TRANSNATIONAL ACCESS TO COURT AND MANDATORY DUE DILIGENCE ENFORCED BY THE HUMAN RIGHT TO A HEALTHY ENVIRONMENT

ACESSO TRANSNACIONAL AO TRIBUNAL E *DUE DILIGENCE* COMPULSÓRIO REFORÇADOS PELO DIREITO HUMANO A UM AMBIENTE SAUDÁVEL

ABSTRACT

The starting point of the present work is the lack of efficiency in the implementation of environmental legislation. Two elements that are particularly fragile in the protection of nature are highlighted and legal instruments are proposed to overcome these weaknesses. First, access to justice in defence of the ecosystems needs to be promoted. Second, economically strong transnational corporations, which exploit the economically weakest countries and produce in them, disregard environmental standards and "evade" their obligations without being held accountable. Human rights due diligence laws have been debated for decades, are in effect in some sectors and in some countries and are considered soft law at the international level. The linking proposed for a better access to court and for transnational accountabilities is enforced by the concept of the human right to a healthy environment.

Key words: Business and human rights; Environmental due diligence obligations; Environmental liability; Human right to healthy environment; Transnational access to court.

RESUMO

O ponto de partida do presente trabalho é a falta de eficiência na implementação da legislação ambiental. São enfocados dois elementos especialmente frágeis na proteção da natureza e propostos os instrumentos jurídicos para superar essas fragilidades. Em primeiro lugar, os elementos dos ecossistemas não são sujeitos jurídicos, de modo que o acesso à justiça precisa ser promovido. Em segundo lugar, as empresas transnacionais economicamente fortes, que exploram os países economicamente mais fracos e neles produzem, desrespeitam os padrões ambientais e "fogem" de suas obrigações sem serem responsabilizadas. Leis de *due diligence* de direitos humanos têm sido debatidas há décadas, estão em vigor em alguns setores e em alguns países, sendo consideradas soft law a nível internacional. A ligação entre o melhor acesso ao tribunal e as responsabilidades transnacionais é reforçada pelo conceito de direito humano a um ambiente saudável

Palavras-chave: Acesso transnacional aos tribunais; Direito humano a um ambiente saudável; Negócios e direitos humanos; Obrigações de diligência ambiental; Responsabilidade ambiental.

INTRODUCTION

Although our modern ecological awareness is over half a century old, and there are more than 500 international treaties on environmental issues, humanity is still far from enforcing these instruments in a way that effectively protects our ecosystems. The main reason for this weakness in our approach to environmental issues is well documented: when making

decisions regarding several sectorial policies, the trade-off between ecological and economical concerns is usually decided in favour of economic promotion.

The environmental protection agenda must comprise three major thrusts: first the promotion of human rights related to environmental matters, second granting access to court in cases of transnational environmental harm, and third due diligence obligations for environmental protection. In order to clarify and enforce these three legal initiatives, and to overcome the lack of definition when regulating the essential environmental problems in global value chains, our proposal is the adoption of the Global Pact for the Environment, GPE.

The present work shows why the GPE, which has as a cornerstone the Human Right to a Healthy Environment, but which has recently been weakened by the recommendation of the open-ended working group for a simple political declaration, addresses the imbalance of ecological and economical concerns by linking two instruments that aim to give a stronger voice to ecological issues. The first instrument promotes and facilitates access to court in environmental matters. The second instrument addresses legislative gaps, in countries where powerful international companies are often not held responsible for their adverse impact on the environment, by enforcing a process of due diligence. Both instruments aim to render the implementation and achievement of environmental protection objectives more efficient. Both instruments focus on correcting weaknesses in the current law. The first method – promoting procedural legitimacy in defence of environmental interests – aims at overcoming a weakness in the current protection of ecosystems. The second method- Instituting the Legal Obligation of Compliance with Human Rights and Environmental Standards – addresses the weakness of ecological concerns in many countries when confronted with the established economic interests of large powerful corporations, which render ineffective the application of existing environmental laws.

It is precisely in order to overcome these two weaknesses that this paper strongly supports the concept of the human right to a healthy environment, framed within the Global Pact for Environment. A global human right based approach addresses the identified weaknesses in the current legal system: first, environmental concerns are hereby provided with advocates in their defence, and second, the global nature of the business interests of large corporations is no longer admissible as an excuse for irresponsible environmental destruction. In parallel, the Global Pact for Environment provides strong clarity and coherence to the proposed national and international approaches.

There are two types of opponents of the GPE: Firstly are those that, right from the start, do not consider environmental protection to be a priority.[1] And secondly are those that concluded, during the negotiation process of the GPE, that intergovernmental compromises would result in a downgrade of the existing International Environmental Law, and as such it would be better not to adopt them. Our support for the GPE, and especially for its Human Right to a Healthy Environment, stems from our conviction that, in order to achieve the desired environmental protection objectives, it is necessary to make it a strong and effective global human rights legal instrument.

The subjective rights approach in the present work supports a global Human Right to a Healthy Environment. It is based on the investigations presented, among others, by the special rapporteur of the UN for the issues of environmental protection related to human rights. Based on decades of experience in more than 100 states, these investigations concluded that the legal

[1] The United States and the Russian Federation, in particular, have already opposed the project on the 10th of May 2018, United Nations General Assembly 12015.

recognition of the right to a healthy environment contributes to healthier ecosystems (BOYD, DR, 2019, p. 30-35).

The subjective rights approach within the new constitutionalism of the constitutions of some Latin-American countries (Colômbia, Equador, Bolívia, Venezuela) is described in the present analysis, but it is not integrated in its main investigative line, since it is believed that there would be no acceptance, at the global level, of the attribution of subjective rights to nature. In fact the draft GPE, incorporating a less radical content, was nevertheless rejected by the General Assembly of the UN.[2] Attributing subjective rights to elements of ecosystems in a United Nations legal instrument is not seen to be a viable approach in the current legal environment. There are two main difficulties blocking this approach, which may be summarized as follows: first, the attempts to understand the doctrines of *Pachamama* and *Buen-vivir* within the worldview of native peoples have made us realize that these cosmo-visions go much further than just the introduction of subjective rights for the elements of nature. This is so because the objective within the indigenous worldview is not the protection of the different individual subjects, but it is rather the balance within the countless relationships amongst them. Finding this balance turns out to be a never-ending process. There is no relative ponderation of the different rights, given that everything is seen together as one. Humans are nature, as stated by Simbaña (2014).

The integration of this philosophical structure into the established legal systems means a deep rupture of those established systems. Maybe this is what the world would ultimately need, but in the much more realistic context of the present work the objective is the Human Right to a Healthy Environment, an instrument which requires far less drastic changes both in the legal system and in our current philosophical views. Nevertheless, even these less drastic demands did not achieve majority support at the UN. The second difficulty weakening the statute of nature as a holder of subjective rights is the current inability to implement these rights (ALMEIDA e CASTRO AGUADO, 2017), even after they have been mandated by court decisions (SILVEIRA BORGES e FARIAS CARVALHO, 2019).

Addressing the lack of efficiency of Environmental law is precisely this paper's objective, and the conclusion presented is that "the time has come for the introduction of an explicit Human Right to a Healthy Environment", achieved through access to justice and due diligence obligations for environmental protection on a global level.

1. SUBJECTIVE RIGHT TO A HEALTHY ENVIRONMENT ON A GLOBAL LEVEL

The concept of the human right to a healthy environment, proposed within the Global Pact for Environment, attributes a subjective right to a healthy environment on a global level. The most important aspects addressed by the present paper are precisely the "subjective right" and the "global level", because they reveal the weaknesses in the current legal system responsible for the generally inefficient enforcement of environmental protection. It is necessary to recognize that offences against nature affect all of humanity globally. Conferring the needed legitimacy to transnational justice, and attributing responsibility to the powerful global players behind the destruction and pollution of the environment, are objectives that can only be achieved when the Human Right to a Healthy Environment is explicitly enshrined in Law.

[2] UNITED NATIONS GENERAL ASSEMBLY. A/RES/73/333, 5 September 2019. https://undocs.org/en/A/Res/73/333.

Firstly, the paper proposes a legal system in which every citizen or legal entity can bring a dispute before the judicial power aiming to ensure the protection of environmental interests. This type of procedural legitimacy is exemplified by Portuguese speaking countries,[3] which are analysed together with the European Union Law[4] and the Aarhus Convention[5].

Secondly, addressing the global level aspect, and aiming at restoring power balance between economically powerful and economically weak countries, the paper reflects on an ongoing debate in several European countries, the European Union and the United Nations, and supports legal Acts on the Obligation of Companies to Exercise Due Diligence in the Protection of Human Rights (SCHERF; GAILHOFER; HIBERT; KAMPFFMEYER E SCHLEICHE, 2019). These due diligence projects aim at bridging the existing governance gaps in the global value chain of companies based in economically powerful countries, by giving a voice to Human Rights concerns and by assigning the responsibility of performing due diligence to the powerful companies implementing the different projects. The concept of instituting due diligence obligations as statutory human rights was triggered by the publication of the UN Guiding Principles for Business and Human Rights. The position of environmental protection in the referred drafts and legal acts varies: in some of them, "integrating" environmental protection into the human rights defence represents a "transfer" of content (SCHERF; GAILHOFER; HIBERT; KAMPFFMEYER E SCHLEICHE, 2019, p.75). Others do not mention environmental protection, so it might be included by a green interpretation of some of the traditional human rights like human dignity, life, integrity, freedoms in the form of security, private and family life, expression, information and association (SADELEER, 2012. p. 39 e 62). This paper stands for a human right to a healthy environment, precisely to contribute for a better clarification of the relation between human rights and environmental protection.

One of the main challenges of the transfer or integration of the environmental sector is the lack of a conclusive set of international environmental agreements that would, in a sufficient, comprehensive and concrete manner, regulate the inherent environmental problems in the global value chain. However, international agreements are available concerning internationally recognised human rights. Our approach to achieve the necessary link is based on the proposal, made by the special relators of the United Nations, of the Global Pact for the Environment, which advocates the institution of the basic human right to a healthy environment.[6] This Global Pact for the Environment is designed to be a binding treaty, and it intends to better tackle the problem of transnational ecological degradation (BARROS, 2012, p. 44), especially degradation caused by consumption that does not take place in the countries of production, and production that is not regulated[7] in the countries where the centre of control over ecological damage is located (BARRITT e VIÑUALES, 2016, p. 89 e DAY, 2015, p. 1079 e 1080). At the core of the Global Pact for the Environment is the recognition of the human right to a healthy environment.

[3] Art 66 of the Portuguese Constitution; UNITED NATIONS GENERAL ASSEMBLY. Human Rights Council, A/HRC/43/53 (30 December 2019) point 10: 110 of the 193 countries of the United Nations integrated the right to a healthy environment in their Constitutions.

[4] EUROPEAN PARLIAMENT AND COUNCIL. Regulation (EC) 1367/2006 of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies.

[5] UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE (UNECE). Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted on 25 June 1998 entered into force on 30 October 2001).

[6] UNITED NATIONS GENERAL ASSEMBLY. A/73/188 ´Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment´ (19 July 2018) 17, 18, https://undocs.org/A/73/188.

[7] See for instance (EBEDKU, 2007, p. 312, 319).

2. ACCESS TO COURT

As quoted, access to court is a vital instrument of social justice and enforcement of environmental protection.

2.1. *ACTIO POPULARIS* IN DEFENCE OF DIFFUSE INTERESTS

Several legal systems, like for instance those of the Constitutions of Portuguese speaking countries, incorporate the subjective, objective and procedural aspects of Environmental Constitutionalism, in the sense that everyone is granted access to the courts for the effective protection of the right to a balanced environment[8].

Regardless of whether a citizen has a direct interest in matters of public health, environment, quality of life, consumer protection, cultural heritage and public property, he has legal standing for the defence of these diffuse interests[9]. This *actio popularis* grants to every citizen the required procedural legitimacy, both against public and private persons, following actions of Civil, Administrative and Penal Procedure Code, to seek prevention, repression or compensation.[10] The author of an *actio popularis* "is exempt from the payment of fees in the case of partial acceptance of the application."[11]

2.2. AARHUS CONVENTION AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

In the context of our analysis, there are four main relevant points in the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ('the Aarhus Convention'): First, a standard of access to justice in environmental matters,[12] because it improves social justice and enforces environmental protection. Second, a commonality of definitions, which give orientation and strength to all three powers of sovereignty. Third, an improved implementation of the EU environmental

[8] Art 66 Constitution of Portugal (Environment and quality of life) "1. Everyone has the right to a healthy and ecologically balanced human living environment and the duty to defend it. 2. In order to ensure the right to the environment within an overall framework of sustainable development, the state, acting via appropriate bodies and with the involvement and participation of citizens, is charged with:
a) Preventing and controlling pollution and its effects and the harmful forms of erosion (…). UNITED NATIONS GENERAL ASSEMBLY. A/73/188 (n. 14) p. 30. At the national level, Portugal became the first country to adopt a).

[9] Art .52 Constitution of Portugal; Art. 5, §LXXIII Constitution of Brazil; Art. 74 Constitution of Angola; Art 58 Constitution of Cape Verde; Art .81 Constitution of Mozambique; SERRANO, PJ; MARTINEZ, RC. ´The Internalization of Human and Fundamental Rights in the Light of the Modern Concept of Democracy. A Dialogue between Cuba, Portugal and Brazil´ (2017) 9 n. 3 Revista de Direito da Cidade City Law Review, 1286, 1299.

[10] ASSEMBLEIA DA REPÚBLICA DE PORTUGAL. Portuguese Law 15/2002, 22 February, amended in 2003, 2008 and 2011 (Code of Administrative Procedure): any right or legally protected interest must correspond to adequate protection before the administrative courts; ASSEMBLEIA DA REPÚBLICA DE PORTUGAL. Portuguese Law 83/95 of 31 August (Law on *actio popularis*).

[11] Art 20, n 2 of Law on *actio popularis*, Law 83/95 of 31 August 1995.

[12] Part of the Sustainable Development Goal 16.

law[13]. And fourth, the guarantee of decentralized action instead of direct intervention by the European Commission[14].

The Aarhus Convention, which has been ratified by all Member States and by the EU, establishes that, in certain cases, natural and legal persons – such as non-governmental organisations, or NGOs – can bring a case to a court or to other impartial bodies in order to allow for the review of acts or omission by public or private bodies.[15] On the one hand, with article 9 paragraph 3, the Aarhus Convention provides a procedural instrument which goes far beyond the material content of the international act in its totality. States have to establish laws whereby the violation of "national law relating to the environment" can be presented in court, or at the minimum can trigger an administrative revision by an independent entity. The inclusion of "any administrative act or omission" means that the environmental law does not need to reflect a subjective right, but that objective content is sufficient. On the other hand, in terms of active legitimacy, states have a wide margin in the formulation of legislation that abides by their national requirements (EPINEY DIEZIG, PIRKER and REITEMEYER, 2018, art. 9, notes 36 and 38).

2.3. INTERNATIONAL LAW AS AN IMPETUS FOR STRUCTURAL INNOVATION IN NATIONAL LAW

In several national law systems, the Aarhus Convention provokes a departure from the heretofore exclusion of the advocacy of collective interests such as a healthy environment[16]. For instance, the German Law on Process in Court for Administrative matters is therefore based on individual infringement and not on collective impairment. (KLOEPPER, 2016). Nevertheless, the Aarhus Convention and the European Union Regulation for its application[17] forced Germany to widen its access to court to include Environmental Non-Governmental Organisations (KLINGER, 2014, p. 135-141). In addition, German jurisprudence has been doing its part by widening the scope of legislation, from the exclusive protection of subjective rights to the protection of collective interests. It is interesting that the Aarhus Convention, which was originally intended, by a large part of its initiators, to strengthen the democratic processes

[13] EUROPEAN PARLIAMENT AND COUNCIL. N 2 Introduction of Regulation (EC) No 1367/2006 of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies.

[14] EUROPEAN COMMISSION. ´Commission Staff Working Document, Environmental Implementation Review 2019 Policy Background, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Environmental Implementation Review 2019: A Europe that protects its citizens and enhances their quality of life´ (2019) 12 http://ec.europa.eu/environment/eir/pdf/eir_2019.pdf.

[15] Its paragraphs 3 and 4 of article 9 provide that "3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment. 4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide
adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive" EUROPEAN COMMISSION (2017) 2616 final ´Communication from the Commission of 28.4.2017, Commission Notice on Access to Justice in Environmental Matters Brussels´.

[16] Art 9 para 2 of Aarhus Convention: https://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf

[17] EUROPEAN PARLIAMEN AND COUNCIL. Regulation (EC) No 1367/2006, 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies.

of the emerging democracies of eastern European Countries, in fact obliged Germany, as well as other long-established democratic countries, to extend to Environmental Non-Governmental Organizations, ENGOs, the right to easily access justice on environmental issues. These legal acts were a reaction to a preliminary ruling by the European Union Court of Justice,[18] which concluded that "legislation which does not permit non-governmental organisations promoting environmental protection, as referred to in Article 1(2) of that directive, to rely before the courts, in an action contesting a decision authorising projects 'likely to have significant effects on the environment' for the purposes of Article 1(1) of Directive 85/337" violates the quoted European Union law.

Studies of collective actions demonstrate that they are far more often successful than other types of actions in the Administrative Court (ZSCHIESCHE AND SCHMIDT, 2013). The most important aspect for our analysis is that powerful lawyers and enforcers of common interests were integrated in favour of environmental concerns, which had previously been the mostly silent victim in this process.

Especially relevant to the present argument, in favour of the Global Pact on Environment and its Human Right to a healthy environment, is the capacity of International Law to cause changes by strengthening existent weaknesses, and also to serve as a catalyst to unexpected innovation.

3. HUMAN RIGHTS AND ENVIRONMENTAL PROTECTION DUE DILIGENCE LAW

International law also provided strong support to sharpening the tools aimed at social justice in transnational environmental cases (SCHERF *et al*, 2019, p. 81, 82). An imbalance has been observed concerning consumption-driven environmental degradation: Companies of "developed" countries operate mostly where human rights and environmental protection are not enforced (GRABOSCH, 2020 and DAY, 2015, p. 1079 and 1092). A soft international law instrument that seeks to attribute responsibility in these cases is laid out in the United Nations Guiding Principles for Business and Human Rights, which were developed by the Special Representative of the UN Secretary-General, and which introduces the issue of human rights when dealing with transnational corporations and other business enterprises[19] .

The non-binding due diligence instruments are strong recommendations (BURCKHARDT and GEORGE, 2017). But they focus on human rights, not on environmental protection, and they are not mandatory. So it is still frequent that companies are allowed to profit from operating in countries where human rights and environmental protection are not enforced. "The absence of legal standards which define the companies' duties and ensure access to justice for victims of corporate malpractice has produced significant accountability gaps, …"[20] ."Today, there is no binding international legal framework to establish the liability of

[18] EUROPEAN COURT OF JUSTICE, JUDGMENT OF THE COURT (Fourth Chamber) 12 May 2011. Case C-115/09 Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen eV v Bezirksregierung Arnsberg, ECLI:EU:C:2011:289.

[19] UNITED NATIONS Resolution 17/4 of 16 June 2011. United Nations Guiding Principles for Business and Human Rights https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.

[20] EUROPEAN COALITION FOR CORPORATE JUSTICE ASBL. ´Key Features of Mandatory Human Rights due diligence legislation, ECCJ Position Paper´ (2018) https://corporatejustice.org/eccj-position-paper-mhrdd-

transnational corporations (TNCs) in the area of human rights and environmental protection, nor is there any guaranteed access to justice and remedies for populations affected by the activities of TNCs. At a time when 3,400 trade and investment agreements protect the interests of transnational corporations through Investor-State Dispute Settlement (ISDS) mechanisms, there is no international treaty requiring these large corporations to uphold human rights and environmental protection"[21].

"European companies' involvement in human rights and environmental violations is not marginal. Corporate activities have major implications for individuals and communities across the world. Between 2005 and 2013, more than half of the companies listed on the UK FTSE 100, French CAC 40 and German DAX 30 stock exchange indices were identified in concerns or allegations regarding human rights abuses"[22].

The development of the human rights due diligence law has progressed in stages, and three generations of laws are frequently identified,[23] to which this paper adds a fourth one.

The first generation concentrates on the reporting obligations of human rights due diligence, HRDD. The second generation includes the identification of risks, and the obligation to take action and to report on the measures taken, including their outcomes. A third emerging generation of laws explicitly links HRDD obligations to the existing (civil) corporate liability. This paper proposes two further integrations: in the material aspects, the inclusion of environmental protection, and in the procedural aspects, the introduction of tools to widen the access to the courts. The draft of the Global Pact for the Environment, which is defended by United Nations representatives, and which is based on an explicit human right to a healthy environment, is taken as an important guide to the first integration. Its highlighted advantage is a global definition of overarching statements of binding principles. The second integration seeks better access to court. The regime of diffuse interests, which is a part of the Portuguese and the Portuguese speaking countries legal systems, confers active legitimacy when the claimer stands for elements of the ecosystem, regardless of whether he or she is directly affected by the ongoing or proposed projects. As a complement to these measures, the Aarhus Convention tools give an added voice to environment defenders. The Global Pact for the Environment is an instrument upon which it is possible to overcome the limited sectoral[24] and spatial[25] scope of current legislations. It could become a binding overarching framework (ABUILA, VIÑUALES, 2029, p. 12, 17).

final_june2018_3.pdf more updated: https://corporatejustice.org/news/final_cso_eu_due_diligence_statement_2.12.19.pdf

[21] STOPISDS.ORG AND CCFD TERRE SOLIDAIRE. ´"A la carte" justice for transnational corporations? Position Paper´ (2019); GIN, global Interparliamentary network ´Representatives worldwide supporting the un binding treaty on transnational corporations with respect to human rights´ https://bindingtreaty.org/

[22] EUROPEAN COALITION FOR CORPORATE JUSTICE (ECCJ) ´Access to Justice´ https://corporatejustice.org/priorities/14-access-to-justice.

[23] EUROPEAN COALITION FOR CORPORATE JUSTICE ASBL. *Op. cit.*

[24] EUROPEAN PARLIAMENT AND COUNCIL. Regulation (EU) 2017/821, 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; EUROPEAN PARLIAMENT AND COUNCIL. EU Timber Regulation (Regulation (EU) No 995/2010); COUNCIL OF THE EUROPEAN UNION. Forest Law Enforcement, Governance and Trade (FLEGT) Regulation (Council Regulation (EC) No 2173/2005).

[25] Dutch Child Labour Due Diligence Act, 2019; LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (LDV France 2017).

3.1. DRAFT BINDING TREATY

The draft Global Pact for the Environment, with its human right to a healthy environment, would be a valuable complement to drafts that have been debated to mandate due diligence of transnational enterprises, precisely because of its legal framework, character and definitions.

The main tool debated within the United Nations is the draft "legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises"[26]. This draft is a result of the open-ended intergovernmental working group (OEIGWG), which the Human Rights Council decided to establish in 2014[27]. In its last version, one of the main enforcement obstacles it faced was its admission into the jurisdiction where the corporation alleged to have committed a human rights violation is domiciled.[28] The need for Mutual Legal Assistance is foreseen, as well as enforcement limitations resulting from "prejudices by the sovereignty, security, public order or other essential interests of the Governing Party where its recognition is sought."[29] The highlighted advantages of the draft are an "increasing legal certainty and predictability to help ensure a level playing field; enhancing prevention and mitigation of business-related human rights abuses; improving access to remedy for those harmed; closing existing gaps in protection and international law; and increasing coordination among members of the international community"[30]. The draft is clearly focused on human rights. The inclusion of environmental protection is marginal[31] and still unclear,[32] which is one main reason why the Global Pact for the Environment, by introducing the human right to a healthy environment, would bring about a very important advancement to the desired legislation.

[26] HUMAN RIGHTS COUNCIL, OEIGWG, open-ended intergovernmental working group, chairmanship revised draft (16.7.2019) https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/OEIGWG_RevisedDraft_LBI.pdf

[27] UNITED NATIONS GENERAL ASSEMBLY, Human Rights Council, A/HRC/RES/26/9 (14 July 2014) https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/082/52/PDF/G1408252.pdf?OpenElement; on the occasion of the 5th session of the UN Human Rights Council OEIGWG , the Global Interparliamentary network supporting the establishment of a Binding Treaty on Transnational Corporations with respect to Human Rights and the Global Campaign have organised a side event on: "UN Binding Treaty: Reflections of members of regional and national parliaments from Europe, Latin America and Asia" (October 2019) https://justice5continents.net/fc/viewtopic.php?qu=720&vplay=1&t=1145&nrvid=4.

[28] Version of July 2019, Art 7. Adjudicative Jurisdiction.

[29] Art 10. & 10."

[30] UNITED NATIONS GENERAL ASSEMBLY, Human Rights Council, A/HRC/43/55 (9 January 2020) ´Report on the fifth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human right´ p. 10. Retrieved from: https://ap.ohchr.org/documents/E/HRC/other/A_HRC_43_55%20E.pdf.

[31] Art 4 & 5.

[32] There were calls to clarify or remove the references to "emotional suffering" and "economic loss". Additionally, several delegations proposed removing the reference to "environmental rights", with two delegations requesting clarification of the meaning of that term. However, some non-governmental organizations insisted on retaining the reference to "environmental rights" and recommended adding an explicit reference to economic, social and cultural rights.

3.2. JUSTIFICATIONS FOR THE UPGRADES AND LINKINGS PROPOSED

When analysing the methods for enforcement of the proposed laws, the priorities are to guarantee access to the courts for the victims, to ensure accountability under the home country's responsibility (see below in chapter 2.3.), and establishing a clear definition of the obligations of the executing companies in order to prevent abuses (chapter 2.4.). An explicit human right to a healthy environment, as proposed by representatives of the United Nations, would be able to support these enforcement tools, namely by ensuring transnational access to court and by defining the basic characteristics of the proposed protection of the ecosystems (chapter 3).

3.3. ACCESS TO COURT IN THE CORPORATIONS' HOME COUNTRY

On the one hand, human rights agreements have established that States have an obligation to provide for an effective remedy against violations of protected rights, and human rights bodies have applied that principle to human rights whose enjoyment is infringed by environmental harm.[33]

On the other hand, there is a large number of cases of violation of human rights and of environmental destruction that were never taken to court.[34] Individual or collective victims are frequently granted active legitimacy for a process in court only within the jurisdiction where the harm was done, usually the host country of the corporation. However, in these countries, "the absence of legal standards which define the duties of the companies and ensure access to justice for victims of corporate malpractice has produced significant accountability gaps,…"[35] . In order to overcome these obstacles often faced by victims in their access to justice, the United Nations Human Rights Council[36] and the European Union[37] have debated the possibility of access to justice in either the Member State where the company is established or the Member State where it conducts business activities. In other words, this would make it possible to submit claims against companies which are established in, or conduct activities in, or have otherwise a link with a Member State, in the jurisdiction of that Member State. European and national developments have opened a window of opportunity for a European directive on mandatory human rights due diligence and responsible business conduct in that sense,[38] but so far the access to justice for victims of corporate malpractice remains ill-defined.[39] This is the current

[33] UNITED NATIONS GENERAL ASSEMBLY, Human Rights Council, A/HRC/28/61. *Op. cit.* 12.
[34] EUROPEAN COALITION FOR CORPORATE JUSTICE ASBL. *op. cit.*
[35] EUROPEAN COALITION FOR CORPORATE JUSTICE. *Op. cit.* 1.
[36] HUMAN RIGHTS COUNCIL, OEIGWG, Open-ended intergovernmental working group. *Op. cit.;* UNITED NATIONS GENERAL ASSEMBLY. ´Report on the fifth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights´ A/HRC/43/55 (9 January 2020).
[37] EUROPEAN TRADE UNION CONFEDERALTION. ´ETUC Position for a European directive on mandatory Human Rights due diligence and responsible business conduct´ Adopted at the Executive Committee Meeting of 17-18 December 2019, 7 https://www.etuc.org/sites/default/files/document/file/2019-12/ETUC%20Position%20for%20a%20European%20directive%20on%20mandatory%20Human%20Rights%20due%20diligence%20and%20responsible%20business%20conduct%20adopted_0.pdf.
[38] See list in EUROPEAN TRADE UNION CONFEDERALTION. *Op. cit.* 17-21.
[39] EUROPEAN TRADE UNION CONFEDERALTION. *Op. cit.* 3.

diagnosis of the problem concerning human rights, but the situation is much worse when dealing with environmental degradation.

3.4. CLEARER CONCEPTS FOR BETTER ENFORCEMENT

Analysing the necessity for better clarity in these laws and their enforcement, three main subjects were identified: First, the challenges facing human rights when related to the environment. Second, the application of human rights obligations in transboundary environmental harm. And third, due diligence obligations for environmental protection.

Several documents simply connect legal acts concerning human rights due diligence and legal acts concerning environmental protection due diligence. Other documents analyse the possibility of transferring provisions from human rights due diligence to environmental protection due diligence (KREBS *et al*, 2020). Considering the essential content, comprising risk analyses, measures of prevention and reparation, and monitoring of enforcement, the instruments from human rights protection due diligence can be straightforwardly transferred to instruments for environmental protection due diligence. However, a conclusive set of international environmental agreements regulating the essential environmental problems in global value chains, in a sufficient, comprehensive and concrete manner, exists for human rights,[40] but does not exist for environmental protection.

The following documents are considered in the content definition for human rights: UN instruments,[41] ILO Conventions and Recommendations,[42] Council of Europe[43] and European Union law[44].Based on these documents, a conclusive and internationally recognised definition can be established for the human rights whose protection is the object of the due diligence process, in the draft human rights due diligence Act. The object of environmental due diligence is not as clearly defined (KREBS, 2020, p. 16). The human right to a healthy environment might contribute to overcome this deficiency.

4. HUMAN RIGHT TO ENVIRONMENT PROPOSED BY THE UNITED NATIONS

As described, the environmental protection agenda must comprise three major thrusts: first the promotion of human rights related to environmental matters, second granting access to court in cases of transnational environmental harm, and third due diligence obligations for environmental protection. In order to clarify and enforce these three legal initiatives, and to overcome the lack of definition when regulating the essential environmental problems in global value chains, our proposal is the adoption of the Global Pact for the Environment, GPE[45]. At

[40] EUROPEAN TRADE UNION CONFEDERATION *Op. cit.* 9.
[41] Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR).
[42] all, in particular the 8 fundamental ones, but also in relation to this issue the Convention(s) on Labour Inspection and Public Procurement/public contracts are particularly relevant.
[43] European Convention of Human Rights (ECSR), European Social Charter (ESC), (Revised) European Code of Social Security (ECSS).
[44] EUROPEAN TRADE UNION CONFEDERATION *op. cit.* 9.
[45] UNITED NATIONS GENERAL ASSEMBLY (n 3) point 47: In May 2018, the General Assembly adopted resolution 72/277, entitled "Towards a Global Pact for the Environment", in which it established an ad hoc open-ended working group to discuss possible options to address gaps in international environmental law and environment-related instruments.

the core of the GPE is the human right to a healthy environment.[46] Even before achieving formal recognition, the term "human right to a healthy environment" is already being used to refer to the environmental aspects of the entire range of human rights, which promote a safe, clean, healthy and sustainable environment.[47]

More than 500 international sectoral conventions currently exist in the environmental field. But the monitoring and application of such a large number of texts in the form of a wider and coherent body of multilateral environmental agreements (ABUILA e VIÑUALES, 2019, p. 27) is missing (FABIUS, 2019, p. 5, 7 and ABUILA e VIÑUALES, 2019, p. 17, 18). Whereas, at the time of writing, 155 States have already established legal recognition of the right to a healthy environment, the future challenge is to make this right fully universal in its application.[48] The modern trend towards environmental constitutionalism has forced courts to create new ways of relating human beings to nature (DALY, 2018, p. 667, 690).

The human rights implications of environmental damage are felt globally, but those segments of the population that are already in vulnerable situations feel them even more acutely.[49] Consequently, the path towards social justice requires the definition and use of effective legal tools.

In order to ensure "the right of every person of present and future generations to live in an environment adequate to his or her health and well-being"[50], the existing power structure needs to be considered within each nation and in the relations between weaker and stronger nations and their private and public business entities. In the Global Pact for the Environment the responsibility rests with activities controllable in the economically more powerful countries[51] .This attribution of responsibility is the decisive enabling factor within the GPE. Traditionally, activities or omissions are judged in the jurisdiction where they take place. When the place of production is a country with a weak judicial system, justice frequently is not achieved. To overcome that weakness of the current system, the GPE foresees and imposes

[46] Art 1; UNITED NATIONS GENERAL ASSEMBLY. A/73/188 ´Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment´ (19 July 2018) point 37: "The time has come for the United Nations to formally recognize the human right to a safe, clean, healthy and sustainable environment, or, more simply, the human right to a healthy environment"; point 42: "People and organizations are empowered by the procedural elements of this right, including access to information, participation in decision-making and access to justice."

[47] UNITED NATIONS GENERAL ASSEMBLY. Human Rights Council. ´Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox´ A/HRC/35/79 (24 January 2018) point 16: "Environmental constitutionalism is likely to be more effective when it is self-executing- that is, when it does not require interceding legislative action".

[48] UNITED NATIONS GENERAL ASSEMBLY A/73/188 ´Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment´ (19 July 2018) point 54.

[49] UNITED NATIONS GENERAL ASSEMBLY A/73/188 ´Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment´ (19 July 2018) point 22, 45: Of particular importance are the positive effects of the recognition of the right to a healthy environment on vulnerable populations; ´Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development´ HRC/RES/34/20 (24 March 2017) 2 https://documents-dds-ny.un.org/doc/UNDOC/LTD/G17/071/83/PDF/G1707183.pdf?OpenElement.

[50] Art 1 of the Aarhus Convention; UNITED NATIONS GENERAL ASSEMBLY A/73/188 ´Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment´ (19 July 2018) point 34; Art 1 of the draft Global Pact of the Environment: "Every person has the right to live in an ecologically sound environment adequate for their health, well-being, dignity, culture and fulfilment."

[51] "Art 5 Prevention … The Parties have the duty to ensure that activities under their jurisdiction or control do not cause damage to the environments of other Parties or in areas beyond the limits of their national jurisdiction." DUVIC, P.; LESLIE, A ´Prevention´. In ABUILA, Y.; VIÑUALES, JE. *Op. cit.* 59, 62, 63.

what has been required for decades:[52] enterprises are to be held responsible for the compliance of all applicable environmental laws, including both the laws of their home country and the laws of the host country, regardless of where the enterprises operate. In that sense, the prevention principle rests on three definitional pillars: firstly its anticipatory rationale creates an obligation to avoid or minimize the risk of significant environmental harm, secondly its due diligence character requires states to act proactively, and thirdly its spatial scope requires States to prevent environmental harm irrespective of the location of the harm (DUVIC and LESLIE, 2019, p 2020, p. 59, 62 and 63). Any adverse impact on the environmental human rights caused by a company, or to which the company contributes, can be defended, among others, by Environmental Non-Governmental Organisations in the enterprise's home country.[53]

This overarching proposal of the GPE integrates the rights-based approach with multiple facets (BOYD, 2011, p. 171 and 179, GRANT, 2017, p. 198, 210). It uses not only an individualistic approach as is normally applied in a human rights context, but it uses at the same time a collective approach where environmental problems are concerned. The explicit inclusion of the right to a healthy environment stresses that many of the other human rights can be impacted by adverse environmental conditions (MORROW, 2017, pp. 36, 43, 44).

FINAL CONSIDERATIONS

The starting point motivating of the present work was the realisation that, whereas environmental protection is foreseen in a huge amount of legislation, in practice it usually loses out to economic concerns in the decisive moment of sectorial decision making, when the balance almost always tilts in favour of what is usually understood as economic progress. This established practice makes ecology the weak litigant in most cases. To compensate for this imbalance, an important tool promoting ecology is the widening access to court by the defenders of environmental issues.

The above-mentioned weakness of ecological interests, during sectorial decision making, is considerably worsened when the cases deal with transnational enterprises homed in economically strong countries and causing environmental degradation while operating in economically weak countries. One important legal tool to counter this double imbalance – ecology as a weak element and ecological damages in weak legal systems when in confrontation with economically powerful companies based in economically powerful countries - is the imposition of due diligence obligations on the international companies, seeking the protection of human rights applied to environmental protection. Any violation of these companies' obligations gives – as foreseen in drafts of the United Nations, the European Union, and some states - active legitimacy to granting and facilitating court access in the companies´ home country. The respondent in this case is the company that took part in controlling the activity that caused the violation or omission.

[52] INTERNATIONAL LAW COMMISSION. ´Draft Articles on the Responsibility of States for Internationally Wrongful Acts´ (2001) UN Doc. A/56/10.

[53] UNITED NATIONS GENERAL ASSEMBLY A/73/188 ´Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment´ (19 July 2018) point 18; KAMPFFMEYER, N. *et al.* ´Umweltschutz wahrt Menschenrechte - Deutsche Unternehmen in der globalen Verantwortung´ ('Environmental protection protects human rights - German companies are called to exercise global responsibility') (2018) 11.

Some countries, like Germany for instance, have hesitated or still hesitate with allowing the refereed tools: the access to court for Environmental Non-Governmental Organisations was only admitted after the European Union Court of Justice ruled in their favour. Even then, the German legislator allowed only as much access to court as necessary for complying with the international and European impositions[54]. At the same time the legislator argued that these questions are part of a dynamic process, implying that the legislator might attempt to restrict access to court as much as possible while satisfying the minimum required extent of the international obligations.

The due diligence obligations for companies have been debated on human rights issues. The status of mandated due diligence for environmental protection is not yet consolidated. To clarify the concepts and definitions, a Global Pact for the Environment has been proposed by representatives of the United Nations. At its core stand the three proposed principles: the human right to a healthy environment, the due diligence obligations with preventive and reparative measures, and the access to court for transnational cases. Enshrining in law the explicit subjective human right to a healthy environment would further strengthen the ecological agenda by contributing to the dynamic process referred above, offering a close match to the three tools analysed and linked in this text[55].

REFERENCES

ABUILA, Y and VIÑUALES, JE. ´A Global Pact for the Environment: Conceptual Foundations´ in ABUILA, Y and VINÑUALES, JE (eds.) *A Global Pact for the Environment – Legal Foundations* (Cambridge: C-EENRG, 2019), 12

AD HOC OPEN-ENDED WORKING GROUP stablished by General Assembly Resolution 72/277 of 10 May 2018 entitled "Towards a Global Pact for the Environment" Recommendations, as agreed by the working group (22 May 2019). :https://globalpactenvironment.org/uploads/GPRecomFINAL.pdf. Acesso em: 9 January 2020.

ALMEIDA, Angelo de; CASTRO AGUADO, Juventino de. O Novo Constitucionalism Latino-Americano: possibilidades de uma constitucionalização simbólica. *1º Simpósio sobre Constitucionalismo, Democracia e Estado de Direito*, [S.l.], v. 1, n. 1, jan. 2017, p. 224, 242. Retrieved from: <https://revista.univem.edu.br/1simposioconst/article/view/1177>. Acesso em: 9 January 2020

ASSEMBLEIA DA REPÚBLICA DE PORTUGAL. Portuguese Law 15/2002, 22 February, amended in 2003, 2008 and 2011 (Code of Administrative Procedure).

ASSEMBLEIA DA REPÚBLICA DE PORTUGAL. Portuguese Law 83/95 of 31 August (Law on *actio popularis*).

BARRITT, E.; VIÑUALES, J. ´A Conservation Agenda for Biodiversity Beyond National Jurisdiction – Legal Scan´ (2016) 89 *St. John´s Law Review* 11 Retrieved from: https://www.ceenrg.landecon.cam.ac.uk/report-files/report-001. Acesso em: 9 January 2020

[54] GERMAN FEDERAL PARLIAMENT. ´Die Verbandsklage im Naturschutz- und Umweltrecht, Historische Entwicklung, europarechtliche Vorgaben, Klageberechtigung´ ('The collective lawsuit in nature conservation and environmental law, historical development, European law requirements, right to initiate and pursue the proceedings') (WD 7-3000-208/18 Scientific services 2018) 14.

[55] Access to court defence of diffuse rights including any legal breach, due diligence obligations and access to court in defence of extra territorial environmental harm, and the human right to a healthy environment.

BARROS, AS. ´Multinacionais e a Deslocalização de Indústrias Perigosas´ ('Multinationals and the Relocation of Dangerous Industries') (Coimbra Editora, 2012).

XXXXX, XX. Força Normativa do Constitucionalismo Ambiental. In TROVÃO DE ROSÁRIO, P; DAL RI, L; HAMMERSCHMIDT, D (coord.), p. 215 – 236 *Direito Constitucional Luso e Brasileiro na Contemporaneidade*, 215-236. Juruá, Brasil: Juruá Editora, 2019.

BOYD, DR. ´The Right to a Healthy and Sustainable Environment´ in ABUILA, Y.; VINÑUALES, JE (eds.) *A Global Pact for the Environment – Legal Foundations* (Cambridge: C-EENRG, 2019) Disponível em: https://globalpactenvironment.org/uploads/Aguila-Vinuales-A-Global-Pact-for-the-Environment-Cambridge-Report-March-2019.pdf. Acesso em: 9 January 2021.

BOYD, DR. ´The Implicit Constitutional Right to Live in a Healthy Environment´ (2011) 20 (2) *Review of European, Comparative and International Environmental Law - RECIEL* 171

BURCKHARDT, P.; GEORGE, A. ´Business and Human Rights - What Swiss companies need to know´ (November 2017) Newsletter. Disponível em: https://s3.amazonaws.com/documents.lexology.com/3864b4c5-47a1-40ab-8e79-826845016f24.pdf. Acesso em: 9 January 2021.

COUNCIL OF THE EUROPEAN UNION. Forest Law Enforcement, Governance and Trade (FLEGT) Regulation (Council Regulation (EC) No 2173/2005).

DALY, E. ´Environmental Constitucionalism in Defense of Nature´ (2018) 53 *Wake Forest Law Review* North Carolina, 667

DAY, GR. ´Private Solutions to Global Crises´ (New York St. John´s University, 2015) 1079

DUVIC, P.; LESLIE, A ´Prevention´ In: ABUILA, Y.; VIÑUALES, JE (eds.) *A Global Pact for the Environment – Legal Foundations* (Cambridge: C-EENRG, 2019), 59

EBEDKU, K. ´Constitutional Right to a Healthy Environment and Human Rights Approaches to Environmental Protection in Nigeria - Gbemre v. Shell Revisited´ (2007) 16 (3) *RECIEL* 312

EPINEY, A; DIEZIG, S; PIRKER, B; REITEMEYER, S. Annotations Aarhus Convention. Ed: Helbing Lichtenhahn. Basel (2018)

EUROPEAN COALITION FOR CORPORATE JUSTICE ASBL. ´Key Features of Mandatory Human Rights due diligence legislation, ECCJ Position Paper´ (2018). Disponível em: https://corporatejustice.org/eccj-position-paper-mhrdd-final_june2018_3.pdf meanwhile more updated: https://corporatejustice.org/news/final_cso_eu_due_diligence_statement_2.12.19.pdf Acesso em: 9 January 2021.

EUROPEAN COALITION FOR CORPORATE JUSTICE (ECCJ) ´Access to Justice´ Disponível em: https://corporatejustice.org/priorities/14-access-to-justice. Acesso em: 9 January 2021.

EUROPEAN COMMISSION. ´Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions - Environmental Implementation Review 2019: A Europe that protects its citizens and enhances their quality of life´, COM (2019) 149 final (4.4.2019) 16. Disponível em: http://ec.europa.eu/environment/eir/pdf/eir_2019.pdf. Acesso em: 9 January 2021.

EUROPEAN COMMISSION (2017) 2616 final ´Communication from the Commission of 28.4.2017, Commission Notice on Access to Justice in Environmental Matters Brussels´.

EUROPEAN COURT OF JUSTICE, JUDGMENT OF THE COURT (Fourth Chamber) 12 May 2011. Case C-115/09 Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen eV v Bezirksregierung Arnsberg, ECLI:EU:C:2011:289.

EUROPEAN PARLIAMENT AND COUNCIL. Regulation (EC) 1367/2006 of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies.

EUROPEAN PARLIAMENT AND COUNCIL. Regulation (EU) 2017/821, 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.

EUROPEAN PARLIAMENT AND COUNCIL. EU Timber Regulation (Regulation (EU) No 995/2010)

EUROPEAN TRADE UNION CONFEDERALTION. ´ETUC Position for a European directive on mandatory Human Rights due diligence and responsible business conduct´ Adopted at the Executive Committee Meeting of 17-18 December 2019, 7 Disponível em: https://www.etuc.org/sites/default/files/document/file/2019-12/ETUC%20Position%20for%20a%20European%20directive%20on%20mandatory%20Human%20Rights%20due%20diligence%20and%20responsible%20business%20conduct%20adopted_0.pdf.Acesso em: 9 January 2021.

FABIUS, L. ´Preface´. In ABUILA, Y.; VINÑUALES, JE (eds.) *A Global Pact for the Environment – Legal Foundations* (Cambridge: C-EENRG, 2019). Disponível em: https://globalpactenvironment.org/uploads/Aguila-Vinuales-A-Global-Pact-for-the-Environment-Cambridge-Report-March-2019.pdf. Acesso em: 9 January 2021.

GERMAN FEDERAL PARLIAMENT. ´Die Verbandsklage im Naturschutz- und Umweltrecht, Historische Entwicklung, europarechtliche Vorgaben, Klageberechtigung´ ('The collective lawsuit in nature conservation and environmental law, historical development, European law requirements, right to initiate and pursue the proceedings') (WD 7-3000-208/18 Scientific services 2018) 14.

GRABOSCH, R ´Initiative Lieferkettengesetz, Rechtsgutachten zur Ausgestaltung eines Lieferkettengesetzes´ ('Initiatives in supply chain law: legal opinion for the design of a supply chain law') (2020) 14-17. Disponível em: https://lieferkettengesetz.de/wp-content/uploads/2020/02/Initiative-Lieferkettengesetz_Rechtsgutachten_final.pdf. Acesso em 9 January 2021

GRANT, E. ´Judicial implementation of rights-based approaches to environmental governance: Regional Perspectives´ in DALY, E. (eds), *New Frontiers in Environmental Constitutionalism* (United Nations Environment Programme, 2017), 198

HUMAN RIGHTS COUNCIL, OEIGWG, open-ended intergovernmental working group, chairmanship revised draft (16.7.2019). Disponível em: https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/OEIGWG_RevisedDraft_LBI.pdf. Acesso em: 9 January 2021.

HUMAN RIGHTS COUNCIL, OEIGWG, Global Interparliamentary network supporting the establishment of a Binding Treaty on Transnational Corporations with respect to Human Rights and the Global Campaign have organised a side event on: "UN Binding Treaty: Reflections of members of regional and national parliaments from Europe, Latin America and Asia" (October 2019). Disponível em: https://justice5continents.net/fc/viewtopic.php?qu=720&vplay=1&t=1145&nrvid=4. Acesso em: 9 January 2021.

INTERNATIONAL LAW COMMISSION. ´Draft Articles on the Responsibility of States for Internationally Wrongful Acts´ (2001) UN Doc. A/56/10.

KAMPFFMEYER, N. *et al.* ´Umweltschutz wahrt Menschenrechte - Deutsche Unternehmen in der globalen Verantwortung´ (‘Environmental protection protects human rights - German companies are called to exercise global responsibility’) (2018) 11.

KLINGER, R. ´Ausweitung der Verbandsklage im Umweltbereich – „Trianel“, „Slowakischer Braunbär“ und die Folgen´ (‘Expansion of collective action in environmental issues’) - "Trianel", "Slovak Brown Bear" and the consequences, in KLOEPFER, M. ´Rechtsschutz im Umweltrecht´ (‘Legal protection in environmental law’) (Publisher Duncker & Humblot, 2014) 135

KREBS, D. *et al.* ´Von der menschenrechtlichen zur umweltbezogenen Sorgfaltspflicht, Aspekte zur Integration von Umweltbelangen in ein Gesetz für globale Wertschöpfungsketten´ texte 49/2020, (‘From human rights to environmental due diligence, aspects to integrate environmental concerns into a law for global value chains, on behalf of the Federal

MORROW, K. ´New Frontiers: Europe, Human Rights, and the Environment - The Continuing Need for Innovation´. In DALY, E. (eds.), *New Frontiers in Environmental Constitutionalism* (United Nations Environment Programme, 2017) 36

SADELEER, N. ´Enforcing EUCHR Principles and Fundamental Rights in Environmental Cases´. In: (2012) 81 *Nordic Journal of International Law*. Koninklijke Brill N. V. Países Baixos

SCHERF, CS; GAILHOFER, P; HILBERT, I; KAMPFFMEYER, N and SCHLEICHE, T. ´Umweltbezogene und menschenrechtliche Sorgfaltspflichten als Ansatz zur Stärkung einer nachhaltigen Unternehmensführung´ Environmental and human rights due diligence as a means to strengthen sustainable business conduct, (German Federal Environment Agency 2019) 97. Disponível em: https://www.umweltbundesamt.de/sites/default/files/medien/1410/publikationen/2019-09-03_texte_102-2019_ap_1-unternehmerische-sorgfaltspflichten.pdf. Acesso em: 9 January 2021.

SERRANO, PJ and MARTINEZ, RC. ´The Internalization of Human and Fundamental Rights in the Light of the Modern Concept of Democracy. A Dialogue between Cuba, Portugal and Brazil´ (2017) 9 n. 3 *Revista de Direito da Cidade* City Law Review, 1286

SILVEIRA BORGES, G; FARIAS CARVALHO, MMLC de. ´O novo constitucionalismo latino-americano e as inovações sobre os direitos da natureza na constituição equatoriana´, The new Latin American constitutionalism and the innovations on the rights of nature in the Ecuadorian constitution. Journal of Law Faculty Goias Federal University, (R. Fac. Dir. UFG) v. 43, (2019) p. 1-15.

SIMBAÑA, Floresmilo. El Sumak Kawsay como proyecto político" 247, 249, (2011). HIDALGO-CAPITÁN, Antonio Luis; GUILLÉN GARCÍA, Alejandro; DELEG GUAZHA Nancy (eds.), Antología del Pensamiento Indigenista Ecuatoriano sobre Sumak Kawsay. Huelva y Cuenca – 2014. Disponível em. https://dspace.ucuenca.edu.ec/bitstream/123456789/21745/1/Libro%20Sumak%20Kawsay%20Yuyay.pdf. Acesso em: 9 January 2021.

STOPISDS.ORG AND CCFD TERRE SOLIDAIRE. ´"A la carte" justice for transnational corporations? Position Paper´ (2019). GIN, global Interparliamentary network ´Representatives worldwide supporting the un binding treaty on transnational corporations with respect to human rights´. Disponível em: https://bindingtreaty.org/. Acesso em: 9 January 2021.

UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE (UNECE). Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted on 25 June 1998 entered into force on 30 October 2001)

UNITED NATIONS ENVIRONMENTAL ASSEMBLY, UNEA, Implementation of General Assembly resolution 73/333, entitled "Follow-up to the report of the ad hoc open-ended working group established pursuant to General Assembly resolution 72/277". Disponível em: https://environmentassembly.unenvironment.org/follow-up-on-ga-res-73-333. Acesso em: 9 January 2021.

UNITED NATIONS GENERAL ASSEMBLY. A/RES/73/333, 5 September 2019. Disponível em: https://undocs.org/en/A/Res/73/333. Acesso em: 9 January 2021

UNITED NATIONS GENERAL ASSEMBLY. Human Rights Council, A/HRC/43/53 (30 December 2019) ´Right to a healthy environment. Good practices, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment´

UNITED NATIONS GENERAL ASSEMBLY. Resolution 17/4 of 16 June 2011. United Nations Guiding Principles for Business and Human Rights Disponível em: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf. Acesso em: 9 January 2021.

UNITED NATIONS GENERAL ASSEMBLY. A/73/188 ´Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment´ (19 July 2018). Disponível em: https://undocs.org/A/73/188. Acesso em: 9 January 2021.

UNITED NATIONS GENERAL ASSEMBLY, Human Rights Council, A/HRC/28/61 (3 February 2015) ´Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, Compilation of good practices´. Disponível em: https://www.cepal.org/sites/default/files/a_hrc_28_61_en.pdf. Acesso em: 9 January 2021.

UNITED NATIONS GENERAL ASSEMBLY, Human Rights Council, A/HRC/RES/26/9 (14 July 2014) ´Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights: "Decides that the open-ended intergovernmental working group shall hold its first session for five working days in 2015, before the thirtieth session of the Human Rights Council…". Disponível em: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/082/52/PDF/G1408252.pdf?OpenElement. Acesso em: 9 January 2021

UNITED NATIONS GENERAL ASSEMBLY, Human Rights Council, A/HRC/43/55 (9 January 2020) ´Report on the fifth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human right´ p 10. Disponível em: https://ap.ohchr.org/documents/E/HRC/other/A_HRC_43_55%20E.pdf.

ZSCHIESCHE, M. and SCHMIDT, A. ´Verbandsklagen im Natur- und Umweltschutzrecht 2011 und 2012 unter Berücksichtigung der Entwicklung von 2007 bis 2010´ (‘Class actions under the nature and environmental protection laws of 2011 and 2012 taking into account the developments from 2007 to 2010’), *Eine empirische Untersuchung im Auftrag des Bundesamtes für Naturschutz,* ('An empirical study commissioned by the Federal Agency for Nature Conservation’) (2013).