continent and most part of Asia in fact. These regions bear the consequences of hundreds of years marked by imperialism and colonialism. Currently, there is a deadlock between the countries of the North and those of the Global South concerning climate action in light of the disproportional impacts suffered by the latter considering its mild contribution, while the former suffers less burdens and contributes far more greatly through their colonialist legacy and their high rates of greenhouse gas emissions. Therefore, while every citizen bears a political responsibility to act in accordance with protection and preservation of Nature, responsibilities are not the same in terms of climate solutions.

While Transnational Corporations continue to profit on the never ending extraction of resources, including human resources, and employ their leverage to influence governance at all levels, including by affecting significant elections, the second lie illustrates their cunning attempt to cover up their true colors. The corporate sector and, particularly, a limited number of transnational corporations are responsible for most of the world's carbon footprint. Yet, just as the impunity for Western states has been institutionalized, the private sector remains practically untouched by Justice's hand. In fact, transnational enterprises are capable of finding more places to hide from Law and loopholes to operate than states because of their extraterritorial outreach, which justifies their action in particular being the main focus of this research.

The third lie, in turn, exposes the inherent politicization of ecology that manifests itself through climate and, more broadly environmental, justice, which is also connected to the fourth and last lie, that humans and Nature are two separated independent elements. In fact, environmentalism is an expression of ecology that seeks to emphasize the interconnection and interdependence of all elements of the web of life by denouncing that all forms of oppressions are interconnected and mutually reinforcing. By disrupting the balance of the relationships humans nurture among themselves, Nature and all living beings are affected. Whereas by destroying Nature

³ Galeano, "Cuatro frases que hacen crecer la nariz de pinocho".

and unsustainably living with other living beings, humans forge their own sufferings in the shape of consequences such as climate change. Unequivocally, humans have disrupted the balance of the web of life based on a misguided perception of independence.

Transnational corporations are being called to courts to respond for these lies which translate into harmful (in)actions related to decarbonization targets and human rights impacts. Grounded in this discussion, the present piece of research is divided into three chapters. Through a decolonial lens, it aims to clarify if climate justice litigation provides a sufficient answer to the current lack of recognition of the interconnections between the web of life and the web of accountability, in which transnational corporations play a central role.

One of the pillars of the present research is the development of an interdisciplinary approach that seeks to benefit from the very notion of interdependence and interconnection that permeates the web of life and the web of accountability. It is based on the premise that for complex issues, such as the ecological collapse and its manifestations, it is not only beneficial but rather necessary to tackle it through an analysis of distinct points of view, particularly without hierarchizing knowledge production. To this end, the first chapter starts by addressing the interdependencies and interconnections within the web of life from the perspective of different disciplines: indigenous knowledge, psychology, ecology, sociology, philosophy and so on.

Applying the same approach, the first chapter places the web of life in the dynamics of the current dominant socio-economic system, denouncing the extractive legacy of colonialism and the "profits above all else" motto of capitalism as not only disruptive but rather destructive to the web's balance. As a product of this human-made system, the era of global boiling becomes the undeniable reality despite the growth of climate disinformation discourse from the private sector and even at governmental level. After all, their political agenda is focused on covering up the web of accountability generated within the context of human-induced climate change, which is exactly what the second chapter aims to address.

By applying literature review, including from quantitative analysis impact studies, the second chapter introduces the climate governance scenario shaped by climate corporate (in)action, focusing on the role of transnational corporations in this regard. In its second part, through comparative law methodology, it examines the main legal instruments of business and human rights law related to climate change impacts, placing climate due diligence at the core of

accountability to hold private actors responsible for their violations. Climate due diligence obligations, in turn, are shaped through the outcomes of climate litigation.

Therefore, by means of case studies, the last chapter addresses the role climate justice plays in bridging the gap between the web of life and the web of accountability, particularly through litigation against transnational corporations. Lastly, the second part of the chapter raises questions and possibilities in terms of the promotion of an (un)just transition, grounded in decolonial epistemology to analyze the current debt the Global North and its corporations owe to the Global South, but also to create a path forward forged in reconciliation processes.

In terms of methodology, this research follows the analytical method (*método analético*), elaborated by Enrique Dussel, which can be summarized in an approach where the "Other", as oppressed, is the starting point. In other words, it incorporates the study of "Otherness" as an ethical foundation of human rights. It is understood, thus, as an expansion of the dialectic method, incorporating a new possibility of construction of knowledge in relation to the "Other", bringing the alterity of the distinct and the exteriority of the system at the core of the research. Thus, the dialogic construction of criticism is prioritized from the practice of alterity and a Philosophy of Liberation. The emphasis is on the mode of production and the conformation (or rather confrontation) of reality from the understanding of the oppressed, the enslaved, the subalternized⁴.

The analytical method favors decolonized epistemology that puts at the center not only the objective conditions of global impoverishment and oppression, but rather the systematic disempowerment of the interpretative perspective of the oppressed in the Global South⁵. To this end, the one producing and interpreting knowledge must already be a "server" committed to liberation. The philosopher must descend from any type of cultural or academic oligarchy "to know-hear" (*saber-ouvir*) the voice that comes from beyond, from above, from the exteriority of domination. The subject to be contemplated, the revealing message to be interpreted, will emerge from the actual process of liberation itself⁶.

⁴ Enrique Dussel, *Método para uma filosofia da libertação: superação analética da dialética hegeliana*, trans. Jandir João Zanotelli, (Salamanca: Sígueme, 1974), pp. 196-97.

⁵ Linda Alcoff, "An epistemology for the next revolution", *Transmodernity: Journal of Peripheral Cultural Production of the Luso-Hispanic World*, v. 1, n. 2, (2011): pp. 67-78. <https://doi.org/10.5070/T412011808>

⁶ Enrique Dussel, *Método para uma filosofia da libertação*, p. 210.

An interdisciplinary descriptive and exploratory desk research was performed in order to conduct the present analysis. The research technique used was based on literature review, case studies and comparative law analysis. Moreover, the procedure method was monographic. Above all, the present piece of research does not claim to be neutral. As Hartwig properly observed, human rights research is not and could never be neutral. The very notion of a Justice system itself is and will always be inherently political⁷.

⁷ Elisa Hartwig, *Quando a mentira ameaça o futuro: desinformação climática e seus impactos na democracia*, (São Paulo: Blimunda, 2023), p. 25.

2. The web of life and the failure of the current socio-economic system

Firstly, the present chapter addresses the interdependencies and interconnections of the components of the web of life, as a way of recognizing the intrinsic value of all living beings and the crisis of perception that led to an ecological collapse. Subsequently, it explains the link between an extractive way of being in the world through the lens of colonialism and the destruction of biodiversity worldwide, particularly in the Global South. It seeks to identify the reasons behind the failure of the current socio-economic system for the promotion of a sustainable environment and the consequences of misleading so-called "green" mechanisms. Lastly, the climate emergency, as a result of the current capitalist extractive neoliberal system, is presented within the context of extreme social and economic inequalities that sustain the destruction of the Earth for the sake of perpetuating the privileges of the economic elite.

2.1. The interdependencies within the web of life

Numerous authors delve into the profound importance of community, spanning from Freud⁸ to the scientists behind "The Ecologist - a Blueprint for Survival"⁹. Central to their discourse is the concept of community akin to an ecosystem, where each individual contributes to its stability. Simultaneously, the community profoundly influences an individual's well-being while imposing boundaries on their actions and reactions. Overall, community encompasses the social bonds and relationships that connect individuals together, providing a sense of collective identity, belonging and solidarity¹⁰.

Maturana's theory of language and consciousness allows to interlink two evolutionary drives: the helplessness of new-born humans and the freedom of the hand to make and use tools. The former required supportive families and communities and the latter stimulated

⁸ Sigmund Freud, *Civilization and its discontents*, trans. David McLintock, (New York: Penguin Classics, 2014).

⁹ "It was an issue of the magazine "The Ecologist" published prior to the 1972 UN Conference on the Human Environment, in Stockholm. The 'Blueprint' issue was so popular it reportedly sold about 500,000 copies, and was later published in book format." Bethany Hubbard, "The Ecologist January 1972: a blueprint for survival," *Ecologist informed by nature*, January 27, 2012, <https://theecologist.org/2012/jan/27/ecologist-january-1972-blueprint-survival>.

¹⁰ José J. Pizarro, Larraitz N. Zumeta, Pierre Bouchat, et al, "Emotional processes, collective behavior, and social movements: A meta-analytic review of collective effervescence outcomes during collective gatherings and demonstrations", *Frontiers in Psychology*, v. 13, (2022): pp. 1-28, <https://doi.org/10.3389/fpsyg.2022.974683>.

brain growth and the creation of language. The evolution of language allowed the early human beings to greatly increase their cooperative activities and to develop families, communities and tribes that gave them tremendous evolutionary advantages. The crucial role of language in human evolution was not the ability to exchange ideas, but rather the increased ability to cooperate. However, gradually, as this world became ever more diverse and complex, humans began to lose touch with Nature and became ever more fragmented personalities¹¹.

On the topic of religious energy and a sense of unity, Freud¹² describes it as an oceanic feeling of being indissolubly bound up with and belonging to the whole of the world outside oneself, quoting a friend that affirms one "[...] cannot fall out of this world". As a newborn child, one does not separate their ego from an outside world that is the source of the feeling flowing towards them. Another motivation to disconnect the ego from the multitude of sensations arising from the external world is the frequent, varied, and inevitable experience of pain (or lack of pleasure), which the absolute pleasure principle mandates to terminate and avoid¹³. In this sense, the inability to connect with others carries with it an inability to take responsibility because of pain¹⁴.

For Capra, deep ecological awareness transcends mere environmental concern; it embodies a spiritual or religious dimension. When the human spirit is viewed as the state of consciousness where individuals experience a profound sense of belonging and interconnectedness with the entire cosmos, it is evident that ecological awareness resonates with spirituality at its core. It is, therefore, aligned with the spiritual traditions of Buddhists and Native Americans¹⁵.

Freud believed a tendency arises to detach from the ego¹⁶ anything that may give rise to such unpleasurable experience, to expel it and so create an ego that is oriented solely towards

¹¹ Fritjof Capra, *The Web of Life: A New Scientific Understanding of Living Systems*. (New York: Anchor Books, 1996), p. 294.

¹² It is important to stress that Freud, as an expert of psychoanalysis, is also a product of the time and space he was occupying at the moment of his writings. Therefore, his theory is limited to a white Western man perspective who lived in between two World Wars.

¹³ Freud, *Civilization and its discontents*, p. 4-5.

¹⁴ Bell Hooks, *Tudo sobre o amor*, trans. Stephanie Borges, (São Paulo: Elefante, 2020), p. 80.

¹⁵ Capra, *The Web of Life*, p. 7.

¹⁶ There are different meanings of "Ego" incorporated in Freud's work. In this book context, the "Ego" can be understood as a mediator between the psyche and the outside world, engaged in the interests of the totality of the person, but with its relative autonomy by the relationship of responsibility with the claims of the id, the imperatives of the superego and the demands of reality. Jean Laplanche and Jean-Bertrand Pontalis, *Vocabulário da Psicanálise*, trans. Pedro Tamen, 4th ed, (São Paulo: Martins Fontes, 2001), p. 124.

pleasure and confronts an alien and menacing world outside¹⁷. On one hand, as a member of a community against the dreaded external world, one can go on the attack against Nature with the help of applied science and subject her to the human will¹⁸. On the other hand, Freud recognized that humans shall never wholly control Nature since humans' "[...] constitutions, itself part of Nature, will always remain a transient structure with limited capacity for adaptation and achievement".¹⁹

As belonging to civilization, Freud acknowledged all activities and values that are useful to human beings, "by making the earth serviceable to them". A country of high level of civilization is considered to be one where it can be found "[...] everything that can assist man in his exploitation of the land and protect him against the forces of nature" in a "properly ordered" way²⁰. However, the interests of big business led to the disintegration of rural communities, as a reminder that destruction based on the accumulation and satisfaction of hedonistic and materialistic desire²¹ is rapidly becoming the norm in all kinds of communities.²² This illustrates how civilization manifests itself in paradoxical ways.

Civilization satisfies human drives, but in contrast it limits the pursuit of many drives for the sake of civilization itself. The very civilization that sustains human life is also an object of destruction by the human being. On one side, it creates unity even with Nature itself, on the other, exploitation of Nature and human beings is the order of the day. In light of this fundamental hostility, "civilized society is constantly threatened with disintegration"²³. In other words, the hegemonic civilization, characterized by its Western, individualistic, neoliberal and technophilic nature, is destined for failure. The ecological breakdown announces a far more profound collapse: the demise of human society. Climate change is a symptom of this larger collapse²⁴.

In terms of satisfaction of the drives, Capra points out that care flows naturally if the "self" is widened and deepened so that protection of Nature is felt and conceived as protection

¹⁷ Freud, *Civilization and its discontents*, p. 5.

¹⁸ Freud, *Civilization and its discontents*, p. 18.

¹⁹ *Ibid*, p. 29.

²⁰ *Ibid*, p. 37.

²¹ Hooks, *Tudo sobre o amor*, p. 142.

²² *Ibid*, p.135.

²³ Freud, *Civilization and its discontents*, p. 61.

²⁴ Hartwig, *Quando a mentira ameaça o futuro*, p. 23.

of themselves. One cares for oneself without feeling any moral pressure to do it. Consequently, if humans feel an integral part of the web of life by recognizing this expansion of the "self", as an "ecological self", their behavior naturally follows norms of strict environmental ethics to care for all of living Nature. Thus, the connection between an ecological perception of the world and corresponding behavior is not a logical but a psychological connection²⁵. In Galeano's words, "*Viéndola, me veo. Lo que contra ella hago, está hecho contra mí. En ella me encuentro, mis piernas son también el camino que las anda*"²⁶.

According to the philosopher Byung-Chul Han, there is a mutual influence between social and biological discourses, which can be perceived through the analysis of social discourses that serve as immunological explanatory models. For the author, "attack and defense determine immunological action"²⁷, and the object of immune defense is the foreign as such. Even if it has no hostile intentions, even if it poses no danger, it is eliminated on the basis of "Otherness"²⁸. The author of "The burnout society", starting from a biological assumption, draws an analysis clarifying what the immune action is able to produce in the social sphere, in the words of the author, "[...] a blind spot: by defense, everything foreign is simply combated and warded off"²⁹.

However, it states that humanity is moving towards the replacement of "Otherness" by "difference", which no longer causes immune defense, since the foreignness itself is being deactivated into a formula of consumption, the consumer is no longer "an immunological subject"³⁰. After all, the immunological paradigm proves incompatible with the process of globalization, given that the world organized immunologically is "[...] marked by borders, transitions, thresholds, fences, ditches, and walls that prevent universal change and exchange"³¹.

Byung-Chul Han's interpretation illustrates the poor aspects of human relationships, shaped in the process of globalization misguided by a formula of consumption. It is undeniable

²⁵ Capra, *The Web of Life*, p. 12.

²⁶ Translation of the author: "Seeing her, I see myself. What I do against her is done against me. In her I find myself, my legs are also the path that walks them". Eduardo Galeano, "MENSAJE A LA CUMBRE DE LA MADRE TIERRA," Página 12, April 19, 2010, <https://www.pagina12.com.ar/diario/contratapa/13-144146-2010-04-19.html>.

²⁷ Byung-Chul Han, *The Burnout Society*, trans. The Board of Trustees of the Leland Stanford Junior University. (California: Stanford University Press, 2015), p. 1.

²⁸ Han, *The Burnout Society*, p. 2.

²⁹ *Ibid*, p. 2.

³⁰ Han, *The Burnout Society*, p. 2.

³¹ *Ibid*, p. 3.

that a satisfactory accounting system sustains and reinforces the social structure it originates from. In light of that, it should be shaped by a society grounded in a sober assessment of ecological reality rather than the anthropocentric illusion that humanity has unrestricted dominion over all species, including, it appears, the future generations³².

Among all species, humans uniquely engage in intra-species killing in the pursuit of ideologies such as religion, free markets and patriotism³³. Consequently, a sense of community is increasingly rare among humans today, let alone a sense of belonging and respect for Nature, with the exception of the indigenous traditions.

In the words of António Guterres, Secretary General of the United Nations, "our planet is a mass of complex, connected systems"³⁴. The Earth, as comprehended by Capra, is confronting systemic issues, intricately linked and interdependent, posing significant harm to both the biosphere and human existence. These problems, he contends, should be regarded as diverse manifestations of a singular crisis — a crisis primarily rooted in how the world is perceived. It de-rives from the fact that most of humanity, and especially large social institutions, subscribe to the concepts of an outdated worldview, a perception of reality inadequate for dealing with an overpopulated, globally interconnected world³⁵.

The indigenous knowledge denounces the current crisis of perception derived specially from modern use of language, colonization and the Western way of life. For Davi Kopenawa, a yanomami³⁶ shaman, in the forest, human beings are the "ecology."³⁷ But "ecology" is equally the *xapiri*³⁸, the animals, the trees, the rivers, the fish, the sky, the rain, the wind and the sun. It is everything that came into being in the forest, far from the "white people": everything that

³² Edward Goldsmith, "A blueprint for survival," *The Ecologist*, (London: Tom Stacey Ltd, 1972), p. 12-13, <https://www.sustainable.soltechdesigns.com/ec0005-Ecologist-1972-01.pdf>

³³ Capra, *The Web of Life*, p. 294.

³⁴ António Guterres, "A Moment of Truth: Special Address on Climate Action by UN Chief with Bloomberg & others," United Nations, June 5, 2024, <https://www.youtube.com/watch?v=e377HTuwBdw>.

³⁵ Capra, *The Web of Life*, p. 04.

³⁶ The Yanomami constitutes a population estimated at more than 33,000 people in about 640 communities that occupies a tropical forest space of approximately 230,000 square kilometers, in the two slopes of the Parima mountain range, a watershed between the upper Orinoco (in southern Venezuela) and the banks of the Rio Negro (in northern Brazil). They form an isolated linguistic and cultural ensemble, subdivided into several languages and related dialects". Davi Kopenawa and Bruce Albert, *A queda do céu. Palavras de um xamã Yanomami*, trans. Beatriz Perrone-Moisés. (São Paulo: Companhia das Letras, 2015), p. 44.

³⁷ "Ecology - from the Greek oikos ("household") - is the study of the Earth Household. More precisely it is the study of the relationships that interlink all members of the Earth Household". Capra, *The Web of Life*, p. 32.

³⁸ Images of the mythological animal ancestors. Kopenawa and Albert, *A queda do céu*, p. 13.

isn't surrounded by fences yet³⁹. By using these words, the shaman recognized the interconnection between the elements that compose the web of life and their interrelationship, demonstrating utter respect and compassion for Nature.

For Krenak, an indigenous leader and praised writer from Brazil, there is no border between the human body and the other organisms that are around it⁴⁰. The body's configuration accepted today by many is just a poor institution manufactured by a civilization without imagination⁴¹. In this sense of imagination, the indigenous ancestors have never devastated the forest because "[...] they kept the spirits by their side". Kopenawa poses the rhetorical question: "Is it not still as alive as it has always been?"⁴². Considering this "living character" of the forest, the ancestors never thought to clear the forest or dig into its ground without measure. They simply thought that it should always be preserved. In his words:

We are inhabitants of the forest. We were born in the middle of the "ecology" and we grew up in it. We have always heard its voice because it is the voice of the *xapiri* who come down from the mountains and hills of the forest⁴³.

In opposition, the "white men" act like the forest lies there without reason and it can therefore be mistreated, damaged, chopped down, and burned to the ground, which means "the land will soon be naked and blazing hot and its value of growth will leave it forever"⁴⁴. Since the European Renaissance, Nature has become a commodity or an obstacle to human progress and, until today, the divorce between human and Nature has persisted, to the point that there are still people of good will who are moved by the mistreated state of nature, but seeing it from outside. Whereas the indigenous traditions see it from within oneself. The European conquests have done harm not only to Nature but also applied brutal punishments such as whipping, throat-slitting or burning alive indigenous peoples because of their belief in this communion with Nature⁴⁵.

The main concern of Kopenawa is that the rhetoric employed by "white men" regarding the preservation of Nature lacks the necessary follow-through in terms of meaningful

³⁹ Kopenawa and Albert, *A queda do céu*, p. 393.

⁴⁰ Ailton Krenak, *Futuro Ancestral*, (São Paulo: Companhia das Letras, 2022), p. 39.

⁴¹ *Ibid*, p. 40.

⁴² Kopenawa and Albert, *A queda do céu*, p. 393.

⁴³ *Ibid*, p. 393.

⁴⁴ *Ibid*, p. 383.

⁴⁵ Galeano, "MENSAJE A LA CUMBRE DE LA MADRE TIERRA."

action. Ultimately, their predominant norm for a significant period has been destruction driven by greed. From a sociological perspective, Bell Hooks affirms that greed violates the spirit of connection and community that is natural for human survival. It destroys the individual recognition of everyone's needs and concerns, replacing this awareness with a dangerous egocentrism⁴⁶.

Healthy narcissism, defined by self-acceptance and perception of one's own worth — cornerstones of self-love, has been replaced by pathological narcissism in which only the "I" matters, which justifies any action that allows the fulfillment of desires. In this context, huge sums of money supply the growing culture of imperialism and capitalism, where satisfaction of desires is attributed to overconsumption⁴⁷.

Another way of understanding the interdependencies within the web of life is by acknowledging scientifically that human survival is directly linked to the preservation of biodiversity. Scholars defined the three main interlinked issues that humanity currently faces as the "triple planetary crisis": climate change, pollution and biodiversity loss⁴⁸. The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services IPEBS-IPCC Workshop Report emphasizes the close connection between climate change and biodiversity loss, revealing their shared roots in human activities and their predominantly adverse effects on human well-being and quality of life⁴⁹. Failing to recognize the inseparable link between climate, biodiversity and human well-being will lead to suboptimal solutions for addressing either crisis⁵⁰.

Unequivocally, climate change and other contemporary challenges to ecological and environmental systems require a network-oriented approach, as multiple species are likely to be affected by ongoing changes at local and global levels. This approach effectively illustrates the intricate ecological interactions among species and underscores their global interdependencies. Without comprehending the structure of ecological networks, one cannot assess how resilient these networks are to species extinctions, habitat loss or other human-induced impacts. Models of such networks have forecasted that random species extinctions could trigger cascading coextinctions

⁴⁶ Hooks, *Tudo sobre o amor*, p. 150.

⁴⁷ Ibid, p. 150.

⁴⁸ United Nations, "What is the Triple Planetary Crisis?," April 12, 2022, <https://unfccc.int/news/what-is-the-triple-planetary-crisis>.

⁴⁹ Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), "IPBES-IPCC Co-sponsored Workshop Report on Biodiversity and Climate Change," (Bonn, 2021), 10.5281/zenodo.4782538, p. 15.

⁵⁰ Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), "IPBES-IPCC Co-sponsored Workshop Report on Biodiversity and Climate Change," p. 15.

among remaining species due to resource depletion. The disappearance of crucial species could lead to a rapid collapse of the entire network⁵¹.

In 1972, a group of experts focused on studying global environmental issues formed the "Movement for Survival - MFS". They highlighted the importance of community decision-making being based on environmental sustainability, foundational principles of ecology, like the interconnectedness of all elements and the extensive repercussions of disrupting ecological processes⁵². In other words, radical change is both essential and inevitable because the increases in human population and *per capita* consumption, which disrupt ecosystems and exhaust resources, are undermining the very foundations of survival.⁵³

According to the IPCC (Intergovernmental Panel on Climate Change), maintaining planetary health is essential for human and societal health, as well as a pre-condition for climate resilient development. Effective ecosystem conservation on approximately 30% to 50% of Earth's land, freshwater and ocean areas, including all remaining areas with a high degree of naturalness and ecosystem integrity, will help protect biodiversity, build ecosystem resilience and ensure essential ecosystem services⁵⁴. After all, ecological interactions play a crucial role in maintaining Earth's biodiversity⁵⁵.

The UN Food and Agriculture Organization (FAO) highlights that community forests in Latin America, where indigenous peoples have a collective and secure land ownership based on a respectful and regenerative relationship with the environment, are subject to deforestation rates four times slower than those of state protected areas in neighboring countries⁵⁶. After all, indigenous communities around the world protect nearly 28% of the earth's surface and

⁵¹ Jordi Bascompte, "Disentangling the Web of Life," *Science*, v. 325, (July 24, 2009): pp. 416-419, https://www.bascompte.net/content/publications/Science_09.pdf. p. 417, 418.

⁵² Goldsmith, "A blueprint for survival," p. 15.

⁵³ *Ibid*, p. 2.

⁵⁴ Intergovernmental Panel on Climate Change (IPCC), "Fact sheet - Biodiversity Climate Change Impacts and Risks," *Contribution of Working Group II – Impacts, Adaptation and Vulnerability to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, November, 2022, https://www.ipcc.ch/report/ar6/wg2/downloads/outreach/IPCC_AR6_WGII_FactSheet_Biodiversity.pdf. p. 3.

⁵⁵ Leandro G. Cosmo, Ana Paula A. Assis, Marcus A. M. de Aguiar, et al, "Indirect effects shape species fitness in coevolved mutualistic networks," *Nature*, v. 619, (2023): pp. 788-792, <https://doi.org/10.1038/s41586-023-06319-7>, p. 788.

⁵⁶ United Nations, "FAO reconhece contribuições indígenas, afrodescendentes e migrantes na luta contra a mudança climática," June 1, 2021, <https://brasil.un.org/pt-br/129502-fao-reconhece-contribuicoes-ind%C3%ADgenas-afrodescendentes-e-migrantes-na-luta-contramudan%C3%A7a>

80% of the planet's biodiversity, making them examples of sustainable relationships within the web of life and key players in responding to climate change challenges⁵⁷.

The mutual reinforcement of climate change and biodiversity loss means that satisfactorily resolving either issue requires consideration of the interconnections and interdependencies of the web of life. All ecosystems tend towards stability and the more diverse and complex the ecosystem the more stable it is; that is, the more species there are and the more they interrelate, the more stable is their environment. In this sense, stability means the ability to return to the original position after any change, instead of being forced into a totally different pattern—and hence predictability. Humans depend on the predictability of ecological processes for their own survival.⁵⁸

The required change in perspective entails viewing the world as a unified entity rather than a dissociated collection of components. Deep ecological⁵⁹ awareness, in a broader and more profound sense of the term "ecological" than usual, acknowledges the inherent interconnectedness of all phenomena and the reality that, both as individuals and societies, they are interconnected within and reliant upon the cyclical rhythms of Nature. This perspective recognizes the intrinsic value of all living beings and views humans as just one particular strand in the web of life⁶⁰.

The primary goal of deep ecology is to challenge every facet of the old paradigm. It does so by posing profound inquiries about the fundamental principles of our contemporary, scientific, industrial, growth-driven, materialistic worldview and way of life. It examines the connections humans nurture with one another, with future generations and with the interconnected web of life in which humans are embedded⁶¹. According to Bell Hooks, living consciously means thinking critically about oneself and the world one lives in, daring to ask basic questions and

⁵⁷ Organização das Nações Unidas para a Alimentação e a Agricultura (FAO), "Dia Internacional dos Povos Indígenas: 5 maneiras pelas quais os povos indígenas estão ajudando a acabar com a fome no mundo," August 9, 2020, <https://www.fao.org/brasil/noticias/detail-events/pt/c/1302179/>

⁵⁸ Goldsmith, "A blueprint for survival," p. 3.

⁵⁹ "A global grass-roots movement known as "deep ecology" is a philosophical school founded by the Norwegian philosopher Arne Naess in the early 1970s with his distinction between "shallow" and "deep" ecology. This distinction is now widely accepted as a very useful term for referring to a major division within contemporary environmental thought." Capra, *The Web of Life*, p. 7.

⁶⁰ Ibid, p. 06-07.

⁶¹ Ibid, p. 11.

seeking to be aware of everything that underpins one's actions, purposes, values and goals to engage in a critical reflection about the world and know it more intimately⁶².

The disconnection begins within oneself, in dealing with what generates conflict, even pain, but that needs to be faced, elaborated, to be known. It goes on to generate more disconnection, this time with the Other, with what is recognized as a community and has the power to supply the sense of belonging, identity and strength. Simultaneously, the individual is in a state of disconnection with Nature, which represents the sustenance of the web of life, which works only together, dependent, whose humans are only one of its elements. However, the most lethal ones.

In conclusion, the recognition of the web of life is a powerful representation encapsulating ecological connectivity among elements of Nature⁶³. The old paradigm is based on anthropocentric (human-centered) values whereas deep ecology is grounded in ecocentric (Earth-centered) values, in which humans are not considered hierarchically superior (speciesism) within the web of life and living consciously is the norm⁶⁴. After all, in the words of Eduardo Galeano, the rights of human beings and the rights of Nature are two names for the same dignity⁶⁵.

2.2. The impacts of coloniality and capitalism

The ecological collapse is rooted in the intertwining of inequality, colonialism, and the trajectory of neoliberal capitalism within the contemporary socio-economic system⁶⁶. For Wright and Nyberg, "the threat of climate change is fundamentally connected with the expansion of global capitalism"⁶⁷. Equally, the strength of the whole imperialist system rests on the necessary inequality of the parts that form it, assuming increasingly dramatic magnitudes⁶⁸. In terms of

⁶² Hooks, *Tudo sobre o amor*, p. 95,96.

⁶³ Bascompte, "Disentangling the Web of Life," p. 417.

⁶⁴ Capra, *The Web of Life*, p. 11.

⁶⁵ Galeano, "MENSAJE A LA CUMBRE DE LA MADRE TIERRA."

⁶⁶ Hartwig, *Quando a mentira ameaça o futuro*, p. 23.

⁶⁷ Christopher Wright and Daniel Nyberg, *Climate Change, Capitalism, and Corporations: Processes of Creative Self-Destruction*, (Cambridge University Press, 2015), p. 6.

⁶⁸ Eduardo Galeano, *Las venas abiertas de América Latina*, (Buenos aires: Siglo Veintiuno Editores, 1971), p. 14.

carbon dioxide emissions⁶⁹, the richest 1% of the World emit as much as one third of humanity⁷⁰ whereas the countries characterized by high levels of inequality experience seven times as many flood-related deaths compared to more egalitarian nations⁷¹.

According to Hartwig, there is a disparity between industrialized nations — colonizers that are paradoxically called "developed countries" — and the colonized nations, which still bear the brunt of this so-called development⁷². The *per capita* consumption of energy and raw materials starkly highlights the divide between the so-called "developed" and "undeveloped" regions of the world. This division serves to perpetuate the gap in inequality, thereby fueling the growth of capitalism in favor of the wealthiest nations⁷³.

In world history, the triumph of those who prevailed was made possible by the losses of others: the narrative of Latin America's underdevelopment is inseparable, as often noted, from the story of global capitalism's growth. The region's subjugation was always implicit in the triumph of others; the region's wealth has consistently fueled its own impoverishment, sustaining the prosperity of external powers: empires and their native realms. In colonial and neocolonial alchemy, "gold is transmuted into scrap and food turns into poison"⁷⁴.

Furthermore, there's inequality among individuals based on factors such as class, gender, race, political beliefs and sexual orientation. Additionally, there's the often-overlooked inequality between species, which reinforces the prevailing model of economic development⁷⁵. In summary, patriarchy, imperialism, capitalism, speciesism and racism are examples of social domination that are interconnected, exploitative and anti-ecological⁷⁶. For the Secretary General

⁶⁹ Carbon dioxide emissions or CO₂ emissions are emissions stemming from the burning of fossil fuels and the manufacture of cement and they are the primary driver of global climate change. Hannah Ritchie and Max Roser, "CO₂ emissions: How much CO₂ does the world emit? Which countries emit the most?," Our World in Data, June, 2020, <https://ourworldindata.org/co2-emissions>; Eurostat statistics explained, "Glossary:Carbon dioxide emissions," (date accessed 29/07/2024), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:Carbon_dioxide_emissions

⁷⁰ Guterres, "A Moment of Truth: Special Address on Climate Action by UN Chief with Bloomberg & others".

⁷¹ Camila Boehm, "Grupo de 1% mais rico emite igual quantidade de CO₂ de 66% dos pobres," *Agência Brasil*, November 19, 2013, <https://agenciabrasil.ebc.com.br/economia/noticia/2023-11/grupo-de-1-mais-rico-emite-igual-quantidade-de-co2-de-66-dos-pobres#:~:text=Os%20pa%C3%ADses%20com%20altos%20C3%ADndices,%2C%20raça%2C%20religião%20e%20casta>

⁷² Hartwig, *Quando a mentira ameaça o futuro*, p. 23.

⁷³ Goldsmith, "A blueprint for survival," p. 2.

⁷⁴ Galeano, *Las venas abiertas de América Latina*, p. 16,17.

⁷⁵ Hartwig, *Quando a mentira ameaça o futuro*, p. 23.

⁷⁶ Capra, *The Web of Life*, p. 8.

of the UN, António Guterres, in the current climate crisis, humans are not only in danger; they are, in fact, the danger.⁷⁷

As Eduardo Galeano properly described, it is Latin America, "the region of open veins". Since the early days of colonization, everything has always been transformed into European or, later, American capital, and as such has accumulated and still accumulates in the distant centers of power. Everything: The Earth, its fruits and its mineral-rich depths, peoples and their capacity for work and consumption, natural resources and human resources. The mode of production and the class structure of each place have been successively determined from outside, by their incorporation into the universal gear of capitalism⁷⁸.

Neoliberalism is often identified as the prevailing phase of capitalism, exerting influence over capitalist economies, societies and shaping public policies, global economic interactions, social dynamics and even individual perspectives⁷⁹. Yet, it appears that to sustain this system, humanity is willing to perpetuate the suffering endured by entire communities through slavery, women's violence and child labor. The exploitation of Nature for profit at the expense of a minority and by subjecting non-human animals to harsh confinement⁸⁰.

According to the UN High Commissioner for Human Rights, "behind today's racial violence, systemic racism, and discriminatory policing lies the failure to acknowledge and confront the legacy of the slave trade and colonialism"⁸¹. In other words, while the colonial era is formally over, numerous issues and impacts it has generated persist with a resonance akin to historical times, often adapting to contemporary manifestations of globalization. As highlighted by Stahn, these enduring challenges are marked by structural injustice, presented in the form of inequality, exploitation and trauma⁸².

⁷⁷ Guterres, "A Moment of Truth: Special Address on Climate Action by UN Chief with Bloomberg & others".

⁷⁸ Galeano, *Las venas abiertas de América Latina*, p. 16.

⁷⁹ Pierre Dardot and Christian Laval, *A nova razão do mundo: ensaio sobre a sociedade neoliberal*, trans. Mariana Echalar, (São Paulo: Boitempo, 2016), p. 14.

⁸⁰ Hartwig, *Quando a mentira ameaça o futuro*, p. 24.

⁸¹ Michelle Bachelet, "UN human rights chief calls for reparations for slavery, colonialism," France 24, June 17, 2020, <https://www.france24.com/en/20200617-un-human-rights-chief-calls-for-reparations-for-slavery-colonialism>

⁸² Carsten Stahn, "Confronting Colonial Amnesia: towards new relational engagement with colonial injustice and cultural colonial objects," *Journal of International Criminal Justice*, v 18, n. 4, (2020): p. 793–824, <https://doi.org/10.1093/jicj/mqaa052>, p. 794, 796.

Moreover, colonialism is defined by ignorance and dissociation which led to large-scale violence and destruction⁸³. However, in legal terms, colonial violence is frequently construed as a type of historical injustice that doesn't neatly align with contemporary legal categories⁸⁴. Therefore, the task of contemplating reconciliation becomes challenging as the enduring repercussions of colonialism persist in the present without being fully recognized and addressed. After all, "colonial injustice largely lacks a 'living memory' since it is considered to be characterized by a greater degree of amnesia"⁸⁵, in the sense of colonial denialism or erasure of history.

As part of the destructive legacy of colonialism, Western discourse and practices perpetuate their universality by invalidating non-Western knowledge, lifestyles, modes of reasoning, and experiences, which are marginalized by unequal racial and geopolitical power dynamics.⁸⁶ Therefore, the restraint of the intellectual capabilities of racialized individuals by the dominant framework of knowledge, which is upheld as inherently superior, becomes normalized. As explained by Foucault, cited by McGurk, "power and knowledge directly imply one another" since "power produces knowledge" just as much as knowledge produces power, which contributes to perpetuate the status quo of the hegemonic powers⁸⁷.

Ultimately, knowledge that aligns with the commanding authority of colonial hegemony and monocultural norms is socially endorsed, while anything beyond these boundaries is deemed as non-existence, insignificance, or even barbarism⁸⁸, including non-Western perceptions of Nature and the recognition of the web of life. For Dzah, "this process of eviscerating or eliding prevailing knowledges and supplanting them with a dominant framing or ideology conceals particular histories and renders them invisible"⁸⁹.

⁸³ Nishtha Singh, "Climate Justice in the Global South: Understanding the Environmental Legacy of Colonialism," *E-International Relations*, February, 2, 2023, <https://www.e-ir.info/2023/02/02/climate-justice-in-the-global-south-understanding-the-environmental-legacy-of-colonialism/>

⁸⁴ Stahn, "Confronting Colonial Amnesia," p. 797.

⁸⁵ *Ibid*, p. 794.

⁸⁶ Frantz Fanon, *Pele negra, máscaras brancas*, trans. Renato da Silveira, (Salvador: EDUFBA, 2008), p. 97.

⁸⁷ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan, (London: Penguin Modern Classics, 2020), p. 27, cited in Sophie McGurk, "Discipline(d) and Punish(ed): The Museum as a 'Prison' of Culture," *Trinity College Dublin*, 2021, <http://www.tara.tcd.ie/handle/2262/97234>, p. 6.

⁸⁸ Enrique Dussel, *Filosofia da libertação na América Latina*, trans. Luiz João Gaio, (Rio de Janeiro: Edições Loyola, 1986), p. 11.

⁸⁹ Godwin Eli Kwadzo Dzah, "Marginalising Africa: The 'New' Human Right to a Clean, Healthy and Sustainable Environment in International Law," *Third World Approaches to International Law Review*, August 17, 2023,

According to Dussel, citizens of colonized nations were not only culturally, economically and politically dependent but also epistemologically constrained. They lacked genuine methodological and autonomous thinking rooted in their socio-historical context because their intellectual frameworks were negatively defined by domination⁹⁰. As a result, the legacy of colonialism persists in how knowledge is produced, as individuals could not break free from applying "philosophies of the center" to peripheral contexts. As an epistemological response, the philosophy of liberation emerged as the breeding ground for the tradition of historiographical studies of the Latin American region⁹¹. Philosophy of liberation, of youth, of the oppressed, of the condemned of the earth, condemned of the world and of history⁹².

The legacy of colonial policies which targeted indigenous groups and involved a "slow-moving process" of still ongoing "colonial genocide" also resulted in the massive destruction of the living Earth⁹³. Thus, the Philosophy of Liberation also involves fostering sustainable relationships among human beings and all living beings. It is crucial in this context to recognize and confront the processes that dehumanize the "Other," such as indigenous peoples, and to understand how the power to depict and construct narratives about them (and their environments) reinforces structures of power, domination and dispossession⁹⁴.

According to Tully, the unsustainable, non-reciprocal extraction rather than sustainable, reciprocal regeneration, has become the dominant relationship to living earth and social systems. Such an "[...] extractive and mastery-over way of being discloses the world as an external storehouse of proto-commodities", neglecting to think ahead to the conditions that sustain future generations⁹⁵. From the perspective of the Global South, the notion of "coloniality" (*colonialidade*) defines this dominant form of control of resources, labor, capital and knowledge confined within a power dynamic shaped by the capitalist market. Thus, as much as colonialism

<https://twailr.com/marginalising-africa-the-new-human-right-to-a-clean-healthy-and-sustainable-environment-in-international-law/>

⁹⁰ Enrique Dussel, *Filosofía de la Liberación*, (Buenos Aires, Docencia, 2013). p. 20.

⁹¹ Ibid, p. 19.

⁹² Ibid, p. 15.

⁹³ Stahn, "Confronting Colonial Amnesia," pp. 797, 802.

⁹⁴ Hamza Hamouchene and Katie Sandwell, eds., *Dismantling green colonialism: Energy and Climate Justice in the Arab Region*, (London: Pluto press, 2023), p. 10.

⁹⁵ James Tully, "Reconciliation Here on Earth," in *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings*, edited by M Ash, J Borrows and J Tully, (Toronto: University of Toronto Press, 2018), pp. 47-68.

has been overcome, coloniality persists through different manifestations, primarily as an ongoing dissemination of colonial ideologies⁹⁶.

From the legacy of colonialism, only the British Crown currently owns 7.23% of all land on the planet, which includes 89% of Canada, 23% of Australia and 40% of New Zealand, and it is very often used for destructive purposes such as logging and commercial agriculture. From 2000 to 2023, 81% of land grabs were operated by companies coming from the highest income countries (the Global North) in poor and low income countries (the Global South)⁹⁷. Besides, until 1882 more than half of the world's cumulative emissions came from the United Kingdom alone⁹⁸. Consequently, there is an inextricable link between colonialism, land ownership and the global extraction-based operating system that has driven the planet into crisis⁹⁹.

In the last decade, various stakeholders such as investors, consumers, governments and corporate clients have increasingly pressured companies to disclose their environmental performance and offer eco-friendly products¹⁰⁰. This surge in green markets has coincided with the rise of greenwashing—a phenomenon characterized by companies engaging in positive environmental messaging despite poor environmental practices¹⁰¹. This includes everything from individual product claims with eco-labeling to broader corporate sustainability reports featuring Nature-themed elements. Greenwashing is perceived as a deliberate corporate strategy involving misleading elements aimed at deceiving stakeholders¹⁰².

While the accumulation of wealth has historically led to the unsustainable depletion of natural resources, capitalism still argues that as one commercially viable resource is depleted, the market will innovate and provide substitutes. This perspective portrays a misleading depiction of capitalism as an inexhaustible mechanism capable of continually generating wealth and

⁹⁶ Milena Abreu Avila, "Colonialidade e Decolonialidade: você conhece esses conceitos?," Politize, March 19, 2021, <https://www.politize.com.br/colonialidade-e-decolonialidade/>

⁹⁷ Culture Hack Labs, "Context – exposing the problem of land ownership", November 9, 2023, <https://www.culturehack.io/issues/territories-of-transition-land-back-to-right-relations-briefing/context-exposing-the-problem-of-land-ownership/>

⁹⁸ Hannah Ritchie, "Who has contributed most to global CO2 emissions?," Our World in Data, *October 1, 2019*, <https://ourworldindata.org/contributed-most-global-co2>

⁹⁹ Culture Hack Labs, "Context – exposing the problem of land ownership".

¹⁰⁰ Sebastião Vieira de Freitas Netto, Marcos Felipe Falcão Sobral, Ana Regina Bezerra Ribeiro, *et al*, "Concepts and forms of greenwashing: a systematic review," *Environ Sciences Europe* v. 32, n.19 (2020): pp. 1-12, <https://doi.org/10.1186/s12302-020-0300-3>, p. 1.

¹⁰¹ Netto, Sobral, Ribeiro, *et al*, "Concepts and forms of greenwashing: a systematic review," p. 2.

¹⁰² *Ibid*, p. 10.

increasing social prosperity. In reality, as every product yields a byproduct, the capacity to extract and consume vast amounts of natural resources has also resulted in a significant volume of waste, including physical garbage, atmospheric pollution and other forms of environmental degradation¹⁰³.

The Intergovernmental Panel on Climate Change (IPCC), the foremost authority on climate science, clearly emphasizes in its assessment report from 2014 that economic growth is a primary driver of greenhouse gas emissions. The rationale is straightforward: sustained economic expansion necessitates continuous consumption of resources such as fossil fuels. This perpetuates a harmful cycle that increases emissions¹⁰⁴. In other words, the world cannot accommodate this continued increase in ecological demand because indefinite growth of whatever type cannot be sustained by finite resources¹⁰⁵.

Effectively tackling climate change requires a global pledge to markedly decrease the extraction, production and consumption of natural resources. Since pollution directly results from consumption, it is imperative to restrict the number of resources humans utilize. Nevertheless, the current capitalist system is poorly equipped and lacks the capacity to purposefully restrain its unsustainable expansion. The underlying tenets of neoliberal capitalism hinder its ability to effectively confront climate change¹⁰⁶.

The same greedy and authoritarian power structures that have contributed to climate change are now shaping the response to it. However, their analysis of climate change and the necessary transition remains limited – and even dangerous, as it threatens to reproduce the patterns of dispossession and resource plunder that characterize the prevailing fossil fuel regime¹⁰⁷. Conversations surrounding climate action tend to be restricted to narrow, technocratic approaches, leaning heavily on neoliberal, market-driven strategies. These discussions are typically top-down

¹⁰³ Jonathan T. Park, "Climate change and Capitalism," *Consilience: The Journal of Sustainable Development* v. 14, n. 2 (2015): Pp.189–206, <https://www.jstor.org/stable/26188749>, p. 189.

¹⁰⁴ Matthew Soener, "Growth, climate change, and the critique of neoclassical reason: New possibilities for economic sociology," *Economic Sociology - the European electronic newsletter*, v. 22, n. 3, (2021): 10-15, https://econsoc.mpifg.de/43841/03_Soener_Econsoc-NL_22-3_July2021.pdf, p. 11-12.

¹⁰⁵ Goldsmith, "A blueprint for survival," p. 3.

¹⁰⁶ Park, "Climate change and Capitalism," p. 189.

¹⁰⁷ Hamouchene and Sandwell, eds., *Dismantling green colonialism: Energy and Climate Justice in the Arab Region*, p. 5.

and implicitly prioritizing the preservation of the structures embedded within racist, imperialist and patriarchal capitalism¹⁰⁸. In the words of Galeano:

Against a system of power founded on war and waste, which despises human life and commodifies our earthly goods.

May we be able to speak little and do much. Serious damage has been done to us, and continues to be done, by "inflation of words", which in Latin America is more harmful than monetary inflation. And also, and above all, we are fed up with the hypocrisy of the rich countries, which are leaving us without a planet while making pompous speeches to disguise the kidnapping¹⁰⁹.

The pompous speeches from rich countries mentioned by Galeano are part of a systematic approach nowadays that tends to translate into "energy colonialism" and environmental racism. This is exemplified by Western governments presenting themselves as pro-environment by banning fracking domestically and setting targets for reducing carbon emissions while they simultaneously provide diplomatic backing to their multinational corporations to exploit shale resources in their former colonies, as seen in France's support of Total¹¹⁰ in Algeria in 2013¹¹¹.

Meanwhile, in the Ecuadorian rainforest, deforestation is driven by China's appetite for wood used in wind turbine construction. In the lithium triangle in South America, communities struggle for the scarce water sources that are increasingly monopolized by lithium mining in order to equip electric cars with lithium batteries. In South Africa, the huge hydrogen plant infrastructure for exporting "clean" energy is an obstacle for communities that depend on artisanal fishing or

¹⁰⁸ Hamouchene and Sandwell, eds., *Dismantling green colonialism: Energy and Climate Justice in the Arab Region*, p. 11.

¹⁰⁹ Original: "[...] contra un sistema de poder fundado en la guerra y el derroche, que desprecia la vida humana y pone bandera de remate a nuestros bienes terrenales. Ojalá seamos capaces de hablar poco y hacer mucho. Graves daños nos ha hecho, y nos sigue haciendo, la inflación palabraria, que en América latina es más nociva que la inflación monetaria. Y también, y sobre todo, estamos hartos de la hipocresía de los países ricos, que nos están dejando sin planeta mientras pronuncian pomposos discursos para disimular el secuestro". Galeano, "MENSAJE A LA CUMBRE DE LA MADRE TIERRA."

¹¹⁰ In 2015, Protests erupted in Algeria against government-approved shale gas exploration. The drilling sites are particularly contentious as they are located near Saharan towns and oases, and threaten already scarce water resources. Olivier Petitjean and Sophie Chapelle, "Shale gas: How Algerians Rallied Against the Regime and Foreign Oil Companies," *Multinationals Observatory*, June 2, 2016, <https://tinyurl.com/3rscs9wv>

¹¹¹ Hamza Hamouchene, "The Energy Transition in North Africa: Neocolonialism Again!," *Dismantling green colonialism: Energy and Climate Justice in the Arab Region*, edited by Hamza Hamouchene and Katie Sandwell, (London: Pluto press, 2023), p. 36.

agriculture. In the Maghreb (northwest Africa), shepherds lose their land and water due to the huge solar farms that are built to provide "green energy" to Europe¹¹².

Green colonialism, also known as "renewable energy colonialism," extends colonial practices of exploitation and dispossession into the era of renewable energies¹¹³. This includes the dehumanization of marginalized groups and the shifting of socio-environmental costs to peripheral countries and communities¹¹⁴. These practices feed continuously on neo-colonial imaginaries, based on the notion reproduced by governments and companies of "empty space", typical of imperial geopolitics¹¹⁵.

Green colonialism manifests itself in at least four distinct forms. First, it involves the search for unlimited raw materials in the global race for energy security, adding a "green" layer to existing extractive pressures. Secondly, it imposes specific conservation frameworks in the southern territories through carbon offset schemes, which, at the same time, further postpone the urgent structural changes in the polluting production processes located in the northern economies. Thirdly, green colonialism includes the use of sites from the Global South as dumping sites for toxic waste and electronics generated by renewable energy sources. Finally, it positions the Global South as a new market for selling renewable technologies at inflated prices within the unequal architecture of global trade, thus perpetuating asymmetric exchanges¹¹⁶.

The renewable energy engineering projects tend to present climate change as a problem that is common to the whole planet, without questioning the capitalist and productivist energy model, or the historical responsibilities of the industrialized West¹¹⁷. After all, according to scientific consensus, countries that were formerly colonized are deemed the most susceptible to climate change impacts. They are expected to endure the most severe consequences of projected weather extremes, including prolonged droughts, intensified yet less frequent rainfall and flooding,

¹¹² Miriam Lang, Breno Bringel and Mary Ann Manahan, ed., *Más allá del colonialismo verde: justicia global y geopolítica de las transiciones ecosociales*, (Buenos Aires: CLACSO, 2023), pp. 20, 21.

¹¹³ Hamouchene, "The Energy Transition in North Africa: Neocolonialism Again!", p. 31.

¹¹⁴ Hamouchene and Sandwell, eds., *Dismantling green colonialism*, p. 17.

¹¹⁵ Lang, Bringel and Manahan, ed., *Más allá del colonialismo verde*, pp. 20, 22.

¹¹⁶ Ibid, p. 21.

¹¹⁷ Hamouchene and Sandwell, eds., *Dismantling green colonialism*, p. 17.

rising sea levels, shifts in flora and fauna migration patterns due to rising temperatures and potentially even earthquakes¹¹⁸.

A glaring contemporary illustration of green colonialism can be found in the project initiated by a former Tesco CEO in collaboration with Saudi ACWA Power proposed connecting southern Morocco to the United Kingdom via underwater cables spanning 3,800 km to transmit electricity. These large-scale renewable energy initiatives appear to echo a recurring colonial pattern: the unhindered extraction of inexpensive natural resources, including solar energy, from the global South to the affluent North, while Europe fortifies its borders with walls and barriers to deter human migration¹¹⁹.

In the Arab region, economic subjugation and imperialist domination have eroded the political and economic independence of the region. These strategies of dominance persist today, as countries in the region are once again portrayed as targets of development efforts, whether termed sustainable or not, echoing the colonial mission of "civilizing" the region. Along the same lines, in North Africa (and later in the Mashriq, or Arab east), the French constructed an environmental narrative of degradation in order to implement "dramatic economic, social, political and environmental changes"¹²⁰ and apply the "white man savior" narrative to the natives and their environments.

This misleading narrative disregards matters of ownership and sovereignty, while concealing the persisting global hegemonic dynamics that enable the extraction of resources, privatization of communal land and resources, and displacement of communities¹²¹. In this narrative, also called "green capitalism"¹²², International financial institutions, corporations and governments are employing the so-called "green economy"¹²³ and the broader mainstream vision of so-called "sustainable development" as a new paradigm. But in reality, they are merely an

¹¹⁸ Justyna Poray-Wybranowska, *Climate Change, Ecological Catastrophe, and the Contemporary Postcolonial Novel*, (New York: Routledge, 2021), p. 7.

¹¹⁹ Hamouchene, "The Energy Transition in North Africa: Neocolonialism Again!", p. 38.

¹²⁰ Hamouchene and Sandwell, eds., *Dismantling green colonialism*, p. 9.

¹²¹ Ibid, p. 5.

¹²² "Green capitalism is an approach that attempts to use free-market mechanisms to mitigate anthropogenic climate change". Nick J. Fox, "Green capitalism, climate change and the technological fix: A more-than-human assessment," *The Sociological Review* V. 71, n. 5, (2023): pp. 1115-1134, <https://doi.org/10.1177/00380261221121232>, p. 1115.

¹²³ "A green economy is defined as low carbon, resource efficient and socially inclusive". United Nations Environment Programme, "Green economy," (date accessed 15/06/2024), <https://www.unep.org/regions/asia-and-pacific/regional-initiatives/supporting-resource-efficiency/green-economy>

extension of the existing logics of capital accumulation, commodification and financialization, including of the natural world.¹²⁴ The challenge facing "green capitalism" lies in its attempt to fit the intricate climate and ecological crises into the confines of "the market," regardless of whether the market is actually capable of addressing these issues effectively¹²⁵.

Economic growth hinges on population, technology and resource consumption, while effective climate change mitigation demands a significant reduction in resource use. Consequently, these objectives—economic growth and environmental sustainability—stand fundamentally opposed¹²⁶. However, given that the science of economics deals with how resources, which are derived from the ecosphere, are distributed, it is unwise to sustain an economic system that destroys it.

As long as the world adheres to capitalist principles dictating that economic gains must outweigh human costs, humanity's ability to prevent or mitigate the catastrophic effects of climate change will remain severely limited. Ideally, ecology and economics should complement each other: ecology offering the perspective and structure for comprehending the interconnections between social and environmental systems, and economics offering the tools to measure these interconnections based on that understanding. This approach should facilitate decision-making on different paths forward without unnecessary complications.¹²⁷

The expansion of neoliberal capitalism and industrialization, along with population growth, is fostering an increasing demand for fossil fuels that continues unabated¹²⁸. Accordingly, the data from IPCC's latest report from 2023 confirmed that the current socio-economic system is not compatible with humanity's survival since the projected Carbon Dioxide (CO₂) emissions from existing fossil fuel infrastructure without additional abatement would exceed the remaining carbon budget for 1.5°C¹²⁹.

¹²⁴ Hamouchene and Sandwell, eds., *Dismantling green colonialism*, p. 6.

¹²⁵ Adrienne Buller, "What's really behind the failure of green capitalism?," *The Guardian*, July 26, 2022, <https://www.theguardian.com/commentisfree/2022/jul/26/failure-green-capitalism>

¹²⁶ Park, "Climate change and Capitalism," p. 195.

¹²⁷ Goldsmith, "A blueprint for survival," p. 13.

¹²⁸ Park, "Climate change and Capitalism," p. 200.

¹²⁹ The Core Writing Team, Hoesung Lee and José Romero, ed., "Climate change 2023: Synthesis Report. Summary for Policymakers. A Report of the Intergovernmental Panel on Climate Change," IPCC, 2023, https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf, p. 19.

In the book "*Vers une société post-croissance*¹³⁰", Cassiers and Maréchal envision a post-growth society, meaning a horizon beyond the pursuit of economic growth¹³¹ as a social project. They acknowledge that the current generation is living at the expense of future generations and that ecosystems cannot sustain the current pace of human activity. This underscores the urgent need for a significant change in direction. Addressing this challenge requires a dual approach: first, through technological innovation aimed at greatly reducing the environmental impact (such as resource consumption and pollution) associated with the production of goods and services. Second, it necessitates a similarly radical shift in human lifestyles, particularly requiring substantial efforts from Global North countries¹³².

In order to implement an effective commitment, especially by transitioning away from fossil fuels, it is essential to confront the power dynamics and inequalities within the international energy system. Based on the evidence provided in this study, this urgently requires acknowledging that countries in the global South continue to be systematically exploited within a colonial and imperialist economic framework that profits from the extraction of their resources and a significant wealth transfer from South to North¹³³.

2.3. The era of global boiling in a world shaped by inequality

The effects of what is currently recognized as "the era of global boiling" emerge in a way incompatible with guaranteeing access to goods and services essential for the maintenance of the human right to live with dignity for the present and future generations¹³⁴. UN Secretary-General António Guterres himself refers to the climate emergency as a time bomb, indicating the report of the Intergovernmental Panel on Climate Change (IPCC) as a "survival guide for

¹³⁰ Translation: "Towards a post-growth society".

¹³¹ Economic growth is defined in the book as the increase in gross domestic product (GDP) at constant prices. Isabelle Cassiers, Kevin Maréchal and Dominique Méda, ed., *Vers une société post-croissance: Intégrer les défis écologiques, économiques et sociaux*, (La Tour-d'Aigues: Editions de l'aube, 2024), p. 8.

¹³² Cassiers, Maréchal and Méda, ed., *Vers une société post-croissance*, pp. 8, 10.

¹³³ Hamouchene, "The Energy Transition in North Africa: Neocolonialism Again!", p. 31.

¹³⁴ United Nations, "International Covenant on Civil and Political Rights. Human Rights Committee. General comment No. 36 Article 6: right to life," 2019, <https://digitallibrary.un.org/record/3884724>; United Nations, "Hottest July ever signals 'era of global boiling has arrived' says UN chief," UN News Global Perspective Human Stories, 2023, <https://news.un.org/en/story/2023/07/1139162>

humanity"¹³⁵. In fact, May 2024 was the hottest May in recorded history and 2023 was entirely the hottest year ever recorded. According to Guterres, "every turn of the calendar has turned up heat"¹³⁶. According to WHO, between 2030 and 2050, climate change is expected to cause approximately 250,000 additional deaths per year¹³⁷.

The Rio Earth Summit in 1992 led to the establishment of the United Nations Framework Convention on Climate Change (UNFCCC), aimed at coordinating international efforts to stabilize greenhouse gas emissions. Another significant milestone occurred in 2015 with the Paris Agreement, which includes provisions for mitigation, adaptation and fair financial contributions. This agreement relies on Nationally Determined Contributions (NDCs) pledged by each UNFCCC party. Its primary goal is to limit global warming to well below 2°C, preferably 1.5°C above pre-industrial levels¹³⁸.

According to a study from 2021 provided by UNDP (United Nations Development Programme) and WIL (World Inequality Lab), since the industrial revolution, humanity has emitted approximately 2500 billion tons of CO₂. At current emission rates, the carbon budget remaining to restrict global warming to 2°C above preindustrial levels—900 billion tons of CO₂—would be exhausted within 18 years. To constrain global warming to 1.5°C, the remaining budget of 300 billion tons of CO₂ would be depleted in 2027¹³⁹.

In recent years, however, skepticism has grown regarding the UNFCCC and its ability to address humanity's most pressing challenge, particularly since the 2015 Paris Agreement relaxed the already insufficient binding targets set by the Kyoto Protocol¹⁴⁰, allowing countries to

¹³⁵ António Guterres, "Secretary-General Calls on States to Tackle Climate Change 'Time Bomb' through New Solidarity Pact, Acceleration Agenda, at Launch of Intergovernmental Panel Report," United Nations Press release, 2023, <https://press.un.org/en/2023/sgsm21730.doc.htm>

¹³⁶ Guterres, "A Moment of Truth: Special Address on Climate Action by UN Chief with Bloomberg & others".

¹³⁷ Organização Pan-americana de Saúde, "Dez ameaças à saúde que a OMS combaterá em 2019," January 17, 2019, <https://www.paho.org/pt/noticias/17-1-2019-dez-ameacas-saude-que-oms-combatera-em-2019>

¹³⁸ The London School of Economics and Political Science, "What is climate change legislation?," Grantham Research Institute on Climate Change and the Environment, October 4, 2022, <https://www.lse.ac.uk/granthaminstitute/explainers/what-is-climate-change-legislation/>

¹³⁹ United Nations Development Programme (UNDP), "How large are inequalities in global carbon emissions – and what to do about it?," Human Development Reports, October 22, 2021, <https://hdr.undp.org/content/how-large-are-inequalities-global-carbon-emissions-and-what-do-about-it>

¹⁴⁰ "The Kyoto Protocol operationalizes the United Nations Framework Convention on Climate Change by committing industrialized countries and economies in transition to limit and reduce greenhouse gases (GHG) emissions in accordance with agreed individual targets. The Convention itself only asks those countries to adopt policies and measures on mitigation and to report periodically". United Nations, "What is the Kyoto Protocol?," (date accessed 17/06/2024), https://unfccc.int/kyoto_protocol

set their own emission-reduction goals independently. In turn, Conferences of the Parties (COP) receive significant media coverage but often fail to achieve significant progress due to agreements that lack robust funding and enforcement mechanisms¹⁴¹.

In terms of historical emissions inequality between regions, North America and Europe are responsible for around half of all emissions since the Industrial Revolution. China contributed to about 11% of the historical total and Sub-Saharan Africa just 4%¹⁴². Only one country—the United States—is responsible for more than a quarter of all carbon emissions until 2019, while the total for the entire African continent is below 3%. In turn, the 28 countries of the European Union (EU-28) are also a large set of historical contributors, accounting for 22% of the global cumulative emissions¹⁴³. Thus, the existing dichotomy between North-South countries remains evident and continues to contribute to perpetual world inequality.

The richest 1% of the world's population is responsible for as much carbon pollution as the poorest two-thirds of humanity. In addition to the richest 1%, the richest 10% are jointly responsible for emitting half of all global emissions. Among the 10% emissions at the global top, 60% come from high-income countries. In this catastrophic scenario, the environmental crisis extends beyond the climate emergency to include habitat loss, biodiversity decline, a fundamental rupture in human connections with the natural world¹⁴⁴ and a high increase of inequality worldwide. After all, climate collapse and inequality are interlinked and mutually reinforce each other¹⁴⁵.

The notable deadlock between Northern countries and those of the global South extends to the limited cooperation of Northern states in addressing climate change from the perspective of intersectional justice. The countries of the global South host the overwhelming majority of climate displaced persons in the world and suffer the impacts of climate change disproportionately to their contribution to the phenomenon, while Northern states have been

¹⁴¹ Hamouchene and Sandwell, eds., *Dismantling green colonialism*, p. 3.

¹⁴² United Nations Development Programme (UNDP), "How large are inequalities in global carbon emissions – and what to do about it?"

¹⁴³ Hannah Ritchie, "Who has contributed most to global CO2 emissions?,"

¹⁴⁴ Hamouchene and Sandwell, eds., *Dismantling green colonialism*, p. 13.

¹⁴⁵ Oxfam International, "Igualdade Climática: um Planeta para os 99%," Oxfam GB, November, 2023, DOI: 10.21201/2023.000001, p. 2.

polluting the environment with the highest rates of greenhouse gas emissions¹⁴⁶. Basically, the climate crisis is an outcome of historical emissions that enabled economic prosperity in the developed world, while many developing economies have not yet benefited from similar economic advancements and are expected to bear the brunt of future climate change impacts¹⁴⁷.

The challenge of reducing emissions is part of the political agenda of climate disinformation, that is, the intentional dissemination of false information related to climate change and climate action¹⁴⁸ in order to sustain the privileges of the economic elite and the neoliberal capitalist rationality that presides over the global economy, as well as all spheres of human life, including subjectivity¹⁴⁹. Therefore, climate disinformation aims to deny a crucial contradiction to human's current way of life: on the one hand a rationality that promotes boundless economic growth as an intrinsic value and that assesses our entire existence in terms of money; on the other, the planetary boundaries that have long indicated are being disrespected¹⁵⁰.

The Global Risks Report 2024 identified misinformation and disinformation (across all subjects) as the foremost short-term risk to human society, while extreme weather events were ranked as the primary long-term risk. This underscores the significant harm that obscuring facts about climate change can cause. Furthermore, false information is considerably more likely to be shared again on social media platforms compared to accurate information¹⁵¹.

According to Poray-Wybranowska, quoting Marshall's work, climate change poses a fundamental “challenge to our ability to make sense of the world around us”. It is often framed as a “crisis of culture” or a crisis of the imagination. Data collected from climate change communications expert George Marshall suggests that “even when people realize climate change

¹⁴⁶ Global Witness, “What is Climate Justice?,” December 2, 2021, <https://www.globalwitness.org/pt/what-climate-justice-pt/>

¹⁴⁷ Wright and Nyberg, *Climate Change, Capitalism, and Corporations*, p. 9.

¹⁴⁸ European Commission, “Climate disinformation,” EU Action, (date accessed 19/05/2024), https://climate.ec.europa.eu/eu-action/climate-disinformation_en#:~:text=Climate%20disinformation%20is%20the%20intentional,climate%20change%20and%20climate%20action

¹⁴⁹ Hartwig, *Quando a mentira ameaça o futuro*, p. 21.

¹⁵⁰ Ibid, p. 22.

¹⁵¹ The London School of Economics and Political Science, “What are climate misinformation and disinformation and what is their impact?,” Grantham Research Institute on Climate Change and The Environment, April 22, 2024, <https://www.lse.ac.uk/granthaminstitute/explainers/what-are-climate-misinformation-and-disinformation/>

is happening, they often put a lot of work into actively denying its impacts or pretending that it is not already manifesting itself in their communities"¹⁵².

In other words, instead of being a living and reciprocal part of the web of life, humanity is exhausting the very source of life itself. It is very paradoxical because it is the same source of life for every living being, including humans. How embedded in disconnection is the human drive for consumption and the capitalist way of life if it disconnects humans from the very notion of survival?

In essence, humanity must swiftly transition away from fossil fuels in a manner that is equitable and enhances the capacity of all nations, particularly those in the Global South, to eradicate poverty and fulfill the needs of their populations. By recognizing the climate emergency as a crisis of perception, to achieve a fair and equitable transformation, the objectives of the current socio-economic systems must be redefined. This involves moving away from the relentless pursuit of economic growth and instead prioritizing both human well-being and the health of Planet Earth¹⁵³.

Avoiding a catastrophic climate collapse necessitates a 48% reduction in global emissions by 2030 (considering 2019 levels), with emissions projected to reach zero by 2050¹⁵⁴. The survival of humanity hinges on halting fossil fuel extraction and adapting to the changing climate while transitioning to renewable energies, sustainable energy consumption levels and other societal transformations¹⁵⁵. Today humanity faces a new and profoundly unsettling phase in this narrative of so-called progress: "the era of creative self-destruction". It is clear: "we are destroying ourselves. It is as simple as that. Economic growth and the exploitation of nature have long gone hand-in-hand, but they now constitute the most ill-fated of bedfellows"¹⁵⁶.

The lack of political will or "living memory" from the Global North to reshape this catastrophic scenario is due to the ongoing economic, social, and cultural advantages gained by the legacy of this large-scale violence and destruction. After all, "who controls the past controls

¹⁵² George Marshall, "Don't Even Think about It: Why Our Brains Are Wired to Ignore Climate Change," Center for Climate Protection, 2014, in Justyna Poray-Wybranowska, *Climate Change, Ecological Catastrophe, and the Contemporary Postcolonial Novel*, (New York: Routledge, 2021), p. 11.

¹⁵³ Oxfam International, "Igualdade Climática: um Planeta para os 99%," p. 12.

¹⁵⁴ Ibid, p. 15.

¹⁵⁵ Hamouchene and Sandwell, eds., *Dismantling green colonialism*, p. 4.

¹⁵⁶ Wright and Nyberg, *Climate Change, Capitalism, and Corporations*, p. 1.

the future. Who controls the present controls the past”¹⁵⁷. "History, then, is not simply an artifact but a process that is always materially present"¹⁵⁸. Still, humanity fails to recognize that the current neoliberal capitalist and colonialist system is doomed to impose (self)destruction. As Galeano well questioned: is the past mute? or are we still deaf?¹⁵⁹.

3. The web of accountability and the role of transnational corporations

The aim of the present chapter is to address the main role transnational corporations play in the web of accountability generated by human-induced climate change. In the first part, it focuses on the developments and challenges of corporate climate (in)action by analyzing private influence over climate governance. It investigates corporations' responsibilities *vis-à-vis* the environment and the multiple stakeholders that suffer from climate change impacts worldwide, including the perpetuation of inequality caused by the "business as usual" motto of transnational corporations. The second part, in turn, seeks to address the definition and applicability of climate due diligence as a human rights-based conduct standard and as a business procedure. For that, it clarifies the evolution of the recognition of climate change as a human rights issue, in particular through the recognition of the human right to a clean, healthy and sustainable environment.

3.1. Corporate Climate (In)Action

Climate change is a confluence of volatile ecological, economic and political conditions. It is a “catastrophic convergence”. After all, the climate emergency is happening in a world primed for crisis in which problems compound and amplify each other, one expressing itself through another¹⁶⁰. This convergence of crises, each compounding upon the others, vividly portrays the realities of the Anthropocene era — a proposed geological classification for the current epoch dominated by human activity and a social theory concept describing humanity's collective

¹⁵⁷ George Orwell, *Nineteen Eighty-Four*, (London: Penguin Modern Classics, 2000), p. 40.

¹⁵⁸ Dzah, "Marginalising Africa: The ‘New’ Human Right to a Clean, Healthy and Sustainable Environment in International Law".

¹⁵⁹ Eduardo Galeano, *As veias abertas da América Latina*, trans. Sergio Faraco, 24th ed., (Porto Alegre: L&PM Editores, 2024), p. 7.

¹⁶⁰ Poray-Wybranowska, *Climate Change, Ecological Catastrophe, and the Contemporary Postcolonial Novel*, p. 6.

impact on the planet¹⁶¹. This period, in which humans are prone to find more acceptable to destroy the Earth instead of the capitalist system, is also named "Capitalocene" by a range of authors¹⁶².

In the Anthropocene, climate change is intricately tied to economic and business activities, which, in terms of accountability, requires collective responsibility beyond individual states. Businesses significantly influence climate change through their substantial contribution to CO2 emissions and other forms of environmental degradation. This occurs not only through their own production of greenhouse gasses but also through direct links to the emissions of other entities via their operations, products or services¹⁶³.

Comprehensive action involving all stakeholders and international cooperation is essential to mitigate its effects and implement adaptation measures effectively¹⁶⁴. After all, in contemporary times, most people worldwide, irrespective of their occupation, are sacrificing aspects of their daily essentials, human rights or the chance to lead dignified lives to sustain the excessive profits of transnational corporations¹⁶⁵ (TNCs)¹⁶⁶.

Already in 1992, TNCs already played a crucial role, as they wielded influence over approximately 50 percent of all greenhouse gas emissions—about half of the oil production

¹⁶¹ Soener, "Growth, climate change, and the critique of neoclassical reason: New possibilities for economic sociology," p. 11.

¹⁶² Krenak, *Futuro Ancestral*, pp. 36, 49; Wendy Arons, "We Should Be Talking about the Capitalocene", TDR v. 67, n. 1, (2023): pp. 35-40, <https://doi.org/10.1017/S1054204322000697>, p. 35.

¹⁶³ Julia Dehm, "Beyond Climate Due Diligence: Fossil Fuels, 'Red Lines' and Reparations," *Business and Human Rights Journal* v.8, n. 2, (2023): 151–179, <https://www.cambridge.org/core/journals/business-and-human-rights-journal/article/beyond-climate-due-diligence-fossil-fuels-red-lines-and-reparations/C2A2B2B586BD71B240CA91282DDB03CB>, p. 154.

¹⁶⁴ João Luis Nogueira Matias and Stephanie Cristina de Sousa Vieira, "Climate litigation, human rights and transnational corporations," *Veredas do Direito*.v.19, n. 44, (2022): pp. 331-356, <https://revista.domhelder.edu.br/index.php/veredas/article/view/2344/25435>, p. 336.

¹⁶⁵ Transnational corporations is a company that is controlled from its home country but has large operations in many different countries. Oxford Reference, "overview transnational corporation," (date accessed 25/06/2024), <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803105436546>; "Business activities of a transnational character' means any business activity described in Article 1.4. above, when: (a) It is undertaken in more than one jurisdiction or State; or (b) It is undertaken in one State but a significant part of its preparation, planning, direction, control, design, processing, manufacturing, storage or distribution, takes place through any business relationship in another State or jurisdiction; or (c) It is undertaken in one State but has significant effect in another State or jurisdiction. Human Rights Council. (2023). Updated draft legally binding instrument (clean version) to regulate, in international human rights law, the activities of transnational corporations and other business enterprises". United Nations Human Rights Council, "Updated draft legally binding instrument (clean version) to regulate, in international human rights law, the activities of transnational corporations and other business enterprises," July, 2023, <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session9/igwg-9th-updated-draft-lbi-clean.pdf>.

¹⁶⁶ Hamouchene and Sandwell, eds., *Dismantling green colonialism*, p. 14.

industry, nearly all road vehicle manufacturing outside centralized economies and significant segments of electricity generation and consumption. Basically, essential corporate climate action would affect nearly every aspect of industrial society¹⁶⁷.

In light of this major influence over society, the emergence of TNCs has disrupted national regulatory frameworks, reshaped governments' trade and fiscal agendas and introduced novel forms of private influence¹⁶⁸. National infrastructures have grown more interconnected on a global scale due to heightened trade and economic interdependence between countries. Some scholars argue that this shift is best viewed as a transition from geopolitics to geoeconomics¹⁶⁹ in understanding security dynamics. Economic considerations have indeed gained prominence in the security discourse, driven by the proliferation of free markets and cross-border production networks¹⁷⁰.

Despite this, theories of global governance often overlook corporations, relegating them primarily as subjects of global regulations rather than active participants. Most political science theories continue to emphasize national governments as the primary actors, whether discussing cooperative evolution or realist power dynamics¹⁷¹. Such a state-centric system has been identified by many scholars as one of the causes behind the failure in the process of getting the emissions down. This perception leaves out the major role played by the private sector and ignores the increasing complexity of the global governance process¹⁷².

Bartley argues that corporations have played three primary roles in the realm of global governance—namely as sponsors, inhibitors, and providers. First, TNCs have actively

¹⁶⁷ United Nations Centre on Transnational Corporations, "Climate Change and Transnational Corporations: Analysis and Trends," United Nations, 1992, https://ieer.org/wp/wp-content/uploads/1992/01/ClimateChangeTransnationalCorp_1992-FULL.pdf, p. 2.

¹⁶⁸ Tim Bartley, "Transnational Corporations and Global Governance," *Annual Reviews*, v. 44, (2018): pp. 145-165, <https://doi.org/10.1146/annurev-soc-060116-053540>, p. 146.

¹⁶⁹ Geoeconomics in the article is defined as a securitizing discourse that legitimizes the use of economic means to achieve geopolitical ends. Salla Kalliojärvi, "Climate Change, Security and the Role of Transnational Corporations," *Arctic Yearbook*, 2020, https://arcticyearbook.com/images/yearbook/2020/Scholarly-Papers/6_Kalliojarvi.pdf, p. 12.

¹⁷⁰ Kalliojärvi, "Climate Change, Security and the Role of Transnational Corporations," p. 2.

¹⁷¹ Bartley, "Transnational Corporations and Global Governance," p. 146.

¹⁷² José Célio Silveira Andrade and José Antônio Puppim de Oliveira, "The Role of the Private Sector in Global Climate and Energy Governance," *J Bus Ethics*, v. 130, (2015): pp. 375–387, <https://repositorio.ufba.br/handle/ri/25118>. p. 375.

sponsored (and to some extent, shaped) certain international regimes, particularly evident in the global ascent of neoliberalism and its institutionalization within trade agreements¹⁷³.

In second place, corporations have hindered the expansion of global governance in other domains by mobilizing to weaken regulations related to labor, the environment (including climate action), health and safety. Third, corporations have assumed a direct role as providers of global governance through the emergence of transnational governance and private regulation. In this capacity, corporations are not advocating for or against intergovernmental agreements; rather, they are establishing private standards concerning safety, sustainability, technical specifications and human rights across their global supply chains¹⁷⁴.

Regardless of the particularities of each role played by the TNC, it is clear that the impacts of corporate inactivity reach far into the future, endangering both societal cohesion and economic stability. The 2024 Corporate Climate Responsibility Monitor report illustrates that establishing and achieving appropriate targets for 2030 is not solely about environmental duty; it's also a crucial strategy to minimize risks and prevent potentially disastrous turning points¹⁷⁵. For that, Gilligan argues that private environmental governance has the potential to make meaningful contributions to reducing greenhouse gas emissions, even though it is unlikely to make a satisfactory substitute for public regulations¹⁷⁶.

It has also become clear that many TNCs perceive both the opportunities and risks posed by climate change, which shape profit-oriented incentives for climate action. The motivations include enhancing resource and energy efficiency, responding to pressures from customers, investors and lenders, avoiding regulatory constraints and bolstering reputation. Their aim is to minimize disruptions to the company's operations and services while maximizing profitability and business viability. Ultimately, while TNCs vary in their awareness of climate change and their strategies for addressing it, their primary objective remains to maximize profits and shareholder value¹⁷⁷.

¹⁷³ Bartley, "Transnational Corporations and Global Governance," p. 146.

¹⁷⁴ Ibid, 146.

¹⁷⁵ Benja Faecks, "Decade of (in)action: Are corporate 2030 climate plans fit for purpose?," Carbon Market Watch, April 9, 2024, <https://carbonmarketwatch.org/publications/corporate-climate-responsibility-monitor-2024/>

¹⁷⁶ Jonathan Gilligan, "Carrots and Sticks in Private Climate Governance," *Texas A&M Law Review*, v.6, n.1, (2018): pp. 179-198, <https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=1156&context=lawreview/>, p. 182.

¹⁷⁷ Kalliojärvi, "Climate Change, Security and the Role of Transnational Corporations," p. 6.

Several scholars viewed the 2015 Paris Climate Agreement as a landmark achievement, representing a pivotal moment for corporate climate action. However, Hulme contends that corporations had already started to unite around a new climate strategy before the Paris landmark. Their actions were driven by a growing belief, reinforced by the Paris Agreement, that governments might not reliably fulfill their traditional roles regarding a transnational issue that could profoundly influence the world's future¹⁷⁸. This recognition implies that corporations adopt a different role than previously seen¹⁷⁹.

In fact, Hulme claims that a growing group of companies started implementing climate-related practices during the 2010s, influenced by their perception of the limited future options for the global energy system and, consequently, the behaviors needed in response. Early adopters shaped a new "normative convergence and consensus", while others gradually reinforced it, regarding the necessary actions for success in a low-carbon future¹⁸⁰.

In turn, Bartley argues corporate positions evolved and diverged over time. From 1999 to 2008 — the “carbon compromise” period, fossil fuel companies (especially in Europe) began looking for carbon market opportunities and investing in alternative energies, while insurance, financial and branded consumer products companies began taking positions on climate risks. But then, starting in 2009, the “carbon impasse” period was marked by corporate opposition to governmental and intergovernmental action strengthen¹⁸¹.

For Hulme, by voluntarily elevating their own standards in areas like environmental conservation when there are gaps in global regulations and widespread anticipation of governmental intervention, industries aim to forestall or at least delay such intervention. In doing so, they hope to cultivate a reputation as "responsible corporate entities". This, in turn, increases the likelihood that governments will delegate authority to these industries or be more open to industry self-regulation as an alternative to traditional regulatory approaches¹⁸².

As a result, addressing climate change is increasingly recognized as being in the best interest of companies' own business strategies. Climate change poses risks such as reduced

¹⁷⁸ Charlotte Hulme, *Corporate Climate Action, Transnational Politics, and World Order*, (London: Palgrave Macmillan, 2023), p. 2-3.

¹⁷⁹ *Ibid*, p. 12.

¹⁸⁰ Hulme, *Corporate Climate Action, Transnational Politics, and World Order*, p. 10.

¹⁸¹ Bartley, "Transnational Corporations and Global Governance," p. 160.

¹⁸² Hulme, *Corporate Climate Action, Transnational Politics, and World Order*, pp. 5-6.

agricultural productivity, disruptions in logistics and supply chains and damage to infrastructure and buildings. These risks threaten the affordability and reliability of energy and natural resources, which are essential for business operations¹⁸³.

TNCs wield significant influence in orchestrating global production networks, significantly shaping the geographical landscape of the global economy through decisions on investments, divestments and operational reconfigurations across borders, primarily based on production costs influenced by governmental regulations¹⁸⁴. However, climate change is altering this calculation framework by intensifying the frequency and severity of physical risks associated with production locations.¹⁸⁵ The climate issue represents one of the major macroeconomic challenges of today.¹⁸⁶

The concept of the critical role of a functional economy in maintaining security is apparent in climate policy. This positions economic prosperity as crucial for social stability and global security, emphasizing the significant role of large corporations in combating climate change¹⁸⁷. On the other hand, TNCs are often viewed solely as profit-driven entities with little incentive to mitigate their impact on climate change. The reductions in emissions achieved through economically advantageous methods are sometimes considered negligible in their significance¹⁸⁸.

Some scholars, however, insist that this perspective does not always hold true, arguing that substantial emissions reductions—amounting to hundreds of millions of tons—can be attained if corporate climate initiatives pursue economically beneficial measures to enhance efficiency and cut emissions¹⁸⁹. Nevertheless, this approach often overlooks issues of climate, social, racial and gender justice. It does not fundamentally change corporations' core goal of profit maximization within the existing capitalist, potentially worsening inequalities in the process.

In the same lines, Andrade and Oliveira argue that private regimes of governance can also generate ethical dilemmas by potentially exacerbating income inequality and social justice issues. For instance, while a private governance regime could mitigate certain global

¹⁸³ Kalliojärvi, "Climate Change, Security and the Role of Transnational Corporations," p. 6.

¹⁸⁴ *Ibid*, p. 3.

¹⁸⁵ *Ibid*, p. 7.

¹⁸⁶ Matias and Vieira, "Climate litigation, human rights and transnational corporations," p. 337.

¹⁸⁷ Kalliojärvi, "Climate Change, Security and the Role of Transnational Corporations," p. 9.

¹⁸⁸ *Ibid*, p. 6.

¹⁸⁹ *Ibid*, p. 6.

environmental issues (such as reducing greenhouse gas emissions through biofuel¹⁹⁰ use), it could simultaneously contribute to or worsen global inequalities (for example, by threatening food security through increased biofuel production)¹⁹¹.

In this context, social scientists are increasingly recognizing how social power and distribution are connected to emissions. The establishment of a “fossil economy” was institutionalized around unequal relations. For instance, research shows that the poorest 50 percent emit approximately thirteen metric tons of CO₂e (CO₂ equivalent) annually, whereas the wealthiest 1 percent emit at least 150 metric tons¹⁹².

As seen in the first chapter, the history of inequality and ecological resources spans centuries. The pursuit of profit drove colonial exploitation for resources and the violent methods used to establish profitable slave plantations in the Americas. Consequently, the consumption of fossil fuels and other natural resources played a pivotal role not only in fostering capitalist expansion but also in shaping a racialized global hierarchy through imperialism¹⁹³.

Actually, another branch of scholars, such as Wright and Nyberg, quoted by Hulme, affirm that in a global economy driven by economic growth and reliant on fossil fuel energy, corporations face minimal incentives to pursue extensive decarbonization efforts and have opposed legislative measures aimed at restricting emissions. They argue that the profit-driven incentive systems and short-term decision-making frameworks inherent in these corporations make them especially unsuitable for tackling climate change¹⁹⁴.

In this regard, according to a report from 2022 by the London-based energy and climate think-tank InfluenceMap, five major oil and gas companies BP, Chevron, ExxonMobil, Shell and TotalEnergies are investing heavily in presenting themselves as proactive on climate change. However, the report highlights that their actual investments in low-carbon initiatives and

¹⁹⁰ "Biofuel is considered any fuel that is derived from biomass—that is, plant or algae material or animal". Noelle Eckley Selin and Clarence Lehman, "biofuel," Britannica, (date accessed 18/06/2024), www.britannica.com/technology/biofuel#:~:text=biofuel%2C%20any%20fuel%20that%20is,%2C%20coal%2C%20and%20natural%20gas

¹⁹¹ Andrade and de Oliveira, "The Role of the Private Sector in Global Climate and Energy Governance," p. 382.

¹⁹² Soener, "Growth, climate change, and the critique of neoclassical reason: New possibilities for economic sociology," p. 12.

¹⁹³ Ibid, p. 13.

¹⁹⁴ Hulme, *Corporate Climate Action, Transnational Politics, and World Order*, p. 24.

their lobbying efforts do not align with their environmentally friendly claims¹⁹⁵. For instance, in a series of studies published in the last few years, on the climate communications of ExxonMobil — one of the world's biggest oil and gas companies —, the traditional climate-science denial by ExxonMobil is thoroughly demonstrated¹⁹⁶.

Over the past two decades, the corporate sector remained critically important due to its significant role in global greenhouse gas emissions. According to data from the Climate Accountability Initiative, 63% of industrial CO₂ and methane emissions from 1751 to 2010 can be attributed to 90 major economic actors in the fossil fuel and cement industries, with half of these emissions occurring after 1986. Similarly, a 2017 study by CDP (formerly the Carbon Disclosure Project) revealed that 100 companies have been responsible for 70% of emissions since 1988¹⁹⁷.

Furthermore, studies from Carbon Majors database have shown that 80 percent of carbon dioxide emissions between 2016-2022 can be traced to just 57 cement or fossil fuel companies¹⁹⁸. Despite governments committing to greenhouse gas reductions in Paris, the analysis shows that the majority of major producers actually increased their production of fossil fuels and related emissions in the seven years following the climate agreement, compared to the seven years prior. Among 122 of the largest historical climate polluters globally, researchers found that 65% of state entities and 55% of private-sector companies had expanded their production¹⁹⁹.

The Corporate Climate Responsibility Monitor, an annual study conducted by NewClimate Institute and Carbon Market Watch, examined the 2030 climate goals of 51 major companies across sectors including automotive, energy, fashion, agriculture and retail, found that the median absolute emissions reduction commitment by 2030 among these companies was minimal, ranging from 30% to a maximum of 33% at the most optimistic. In contrast, global targets

¹⁹⁵ Influence Map, "Big Oil's Real Agenda on Climate Change 2022," September, 2022, <https://influencemap.org/report/Big-Oil-s-Agenda-on-Climate-Change-2022-19585>

¹⁹⁶ Alvin Powell, "Tracing Big Oil's PR war to delay action on climate change," *The Harvard Gazette*, September 28, 2021, <https://news.harvard.edu/gazette/story/2021/09/oil-companies-discourage-climate-action-study-says/>

¹⁹⁷ Hulme, *Corporate Climate Action, Transnational Politics, and World Order*, p. 4.

¹⁹⁸ Amnesty, "Global large companies must do far more to cut carbon emissions and limit climate change," April 9, 2024, <https://www.amnesty.org/en/latest/news/2024/04/global-large-companies-must-do-far-more-to-cut-carbon-emissions-and-limit-climate-damage/>

¹⁹⁹ Jonathan Watts, "Just 57 companies linked to 80% of greenhouse gas emissions since 2016," *The Guardian*, April 4, 2024, <https://www.theguardian.com/environment/2024/apr/04/just-57-companies-linked-to-80-of-greenhouse-gas-emissions-since-2016>

require a reduction of 43% in greenhouse gas emissions and 48% in carbon emissions below 2019 levels to limit the rise in global temperatures to 1.5°C²⁰⁰.

There seems to be a consensus in the scientific sphere that businesses play a dual role in climate politics²⁰¹. On one hand, research on climate change illustrates how corporate mobilization influences the effectiveness and direction of global governance since, while they are major carbon emitters, TNCs are also a source of "green" investments²⁰². On the other hand, it uncovers shifting sectoral and national divisions within the corporate sector, leading to a spectrum of responses ranging from opposition to strategic support and passive acceptance of the expansion of climate governance²⁰³.

It is undeniable that TNCs are increasingly crucial actors in the new model of security governance that is emerging under the era of human-induced climate change since they largely dominate markets, trade, investment, research and development and the spread of technology today²⁰⁴. However, it's crucial and urgent to shift the approach to climate change from a security perspective to one of justice since, in the words of Chico Mendes, "environmentalism without class struggle is just gardening"²⁰⁵. As Galeano well explained,

The giant companies of the chemical, oil and automobile industry paid much of the expenses of Eco-92: the international conference that dealt, in Rio de Janeiro, with the agony of the planet.

And this conference, called the Earth Summit, did not condemn the transnationals that produce contamination and live from it, nor did it utter a word against the unlimited freedom of trade that makes it possible to sell poison.

At the big masquerade ball at the end of the millennium, even the chemical industry dresses in green. The ecological anguish disturbs the sleep of the largest

²⁰⁰ Faecks, "Decade of (in)action: Are corporate 2030 climate plans fit for purpose?"

²⁰¹ Wright and Nyberg, *Climate Change, Capitalism, and Corporations*, p. 3.

²⁰² United Nations, "UN highlights role of transnational corporations in transitioning to low-carbon future," UN News, July 22, 2010, <https://news.un.org/en/story/2010/07/345602#:~:text=While%20they%20are%20major%20carbon,by%20the%20UN%20trade%20arm>

²⁰³ Bartley, "Transnational Corporations and Global Governance," p. 160.

²⁰⁴ Kalliojärvi, "Climate Change, Security and the Role of Transnational Corporations," p. 12.

²⁰⁵ Gomercindo Rodrigues, "Ecologia sem luta de classes é jardinagem," *Jacobina*, December 22, 2020, <https://jacobin.com.br/2020/12/ecologia-sem-luta-de-classes-e-jardinagem/>

laboratories in the world that, to help nature, are inventing new biotechnological crops.

[...]

The recovery of the planet or of what we still have of it involves denouncing the impunity of money and human freedom. Neutral ecology, which is more like gardening, becomes an accomplice to the injustice of a world where healthy food, clean water, clean air and silence are not everyone's rights - but privileges of the few who can afford them.

Chico Mendes, a rubber worker, fell murdered in late 1988, in the Brazilian Amazon, for believing what he believed: that ecological militancy cannot divorce from social struggle. Chico believed that the Amazon rainforest will not be saved until a land reform is carried out in Brazil²⁰⁶.

A future for climate action through a "security" lens places humans' struggles within a conceptual framework that reinforces the power dynamics of the system that currently sustains inequalities, human rights violations and extractivism. After all, TNCs are considered "[...] the backbone of a unified class of investors, capable of demanding forms of global governance that facilitate the accumulation of wealth and manage the endemic crises of capitalism".²⁰⁷

As denounced by Galeano, meaningful climate action cannot remain neutral towards global injustices. It must extend beyond focusing solely on greenhouse gas emissions to avoid becoming a superficial display where industries merely adopt greenwashing practices or "green colonialism", that is: "a big masquerade ball where industry dresses in green" and the most vulnerable ones suffocate or drown outside from air pollution, heat waves or severe floods.

Essentially, the dominant corporate perspective argues that capitalism should not be viewed as a root cause of climate change but rather as its solution. According to this rationale, a problem stemming from excessive consumption should be tackled by promoting more consumption²⁰⁸, albeit branded as "green". As humanity edges closer to a tipping point from which

²⁰⁶ Eduardo Galeano, "Galeano explica Chico Mendes: militância ecológica com luta social," Vermelho, February 13, 2019, <https://vermelho.org.br/2019/02/13/galeano-explica-chico-mendes-militancia-ecologica-com-luta-social/>

²⁰⁷ Bartley, "Transnational Corporations and Global Governance," p. 149.

²⁰⁸ Wright and Nyberg, *Climate Change, Capitalism, and Corporations*, p. 4.

meaningful recovery will be unattainable, a familiar refrain echoes from the corporate sphere: "business as usual"²⁰⁹. After all, "the corporate world's engagement with climate change represents a profound influence on humanity's actions – and, more significantly, its inactions – in responding to the fast-unfolding crisis"²¹⁰.

The economic-security approach to climate action, at best, will ensure the wealthy can continue to live comfortably while the rest of the world bears the consequences of "green colonialism". Instead, there needs to be a break away from the capitalist system that has precipitated the climate crisis by exploiting both people and the planet, rather than fortifying and perpetuating it²¹¹. Human Rights Due Diligence serves as a crucial tool in this endeavor, ensuring the protection of human rights under all circumstances, particularly in face of human-induced climate change impacts.

3.2. Climate Due Diligence

Human Rights Due Diligence (HRDD) is an open-ended standard, allowing for adaptation to various contexts²¹². "Due diligence" refers to a thorough and proactive effort to identify human rights risks, both current and potential, throughout the entire lifecycle of a project or business activity, aimed at preventing and mitigating those risks²¹³. In turn, human rights refer to inalienable fundamental rights that every human being inherently possesses by virtue of their humanity²¹⁴.

Over the past decade, there has been increasing international consensus on recognizing climate change and its impacts as human rights issues²¹⁵, even by the UN²¹⁶. Current

²⁰⁹ Wright and Nyberg, *Climate Change, Capitalism, and Corporations*, p. 1.

²¹⁰ Ibid, p. 3.

²¹¹ Hamouchene and Sandwell, eds., *Dismantling green colonialism*, p. 8.

²¹² Chiara Macchi, "The Climate Change Dimension of Business and Human Rights: The Gradual Consolidation of a Concept of 'Climate Due Diligence'," *Business and Human Rights Journal* v. 6, n. 1, (2021): pp. 93–119, doi:10.1017/bhj.2020.25, p. 108.

²¹³ Dehm, "Beyond Climate Due Diligence: Fossil Fuels, 'Red Lines' and Reparations," p. 155.

²¹⁴ Florian Wettstein, Elisa Giuliani, Grazia D. Santangelo and Günter K. Stahl, "International Business and Human Rights: A Research Agenda," *Journal of World Business*, (2019), 10.1016/j.jwb.2018.10.004, p. 2-3.

²¹⁵ Macchi, "The Climate Change Dimension of Business and Human Rights: The Gradual Consolidation of a Concept of 'Climate Due Diligence'," p. 93.

²¹⁶ United Nations, "Climate change is a matter of justice – here's why," News and stories June 30, 2023, <https://climatepromise.undp.org/news-and-stories/climate-change-matter-justice-heres-why#:~:text=Climate%20justice%20means%20putting%20equity,and%20action%20on%20climate%20change>.

policy and judicial advancements indicate a shift towards integrating "climate due diligence" into the human rights due diligence obligations of states and corporations. This concept is evolving both as a conduct standard and as a business procedure²¹⁷.

Major corporate entities are intensifying climate change and perpetrating numerous human rights violations with little regard for the consequences. Often, they evade appropriate accountability for the harm caused²¹⁸. As it turns out, human rights violations are not frequently associated with lawful business practices, particularly in management and International Business research. This gap exists despite mounting evidence of businesses being implicated in human rights controversies, such as the infringement of rights to life and health through environmental degradation²¹⁹.

Throughout the last few decades, the increasing agreement on the necessity for HRDD to adopt an integrated approach that addresses both environmental and human rights impacts is a positive advancement in the realm of business and human rights²²⁰. This interpretation is in accordance with the evolutionary character of human rights²²¹ to encompass an intersectional view on its protection.

In the mid-1990s, structured discourse on Business and Human Rights (BHR) began to gain traction²²². Yet, only in the last decade, with the exception of the African continent, the right to a sustainable environment increasingly gained recognition as a human right at universal and regional levels.

In 2022, the right to a clean, healthy and sustainable environment was finally recognized by the United Nations General Assembly (UNGA) as a human right²²³. However, since 2021, the UN Human Rights Council has officially recognized the existence of a human right to a

²¹⁷ Macchi, "The Climate Change Dimension of Business and Human Rights: The Gradual Consolidation of a Concept of 'Climate Due Diligence'," p. 94.

²¹⁸ Matias and Vieira, "Climate litigation, human rights and transnational corporations," p. 338.

²¹⁹ Wettstein, Giuliani, Santangelo and Stahl, "International Business and Human Rights: A Research Agenda," p. 3.

²²⁰ Dehm, "Beyond Climate Due Diligence: Fossil Fuels, 'Red Lines' and Reparations," p. 151.

²²¹ Comissão Interamericana de Derechos Humanos (CIDH), "Pueblos indígenas, comunidades afrodescendientes y recursos naturales: Protección de derechos humanos en el contexto de actividades de extracción, explotación y desarrollo," OEA/Ser.L/V/II. Doc. 47/15, December, 2015, <http://www.oas.org/es/cidh/informes/pdfs/industriasextractivas2016.pdf>, p. 40.

²²² Wettstein, Giuliani, Santangelo and Stahl, "International Business and Human Rights: A Research Agenda," p. 4.

²²³ United Nations, "Resolution adopted by the General Assembly on 28 July 2022. The human right to a clean, healthy and sustainable environment," United Nations Digital Library, Doc. n° A/RES/76/300, 2022, <https://digitallibrary.un.org/record/3982508?ln=en>

clean, healthy and sustainable environment²²⁴. Moreover, the relationship between a safe environment and the protection of human rights has been highlighted several times during the last decades in the context of coping with the climate crisis.

Since Principle 1 of the Stockholm Declaration of 1972, it has been established that the human being has the right to enjoy adequate living conditions in a quality environment that allows the enjoyment of a dignified life²²⁵. Currently, more than 150 national jurisdictions have enshrined the principles of the Declaration in their national legislation²²⁶ and the right to a healthy environment is already recognized in domestic law in 80 per cent of UN member states – 161 out of 193 nations²²⁷.

According to the 2019 UN Human Rights Committee's General Comment n. 36, the right to a dignified life implies that states must take appropriate measures to address the general conditions that threaten this right, such as environmental degradation. That is, the Human Rights Committee recognizes that the right to a dignified life, threatened by the climate crisis, encompasses the right of individuals to access essential goods and services such as food, water, shelter, health, electricity and sanitation²²⁸.

At the regional level, the Inter-American Court of Human Rights (IACtHR) has recognized the right to a healthy environment as an autonomous right, from Article 26 of the American Convention on Human Rights and Article 11 of the San Salvador Protocol²²⁹. Currently,

²²⁴ United Nations, "Resolution adopted by the Human Rights Council on 8 October 2021. The human right to a clean, healthy and sustainable environment,". Doc A/HRC/RES/48/13, 2021, <https://undocs.org/en/A/HRC/RES/48/13>

²²⁵ United Nations, "Report of the United Nations Conference on the Human Environment," (date accessed 22/05/2024), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/NL7/300/05/PDF/NL730005.pdf?OpenElement>, p. 4.

²²⁶ International Labour Organization (ILO), "UN General Assembly recognizes human right to a clean, healthy, and sustainable environment," September 29, 2022, https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_857164/lang--en/index.htm#:~:text=The%20right%20to%20a%20clean,and%20mutually%20reinforcing%20as%20well

²²⁷ Ionel Zamfir, "A universal right to a healthy environment," European Parliamentary Research Service, December, 2021, [https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698846/EPRS_ATA\(2021\)698846_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698846/EPRS_ATA(2021)698846_EN.pdf)

²²⁸ United Nations, "International Covenant on Civil and Political Rights. Human Rights Committee. General comment No. 36 Article 6: right to life," United Nations Digital Library, 2019, <https://digitallibrary.un.org/record/3884724>

²²⁹ Corte Interamericana de Derechos Humanos (CtIDH), "Opinión Consultiva OC-23/17. Medio Ambiente y Derechos Humanos," November 15, 2017, https://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf, pp. 47-48.

the Court is also elaborating an advisory opinion to clarify the scope of State obligations in terms of the climate emergency within the framework of international human rights law²³⁰.

In 2021, the Inter-American Commission of Human Rights and the Office of the Special Rapporteur on Economic, Social, Cultural, and Environmental Rights, relying on IACtHR's advisory opinion (OC-23/17), jointly adopted resolution No. 3/21, entitled "Climate Emergency: Scope of Inter-American human rights obligation". The resolution urges companies to align their conduct and operations with the norms of the business and human rights regime. It also calls for the adoption and public disclosure of plans to reduce greenhouse gas emissions, as an obligation of mitigation that extends to products, services, subsidiaries, and suppliers²³¹.

In turn, the European Convention on Human Rights does not contain any provisions referring to a right to a healthy environment. In 2021, however, the Parliamentary Assembly of the Council of Europe recommended the drafting of an additional protocol in this respect²³². All Council of Europe states also voted in favor of the UN resolution recognizing this right in 2022, but the Council of Europe still remains the only regional human rights system that has not yet explicitly recognized the right to a healthy environment²³³. Besides, 42 of the Council's 46 member states already safeguard the right to a healthy environment either through their national constitutions, legislation, or as signatories to the Aarhus Convention²³⁴.

Within the European Union scope, in its resolution on the EU biodiversity strategy for 2030 adopted in 2021, the European Parliament advocates for the recognition of the right to a healthy environment in the EU Charter and urges the EU to play a leading role in its international recognition.²³⁵

²³⁰ Corte Interamericana de Derechos Humanos (CtIDH), "Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile," January 9, 2023, https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf.

²³¹ United Nations Environment Programme, "Global Climate Litigation Report: 2023 Status Review," Nairobi, 2023, Nairobi, <https://doi.org/10.59117/20.500.11822/43008>, pp. 31,32.

²³² Ionel Zamfir, "A universal right to a healthy environment".

²³³ Rosie Frost, "Is it 'high time' for Europe to recognise the human right to a healthy environment?," EuroNews, May 11, 2024, <https://www.euronews.com/green/2024/05/11/is-it-high-time-for-europe-to-recognise-the-human-right-to-a-healthy-environment>

²³⁴ This international agreement guarantees the public three key rights on environmental issues: access to information, public participation and access to justice. Ann Harrison, Amy Jacobsen, Emma Pagliarusco, et al, "Time's up: The Council of Europe Must Put The Right to a Healthy Environment in Law," Center for International Environmental Law, May 6, 2024, <https://www.ciel.org/coe-must-put-the-right-to-healthy-environment-in-law/>

²³⁵ Ionel Zamfir, "A universal right to a healthy environment".

While the Council of Europe and the European Union still fail to formally recognize the human right to a clean, healthy and sustainable environment, it should be noted that the African Continent was the birthplace of the first regional human rights treaty to provide for a legally binding and enforceable right to a healthy environment under Article 24 of the 1981 African Charter on Human and Peoples' Rights (African Charter)²³⁶. That is, "there was no justiciable right to the environment before the African human rights system innovated and contributed it to the world, thus inviting a dynamic of imitation and dispersal"²³⁷.

Thus, it is undeniable the interrelation between the protection of the right to an ecologically balanced environment and the fundamental right to a stable and secure climate, and the essential human right to live with dignity. In this intrinsic connection, it must be considered that humanity is indivisible and, consequently, human rights are considered universal, inalienable, interrelated, interdependent and mutually reinforced²³⁸.

The strong link between climate change and human rights, along with the prediction that climate change will severely impact the realization of nearly all human rights, is well established²³⁹. Climate change-related impacts on human rights are, therefore, an essential aspect of the HRDD processes that businesses must implement to fulfill their duty to respect human rights.

The UN has been pushing to design normative standards and regulatory frameworks for TNCs and their value chains for almost five decades²⁴⁰. In 2011, the third attempt to adopt an instrument on corporate responsibilities succeeded: states in the Human Rights Council unanimously endorsed the Guiding Principles on business and human rights (UNGPs)²⁴¹. It is a

²³⁶ Dzah, "Marginalising Africa: The 'New' Human Right to a Clean, Healthy and Sustainable Environment in International Law".

²³⁷ Obiora C Okafor and Godwin EK Dzah, "The African human rights system as 'norm leader': Three case studies," *African Human Rights Law Journal*, (2021): pp. 669-698. <https://scielo.org.za/pdf/ahrlj/v21n2/03.pdf>, p. 690.

²³⁸ International Labour Organization (ILO), "UN General Assembly recognizes human right to a clean, healthy, and sustainable environment".

²³⁹ Dehm, "Beyond Climate Due Diligence: Fossil Fuels, 'Red Lines' and Reparations," p. 152.

²⁴⁰ Radu Mares, "Regulating transnational corporations at the United Nations – the negotiations of a treaty on business and human rights," *International Journal of Human Rights* v. 26, n. 9, (2022): pp. 1522–1546. <https://doi.org/10.1080/13642987.2022.2036133>, p. 1522.

²⁴¹ Mares, "Regulating transnational corporations at the United Nations – the negotiations of a treaty on business and human rights," p. 1523.

comprehensive global framework for preventing and addressing adverse human rights impacts associated with business activities, including those arising from climate change²⁴².

One of the primary strategies outlined in the UNGPs to ensure businesses fulfill their duty to respect human rights is conducting HRDD. This process involves identifying, preventing, mitigating and being accountable for the adverse impacts on human rights caused by their operations²⁴³. For TNCs, it means they are not only obligated to avoid causing or contributing²⁴⁴ to human rights violations but also to take steps to prevent the impacts that are linked to their business relationships²⁴⁵.

Addressing and remedying human rights violations caused by human-induced climate change can be seen as falling within both the "state duty to protect" (Pillar I) and the "business responsibility to respect" (Pillar II) as outlined in UNGPs²⁴⁶. This corporate responsibility translates into climate due diligence, which entails requirements to do a risk assessment, to set concrete climate targets, to monitor results of steps taken and to communicate these steps to the public. A comprehensive risk assessment approach should encompass not only a corporation's GHG emissions and those of its affiliates, but also the broader climate-related vulnerabilities of local territories and communities, particularly where the corporation's activities affect local natural resources²⁴⁷.

Nowadays, this application of the corporate responsibility embedded in the UNGPs to climate-related human rights impacts is undeniable²⁴⁸. For energy corporations, however, Macchi argues that fulfilling their responsibility may challenge their core business model, particularly with the increasing availability of low-carbon alternatives. In this scenario, corporations cannot absolve themselves of responsibility for human rights impacts through

²⁴² United Nations Human rights Office of the High Commissioner, "Human Rights, Climate Change and Business: Key Messages," (date accessed 22/07/2024),

<https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/materials/KMBusiness.pdf>, p. 1.

²⁴³ Dehm, "Beyond Climate Due Diligence: Fossil Fuels, 'Red Lines' and Reparations," p. 155.

²⁴⁴ "In the UNGPs, 'contribution' broadly indicates an action or omission that assists or helps bring about the underlying violation, or increases the likelihood of the Event". Macchi, "The Climate Change Dimension of Business and Human Rights: The Gradual Consolidation of a Concept of 'Climate Due Diligence'," p. 111.

²⁴⁵ Dehm, "Beyond Climate Due Diligence: Fossil Fuels, 'Red Lines' and Reparations," p. 155.

²⁴⁶ Macchi, "The Climate Change Dimension of Business and Human Rights: The Gradual Consolidation of a Concept of 'Climate Due Diligence'," p. 94.

²⁴⁷ Ibid, pp. 113, 114.

²⁴⁸ Dehm, "Beyond Climate Due Diligence: Fossil Fuels, 'Red Lines' and Reparations," p. 155.

voluntary corporate social responsibility (CSR) initiatives, just as purchasing carbon offsets may not fully absolve a corporation of its responsibility to mitigate its contribution to global warming²⁴⁹.

In fact, corporate human rights obligations are to be seen as distinct from the Corporate Social Responsibility discussion. For Wettstein and other scholars, BHR and CSR can be differentiated in at least five different ways. For one, the quality and force of the underlying obligation differs: the private responsibility attributed to CSR is often perceived as voluntary or discretionary, as praiseworthy behavior beyond the call of duty; in contrast, BHR obligations are understood as mandatory and objective since humans are "[...] *owed* respect and protection for human rights". In summary, if human rights claims are addressed by using the vocabulary of "private responsibility", there is a risk of "[...] emptying them of their essential character as *rights* and turning them into a function of mere corporate goodwill"²⁵⁰.

Secondly, public responsibility entails a strong call for public accountability. Thus, BHR scholars emphasize a much stronger role for law, a more proactive and interventionist legal role not only in defining, but also in ensuring the enforcement of the respective responsibilities. The move from CSR to BHR is, therefore, described as one from responsibility to accountability since characterizing corporate responsibility solely as private misrepresents the current role corporations hold in today's global political economy²⁵¹. In third place, rights terminology matters insofar "[...] rights enjoy priority over considerations that 'merely' aim at enhancing the public or private good". Therefore, there is much less room to maneuver when it comes to the violation of human rights compared to the responsibilities emanating from CSR²⁵².

Fourth, human rights define a universal core of a standard of acceptable behavior beyond national borders. Even though human rights practices and interpretations naturally vary across domestic and cultural contexts, they are all bound to the same universal core, which is particularly important when it comes to regulating TNCs impacts. Lastly, while corporate social responsibility (CSR) has historically been diffuse and undefined, potentially susceptible to moral

²⁴⁹ Macchi, "The Climate Change Dimension of Business and Human Rights: The Gradual Consolidation of a Concept of 'Climate Due Diligence'," p. 113.

²⁵⁰ Wettstein, Giuliani, Santangelo and Stahl, "International Business and Human Rights: A Research Agenda," p. 10.

²⁵¹ *Ibid*, p. 9.

²⁵² *Ibid*, p. 11.

relativism that could hinder rather than promote responsible business practices abroad, human rights offer a robust and universally recognized framework²⁵³.

As previously mentioned, the global market context and TNC value chains expand far beyond the regulatory oversight of any single government. This creates ungoverned spaces, the so-called governance gaps or institutional voids, where a diverse array of actors—both private and public—operate. Essentially, including corporations in human rights responsibilities does not imply privatizing human rights; instead, it expands corporate responsibility into the public domain²⁵⁴.

Although international documents addressing BHR provide a much stronger role for law in terms of accountability, it is important to stress they are all considered soft-law and by themselves do not include liability or enforcement, such as the UNGPs, the OECD Guidelines for Multinational Enterprises and the OECD Guidance on Responsible Business Conduct. The governance model of the UNGPs is based on a framework that requires businesses to fulfill their responsibility to "account for" their social impacts by requiring them to "know and show" their adverse effects, rather than mandating legally binding obligations to achieve specific outcomes²⁵⁵.

Consequently, investments in practices that minimize environmental and human rights risks may be pursued only when they benefit the enterprise since, as mentioned in the last section of this chapter, business activities are driven by profit. Otherwise, Matias and Vieira clarify that there is a tendency toward risk-taking, particularly among TNCs²⁵⁶. Besides, "[...] reporting or transparency without liability and enforcement is rarely effective as a means of changing conduct"²⁵⁷.

Bartley, on the other hand, argues that "TNCs have also become direct providers of global labor standards and purported protectors of human rights" since the UNGPs has received backing from numerous companies globally. However, only a select few well-known TNCs have

²⁵³ Wettstein, Giuliani, Santangelo and Stahl, "International Business and Human Rights: A Research Agenda," p. 12.

²⁵⁴ Ibid, p. 10.

²⁵⁵ Dehm, "Beyond Climate Due Diligence: Fossil Fuels, 'Red Lines' and Reparations," p. 167.

²⁵⁶ Matias and Vieira, "Climate litigation, human rights and transnational corporations," p. 338.

²⁵⁷ Dehm, "Beyond Climate Due Diligence: Fossil Fuels, 'Red Lines' and Reparations," p. 167.

played pivotal roles in more robust multi-stakeholder compliance and capacity-building initiatives²⁵⁸

It is worth bearing in mind that, when conducting operations in a specific country, enterprises are clearly required to comply with that nation's regulations. However, addressing violations stemming from the indirect activities of a TNC based in another country is significantly more complex and often goes unresolved. Consequently, the most complex problem nowadays involves environmental and human rights impacts that very often occur without TNCs bearing the associated costs, leading to a high preference for risk-taking²⁵⁹.

In terms of risk management, climate due diligence may involve exerting influence over the business affiliates of a corporation, and in severe situations, withdrawing from projects and investments where climate-related impacts cannot be effectively mitigated. The business side of the deal is that corporations can enhance their readiness for future legal and judicial developments by focusing on comprehensive risk management and integrating available guidance effectively²⁶⁰.

In summary, the UNGPs marked a process of convergence in soft law within and outside the UN on the corporate responsibility to respect human rights. Yet, by acknowledging its shortcomings in addressing compensation for victims and establishing legal responsibility for companies, the Human Rights Council initiated a treaty-making process in 2014 and established an Intergovernmental Working Group (IGWG) to develop it, in which the discussions indicate the treaty's design a continuation within international human rights law²⁶¹.

In addition to the UNGPs and the treaty-making process, several jurisdictions have implemented laws mandating HRDD. In April 2024, The European Union, in turn, has adopted the long-awaited Corporate Sustainability Due Diligence Directive (CSDDD), which mandates large companies to conduct risk-based due diligence to identify, assess, mitigate and remedy potential and actual adverse impacts on human rights and the environment related to their activities

²⁵⁸ Bartley, "Transnational Corporations and Global Governance," p. 157.

²⁵⁹ Matias and Vieira, "Climate litigation, human rights and transnational corporations," p. 338.

²⁶⁰ Macchi, "The Climate Change Dimension of Business and Human Rights: The Gradual Consolidation of a Concept of 'Climate Due Diligence'," p. 119.

²⁶¹ Mares, "Regulating transnational corporations at the United Nations – the negotiations of a treaty on business and human rights," p. 1523.

and broader business operations²⁶². In summary, the CSDDD creates "[...] an EU level mandatory corporate due diligence law which will be transposed and implemented across the EU Member States in the coming years"²⁶³.

According to Dehm, the Directive could serve as a platform to advance a unified understanding of the human rights and environmental law principles that form the basis of due diligence. Moreover, the directive aims to move beyond mere disclosure requirements by demanding the comprehensive integration of climate due diligence throughout business policies and operations²⁶⁴. For Hannah Storey, Amnesty International Policy Advisor on Business and Human Rights, "this is a defining moment for human rights and corporate accountability" since the adoption of the Directive provides a binding standard for responsible business conduct in the world's biggest single market²⁶⁵.

Regarding accountability, it is worth to note that under the CSDDD, Member States will need to appoint one or more Supervisory Authorities to oversee compliance with the transposition laws with a requirement for Member States to impose pecuniary penalties²⁶⁶. Additionally, the CSDDD introduces a limited civil liability framework, allowing companies to be held accountable for damages resulting from failure to fulfill their obligations. Furthermore, companies will be required to establish accessible complaint mechanisms for a wide range of stakeholders²⁶⁷. Essentially, the EU Directive is portrayed as a regulatory landmark because it finally crystallizes into hard law at the EU level with extra-territorial effect the soft-law international standards on human rights due diligence, such as the UNGPs.

²⁶² European Union, "Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 Text with EEA relevance," EUR-Lex, access to European Law, (date accessed 29/07/2024), <http://data.europa.eu/eli/dir/2024/1760/oj>, p. 31.

²⁶³ Gabrielle Holly, "The EU Corporate Sustainability Due Diligence Directive: maximsing impact through transposition and implementation," The Danish Institute for Human Rights, 2024, https://www.humanrights.dk/files/media/document/DIHR_The%20EU%20Corporate%20Sustainability%20Due%20Diligence%20Directive_0.pdf, p. 4.

²⁶⁴ Dehm, "Beyond Climate Due Diligence: Fossil Fuels, 'Red Lines' and Reparations," p. 159.

²⁶⁵ Hannah Storey, "Europe: New EU due diligence law governing big business is a landmark advance for human rights," Amnesty International, May 24, 2024, <https://www.amnesty.org/en/latest/news/2024/05/europe-new-eu-due-diligence-law-governing-big-business-is-a-landmark-advance-for-human-rights/>

²⁶⁶ European Union, "Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 Text with EEA relevance," p. 21.

²⁶⁷ Holly, "The EU Corporate Sustainability Due Diligence Directive: maximsing impact through transposition and implementation," p. 5.

The CSDDD is the first of its kind to offer in the international arena (i) binding obligations for companies concerning their actual and potential human rights and environmental impacts within their own operations and those of its subsidiaries — but also to those carried out by a company's business partners in the company's chain of activities; (ii) liability for violations of these obligations; and (iii) an obligation to adopt a climate change mitigation transition plan aligned with the 2050 climate neutrality objective of the Paris Agreement as well as intermediate targets under the European Climate Law²⁶⁸. However, as noted by Holly from the Danish Institute for Human Rights, these mechanisms may only partially address the remedy gap often experienced by rights holders. Therefore, the development of complementary access to justice mechanisms alongside the implementation of the CSDDD remains needed²⁶⁹.

In practical terms, the Directive covers EU companies (either on a standalone or consolidated basis) with over 1,000 employees on average and a net worldwide turnover exceeding EUR 450 million, as well as non-EU companies (either on a standalone or consolidated basis) with a net turnover surpassing EUR 450 million within the EU²⁷⁰. However, civil society groups have criticized the Directive's final text, which now partially exempts financial institutions and applies to only one-third of the companies that would have been included in the original proposal²⁷¹.

Member States are required to transpose the Directive into national law and submit the relevant texts to the Commission by 26 July 2026. The regulations will begin to apply to the initial group of companies one year later, following a phased approach, with full implementation set for 26 July 2029²⁷². In the meantime, according to the Grantham Research Institute on Climate Change and the Environment, the piece of legislation is expected to lead to new climate-related

²⁶⁸ European Union, "Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 Text with EEA relevance," p. 25.

²⁶⁹ Holly, "The EU Corporate Sustainability Due Diligence Directive: maximising impact through transposition and implementation," p. 5.

²⁷⁰ European Commission, "Corporate sustainability due diligence," (date accessed 26/07/2024), https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en#how-will-the-new-rules-be-enforced

²⁷¹ Joana Setzer and Catherine Higham, "Global Trends in Climate Change Litigation: 2024 Snapshot," Grantham Research Institute on Climate Change and the Environment, June, 2024, <https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2024/06/Global-trends-in-climate-change-litigation-2024-snapshot.pdf>, p. 21.

²⁷² European Commission, "Corporate sustainability due diligence".

cases as companies and civil society groups work to understand the practical implications of the new requirements²⁷³.

Since climate, environmental and human rights challenges are inherently interconnected, a holistic approach to HRDD is essential to interpret the standard of conduct in alignment with environmental law, climate law and international human rights law²⁷⁴. After all, Human Rights Due Diligence was never intended as a singular solution capable of completely changing corporate behavior on its own. Instead, it was always conceived as one component within a larger polycentric governance framework that incorporates a combination of binding and non-binding instruments²⁷⁵.

In this context, it is crucial to clarify that there are more than 2,860 climate-related laws and policies in force around the world (as of September 2022), according to The Climate Change Laws of the World (CCLW) database. At least 2,203 of them deal with mitigation, 1,338 have an adaptation component and 424 address disaster risk management. They are mostly focused on energy, transport, economy-wide issues, land use, land use change and forestry. Moreover, all 193 Parties (192 countries plus the European Union) of the Paris Agreement have at least one law addressing climate change or the transition to a low-carbon economy²⁷⁶, including the EU Regulation from 2019 on Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks, the "European Climate Law" and the EU's new Deforestation Regulation (EUDR)²⁷⁷.

There is an urgent need to broader regulatory reforms that draw clear 'red lines' to prevent and phase out fossil fuel development and reduce the disproportionate power of the fossil fuel industry²⁷⁸. According to the European Commission, EU action on mandatory corporate sustainability due diligence was driven by a clear demand from a broad range of stakeholder groups, including 70% of the businesses that participated in the public consultation. Therefore, the

²⁷³ Setzer and Higham, "Global Trends in Climate Change Litigation: 2024 Snapshot," p. 21.

²⁷⁴ Macchi, "The Climate Change Dimension of Business and Human Rights: The Gradual Consolidation of a Concept of 'Climate Due Diligence'," p. 109.

²⁷⁵ Dehm, "Beyond Climate Due Diligence: Fossil Fuels, 'Red Lines' and Reparations," p. 161.

²⁷⁶ The London School of Economics and Political Science, "What is climate change legislation?," Grantham Research Institute on Climate Change and The Environment, October 4, 2022, <https://www.lse.ac.uk/granthaminstitute/explainers/what-is-climate-change-legislation/>

²⁷⁷ Setzer and Higham, "Global Trends in Climate Change Litigation: 2024 Snapshot," p. 21.

²⁷⁸ Dehm, "Beyond Climate Due Diligence: Fossil Fuels, 'Red Lines' and Reparations," p. 162.

implementation of the Corporate Sustainability Due Diligence Directive (CSDDD) represents a notable step forward in this area over the coming years, as it will apply to approximately 6,000 EU companies and 900 non-EU companies²⁷⁹.

In terms of additional advancements, strategic human rights litigation plays a decisive role in further shaping climate due diligence, identifying the actors of society accountable for the human-induced climate change and prompting new regulation of business activities contributing to greenhouse gas (GHG) emissions. Several international courts are now being asked to address questions about a state's international obligations in the face of the climate emergency - including the legal consequences of failing to fulfill these obligations. The right to a healthy environment is helping to answer those questions²⁸⁰.

In the domestic sphere, private actors are also facing lawsuits regarding their stand in climate-related obligations. These cases contribute to identifying the main tenets of an emerging climate due diligence and may prompt new regulation of business activities contributing to GHG emissions²⁸¹. Climate litigation, in light of this, is one crucial instrument (i) to establish concrete obligations within the scope of climate due diligence and (ii) to promote accountability of those who fall short on complying with these obligations.

4. Climate Justice litigation and the role of civil society

In its first part, the present chapter focuses on addressing the role climate justice plays in bridging the gap between the web of life and the web of accountability, particularly through litigation against transnational corporations. It defines the Climate Justice Movement as a human rights-based resistance to climate inaction from states and the private sector. Climate litigation is, thus, portrayed as a significant arena for civil society to influence climate policy, governance, and public discourse. The second part of this chapter questions the promotion of an (un)just transition, delving into a discussion on the narratives of the world that could lead humanity to a safer, more just and equitable place. Global justice arises as the solution for embracing the

²⁷⁹ European Commission, "Corporate sustainability due diligence".

²⁸⁰ Frost, "Is it 'high time' for Europe to recognise the human right to a healthy environment?".

²⁸¹ Macchi, "The Climate Change Dimension of Business and Human Rights: The Gradual Consolidation of a Concept of 'Climate Due Diligence'," p. 98.

voices and needs of those historically and systemically affected by human-induced climate change. The interconnected notions of justice, education, democracy and love, as a transformative social force, are portrayed as crucial tools in the endeavor for a just transition.

4.1. Climate Litigation against transnational corporations

As established in the first two chapters, climate change is unequivocally a human rights issue. It has led to loss of lives, livelihoods, languages and cultures, placing many at risk of food and water scarcity while also exacerbating displacement, conflict and inequalities. Addressing the causes and consequences of climate change by challenging the current socio-economic system and its power dynamics is essential for human survival. The climate crisis is, therefore, a matter of justice²⁸².

Climate justice translates into putting equity and human rights at the core of decision-making and climate action²⁸³. It arises as a worldwide movement for a more equitable distribution of investments and responsibilities in addressing the climate emergency. After all, climate change is an universal issue but its impacts are not uniformly experienced everywhere²⁸⁴. Its solutions should necessarily involve reconciliation through the lens of decoloniality and intersectional justice since the undeniable premise behind anthropogenic climate change is that "‘we’—but really a (sizeable) minority of us—are, in effect, shaping, even colonizing, future lives and lifestyles, just as past generations colonized the lives of (many) of us alive today"²⁸⁵.

On the international stage, the voices and demands of vulnerable communities and groups are being increasingly acknowledged. Activists worldwide are mobilizing in the streets to advocate for change²⁸⁶ and playing a significant role in terms of shaping the future, including the accountability of states and TNCs. For young activists such as Anuna de Wever and Kyra Gantois, the Climate Justice Movement is a growing awareness that is spreading from city to city and

²⁸² United Nations, "Climate change is a matter of justice – here’s why".

²⁸³ Ibid.

²⁸⁴ Governo do Estado de São Paulo, "Justiça Climática," Portal de Educação Ambiental, May 23, 2023 <https://semil.sp.gov.br/educacaoambiental/prateleira-ambiental/justica-climatica/>

²⁸⁵ Stephen Humphreys, "Against Future Generations," *European Journal of International Law* v. 33, n. 4, (2022): pp. 1061–1092, <https://doi.org/10.1093/ejil/chac068>. p. 1063.

²⁸⁶ United Nations, "Climate change is a matter of justice – here’s why".

country to country²⁸⁷. They realized their actions are much more than simple protests. It is about connection and the feeling of being part of something bigger that provides a sense of community and belonging to Earth²⁸⁸. For Wever and Gantois, "we are the climate" ("*nous sommes le climat*"), which means each person is part of the crisis and may be also part of the solution²⁸⁹.

The Climate Justice Movement illustrates the recognition by human beings worldwide that they cannot afford to be passive when humanity's future is at stake. The Movement denounces the main actors of the current socio-economic system that spend way more money on fueling the problem instead of producing possible solutions²⁹⁰. Climate activists worldwide are awake and not afraid to commit to challenge the ones in power and express their wish to form a community of resistance²⁹¹.

Climate litigation stands as a pioneering approach taken by the resistance to reshape the landscape of this battle. Governments and private sector entities are facing challenges and demands for accountability from the rising trend of people resorting to the judiciary to confront the climate crisis. Children, youth, women's groups, local communities and Indigenous Peoples, among others, are increasingly leading efforts to bring forth these cases and drive reforms in climate governance across numerous countries worldwide²⁹², including by reshaping regulatory frameworks on climate due diligence.

Given the reluctance or resistance of both public and private actors to implement necessary urgent measures to address the climate emergency, climate litigation serves as a grassroots mechanism that reinforces domestic adherence to international legal and scientific agreements on climate action. In the words of Rodríguez-Garavito, climate litigation "[...] contributes to addressing the climate emergency by providing at least part of the missing link between international promises and domestic action". In doing so, it provides a crucial leverage

²⁸⁷ Aruna de Wever and Kyra Gantois, *Nous sommes le climat: lettre à tous*, (Stock: 2019), p. 60.

²⁸⁸ De Wever and Gantois, *Nous sommes le climat*, p. 12.

²⁸⁹ Ibid, p. 60.

²⁹⁰ Ibid, pp. 41, 49.

²⁹¹ Ibid, p. 54.

²⁹² Michel Burger and Maria Antonia Tigre, "Global Climate Litigation Report: 2023 Status Review," *Sabin Center for Climate Change Law, Columbia Law School & United Nations Environment Programme.*, July, 2023, <https://www.unep.org/resources/report/global-climate-litigation-report-2023-status-review>, p. 9.

point to amplify and accelerate climate action²⁹³, which is crucial because the climate emergency is a time bomb²⁹⁴.

Essentially, climate change litigation encompasses cases brought before a range of administrative, judicial and other adjudicatory bodies, that involve significant legal or factual matters concerning climate change mitigation, adaptation, loss and damages and management of climate risks²⁹⁵. The legal grounds for climate cases are widening as parties put forward innovative arguments linking the actions of specific greenhouse gas emitters to global climate change and demonstrate how foreseeable climate impacts can be directly linked to specific harms suffered by plaintiffs²⁹⁶.

The growth of climate litigation is related to several factors, such as the proliferation of national laws and policies addressing climate issues, the outcomes of the Paris Agreement, the influence of landmark cases and the pursuit of human rights protection²⁹⁷. Regarding its objectives, climate litigation aims to achieve the following: (i) the enforcement of existing climate laws; (ii) incorporation of climate action into existing environmental, energy and natural resources laws; (iii) orders to legislators, policymakers and business enterprises to respect and apply climate due diligence; (iv) establishment of clear definitions of human rights obligations in terms of climate change; and (v) compensation for climate-related damages²⁹⁸.

One of climate litigation's most decisive outcomes has been the advancement of climate governance across various levels—local, national and global²⁹⁹. It was even recognized by the IPCC for the first time (with medium confidence) in its Sixth Assessment Report³⁰⁰. Thus,

²⁹³ César Rodríguez-Garavito, "Litigating the Climate Emergency: The Global Rise of Human Rights-Based Litigation for Climate Action," New York University, May 12, 2021, <https://www.law.nyu.edu/sites/default/files/Litigating%20the%20Climate%20Emergency%20-ia%20remediated.pdf>, p. 6.

²⁹⁴ António Guterres, "Secretary-General Calls on States to Tackle Climate Change 'Time Bomb' through New Solidarity Pact, Acceleration Agenda, at Launch of Intergovernmental Panel Report," United Nations Press Release, March 20, 2023, <https://press.un.org/en/2023/sgsm21730.doc.htm>

²⁹⁵ Matias and Vieira, "Climate litigation, human rights and transnational corporations," p. 339.

²⁹⁶ Burger and Tigre, "Global Climate Litigation Report: 2023 Status Review," p. 12.

²⁹⁷ Matias and Vieira, "Climate litigation, human rights and transnational corporations," p. 349.

²⁹⁸ Burger and Tigre, "Global Climate Litigation Report: 2023 Status Review," p. 11.

²⁹⁹ Matias and Vieira, "Climate litigation, human rights and transnational corporations," p. 349.

³⁰⁰ Navroz K. Dubash, Catherine Mitchell, Elin Lerum Boasson, et al, "Chapter 13: National and sub-national policies and institutions. In Climate Change 2022: Mitigation of Climate Change. Working Group III Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change," *Intergovernmental Panel on Climate Change*, November 28, 2021, https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_Chapter_13.pdf

climate litigation has unequivocally become pivotal in compelling governments and corporate entities to pursue more ambitious goals for mitigation and adaptation to climate change, offering to civil society and the Climate Justice Movement a potential instrument to address insufficient responses in terms of climate action³⁰¹.

As discussed in the last chapter, climate governance and climate due diligence cannot be understood and dealt with as a private matter, as merely abstract concepts that provide voluntary standards to the corporate world. In this context, climate litigation provides a crucial avenue to further shape climate due diligence by establishing concrete obligations, identifying responsible public and private actors and significantly ensuring accountability for both actions and inactions related to climate violations. In fact, given how climate litigation enhances corporate climate accountability frameworks, it is likely that ongoing and future cases will result in the development of stricter standards for corporate climate accountability³⁰².

Undoubtedly, the nexus between climate change and human rights is expanding beyond the confines of international documents discussed in the previous chapter, notably manifesting in decisions made through climate litigation³⁰³. As of December, 2022, the Sabin Center's Climate Change Litigation databases documented 2,180 cases filed under different legal grounds (including human rights) across 65 jurisdictions and international or regional courts, tribunals, quasi-judicial bodies or other adjudicatory bodies, including United Nations special procedures and arbitration tribunals. Out of these, 1,522 cases were in the United States of America, with the remaining 658 cases spread across other jurisdictions globally³⁰⁴.

According to the latest report (from June, 2024) of The Grantham Research Institute on Climate Change and the Environment from the London School of Economics, strategic cases continued to be filed against companies in the last year, with about 230 such cases now identified from 2015 to the present. Among other trends, the Report highlights that (i) climate cases are spreading to more countries; (ii) cases in the Global South are increasing and gaining more attention; (iii) most climate litigation cases from recent years have been filed by NGOs or

³⁰¹ Burger and Tigre, "Global Climate Litigation Report: 2023 Status Review," p. 18.

³⁰² Dehm, "Beyond Climate Due Diligence: Fossil Fuels, 'Red Lines' and Reparations," p. 161.

³⁰³ Matias and Vieira, "Climate litigation, human rights and transnational corporations," p. 341.

³⁰⁴ Burger and Tigre, "Global Climate Litigation Report: 2023 Status Review," p. 14.

individuals; and (iv) companies from many sectors are now at risk of being taken to court over climate³⁰⁵.

In the last decades, however, "[...] only a limited number of lawsuits directly targeting the climate change impacts of corporations, and an even narrower sample with an explicit human rights dimension, exist"³⁰⁶. As of 2021, there have been only twenty-four climate lawsuits filed against corporations on grounds related to human rights concerns. This trend is somewhat expected, given the historical challenges human rights norms and concepts face when addressing non-state actors, especially corporations³⁰⁷. Nevertheless, Macchi argues that the significance of climate change litigation rests not merely on the sheer volume of cases but rather the potential impact of strategic litigation, including cases against corporations, and the growing use of human rights arguments³⁰⁸.

For instance, the *Urgenda v. State of the Netherlands* case (2019) was the first case to establish that climate inaction is a violation of human rights law and to hold a government legally accountable for its international obligations and national targets of greenhouse gas emission reductions, determining urgent and substantial cuts to the country's emissions³⁰⁹. The Supreme Court ruling affirms that principles of climate law and environmental law are essential components of the due diligence obligations that states are bound by under international human rights law. Such an integrated approach is equally needed to interpret the expected standard of conduct for businesses under the UNGPs³¹⁰. Besides, the landmark case drew considerable attention and prompted others to adopt similar strategies³¹¹.

In Germany, the landmark judgment in the *Neubauer* case (2020) prompted the government to increase its 2030 greenhouse gas (GHG) emissions reduction target, specify further

³⁰⁵ Setzer and Higham, "Global Trends in Climate Change Litigation: 2024 Snapshot," pp. 2-3.

³⁰⁶ Macchi, "The Climate Change Dimension of Business and Human Rights: The Gradual Consolidation of a Concept of 'Climate Due Diligence'," p. 95.

³⁰⁷ Rodríguez-Garavito, "Litigating the Climate Emergency: The Global Rise of Human Rights-Based Litigation for Climate Action," p. 21.

³⁰⁸ Macchi, "The Climate Change Dimension of Business and Human Rights: The Gradual Consolidation of a Concept of 'Climate Due Diligence'," p. 95.

³⁰⁹ Rodríguez-Garavito, "Litigating the Climate Emergency: The Global Rise of Human Rights-Based Litigation for Climate Action," p. 1.

³¹⁰ Macchi, "The Climate Change Dimension of Business and Human Rights: The Gradual Consolidation of a Concept of 'Climate Due Diligence'," p. 103.

³¹¹ Matias and Vieira, "Climate litigation, human rights and transnational corporations," pp. 341-342.

increases thereafter, and accelerate the timeline for achieving net carbon neutrality to 2045³¹². This type of litigation has significant impacts on businesses by potentially speeding up and shaping policy initiatives like the shift to a low-carbon economy or the regulation of specific business practices³¹³. These developments include the consideration of extraterritorial jurisdiction, exemplified by the Neubauer case involving plaintiffs from Bangladesh and Nepal in which the court recognized Germany's extended constitutional responsibilities to safeguard these individuals in other countries³¹⁴.

According to the UN Climate Litigation Report of 2023, the increasing focus on extraterritorial jurisdiction is expected to become a central aspect of future cases. The 2017 advisory opinion from the IACtHR established guidelines for determining jurisdiction in cases seeking remedies for cross-border environmental damages (extraterritorial jurisdiction) under two conditions: first, when there is a factual connection between actions within a state's territory and human rights violations abroad; and second, when a state effectively controls activities in another state that lead to such violations. This recognized linkage expands a state's accountability for environmental harms, including those related to climate change, emphasizing its duty to exercise due diligence within its borders when human rights abroad are endangered³¹⁵.

In *Sacchi et al v. Argentina et al* (2021), The UN Commission on Children's Rights reaffirmed the reasoning of IACtHR by determining that countries have extraterritorial responsibilities related to climate change (transboundary harm). The Commission found that when transboundary harm occurs, children are under the jurisdiction of the state on whose territory the emissions originated if (i) there is a causal link between the acts or omissions of the state in question and the negative impact on the rights of children located outside its territory, and (ii) the state of origin exercises effective control over the sources of the emissions in question³¹⁶.

³¹² Rodríguez-Garavito, "Litigating the Climate Emergency: The Global Rise of Human Rights-Based Litigation for Climate Action," p. 1.

³¹³ Macchi, "The Climate Change Dimension of Business and Human Rights: The Gradual Consolidation of a Concept of 'Climate Due Diligence'," p. 102.

³¹⁴ Burger and Tigre, "Global Climate Litigation Report: 2023 Status Review," p. 14.

³¹⁵ *Ibid*, p. 67.

³¹⁶ Climate Rights and Remedies (CRRP), "*Sacchi et al. v. Argentina, Brazil, France, Germany & Turkey*," University of Zurich, September 22, 2021, <https://climaterightsdatabase.com/2021/09/22/crc-sacchi-et-al-v-argentina-et-al/>

Even though the complaint was found inadmissible for a failure to exhaust local remedies in *Sacchi et al v. Argentina et al*, the findings provide a significant pathway for future climate litigation beyond the Convention on the Rights of the Child and its reliance on the interpretation of extraterritorial responsibility by the IACtHR shows a growing cross-fertilization between courts³¹⁷.

In the 2022 decision of the case of *Torres Strait Islanders vs. Australia*, the Human Rights Committee has declared Australia's international responsibility for violations of human rights to the culture and private and family life of fourteen indigenous inhabitants of the Torres Strait region, on the basis of the failure of the state to promote adaptation and protect people from the impacts of climate change. At the time, it was considered by the Academy as the most important climate decision ever issued by an International Court of Human Rights³¹⁸.

Notoriously, in April, 2024, the European Court of Human Rights confirmed, in a landmark decision of the case of *KlimaSeniorinnen and ors. v. Switzerland*, that government failure to act on climate change constitutes a violation of the European Convention on Human Rights (articles 8 and 6 §1)³¹⁹. The Court found that the right to respect for private and family life (Article 8) encompasses a right to effective protection by the state authorities from the serious adverse effects of climate change on lives, health, well-being and quality of life. Consequently, Switzerland was held accountable for failing to comply with its positive obligations under the Convention concerning climate change, in terms of domestic regulatory framework, carbon budget and national GHG emissions limitations, including its past reduction targets³²⁰.

In this context, it is evident that the outcomes of climate litigation against states move beyond states' realm, penetrating the corporate climate action level. Governments, which have the power to regulate the collective emission level as demonstrated in the *Urgenda* case, are increasingly urged to integrate adequate climate targets into their own policies, and, at the same

³¹⁷ Burger and Tigre, "Global Climate Litigation Report: 2023 Status Review," p. 67.

³¹⁸ United Nations, "Australia violated Torres Strait Islanders' rights to enjoy culture and family life, UN Committee finds," Press Releases, September 23, 2022, <https://www.ohchr.org/en/press-releases/2022/09/australia-violated-torres-strait-islanders-rights-enjoy-culture-and-family>

³¹⁹ Setzer and Higham, "Global Trends in Climate Change Litigation: 2024 Snapshot," p. 3.

³²⁰ Sabin Center for Climate Change Law, "*KlimaSeniorinnen v Switzerland (ECtHR)*," Climate Change Litigation Databases, (date accessed 22/07/2024), <https://climatecasechart.com/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-council-and-others/>

time, supervise corporate action to avoid the frustration of the objectives of the Paris Agreement³²¹. After all, climate change is a transnational issue that requires a holistic approach of cooperation and regulation among public authorities, corporate actors and civil society, as an illustration of democratic checks and balances to prevent the unconstrained exercise of power, improve the quality of decision-making and ensure accountability³²².

The illustration of such influence beyond governmental level is observed in *Milieudéfensie et al. v. Royal Dutch Shell* (2022), in which the plaintiffs alleged the corporation's violation of its duty of care anchored in Dutch law, human rights law and the Paris agreement. This approach proposes an integrated interpretation of corporate Human Rights Due Diligence based on both human rights law and climate law standards. For Macchi, "the plaintiffs clearly aim at riding the long wave of the Urgenda judgment and extending its conclusions, *mutatis mutandis*, to private actors"³²³. The appeal from Royal Dutch Shell is currently under analysis as of July 2024³²⁴.

The *Milieudéfensie* case perfectly portrays the crucial role of civil society in terms of shaping climate corporate action and climate due diligence. Successfully, the plaintiffs based their allegations on the grounds of the main business and human rights instruments (such as the UNGPs - publicly endorsed by Shell) to demonstrate Shell was undoubtedly liable for insufficient action to reduce GHG emissions and the active attempt to mislead the public about the sustainability of its operations. Through litigation and application of BHR legal instruments, they demonstrated that Shell, in addition to governments, has a responsibility to align its policies and

³²¹ Macchi, "The Climate Change Dimension of Business and Human Rights: The Gradual Consolidation of a Concept of 'Climate Due Diligence'," p. 107.

³²² The Constitution Unit, "Checks and balances: what are they, and why do they matter?," The constitution Unit Blog, January 19, 2023, <https://constitution-unit.com/2023/01/19/checks-and-balances-what-are-they-and-why-do-they-matter/>

³²³ Macchi, "The Climate Change Dimension of Business and Human Rights: The Gradual Consolidation of a Concept of 'Climate Due Diligence'," pp. 95, 96.

³²⁴ Setzer and Higham, "Global Trends in Climate Change Litigation: 2024 Snapshot," p. 1.

practices with the Paris Agreement targets, in line with the precautionary principle³²⁵ from International Environmental Law³²⁶.

The Hague District Court ordered Royal Dutch Shell, a Dutch-based oil and gas multinational, to reduce CO2 emissions from its products by 45% from 2019 levels by 2030. The ruling represents the first time a private company was ordered to comply with the Paris Agreement and fulfill obligations to mitigate greenhouse gas emissions under its provisions. The court grounded its decision in climate-related human rights responsibilities and tort-based duties, including those related to corporate due diligence, and on an implicit duty of care aligned with the goals of the Paris Agreement and the UNGPs³²⁷.

In turn, France's 2017 law on the duty of vigilance, which imposes parent-based climate due diligence obligations in compliance with the UNGPs³²⁸, has also paved the way for new climate-related lawsuits against corporations. In 2019, six nongovernmental organizations from France and Uganda have sued energy company Total over an oil project in Uganda and Tanzania (*Les Amis de la Terre et al v. Total*). The plaintiffs alleged that Total's mega oil project failed to adequately comply with the company's legal obligations to prevent human rights violations and environmental harm³²⁹.

While the Judicial Court of Paris ruled the case "inadmissible" in early 2023, citing procedural missteps by the plaintiffs in their court procedures against the company, this has become the very first legal action of its kind under France's law on the duty of vigilance³³⁰. This

³²⁵ "In simple terms, the precautionary principle is an attempt to give the notion of precaution—understood as a form of addressing risk—legal status". Jose Felix Pinto-Bazurco, "The Precautionary Principle Still Only One Earth: Lessons from 50 years of UN sustainable development policy," International Institute for Sustainable Development, October 23, 2020, <https://www.iisd.org/articles/deep-dive/precautionary-principle>

³²⁶ Macchi, "The Climate Change Dimension of Business and Human Rights: The Gradual Consolidation of a Concept of 'Climate Due Diligence'," p. 96.

³²⁷ Burger and Tigre, "Global Climate Litigation Report: 2023 Status Review," pp. 50,51.

³²⁸ Commission nationale consultative des droits de l'homme (CNCDDH), "Entreprises et droits de l'Homme. Protéger, respecter, réparer. Rapporteur national indépendant," 2023, <https://www.cncdh.fr/publications/rapport-entreprises-et-droits-de-lhomme-protoger-respecter-reparer>, p. 334.

³²⁹ Sabin Center for Climate Change Law, "Friends of the Earth et al. v. Total," Climate Change Litigation Databases, (date accessed 22/07/2024), <https://climatecasechart.com/non-us-case/friends-of-the-earth-et-al-v-total/#:~:text=Summary%3A,human%20rights%20and%20the%20environment>

³³⁰ Le Monde, "French court dismisses case against TotalEnergies East Africa oil project: It was a first of its kind case for France, and activists had hoped it would set a legal precedent to halt projects deemed harmful to the environment and human rights," February 28, 2023, https://www.lemonde.fr/en/police-and-justice/article/2023/02/28/french-court-dismisses-case-against-totalenergies-east-africa-oil-project_6017688_105.html

legal instrument provides grounds to hold "[...] parent companies of transnational corporations legally accountable for the impacts of their operations all over the world"³³¹. Besides, the case itself is a symbol of the Climate Justice Movement, led by civil society organizations from both Global South and North with the aim of regulating corporate (in)action and climate governance to prevent BHR violations.

In the case *Notre Affaire à Tous and Others v. Total* (2021), filed in France by fourteen French cities and four NGOs, plaintiffs have asked the court to compel the oil and gas company Total to acknowledge the risks associated with its business operations and to bring its practices in line with the Paris Agreement³³². This marked the first instance of a lawsuit filed under the duty of vigilance law to address the climate inaction of an oil corporation. Total was targeted due to its status as one of the largest global emitters, accounting for 1% of the world's total greenhouse gas emissions and two-thirds of France's emissions. Instead of progressing towards the 2°C target set by the Paris Agreement, the company allegedly increased its oil production and continues to invest in exploring new oil reserves³³³.

On June 18, 2024, the French Court of Appeal overturned the initial decision in the *Notre Affaire à Tous and Others* Case to dismiss it and ruled that the case must proceed to trial. The Court resolved a procedural dispute that had the potential to undermine the efficacy of France's duty of vigilance law. However, the Court found the actions brought by local authorities, except for the city of Paris, to be inadmissible. This ruling cleared the path for the first substantive examination of a climate lawsuit against a multinational corporation in France. Following years of legal proceedings, the French Company must now demonstrate its compliance with legal obligations related to climate issues³³⁴.

In fact, legal actions are increasingly targeting fossil fuel corporations for their failure to address the risks of anthropogenic climate change, particularly to mitigate GHG emissions. Regarding the grounds, legal efforts aim to hold corporations accountable under tort

³³¹ Amis de la Terre France, "Total Uganda, A first lawsuit under the duty of vigilance law: an update," 2020, <https://www.amisdelaterre.org/wp-content/uploads/2020/10/total-uganda-legal-brief-foefrance-survie.pdf>, p. 2.

³³² Burger and Tigre, "Global Climate Litigation Report: 2023 Status Review," p. 51.

³³³ Macchi, "The Climate Change Dimension of Business and Human Rights: The Gradual Consolidation of a Concept of 'Climate Due Diligence'," p. 97.

³³⁴ Sherpa, "Stage victory in the climate trial against TotalEnergies," June 19, 2024, <https://www.asso-sherpa.org/stage-victory-in-the-climate-trial-against-totalenergies>

law (non-contractual civil responsibilities), international human rights law and consumer protection laws (misinformation and deceptive conduct). There are even proposals suggesting that fossil fuel companies could face criminal liability, including charges of homicide, which resonate with broader efforts advocating for the establishment of the international crime of ecocide and its prosecution by the International Criminal Court³³⁵. In fact, the concept of ecocide is gaining momentum, with new legislation in Belgium and proposed EU directives aimed at addressing environmental crimes³³⁶.

In 2022, the Commission on Human Rights of the Philippines released its National Inquiry on Climate Change, the culmination of a seven-year investigation into the accountability of 47 fossil fuel-producing companies known as the “Carbon Majors” for climate change impacts. The investigation was initiated in response to a petition filed by Greenpeace Southeast Asia and other environmental organizations and a number of organizations and individuals. The petition builds on studies that trace anthropogenic GHG emissions to specific corporations, and largely relies on the UNGPs³³⁷. The Commission concluded that, along with states, business enterprises must respect human rights, irrespective of whether domestic laws exist or are fully enforced domestically³³⁸. It highlights the extraterritorial scope of climate due diligence obligations as an important factor to hold the “Carbon Majors” accountable for their violations worldwide.

In *Envol Vert et al. v. Casino* (2021), a group of NGOs filed a lawsuit against the French supermarket chain Casino for its supply chain emissions associated with the cattle industry in Brazil and Colombia. This pending case questions the practice of “emissions outsourcing”³³⁹ and focuses on a company that maintains low emissions profiles domestically but whose products contribute significantly to pollution in other countries³⁴⁰. In fact, all of these cases illustrate the complexities of holding transnational corporations accountable, in a world where companies,

³³⁵ Dehm, “Beyond Climate Due Diligence: Fossil Fuels, ‘Red Lines’ and Reparations,” p. 176.

³³⁶ Setzer and Higham, “Global Trends in Climate Change Litigation: 2024 Snapshot,” p. 6.

³³⁷ Macchi, “The Climate Change Dimension of Business and Human Rights: The Gradual Consolidation of a Concept of ‘Climate Due Diligence’,” p. 97.

³³⁸ Burger and Tigre, “Global Climate Litigation Report: 2023 Status Review,” p. 52.

³³⁹ “Outsourcing of emissions” means that a country's foreign trade reduces domestic emissions, but increases emissions outside its borders”. Nicolai Baumert, Astrid Kander, Magnus Jiborn, et al, “Global outsourcing of carbon emissions 1995–2009: A reassessment,” *Environmental Science & Policy*, v. 92, (2019): pp. 228-236, <https://www.sciencedirect.com/science/article/pii/S1462901118307536#:~:text=“Outsourcing%20of%20emissions”%20means%20that,et%20al.%2C%202017,pp.228-229.>

³⁴⁰ Burger and Tigre, “Global Climate Litigation Report: 2023 Status Review,” p. 51.

particularly TNCs, often exploit legal loopholes to prioritize profits over human well-being (or even survival).

Nevertheless, the extraterritorial scope of the aforementioned decisions also facilitates a more comprehensive application of climate due diligence and, consequently, protection of human rights. By requiring a company to reduce greenhouse gas (GHG) emissions and to prevent environmental harm, it inherently yields positive cross-border effects and contributes to global efforts in combating climate change. Building on this *ratio decidendi*, climate litigation can serve as an extraterritorial tool for safeguarding human rights in response to corporate violations³⁴¹, as well as for making the objectives of the Paris Agreement more concrete, attainable, thereby reinforcing the role and responsibility of corporate stakeholders³⁴².

Climate litigation, therefore, encompasses a range of cases seeking compensation from defendants accused of contributing to harmful climate impacts, known as 'Polluter pays' cases. For instance, the case of *Falys v. Total* involves a Belgian farmer suing the French energy giant Total for climate damages, marking the third such case filed in Europe. Additionally, there are lawsuits brought against corporations on claims of misrepresentative statements about climate change (greenwashing or "climate-washing")³⁴³. According to the Climate Litigation Database from the Sabin Center for Climate Change Law, there are currently 67 cases outside the US targeting corporations for misleading advertising and 37 cases related to climate damage³⁴⁴.

The last decade of climate litigation has proven wrong some of the early climate decisions issued, such as *Native Village of Kivalina v. ExxonMobil* in the United States, in which "[...] the court held that the question of how best to address climate change was a political question not appropriate for a federal trial court to decide"³⁴⁵. In fact, climate change is a matter of justice and, as it was demonstrated in this chapter, it has been recognized as such by many courts and administrative bodies worldwide. Beyond the will of politicians, public participation in democratic

³⁴¹ Matias and Vieira, "Climate litigation, human rights and transnational corporations," pp. 346-347.

³⁴² Ibid, p. 348.

³⁴³ Setzer and Higham, "Global Trends in Climate Change Litigation: 2024 Snapshot," p. 4.

³⁴⁴ Sabin Center for Climate Change Law, "Climate litigation database". Climate Change Litigation Databases, (date accessed 27/07/2024), <https://climatecasechart.com/non-us-case-category/corporations/>

³⁴⁵ Sabin Center for Climate Change Law, "*Native Village of Kivalina v. ExxonMobil Corp.*," Climate Change Litigation Databases, (date accessed 27/07/2024), <https://climatecasechart.com/case/native-village-of-kivalina-v-exxonmobil-corp/>

processes includes access to the respective legal system. The turn to the courts is a sign that legal systems are working exactly as intended³⁴⁶.

Addressing environmental issues poses a collective challenge, mainly for the vulnerable groups most affected by their impacts, with courts increasingly becoming the preferred forum for all stakeholders in this ongoing debate. For decades, the global environmental movement has advocated, protested, litigated and urged governments and corporations to bridge the gap between human activities and the natural environment essential to all life: "these are exercises in democracy"³⁴⁷.

In terms of accountability of TNCs, even though considerable advancements have been achieved through climate litigation, particularly in terms of recognizing extraterritorial jurisdiction and concrete obligations, it should not be viewed as a sufficient mechanism for rendering TNCs accountable for their violations³⁴⁸, much less for tackling the climate emergency as a whole. Besides, successful lawsuits against corporations are a considerably recent trend within the Climate Justice Movement, which means a lot will unfold in the next few years regarding the scope of enforcement.

In conclusion, climate change poses a challenge too complex for any single regulatory tool to adequately address³⁴⁹. Climate litigation is one component of the solution, resonating impacts that reach beyond courtroom decisions and influence policy, governance and public discourse³⁵⁰. Particularly, it has been providing a stand for civil society as stakeholders to claim their rights and denounce their sufferings. Through joint action among different actors of climate governance and by effective use of diverse instruments, the protection of human rights can be adequately enforced³⁵¹.

Beyond the role of civil society as advocates, every person bears a responsibility, not only as a citizen but fundamentally as a living being part of the web of life, to actively

³⁴⁶ Bianca de Marchi, "Climate in the courtroom: all sides are using 'green lawfare', and it's good for democracy," The conversation, July 14, 2024, <https://theconversation.com/climate-in-the-courtroom-all-sides-are-using-green-lawfare-and-its-good-for-democracy-234269>

³⁴⁷ De Marchi, "Climate in the courtroom: all sides are using 'green lawfare', and it's good for democracy".

³⁴⁸ Matias and Vieira, "Climate litigation, human rights and transnational corporations," p. 349.

³⁴⁹ Rodríguez-Garavito, "Litigating the Climate Emergency: The Global Rise of Human Rights-Based Litigation for Climate Action," p. 6.

³⁵⁰ Setzer and Higham, "Global Trends in Climate Change Litigation: 2024 Snapshot," p. 6.

³⁵¹ Matias and Vieira, "Climate litigation, human rights and transnational corporations," p. 350.

contribute to societal change. The profit-oriented strategies of capitalism must be questioned by those intrinsic to its system—consumers whose identities are often intertwined with the products they consume. However, bridging the gap between the web of life and the web of accountability involves more than identifying those primarily responsible for harm and disconnection. It requires creating a just and concrete path for change without sacrificing the least responsible and most affected by the crisis.

4.2. (Un)Just transition

In the words of the indigenous leader Ailton Krenak, the world is replacing the idea of citizens by consumer experiences and thus the world is inhabited by customers, some preferential³⁵². The approach taken towards a so-called "just transition" reveals that the underlying power dynamics remain entrenched in exploitation, imperialism, elitism and capitalism. This perpetuates preferential treatment for a select few, rather than fostering true fairness and justice in the transition process. Consequently, what is supposed to be a fair and just transition may not lead to any meaningful change, as the same influential entities continue to dominate the landscape. Yet, painted in green for the society to applaud and endorse.

In 2019, years after states pledged to implement a just transition during the Paris Agreement, the wealthiest 1 percent, totaling 77 million individuals, generated 16 percent of global consumption emissions—surpassing the emissions from all cars and road transportation combined. The top 10 percent were responsible for half of these emissions³⁵³. It is simply unjustifiable for the majority to suffer so that a privileged few can luxuriate in excessive wealth³⁵⁴. For decades, different parts of society have been demanding the system to change.

The concept of "just transition" originated from discussions among North American unions in the 1970s, aiming to mitigate the potential negative effects of environmental policies on workers in high-risk industries. In the late 1990s and early 2000s, the term was adopted in the context of climate discussions to emphasize the importance of addressing (un)employment issues.

³⁵² Ailton Krenak, *Futuro Ancestral*, p. 53.

³⁵³ Oxfam International, "Richest 1% emit as much planet-heating pollution as two-thirds of humanity - Oxfam," November 20, 2023, <https://www.oxfam.org.uk/mc/qer7km/>

³⁵⁴ Bell Hooks, *Tudo sobre o amor*, p. 156.

Since then, it has gained significant momentum within climate governance³⁵⁵. In 2015, the preamble to the Paris agreement mentioned the need to take “into account the imperatives of a just transition of the workforce and the creation of decent work and quality jobs”³⁵⁶.

In terms of climate litigation, just transition cases scrutinize the development and execution of climate policies and their impacts on human rights. It is about how climate action is designed, rather than opposing the need for such action³⁵⁷. As governments embrace decarbonization strategies, lawsuits brought by workers and vulnerable communities affected by these policies are likely to challenge potential violations of their rights and demand their participation in governmental decision-making processes³⁵⁸.

According to the European Commission, a "greener future" depends on considering employment and social impacts for the implementation of climate change policies. While some sectors and regions experience job growth, others heavily reliant on industries requiring significant transformations for environmental protection and climate neutrality face adverse employment effects. Besides, the regions and communities that have contributed the least to overall emissions could be disproportionately impacted by the direct or indirect costs associated with climate actions. These costs may include taxes, increased energy expenses, shifts in transportation costs and new standards or regulations affecting certain goods, products or technologies. Addressing these challenges and promoting a just transition requires robust employment and social policies³⁵⁹.

More broadly, the UN defines just transition "[...] as ensuring that no one is left behind or pushed behind in the transition to low-carbon and environmentally sustainable economies and societies". It emphasizes that countries must develop inclusive approaches to a just transition through dialogue that considers the needs, priorities and realities of their societies, as

³⁵⁵ Adrien Thomas, "Framing the just transition: How international trade unions engage with UN climate negotiations," *Global Environmental Change* v. 70, (2021), <https://www.sciencedirect.com/science/article/pii/S0959378021001266>, p. 6.

³⁵⁶ United Nations Framework Convention on Climate Change (UNFCCC), "Acordo de Paris", 2015, <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>

³⁵⁷ Setzer and Higham, "Global Trends in Climate Change Litigation: 2024 Snapshot," p. 6.

³⁵⁸ Burger and Tigre, "Global Climate Litigation Report: 2023 Status Review," p. 72.

³⁵⁹ European Commission, "Employment and Social Developments in Europe 2019 - Sustainable growth for all: choices for the future of Social Europe," Publications Office of the European Union, June 19, 2019, <https://op.europa.eu/en/publication-detail/-/publication/747fefa1-d085-11e9-b4bf-01aa75ed71a1/language-en>, pp. 166, 168.

well as their historical responsibilities for climate change and environmental degradation³⁶⁰. Essentially, just transition is not only about a way forward; it crucially involves confronting the history that has brought humanity to its current emergency. After all, whose lives were sacrificed in the name of the so-called progress of this profit-driven society? What does it truly mean in terms of perception of the world to "leave no one behind"?

In other words, decarbonization strategies focused on phasing out fossil fuels and, more broadly, climate action are developed within a context that encompasses socioeconomic challenges such as structural inequalities and intersectional forms of oppressions. Even worse, the top-down design of the system aims to perpetually preserve its destructive structure. Against this backdrop, "[...] the concept of 'just transition' has emerged as a framework that places justice at the centre of the discussion"³⁶¹. From environmental, labor and social perspectives, a just transition is essential to ensure fairness and effectiveness in climate action. It entails moving towards a low-carbon society while protecting minorities and communities dependent on carbon-intensive industries from bearing undue costs, particularly in the Global South³⁶².

Globally, corporations and governments increasingly tried to advance their own versions of just transition. After all, for every USD 1 spent on adaptation this decade, an economic benefit of USD 12 could be generated, demonstrating that climate inaction is also economically detrimental³⁶³. Yet, these versions lack class analysis and deny the necessity for radical transformation. The concept of just transition has thus become a field of contestation, full of (im)possible responses to the climate crisis, in which many actors have been coopting the concept for their own business purposes³⁶⁴. Climate governance, however, cannot be portrayed merely as a matter of economic advantage. Otherwise, the so-called "green" transition will only lead to new forms of domination and oppression, such as "green extractivism" or "green colonialism".

³⁶⁰ United Nations, "Just transition* CDP input on the 2023 ECOSOC theme (Accelerating the recovery from the coronavirus disease (COVID-19) and the full implementation of the 2030 Agenda for Sustainable Development at all levels)," Committee for Development Policy, (2023), <https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/CDP-excerpt-2023-1.pdf>.

³⁶¹ Hamouchene and Sandwell, eds., *Dismantling green colonialism*, p. 11.

³⁶² Burger and Tigre, "Global Climate Litigation Report: 2023 Status Review," p. 72.

³⁶³ The United Nations Office for Disaster Risk Reduction (UNDRR), "Launch of a new roadmap for financing adaptation and resilience".

³⁶⁴ Hamouchene and Sandwell, eds., *Dismantling green colonialism*, p. 12.

In this field of contestation, the current uneven transition to renewable energies, primarily occurring in the global North, relies heavily on the extraction of essential minerals and rare earth metals essential for producing solar panels, wind turbines, blades and batteries. Hamouchene poses the following question: "Where will these resources come from?". The answer lies in the energy transition efforts in North African countries like the Democratic Republic of Congo, Bolivia, Chile, Indonesia and Morocco, where environmental degradation and exploitation of workers are expected to persist and potentially worsen³⁶⁵.

In South America, Krenak points out that there are still those who have the audacity to say that Brazil is at the forefront of producing clean energy. Meanwhile, "if one puts a blood filter on the main hydroelectric plants in the country, it clogs"³⁶⁶. On the energy sector in Morocco, Moustakbal argues that public-private partnerships ensure substantial profits for private corporations, while the burden of increasingly high energy prices falls on the poor. In this context, a truly equitable transition will not materialize as long as Morocco's energy sector remains dominated by foreign multinational corporations and a local ruling elite that exploits state resources for unlimited profit³⁶⁷.

These have become some of many examples of "green colonialism" or "renewable energy colonialism" as explained in the first chapter of this paper. Yet, the concept of just transition still bears significance, or even hope, for a way out of the crisis far from these examples of so-called "green" actions taken by Western states and corporations. The centrality of justice in the term itself serves as a reminder of its main purpose and it should be implemented as such within a context of democratic participation³⁶⁸.

From the Global South, the notion of "decoloniality" ("decolonialidade") is by definition a way to resist and deconstruct patterns, concepts and perspectives imposed on subaltern peoples throughout history, such as indigenous peoples and racially discriminated communities. Decoloniality expresses the moral duty of humanity to give voice and visibility to subaltern and oppressed peoples who were silenced for a long time³⁶⁹. Furthermore, decoloniality also entails

³⁶⁵ Hamouchene, "The Energy Transition in North Africa: Neocolonialism Again!," pp. 30, 31.

³⁶⁶ Ailton Krenak, *Futuro Ancestral*, p. 53.

³⁶⁷ Hamouchene and Sandwell, eds., *Dismantling green colonialism*, p. 19.

³⁶⁸ *Ibid*, p. 12.

³⁶⁹ Milena Abreu Avila, "Colonialidade e Decolonialidade: você conhece esses conceitos?," *Politize*, March, 19, 2021, <https://www.politize.com.br/colonialidade-e-decolonialidade/>

reconciliation processes between the Global South and the Global North in which transitional justice is vital to combat coloniality, its "extractive and mastery-over way of being"³⁷⁰ and the very notion of "colonial amnesia" aforementioned.

The decolonial epistemology is a significant device for catalyzing other "truths" and new power relations that can move within the Global South or from South to North, generating new processes of subjectivation responsible for the emergence of singular groups and subjects until then stifled by modern colonial rationality. An epistemology manufactured in the South makes knowledge buried by Eurocentrism ("absent") and new knowledge until then invisible by hegemonic reason emerge, as well as the prospective of new educational and emancipatory processes³⁷¹.

In the context of the current ecological collapse, decolonial epistemology serves as the rightful tool to influence human activity and transition to a different model of society focused on justice. While traditionally focused on transitions from authoritarian to democratic governance and from periods of conflict to peace³⁷², the field of transitional justice now lends its insights to the current transition from a socially and ecologically collapsed society to one committed to preserving the interconnected web of life.

As Krenak astutely observed, humans are living in a world where they are forced to dive profusely into Earth to be able to recreate possible worlds. It turns out that in the world narratives where only humans act, this centrality silences all other presences³⁷³. In simpler terms, to alter the system that has led humanity to the current state of emergency and transition to a safer, more just and equitable place, the very perception of Nature as a bank of resources and its (lack of) interconnections ought to be challenged. To this end, the previously mentioned concepts of climate due diligence and climate litigation are significant instruments. Yet, a broader interdisciplinary approach to influence human perception and, thus, behavior needs to be put into place.

³⁷⁰ Tully, "Reconciliation Here on Earth".

³⁷¹ Robério Manoel da Silva, "A sociopoética decolonial de Eduardo Galeano," *XVIII Encontro de Estudos Multidisciplinares em Cultura – ENECULT*, (2022), <http://www.enecult.ufba.br/modulos/submissao/Upload-607/139304.pdf>.

³⁷² Franziska Boehme, "Normative expectations and the colonial past: apologies and art restitution to former colonies in France and Germany," *Global Studies Quarterly* v. 2, n. 4, (2022), <https://academic.oup.com/isagsq/article/2/4/ksac053/6753236>, p. 3.

³⁷³ Krenak, *Futuro Ancestral*, p. 37.

In general terms, transitional justice denotes the comprehensive array of processes and mechanisms employed by a society in its endeavor to confront and reconcile with the legacy of extensive abuses that have occurred in the past³⁷⁴. In other words, it emerges as a practice aimed at social recomposition and stability of societies undergoing transformation after a period of massive violations³⁷⁵. Historically, the violence that has led humanity to its present state has been inflicted upon Nature and a diverse array of living beings, including humans themselves. In this context, ecologists view climate change as a consequence of unbalanced relationships between human and non-human spheres. Thus, a just transition necessarily calls for a reshaping of the type of societies humans want to live in and the values these should be built on³⁷⁶.

In the scope of transitional justice, it means accommodating the needs of voices historically silenced, including Nature's, and promoting the respective reconciliation processes that honor their unique circumstances. Given the world's rich diversity, a "just transition" will naturally manifest differently across various contexts³⁷⁷. Ultimately, any concept of transition that disregards global justice through a decolonial lens is merely a disguise in green of the current power dynamics that drove humanity to the abyss.

The act of providing reparations is at the core of transitional justice since it aims to restore order and harmony to the international society. Reparations or politics of memory are means employed through the lens of transitional justice to confront "historical amnesia", as they serve as to counter denial of violence or to contribute to social reconciliation³⁷⁸. Reparations are, therefore, an essential component of just transition. A broader framework of corporate climate accountability must include seeking remedy and reparations for the ongoing human rights violations stemming from historical corporate greenhouse gas emissions³⁷⁹.

³⁷⁴ Natasha Robinson, "Conceptualising historical legacies for transitional justice history education in postcolonial societies," *History Education Research Journal*, (2022), <https://uclpress.scienceopen.com/hosted-document?doi=10.14324/HERJ.19.1.10>, p. 2.

³⁷⁵ Juliana Lima, "A Justiça de Transição como Modelo de Gestão de Conflitos: um Mito Universal?," *Corte Interamericana de Derechos Humanos*, (date accessed 26/06/2024): pp. 97-117, <https://www.corteidh.or.cr/tablas/r27199.pdf>, p. 101.

³⁷⁶ Carme Melo Escrihuela and Marcel Wissenburg, "A Conversation on Green Democracy," *Futures of Democracy*, (2014): 184-196, https://www.academia.edu/8610113/A_conversation_on_green_democracy_with_Marcel_Wissenburg_, p. 186.

³⁷⁷ Hamouchene and Sandwell, eds., *Dismantling green colonialism*, p. 19.

³⁷⁸ Stahn, "Confronting Colonial Amnesia," p. 794.

³⁷⁹ Dehm, "Beyond Climate Due Diligence: Fossil Fuels, 'Red Lines' and Reparations," p. 178.

Based on cumulative emissions between 1988 and 2022, one study has quantified that the 21 largest fossil fuel companies owe USD5.4 trillion in reparations between 2025 and 2050³⁸⁰. During the same period, the cumulative cost of climate damages attributed to all anthropogenic sources based on a model of loss of Gross Domestic Product (GDP) under a 3 degrees Celsius scenario is \$99 trillion, of which \$70 trillion is attributed to fossil fuels³⁸¹. Economic losses from natural and climate-related disasters are estimated to cost more than USD 330 billion per year, of which USD 212 billion are required for developing countries alone³⁸². In contrast, "the super-profits made by the fossil fuel industry between 2000 and 2019 could cover the costs of climate-induced economic losses in 55 of the most climate-vulnerable countries nearly 60 times over"³⁸³.

These figures should not be unexpected given the discussions presented in the last two chapters regarding the profit-oriented nature of states and transnational corporations, along with their strategies in climate governance aimed primarily at serving their own interests. It is evident that, in the process of reconciliation, reparations should take the form of wealth and technology transfers, not loans or additional debts. This practice includes canceling current vile debts, halting illicit capital flows, dismantling neocolonial trade and investment agreements and stopping the ongoing plunder of resources. After all, "the financing of the transition needs to take into account the current, ongoing and future loss and damage, which is occurring disproportionately in the South"³⁸⁴.

In addition to the responsibilities of states and corporations in terms of reconciliation, every individual has a duty to actively engage in the movement for change. According to Bell Hooks, this responsibility is rooted in love, which she identifies as the driving force behind significant change in any movement for social justice. Every major social justice

³⁸⁰ Marco Grasso and Richard Heede, "Time to Pay the Piper: Fossil Fuel Companies' Reparations for Climate Damages," *One Earth* v. 6, n. 5, (2023): pp. 459-463, <https://doi.org/10.1016/j.oneear.2023.04.012>, p. 461.

³⁸¹ *Ibid*, p. 460.

³⁸² The United Nations Office for Disaster Risk Reduction (UNDRR), "Launch of a new roadmap for financing adaptation and resilience," Press Release, April 11, 2024, <https://www.undrr.org/news/launch-new-roadmap-financing-adaptation-and-resilience>.

³⁸³ Oxfam International, "189 million people per year affected by extreme weather in developing countries as rich countries stall on paying climate impact costs," October 24, 2022, <https://www.oxfam.org/en/press-releases/189-million-people-year-affected-extreme-weather-developing-countries-rich-countries>.

³⁸⁴ Hamouchene and Sandwell, *Dismantling green colonialism*, p. 21.

movement in society has strongly emphasized an ethic of love³⁸⁵. For the American scholar and activist, love is an action rather than a feeling. Its absence benefits consumer culture by promoting dishonesty, which in turn reinforces predatory advertising and perpetuates a cycle of constant longing and desire, thereby bolstering the capitalist economy³⁸⁶.

On love as a social force, Hooks quotes the psychoanalyst Erich Fromm, who boldly calls attention to the fact that the principle that underpins a capitalist society and the principle of love are incompatible. Society is run by professional politicians and their aim is to produce more and consume more based on the cultural emphasis on endless consumption. It diverts attention from spiritual hunger. When the urge to have intensifies, so does the sense of spiritual emptiness³⁸⁷.

In contrast, an emphasis on love is an active force capable of leading humanity to wider communion with the world. The practice of love is not directed simply at giving the individual greater satisfaction in life; it is exalted as the basic way to put an end to domination and oppression. This important politicization of love is often absent from current writings³⁸⁸. It demands conscious practice, a willingness to unite the way one thinks to the way one acts. Spiritual life is about, first of all, commitment to a way of thinking and acting that honors the principles of interconnection and symbiosis³⁸⁹. In these terms, love as an action is the opposite of alienation; it translates into deep ecology, as the responsibility to consciously act in this world as part of the interconnected Nature rather than as a consumer of goods and relationships.

In concrete terms, "broad social acceptance of environmental protection and climate action measures is vital for their effective implementation". Undoubtedly, societal trends have a strong impact on the environment, through shifting preferences and consumption patterns, even as dietary choices and travel behaviors. Social networks and social movements, such as organized protests, play a crucial role in raising awareness, altering perceptions, and reshaping political and public discussions³⁹⁰. As such, individuals have the power as consumers to be

³⁸⁵ Hamouchene and Sandwell, *Dismantling green colonialism*, p. 33.

³⁸⁶ Ibid, p. 89

³⁸⁷ Ibid, p. 110.

³⁸⁸ Ibid, p. 114.

³⁸⁹ Hooks, *Tudo sobre o amor*, p. 115.

³⁹⁰ European Commission, "Employment and Social Developments in Europe 2019 - Sustainable growth for all: choices for the future of Social Europe," p. 168.

exercised by choosing not to invest time, energy or resources in supporting the production and dissemination of unsustainable practices of domination and exploitation that weaken the ethics of love³⁹¹ and, ultimately, humanity's chance of survival.

A conscious practice of love allows individuals to critically examine their actions and embrace their common responsibilities, showing respect and manifesting willingness to learn. Understanding knowledge as an essential element of love is vital³⁹². From his own childhood experiences, Krenak observes that the more humans connect with Nature around them, the more they are able to comprehend and adhere to boundaries and limits, Nature's and their own. A sustainable network cannot exist without acknowledging, connecting with and understanding these inherent healthy limits that sustain the entire interconnected web of life³⁹³.

The very notion of balance implies more than one element being taken into account, which means the recognition of pluralism and unity at the same time. For Krenak, it translates into the experience of being a "*sujeito coletivo*" (part of a collective), as feeling the essence of life in other beings and belonging to unity³⁹⁴. This sustainable way of being in this world is something that can be taught, according to Krenak, through practices engaged in the development of a person. Instead of the Western version of education based on "formatting or shaping" someone to fit in a box produced by the neoliberal capitalist society, Krenak firmly believes in the power of education through sociability beyond human beings, involving other living beings in human formation³⁹⁵.

Krenak questions the advancement of education that lacks a sense of unity with Nature. This disconnection prevents humans from fully embracing principles of interconnectedness and symbiosis, and from effectively addressing cycles of domination and oppression. In light of Bell Hooks' perception on love, Krenak advocates for exercising love towards all living beings in Nature as a means to foster harmony and respect, emphasizing that what indigenous children learn from an early age is "to put their heart in the rhythm of the forest"³⁹⁶.

³⁹¹ Hooks, *Tudo sobre o amor*, p. 133.

³⁹² Ibid, p. 130.

³⁹³ Krenak, *Futuro Ancestral*, pp. 102-03.

³⁹⁴ Ibid, pp. 102-03.

³⁹⁵ Ibid, p. 99, 101.

³⁹⁶ Ibid, p. 118.

Within the organization of a state, this communion is only compatible with a version of democracy oriented procedurally and substantially for greater participation of individuals in decision-making processes, which fortifies environmental governance and provides the rightful path for a just transition. In light of this, environmental education and the right to information is associated with the formation of an environmental awareness that ultimately translates into readiness to act in protection of the environment. For the effectiveness of said protection, it is necessary to raise environmental awareness of all citizens on the need for action. For this, states are not only formally bound to provide environmental information, but rather authentic, clear, complete and updated information³⁹⁷.

An environmental democracy honors the connection between environmentalism and democracy, based on the premise that the more democratic a society is, the greater the chance that it will be sustainable³⁹⁸. However, most countries do not have a strong democracy to support such approaches by majority. Thus, global justice predicts that those most favored by the global order currently have greater responsibility to contain their environmental demands than people who already live in a condition of environmental vulnerability, or even "ecological marginalization"³⁹⁹. In addition, climate justice allocates people at the center of the proposed solutions, as one of the pillars of environmental democracy⁴⁰⁰.

In fact, to achieve environmental democracy, it is crucial to establish participatory and deliberative tools for proper environmental management. The entire government structure should be focused on evaluating environmental considerations as a fundamental factor in all public decisions. The core principles of environmental democracy include the right to information, the right to participation and access to justice regarding environmental matters⁴⁰¹. Environmental democracy emerges as "[...] the result of evolutionary acquisition that brought together the ideal of popular self-determination with the dignified life project on Earth for present and future generations"⁴⁰².

³⁹⁷ Hartwig, *Quando a mentira ameaça o futuro*, p. 57.

³⁹⁸ Ibid, p. 40.

³⁹⁹ Ibid, p. 44.

⁴⁰⁰ Ibid, p. 42.

⁴⁰¹ Ibid, p. 38, 45.

⁴⁰² José Adércio Leite Sampaio, "Democracia Ambiental como Direito de Acesso e de Promoção ao Direito ao Meio Ambiente Sadio," *Conpedi Law Review* 1, no. 11 (2015): pp. 149-176, https://doi.org/10.26668/2448-3931_conpedilawreview/2015.v1i11.3445, p. 149.

Hartwig clarifies that global environmental challenges, such as climate change, present contrasts between, on one hand, individualistic and short-term interests and, on the other, sacrifices that need to be made in the name of what is best for society as a whole, both current and future generations⁴⁰³. In this context, citizen participation in environmental decision-making is currently seen not only as a right, but rather as a duty⁴⁰⁴. In fact, everyday life decisions, from the quality and number of products one consumes to the way one directly interacts with Nature, are an essential part of the common, but differentiated, responsibility human beings bear to preserve the web of life.

In conclusion, the path forward needs to be forged by the people, particularly those silenced in the past, with support from the states and companies, such as TNCs, as primarily responsible for mitigation, adaptation and reparation. In turn, each citizen bears responsibility to build humanity's path to transition on the principles of interconnectedness, environmental consciousness, compassion and love, as the driving force of transformation. Through the lens of the Climate Justice Movement, represented by young activists Wever and Gantois, in opposition to economic growth and profit-driven strategies:

The true growth we need is the growth of love, the growth of decision-making, the growth of connection and especially imagination, the growth of hope, the growth of passion for life, the growth of respect for nature, the growth of consciousness. And above all: the growth of courage⁴⁰⁵.

⁴⁰³ Hartwig, *Quando a mentira ameaça o futuro*, p. 43.

⁴⁰⁴ *Ibid*, p. 38.

⁴⁰⁵ De Wever and Gantois, *Nous sommes le climat*, p. 62.

5. Conclusion

The deadliest human-made product has arrived: the era of global boiling. The present research uncovers the truth that the climate emergency is not unavoidable and is not natural; it is human-made and it actually persists because of human resistance to radically change the system it lives in, even when confronted by scientific knowledge from many different fronts alerting to the same end: "we are destroying ourselves. It is as simple as that"⁴⁰⁶. Indeed, it appears the human drive for consumption and the capitalist way of life, institutionalized around unequal relations, runs so deep that it disconnects humans from the very notion of survival.

Therefore, the ecological collapse announces the so far failure of humanity to sustainably inhabit this world which is not only caused by aggression towards Nature, but also shaped by the legacy of domination, exploitation and oppression against other humans that persists nowadays. The growing culture of green colonialism and capitalism, where satisfaction of desires is attributed to overconsumption, is simply incompatible with any ecologically balanced response to this crisis. It has been proven that continued exponential growth of consumption of materials and energy is impossible.

Climate change is, in fact, a “catastrophic convergence” of ecological, economic and political issues that amplify each other and express themselves through one another. It is grounded in the crisis of perception of the world in which humanity fails to recognize the inherent interconnections and interdependencies of all elements of the web of life. Humans fail to recognize themselves as merely one of the elements of this web, which actually sustains human life. It is overlooked the fact that the very air one breathes or the water one drinks and is made of are elements created as a product of the web's cycles that necessitate balance and stability. The recognition of the web of life is a powerful instrument towards radical change in the current global order, encapsulating ecological connectivity among elements of Nature.

Essentially, effectively addressing climate change requires a global pledge to significantly reduce (and in some cases phase-out) the extraction, production and consumption of natural resources. The choice, however, to sustain this system is predominantly made by corporations, governments in the northern hemisphere and national ruling classes, empowered by

⁴⁰⁶ Wright and Nyberg, *Climate Change, Capitalism, and Corporations*, p. 1.

centuries of exploitation. In contrast, the ones willing to change are adapting their lives and are incessantly advocating for a chance of survival. The issue remains on the fact that the current goals for survival cannot be reached without a systemic change within the realm of climate governance, still primarily controlled by the private sector and the wealthy states, where decisions affect millions or even billions of people worldwide.

Essential corporate climate action would affect nearly every aspect of industrial society and every person on the Planet would benefit from this. A state-centric perception leaves out the major role played by the private sector and ignores the increasing complexity of the global governance process. A business and human rights approach, in contrast, is presented as an alternative option focused on uncovering the web of accountability generated by human rights violations within the climate emergency context. To this end, climate due diligence provides a groundbreaking avenue for holding corporate actors and, most importantly, those with major extraterritorial influence such as transnational corporations, accountable for their climate violations in terms of actions and inactions.

The adoption of the new EU Directive on Corporate Sustainability Due Diligence holds a significant promise of advancement in terms of accountability for being the first binding standard for climate due diligence in the world's biggest single market. Business and human rights legal instruments are not, however, intended as a singular solution capable of completely changing corporate behavior on its own. Climate litigation, for instance, complements climate due diligence regulations, providing an arena for civil society to exercise their democratic right to participation.

Climate litigation is an important expression of the Climate Justice Movement, increasingly led by collectives from both sides of the world to denounce the (self)destruction nature of the current global order and to regulate corporate and governmental climate action. Ultimately, climate litigation enables citizens to exercise their rights provided by an environmental democracy and, oftentimes, it translates into concrete climate obligations being established by courts in favor of the web of life with transnational effects. Therefore, the range of litigation against transnational corporations is a key element to the promotion of democratic values not only in the countries shaped by strong democracies, but even more importantly in more fragile democracies in which the states are unable or unwilling to fulfill their human rights obligations in terms of protection of peoples and the environment itself.

In the realm of climate governance, two very significant and interconnected roles of the Climate Justice Movement emerge: firstly, it sheds light on the power of citizens who must take responsibility for their actions and inactions, realizing that they are capable as consumers to (re)create consumption patterns and, essentially, as changemakers too in the way they decide to nurture their relationships with one another and with Nature - it must be based on the premises of interconnection, interdependence and love, as a social force of transformation; secondly, the Movement denounces the structural and systemic human rights violations and demands the rightful response from actors who bear the major responsibility to climate action, placing individuals as a crucial part of decision-making processes.

Even though addressing climate change is increasingly recognized as being in the best interest of companies' own business strategies, a just transition cannot and will not be achieved without a global justice perspective. Where businesses are free to operate only on the basis of their own strategies, inequality prevails which, in turn, leads to continuous cycles of different forms of interconnected violence, including against Nature. It translates into a context of perpetual unsustainable relationships among all living beings in which an ecological collapse is not a probability but rather a certainty. Essentially, meaningful climate action cannot remain neutral towards global injustices. Climate justice must be consistently integrated into a business and human rights approach.

Climate justice litigation is one way to formally recognize the interconnections between the web of life and the web of accountability by identifying the responsible actors and holding them properly accountable for their contribution to the disruptions in the web of life. The core argument unfolded by this thesis is, however, that legal frameworks and strategic litigation are not capable alone to tackle the root causes of climate change which are embedded in the ways of life shaped by civil society placed in the current socio-economic system that is doomed to fail. Societal change is crucial: the recognition of a common ground of responsibility of all humankind, differentiated by the roles played in the system, to promote a regenerative climate justice.

In concrete terms, bridging the long-lasting gap between the web of life and the web of accountability means providing and adapting reconciliation to each singular context, as an inclusive approach grounded in environmental democracy. It is accomplished by confronting coloniality, capitalism and the dominant Western epistemology. For climate justice, it means

shedding light to the truth behind the ecological collapse by giving a stand to those primarily affected. It means identifying the responsible actors, setting their concrete obligations and providing enforcement mechanisms. It also involves all types of regenerative initiatives, such as recognizing indigenous land rights and creating innovative ways to promote biodiversity's preservation. Above all, it means recognizing the preservation of the web of life as a matter of justice essential to human survival.

In sum, the worldwide impacts of climate change are defined as the worst threat humanity has ever faced. Climate change, in turn, is a product of a world shaped by the legacy of imperialism, colonialism and capitalism, which are grounded in exploitation, extraction, misery, inequality and death. The present thesis sheds light to this central paradox: humanity is actually the worst threat humanity has ever faced. But there is still hope based on the paths and mechanisms discussed in this research.

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