

What we talk about when we talk about...Corporate Sustainability Due Diligence (CSDD) and Climate Change Litigation

Lorena SALES PALLARÉS*

Abstract: Climate change represents one of the most pressing challenges of our time, with especially profound impacts on vulnerable communities and a tendency to intensify social, economic, and environmental inequalities. In this context, the concept of climate justice has emerged as a critical framework for addressing the impacts of climate change through a human rights lens. Initially developed within corporate law, the principle of due diligence has evolved into international human rights standards, serving as a valuable tool for holding companies and states accountable for their environmental and social impacts. Consequently, climate due diligence emerges as an essential tool in the ongoing fight against climate change.

Keywords: Corporate Sustainability Due Diligence Climate Change Litigation Climate Due Diligence

(A) SOME INITIAL PREMISES

As previously noted in another work in this issue,¹ climate litigation is not a recent phenomenon. However, the *Urgenda* case² marked a significant shift in trends. Over the past decade, climate litigation has evolved into a steadily growing reality, as evidenced by the data.³

Recently, the *KlimaSeniorinnen*⁴ case marked a new turning point for two primary reasons. Firstly, it is the first time the European Court of Human Rights (ECHR) has ruled on the responsibility of states for their inaction in combating climate change. Although the cases of *Carême v. France*⁵ and *Duarte Agostinho and Others v. Portugal and*

* Professor of Private International Law, University of Castilla-La Mancha. Lorena.Sales@uclm.es.

¹ E. Álvarez-Armas, “Climate change litigation: overview of jurisdiction and applicable law”, 20 *SYbIL* (2024).

² L. Chiussi, L., A. MTanzi, “Urgenda: un precedente mundial en el litigio climático,” in E.J. Zamora Cabot, L. Sales Pallarés, M.^a Ch. Marullo (dirs.), *La lucha en clave judicial frente al cambio climático* (Aranzadi, Navarra, 2022); N. Rodríguez García, “Responsabilidad del Estado y cambio climático: el caso *Urgenda c. Países Bajos*”, 7(2) *Revista Catalana de Dret Ambiental* (2016) 1-38 [doi: <http://dx.doi.org/10.17345/1703>]; Vilchez Moragues, P., “Broadening the scope: The Urgenda case, the Oslo principles and the role of national courts in advancing environmental protection concerning climate change”, 20 *SYbIL* (2016) 71-92 [doi: <http://dx.doi.org/10.17103/sybil.20.06>]; A-S. Tabau, Ch. Courmil, “Nouvelles perspectives pour la justice climatique (Cour du District de La Haye, 24 juin 2015, Fondation Urgenda contre Pays-Bas)”, 4 *Revue juridique de l’environnement* (2015) 672-693 [doi: <http://dx.doi.org/10.3406/rjenv.2015.6759>].

³ Data from the Grantham Research Institute on Climate Change and the Environment or the Sabin Center for Climate Change Law (respectively https://climate-laws.org/ccclaw/litigation_cases and <http://climatecasechart.com/>) to see the increase in climate litigation cases over the past decade.

⁴ *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (GC), ECHR (2024), no. 53600/20, judgment (Grand Chamber) of 9 April 2024 [<https://hudoc.echr.coe.int/eng/?i=001-233206>].

⁵ *Case of Carême v. France* (GC), ECHR (2024), no. 7189/21, judgment (Grand Chamber) of 9 April 2024, [<https://hudoc.echr.coe.int/?i=001-233174>].

32 *Other States*,⁶ which were consolidated with this ruling, were dismissed on procedural grounds, the decision in *KlimaSeniorinnen* is likely to spur further litigation against European states for similar inaction attributed to Switzerland.

Secondly, this turning point is underpinned by the legal context which the European Union operates, particularly following the adoption of the Corporate Sustainability Due Diligence Directive (CSDDD). The Directive establishes a new framework that will compel both companies and states to expand their responsibilities, inevitably leading to an increase in climate litigation once it comes into force, as it raises the standards regarding the obligations and responsibilities.

To understand the relationship between these two arguments, the first section will review the due diligence regulations. This analysis will allow us to examine cases such as *KlimaSeniorinnen* through the lens of due diligence, enabling a clearer understanding of what *climate due diligence* entails.

(B) DUE DILIGENCE AND HUMAN RIGHTS

In order to gain an accurate understanding of the scope and meaning of due diligence, it is first necessary to appreciate the nuances of its nature. The concept of due diligence was introduced by the *Securities Act of 1933*⁷ and served as a measure of prudence required of every businessman. Intermediaries utilized it as protective measure against investors in instances where the information pertaining to share purchases was found to be erroneous. By demonstrating that they had conducted due diligence on the affected company and communicated the findings to investors, intermediaries could avoid liability for any misinformation.

The concept of due diligence was gradually institutionalized, and its application was extended beyond the field of securities to other areas of corporate practice.

Consequently, due diligence is defined as the process through which the potential positive and negative consequence of a decision can be evaluated. This process *contributes to informed decision-making by optimizing the quality and quantity of information available to decision-makers*.⁸ In the context of commercial law, the term ‘due diligence’ is used to describe the investigative process that is undertaken with a view to informing decision-making. This process entails a systematic analysis of the risks, costs and benefits associated with a transaction, with a view to objectively evaluating the cost of operations. Consequently, the practice of due diligence in the context of corporate transactions is a common procedural practice that is aimed at mitigating the risks associated with such financial transactions. The conventional purpose of due diligence has been to function

⁶ *Duarte Agostinho and Others v. Portugal and 32 Others* (dec.) [GC] 39371/20, Decision 9.4.2024 [GC] [<https://hudoc.echr.coe.int/eng/?i=002-14303>]

⁷ United States Code: Securities Act of 1933, 15 U.S.C. §§ 77a-77mm (1934) [<https://www.govinfo.gov/content/pkg/COMPS-1884/pdf/COMPS-1884.pdf>].

⁸ R. E. Hoskisson, M. A. Hitt, R. D. Ireland, J.S. Harrison, *Competing for Advantage* (Second Edition, Thomson/South-Western, 2008), at 252.

as a process for the prevention of risk in significant securities and financial transactions, as well as in the design of operational activities.⁹

This commercial concept was subsequently integrated with an *international law concept of due diligence*, which was proposed as a criterion for measuring the responsibility or commitment of states in response to claims from an individual or group. In accordance with the *Guiding Principles on Business and Human Rights*, due diligence has been defined as "...[s]uch a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent [person] under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case".¹⁰

From this perspective of human rights due diligence, the support provided by the emergence of the *Guiding Principles*¹¹ was fundamental, as they defined the concept based on the negative or adverse impacts on human rights that business practices entailed: "...[h]uman rights due diligence comprises an ongoing management process that a reasonable and prudent enterprise needs to undertake, in light of its circumstances (including sector, operating context, size, and similar factors) to meet its responsibility to respect human rights".¹²

The impetus of the *Guiding Principles* resulted in the integration of the concept into regulatory frameworks and guidelines of organizations such as the European Union and the OECD, as well as in major transnational companies. Furthermore, it facilitated the formulation of regulatory frameworks for corporate conduct in the realm of human rights, including the establishment National Action Plans on business and human rights and the development and enhancement of National Contact Points. Nevertheless, the most significant outcome was the impetus they provided for the enactment of national legislation requiring due diligence in the field of human rights.¹³

⁹ O. Martín-Ortega, "La diligencia debida de las empresas en materia de Derechos Humanos: un nuevo estándar para una nueva responsabilidad", in F.J. Zamora Cabot, J. García Cívico, L. Sales Pallarés, (eds.), *La responsabilidad de las multinacionales por violaciones de derechos humanos* (Ed. Universidad de Alcalá, Madrid, 2013), at 167-192.

¹⁰ OHCHR, *The Corporate Responsibility to Respect Human Rights: An interpretative Guide* (Nueva York y Ginebra, 2012), at 6.

¹¹ OHCHR, *Guiding Principles on Business and Human Rights. Implementing the United Nations "Protect, Respect and Remedy" Framework* (Nueva York y Ginebra, 2011). The Guiding Principles on Business and Human Rights are the global standard for preventing and addressing the risk of adverse impacts on human rights involving business activity, and they provide the internationally accepted framework for enhancing standards and practices with regard to business and human rights. They were developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. The Human Rights Council unanimously endorsed the Guiding Principles in its Resolution GA A/HRC/RES/17/4.

¹² OHCHR, *The Corporate...*, supra n.10, at 6.

¹³ C. Márquez Carrasco, "El reto de la diligencia debida en materia de derechos humanos en el 10 aniversario de los Principios Rectores de las Naciones Unidas sobre empresas y derechos humanos: orígenes, evolución de instrumentos y valoración de cara a la próxima década", in C. Márquez Carrasco, *El 10 aniversario de los principios rectores de las Naciones Unidas sobre empresas y derechos humanos, retos de la debida diligencia en materia de derechos humanos y medio ambiente y derechos de los pueblos indígenas* (Aranzadi, 2022), at 21-70.

The efforts of numerous forums and actors have successfully established a link between businesses and human rights, ensuring that business practices respect internationally recognized standards and principles on environmental protection and the protection of vulnerable groups, particularly in sectors or activities where risks have a greater social and environmental impact.¹⁴ Furthermore, these obligations have been extended not only to the companies' own operations but also to their supply chains.¹⁵ The Organization for Economic Co-operation and Development (OECD) has defined this due diligence process in relation to supply chains, stating that due diligence is a process that encompasses the entire supply chain and applies to all business relationships, including those that extend beyond contractual, "first-tier," or immediate relationships.¹⁶

This is not simply a matter of chance, as the reduction of social and environmental impacts in relation to supply chains has become a central issue in supranational and national legislative proposals on business and human rights.¹⁷ This obligation of the company to respect human rights and protect the environment in a broad sense will necessitate the implementation of human rights processes that facilitate the identification, prevention, and mitigation of the risks and impacts that its operations or business relationships may have on human rights¹⁸. Furthermore, the company is obliged to implement robust internal procedures to rectify any adverse consequences that it has caused or contributed to causing. In accordance with *Guiding Principle 17* business enterprises are required to carry out human rights due diligence in order to "...identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence: (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships; (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations; (c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve".¹⁹

¹⁴ M.E. Hernández Peribáñez, *Diligencia Debida y Derechos Humanos, acceso a mecanismos de reparación judicial* (COLEX, 2022).

¹⁵ European Commission, Directorate-General for Justice and Consumers, F. Torres-Cortés, C. Salinier, H. Deringer, C. Bright, *et al.*, *Study on due diligence requirements through the supply chain: final report* (Publications Office, 2020) at 39 [<https://data.europa.eu/doi/10.2838/39830>].

¹⁶ OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (OECD Publishing, Paris, 2023) [doi: <https://doi.org/10.1787/81f92357-en>].

¹⁷ J. Nolan, "Business and human rights: The challenge of putting principles into practice and regulating global supply chains", 42(1) *Alternative Law Journal* (2017) [doi: [10.1177/1037969X17694783](https://doi.org/10.1177/1037969X17694783)].

¹⁸ In the same vein, the pioneering LOI n.º 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre, JORF n.º 0074 du 28/03/2017, stated "...[m]esures de vigilance raisonnable propres à identifier les risques et à prévenir les atteintes graves envers les droits humains et les libertés fondamentales, la santé et la sécurité des personnes ainsi que l'environnement, résultant des activités de la société et de celles des sociétés qu'elle contrôle..."; N. Magallón Elósegui, *La ley aplicable a la responsabilidad civil extracontractual de empresas por abusos de los derechos humanos* (Aranzadi, Navarra, 2023), at 26.

¹⁹ OHCHR, *The Corporate Responsibility...*, *supra* n.10, at 31.

Consequently, it is incumbent upon each company to undertake this task, adapting its measures in accordance with factors such as size, sector and location. It is incumbent upon them to evaluate and measure the actual and potential impacts of their activities throughout the supply chains; to monitor the results of these evaluations; to communicate the findings both internally and externally, and to inform their decision-making regarding negative consequences.

Furthermore, as the objective is to enable a company to demonstrate that it respects human rights throughout all its operations and over time, it is necessary to implement permanent processes, rather than a one-time exercise. Consequently, human rights due diligence must be a continuous and ongoing process for companies. In practice, this represents the most significant challenge companies face, as they must incorporate a new, permanent process for which they have no prior experience in the sector.

(1) How to Initiate Change: From Due Diligence to Climate Due Diligence

In order to comprehend the manner in which climate due diligence is evolving into a distinct dimension of the due diligence obligations pertaining to human rights for both states and corporations, it is essential to examine the evolution in the understanding and practice of due diligence by the principal actors. While states remain responsible for ensuring climate protection by providing tools to make environmental information accessible and enabling civil society participation in environmental policies,²⁰ they have also permitted the involvement of new actors.

It was previously assumed that the state was the sole guarantor of fundamental rights and environmental protection. Nevertheless, this is no longer the case. The involvement of new actors, such as companies and, indirectly, individuals, has resulted in a shift in the conceptualization of norms and the manner in which they are demanded. Following the adoption of internal legislation on human rights by several states,²¹ the European Union put forth the proposal of establishing regulations that would set due diligence obligations regarding human rights and the environment for companies in a polyhedric mode²².

²⁰ *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)*, UN, Treaty Series, vol. 2161, at 447.

²¹ In addition to the aforementioned LOI n° 2017-399 du 27 mars 2017 *relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre*, other European countries have enacted similar internal regulations, such as the Netherlands, (*Child Labour Due Diligence Act*), Germany (*Act on Corporate Due Diligence Obligations in Supply Chains* of 16 July 2021 (*Lieferkettensorgfaltspflichtengesetz – LkSG*)), Norway (*Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions (Transparency Act)*), and many others are in the process of enacting or studying similar initiatives. All of these can be followed at <https://www.business-humanrights.org/en/latest-news/national-regional-movements-for-mandatory-human-rights-environmental-due-diligence-in-europe/>.

²² Although the CSDDD Directive has been the most relevant regulation for us as it is the latest adopted, the European Union has been regulating in this direction for some time, as evidenced by: Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15.4.2011; Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, OJ L 330, 15.11.2014; Regulation (EU) 2017/821 of

Furthermore, the private sector has come recognize that competing in a globalized economy entails a certain degree of obligations. These entities are responsible for a considerable proportion of global greenhouse gas emissions,²³ which have an adverse impact on millions of individuals as a result of their activities in the context of climate change. The emergence of new models of responsible consumers has led to a greater demand for transparency, thereby elevating the importance of due diligence and environmental risk management in supply chains²⁴. For businesses, due diligence has become a strategic objective to attract this new consumer.

As companies learn to incorporate sustainable practices into their business models with the dual objective of reducing their environmental impact and increasing profitability, we will have identified a balance that is currently only anticipated. The primary challenge in achieving this objective is the mechanism that allows for strict control by governments and supranational institutions to verify the effectiveness of the measures implemented by these companies to minimize negative impacts, as well as instance of non-compliance. A further significant challenge is the necessary for an independent national supervisory authority to assess the compliance and progress of the plans developed by companies. In the absence of the capacity to sanction those whose strategies fail to meet the required standards, it is unlikely that any tangible results will be achieved. The establishment of obligations for companies would lack sufficient substance and be ineffective if it were not subject to specialized control. Such control would assist companies in their due diligence efforts, specify the requirements for enhanced due diligence, if necessary, maintain a register, supervise due diligence

the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas, OJ L 130, 19.5.2017, which obliges community companies to ensure in their supply chain that they import only tin, tungsten, tantalum, and gold from responsible and conflict-free sources and to establish more specific mechanisms to carry out due diligence; Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019, on sustainability-related disclosures in the financial services; Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, PE/20/2020/INIT, OJ L 198, 22/06/2020; Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010, OJ L 150, 9.6.2023; Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds, OJ L, 2023/2631, 30.11.2023; Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020, PE/78/2023/REV/1, OJ L, 2024/1252, 3.5.2024.

²³ The Carbon Majors database tracks historical cumulative emissions from 1854 to 2022 of 122 industrial producers, whose share of CO₂ accounts for 72% of global CO₂ emissions from fossil fuels and cement since 1751. More than 70% of these global CO₂ emissions have historically been attributed to 78 corporations. In its latest report from April 2024, it focused on carbon dioxide (CO₂) emissions from 2016 to 2022, the years following the signing of the Paris Agreement. The study concludes that 57 corporations are responsible for emitting 80% of the emissions. It also highlights that most fossil fuel companies ignored the Paris Agreement and produced more fossil fuels in the seven years following the adoption of the treaty than in the seven years prior (<https://carbonmajors.org/briefing/The-Carbon-Majors-Database-26913>).

²⁴ D. Surya, "Mandatory human rights due diligence laws in Europe: A mirage for rightsholders?", 36(2) *Leiden Journal of International Law* (2023) 389-414 [doi:10.1017/S0922156522000802].

statements and plans, make recommendations, advise state bodies and companies, articulate mechanisms for conciliation, mediation and arbitration, establish a claims procedure, and finally, a sanctioning regime that defines infractions and penalties.²⁵

Having ensured that companies incorporate human rights due diligence into their business activities, the next logical step is to turn our attention to *climate due diligence*. Discussions surrounding climate due diligence encompass the evaluation and minimization of CO₂ emissions alongside the incorporation of climate change adaptation measures within business operations. As the primary contributors to emissions,²⁶ companies are well-positioned to play a pivotal role in combating climate change by reducing their impact. As highlighted in the 2022 UNEP Report²⁷, the experience of the 2020 coronavirus (COVID-19) crisis regarding the reduction of emissions indicates that significant emissions reduction will only be achievable by 2030 if countries integrate decarbonization into their economic recovery plans. In any case, the instruments currently in place to reduce greenhouse gas emissions, especially those designed for companies, have been demonstrated to be ineffective or insufficient to achieve this goal. It is imperative that new legal instruments capable of exerting pressure on other states, as well as their respective corporations, are established. An increase in due diligence obligations represents the optimal instrument.

The phenomenon of climate change represents an unprecedented threat to human rights. The UNGPs' stipulation that the most severe adverse human rights impacts should be accorded priority status means that climate change should be identified as an area of particular concern for corporate sustainability due diligence with unambiguous clarity. In accordance with the UNGPs' stipulation that human rights risks should be prioritized according to their severity, it is imperative that the CSDD provides a detailed account of this unprecedented human rights risk, clearly identifying it as a paramount concern in corporate due diligence processes. In light of the imminent irremediability of climate-related risks in the event of climate tipping points being surpassed, coupled with the limited timeframe available to avert such risks, it is imperative that there is no ambiguity in the legal framework as to the necessity for companies to consider climate-related risks in their due diligence processes. It is imperative that companies are explicitly instructed to do so with the utmost urgency.

Furthermore, the proposal of a European Green Deal²⁸ and the objective to become climate neutral by 2050, with the goal of making Europe the first climate-neutral continent in the world, provides additional justification for considering the mandatory submission of the entire industry to climate due diligence. Climate due diligence entails direct and effective engagement with the primary actors responsible for environmental externalities and climate change: corporations. As previously noted, this approach has

²⁵ C. Fernández Liesa, "Obligaciones del Estado y de la empresa en materia de debida diligencia", in M.C. Marullo, L. Sales Pallarés, F.J. Zamora Cabot, *Empresas transnacionales, derechos humanos y cadenas de valores: nuevos desafíos*, (COLEX, 2023), at 232.

²⁶ Briefing Carbon Majors databases, *supra* n 23.

²⁷ UNEP, *Emissions Gap Report (EGR) 2022: The Closing Window* (<https://www.unep.org/resources/emissions-gap-report-2022>).

²⁸ European Green Deal: https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/story-von-der-leyn-commission/european-green-deal_en?prefLang=es.

been adopted by some European states. However, companies may find some appeal in having a mandatory legal due diligence regime. On the one hand, this could promote harmonization and level the playing field, at least throughout the EU territory. On the other hand, it could provide greater legal certainty regarding the standards that will be required of companies, in a common and more harmonious path towards sustainability.

It is imperative that companies comprehend the potential risks and the concomitant investment opportunities. Such risks may be classified as either physical or transition risks. Physical risks encompass the impact of extreme weather events on infrastructure, while transition risks pertain to the potential consequences of a shift towards a more sustainable economic model.²⁹ It is incumbent upon companies to assess their greenhouse gas emissions and carbon footprints along their supply chains, as well as to develop plans to reduce emissions in accordance with the goals set out in the Paris Agreement. Subsequently, an examination of governance strategies and processes should be conducted to ensure that climate-related risks and opportunities are adequately addressed at all levels. Finally, an assessment of reputational risks and the adequacy of insurance coverage should be undertaken.

It is imperative that the state maintains its role in guaranteeing the efficacy of corporate measures, facilitating external control mechanisms, and imposing penalties when necessary. Concurrently, the state must establish incentives for companies to invest in renewable energy and/or more sustainable infrastructure.

It is beyond question that certain industrial sectors and/or activities give rise to considerably greater environmental impacts in connection with climate change. However, a new phenomenon has emerged: investors are requesting that large corporations implement more comprehensive and effective processes to assess the risks and opportunities associated with the transition to a low-carbon economy. In addition, major UK pension funds are urging the senior management of companies such as *BP Plc* and *Shell* to adopt a more rigorous and effective approach to addressing the issue of carbon emissions.³⁰

It seems inevitable that due diligence will become an essential component of responsible investments and business *best practices* associated with the transition to a low-carbon economy. This is particularly likely if companies recognize that implementing sustainable practices could also confer economic and reputational benefits. Consequently, organizations that adopt more sustainable practices will be able to attract a greater number of customers and enhance their profitability.

Although the subject of emissions has been the primary focus of this discussion, it is important to understand climate due diligence in a broader context. Such an approach will facilitate the identification of the impact of corporate activities on the human rights of vulnerable communities. To illustrate, a company engaged in natural resource extraction must evaluate the extent to which its activities contribute to deforestation

²⁹ E.g. a transition risks could be the possibility of regulatory changes at the state or supranational level or market changes affecting operations.

³⁰ Reuters, *UK pension funds target BP and Shell directors over climate goals-FT* (March 12, 2023) [<https://www.reuters.com/world/uk/uk-pension-funds-threaten-vote-against-bp-shell-directors-over-climate-targets-2023-03-12/>].

and, consequently, to climate change. This evaluation must also consider the impact of these activities on the rights of indigenous communities and their relationship with the affected territory. Furthermore, effective climate due diligence should encompass the provision of efficacious recourse for those adversely impacted by its consequences, such as pecuniary compensation or environmental remediation. This would reinforce the capacity of victims to pursue legal redress. The European Union's Corporate Due Diligence Directive provides a promising exemplar for integrating due diligence with climate objectives.

(2) Directive on Corporate Sustainability Due Diligence: Reasons for a Change For the Better?

The CSDDD establishes a transparent and comprehensive framework of obligations for companies in relation to climate risks. To achieve the objectives, set out in the Paris Agreement, it is imperative that they develop a detailed plan to reduce their greenhouse gas emissions. This plan must include short, medium and long-term targets for decarbonization. Furthermore, they are obliged to evaluate the climatic impact of their operations, including their supply chains.

Such assessments must encompass climate risks, necessitating the identification of both direct emissions (arising from the company's own operations) and indirect emissions (emanating from supply chains). To the extent that European companies are responsible for the climate and human rights impacts of their suppliers in third countries, they will be obliged to require suppliers to comply with environmental and climate standards, implementing audits and controls throughout their supply chains.

The directive requires companies to publish comprehensive reports on the risks identified, the measures taken, and the climate performance achieved. This obligation serves to enhance accountability and facilitate the monitoring of corporate performance.

The primary challenges that the EU will face in ensuring the CSDDD's material applicability are twofold: firstly, to build the technical and financial capacity of small and medium-sized enterprises (SMEs), which are likely to encounter significant difficulties in meeting the requirements of the CSDDD; and secondly, to provide adequate support to these enterprises to enable them to comply with the CSDDD. As they become integrated into a supply chain, they will be required to adopt a standard that is markedly different from their usual practice, which will be challenging for many of them to learn and internalize. In addition to the challenge of acquiring the necessary skills, there will be the monitoring of compliance itself. Many suppliers are in countries with either no domestic regulations or very weak ones, which will present a significant challenge.

In any case, the action taken by the Directive is of great consequence in terms of aligning business activities with global sustainability objectives. The CSDDD not only establishes clear obligations for companies but also serves to reinforce the interconnection between climate justice, human rights and corporate responsibility. Nevertheless, the success of the Directive will depend on its effective implementation, collaboration across sectors and political commitment to address climate and social challenges in a comprehensive and equitable manner.

It is not yet possible to reach a conclusion regarding the CSDDD. It is sufficient to note that the Article 22 stipulates that Member States must ensure that companies adopt and implement a climate change mitigation transition plan. This is to guarantee that their business model and strategy are compatible with the transition to a sustainable economy and with the limitation of global warming to 1.5°C and the goal of achieving climate neutrality.

Moreover, Articles 24(1) and 25(1) stipulate that each Member State shall designate an authority or authorities to monitor compliance with the obligations set forth in this Directive. These monitoring authorities must be vested with the requisite powers and resources to fulfil their duties, including the authority to require companies to provide information and to conduct investigations pertaining to compliance with the obligations outlined in this Directive.

If we recall our initial remarks about criticizing Switzerland's inaction and noting that member states have not yet aligned themselves with the objectives in question, it would seem contradictory to suggest that the body responsible for monitoring company compliance with European legislation relating to climate change mitigation could potentially infringe these very objectives.

It is thus of the utmost importance that the States fulfil the obligations set out for them. In the event of non-compliance, it is essential that additional measures are implemented to guarantee the fulfilment of these obligations, particularly when there is a high probability of non-compliance. At this juncture, it is evident that there is a dichotomy between the conviction that climate due diligence will curb climate change and the doubt as to whether it will be effective.