

China's Practice in Regulating Corporate Human Rights Due Diligence from the Perspective of Climate Change

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Abstract: *The international community, based on the United Nations Guiding Principles on Business and Human Rights (hereinafter referred to as the Guiding Principles), is increasingly calling for strengthened corporate climate accountability. Climate due diligence, as a new dimension of corporate human rights due diligence, has become an “overlapping consensus” and normative expression of the international community regarding corporate climate responsibilities. Climate due diligence is a mechanism that all types of businesses should continuously implement in light of specific contexts to identify, prevent, address, and disclose climate risks and the resulting negative impacts on human rights. It is characterized by continuity, extensiveness, contextuality, scientificity, and duality, and includes formulating climate policies, assessing and addressing climate risks, following up on response measures, disclosing climate information, and taking remedial actions. China has not only repeatedly clarified its firm stance on regulating corporate climate responsibilities at the global, regional, and national levels but also urged and required Chinese enterprises to fulfill their climate responsibilities through a series of laws, regulations, and policy documents, while establishing a relatively sound remedy system for corporate climate-related infringements. Although China has initially built a “climate due diligence” system that aligns with the normative expectations of the United Nations, it is still necessary to further improve and strengthen the implementation of existing rules. This will promote the legalization, standardization, and systematization of Chinese enterprises’ climate responsibilities, and enable China to tell its story — on addressing the global climate crisis, enhancing human rights protection, and strengthening corporate climate accountability — in a language that the international community is willing to accept and easy to understand.*

Keywords: business and human rights ♦ corporate climate responsibility ♦ human rights due diligence ♦ climate due diligence

I. Introduction

Extreme weather events induced by climate change, such as floods, droughts, and typhoons, pose severe threats to human rights, including the right to life, the right

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to work, the right to water, and the right to health, presenting systemic challenges to global human rights governance.¹ Climate science research indicates that contemporary global climate change is primarily driven by the irresponsible development models of a limited number of countries and transnational corporations. The collective emissions of the top 100 global corporate emitters account for 71% of total global greenhouse gas emissions from 1988 to 2016.² Anthropogenic climate change caused by business and industrial activities has constituted one of the greatest threats to human rights in the 21st century.³ Against this backdrop, an international consensus has emerged that enterprises should bear responsibilities for climate and human rights impacts, with “climate due diligence” becoming the common expression for the international community’s varying requirements for corporate climate responsibility. Climate due diligence is a normative concept developed through a holistic approach, which “interprets the standards of conduct for human rights due diligence based on the complementary principles derived from environmental law, climate law, and human rights law.”⁴ It represents a management mechanism that all types of business enterprises should continuously implement, tailored to their specific circumstances, to identify, prevent, disclose, and address climate-related risks and their consequent adverse impacts on human rights. Currently, climate due diligence is rapidly evolving into a transnational social norm and is even being transformed into a legally binding regulatory system in some countries and regions. In the context of increasingly prominent values-based trade globally, both the Chinese government and Chinese enterprises should pay close attention to the opportunities and challenges arising from this normative development.

China is a significant participant and contributor to global governance and has made substantial contributions to promoting responsible business conduct and sustainable development. However, as discursive power in global governance has long been dominated by Western nations, some countries, aiming to suppress China’s development, disregard its achievements and contributions in the aforementioned areas, and even frequently employ discursive hegemony to pressure the Chinese government and enterprises. As an emerging “global language,” “climate due diligence” may present an opportunity to demonstrate the Chinese government’s firm stance and concrete actions in advancing responsible business conduct and sustainable development, thereby enhancing China’s influence and discourse power in global business and human rights governance. While the international academic community in the field of business and human rights has taken the lead in researching climate due diligence, Chinese scholarship remains in an exploratory phase. Although some scholars have discussed corporate responsibilities from perspectives such as

¹ Ed. Bai Guimei, *Human Rights Law* (Beijing: Peking University Press, 2023): 335-337.

² Paul Griffin, *The Carbon Majors Database CDP Carbon Majors Report 2017*, page 8, accessed July 31, 2023, <https://cdn.cdp.net/cdp-production/cms/reports/documents/000/002/327/original/Carbon-Majors-Report-2017.pdf?1501833772>.

³ UN Office of the High Commissioner for Human Rights, *Understanding Human Rights and Climate Change*, 6, accessed July 31, 2023, <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/COP21.pdf>.

⁴ Chiara Maggi, “The Climate Change Dimension of Business and Human Rights: The Emerging Concept of ‘Climate Due Diligence,’” trans. Li Zhuolun, *Human Rights* 4 (2022): 139.

environmental liability,⁵ the low-carbon economy,⁶ climate-human rights linkages,⁷ and the context of the dual carbon goals,⁸ occasionally referencing concepts like corporate “carbon responsibility” and “climate due diligence,”⁹ few have conducted dedicated research on the conceptual essence and normative implications of climate due diligence. There is also a lack of systematic study on the regulatory practices concerning climate due diligence by Chinese enterprises. Consequently, this paper attempts to deepen research on the theory and Chinese practice of climate due diligence. After summarizing the normative content of corporate climate due diligence, this paper will systematically review the specific practices of regulating climate due diligence in China, examine the strengths and weaknesses of these regulatory practices against relevant UN standards, and propose recommendations for improvement and directions for action. The objective is to assist China in promoting responsible business conduct within global supply chains, showcase its successful experiences in addressing climate change and implementing climate due diligence to the international community, enhance its institutional discourse power in global business and human rights governance, and strengthen the capacity of Chinese enterprises to fulfill their human rights and climate due diligence obligations.

II. The Normative Evolution of Corporate Human Rights Due Diligence in the Context of Climate Change

To effectively address the “governance gap” in business and human rights, the *United Nations Guiding Principles on Business and Human Rights* (hereinafter referred to as the *Guiding Principles*) introduced the core concept of human rights due diligence.¹⁰ Human rights due diligence is a continuous process that all business enterprises should undertake to identify, mitigate, disclose, and address human rights risks based on specific contexts. It serves as the cornerstone of corporate human rights responsibilities. Although the *Guiding Principles* do not explicitly mention climate change, the increasingly apparent role of “carbon major” in exacerbating global climate change and its resultant adverse human rights impacts has led the international community to recognize that “climate change is a human rights issue, but more

⁵ Cheng Qian and Xu Yawen, “Corporate Environmental Responsibility from a Human Rights Perspective: Concurrently on the Guiding Significance of the ‘Business and Human Rights’ Framework,” *Journal of China University of Geosciences (Social Sciences Edition)* 5 (2015): 1-9.

⁶ Zhao Jingtao, “Low-carbon Economy and Corporate Environmental Responsibility,” *Jilin University Journal Social Sciences Edition* 1 (2010): 132-138.

⁷ Yang Bowen, “On the Legal Regulation of Corporate Environmental Responsibility in the Context of Climate Human Rights Protection,” *Journal of North China Electric Power University (Social Sciences Edition)* 2 (2018): 1-7.

⁸ Zhang Wanhong and Wang Xiaotong, “Corporate Environmental Responsibility from the Perspective of Business and Human Rights: Against the Background of Carbon Peaking and Carbon Neutrality,” *Chinese Journal of Human Rights* 3 (2021): 41-52.

⁹ Zhang Xu, “Corporate Environmental Responsibility from the Perspective of Climate Change: Evolutionary Logic, Development Trends, and Response Strategies,” *The South China Sea Law Journal* 3 (2022); Qian Xiaojun and Gong Yangran, “Carbon Responsibility: A New Stage of Corporate Environmental Responsibility,” *Tsinghua Business Review* 9 (2021): 96-100.

¹⁰ UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, A/HRC/17/31, March 21, 2011.

specifically, a business and human rights issue,”¹¹ which consequently requires solutions grounded in the business and human rights framework. Driven by multiple international and domestic stakeholders, climate due diligence has emerged as an intrinsic dimension of corporate human rights due diligence and is rapidly evolving into a widely recognized international norm, and even a legal institution. However, these practices have not yet clearly defined the concept and essential elements of climate due diligence. This section will clarify the conceptual meaning and fundamental components of climate due diligence based on existing research and practice, thereby laying the groundwork for the subsequent review and assessment of the regulatory practices concerning climate due diligence by Chinese enterprises.

A. Climate due diligence: a new dimension of corporate human rights due diligence

Since 2011, the *Guiding Principles*, with human rights due diligence as their core mechanism, have become a transnational social norm reshaping business logic, their meaning and scope continuously refined through practice. As consensus has grown regarding the intrinsic connections between corporate responsibility, climate change, and human rights protection, the international community has increasingly called for enhanced corporate climate accountability based on the *Guiding Principles*. Consequently, human rights-based climate due diligence has developed rapidly,¹² becoming a common expression for various demands urging enterprises to fulfill their climate responsibilities. As early as 2014, the International Bar Association proposed a framework for corporate climate responsibility based on human rights due diligence, including elements such as developing climate policies, implementing due diligence processes, and taking responsive measures.¹³ In 2015, leading global jurists drafted the *Oslo Principles on Global Climate Change Obligations* (hereinafter the *Oslo Principles*),¹⁴ requiring enterprises to fulfill their climate responsibilities through climate impact assessments and climate-related disclosures. Subsequently, they formulated the *Climate Principles for Enterprises*,¹⁵ outlining four categories of corporate climate duties: reducing greenhouse gas emissions from their own operations, reducing emissions associated with their products and services, giving due consideration to emissions from their suppliers, and conducting climate-related disclosure and impact assessments.

In 2016, a UN Special Rapporteur provided a detailed analysis of the systemic linkages between climate change and human rights, citing the *Guiding Principles* to state that enterprises have a responsibility to avoid causing adverse human rights

¹¹ Florian Wettstein, *Business and Human Rights: Ethical, Legal, and Managerial Perspectives* (Cambridge: Cambridge University Press, 2022): 353.

¹² Andreas Hösli and Rolf H. Weber, “Climate Change Reporting and Due Diligence: Frontiers of Corporate Climate Responsibility,” 18 *European Company and Financial Law Review* 6 (2021): 948-979.

¹³ International Bar Association, *Achieving Justice and Human Rights in an Era of Climate Disruption*, July 2014, page 147-149, accessed July 31, 2023,

<https://www.ibanet.org/MediaHandler?id=0F8CEE12-EE56-4452-BF43-CFCAB196CC04>.

¹⁴ *Oslo Principles on Global Climate Change Obligations*, accessed July 31, 2023, <https://globaljustice.yale.edu/sites/default/files/files/OsloPrinciples.pdf>.

¹⁵ Expert Group on Climate Obligations for Enterprises, *The Climate Principles for Enterprises*, Eleven International Publishing (2018).

impacts related to climate change.¹⁶ That same year, the UN Office of the High Commissioner for Human Rights publicly called on enterprises to “be accountable for their climate impacts and to engage responsibly in mitigation and adaptation efforts with full respect for human rights.”¹⁷ In 2018, a UN Special Rapporteur formally submitted the *Framework Principles on Human Rights and the Environment*.¹⁸ This landmark document provided an action guide for enterprises to fulfill their environmental responsibilities and prompted the UN Office of the High Commissioner for Human Rights (OHCHR) to formally clarify the “baseline requirements” for applying the *Guiding Principles* in the context of climate-related human rights, explicitly demanding that enterprises integrate climate considerations into their human rights due diligence processes.¹⁹

The rise of climate change litigation has also provided impetus for the normative development of climate due diligence. The “second-generation climate litigation” that began sweeping the globe in 2013 has exposed an increasing number of enterprises to direct or indirect climate-related litigation risks.²⁰ Beyond demanding that companies adjust their emission behaviors and disclose emission data in line with *Paris Agreement* goals, many cases have attempted to construct legal arguments using human rights norms and theories,²¹ promoting a “rights turn” in climate change litigation. For instance, in the 2019 case of *Milieudefensie et al. v. Royal Dutch Shell PLC*, the plaintiffs, based on a systematic interpretation of the *Guiding Principles* through human rights and climate laws, demanded that Shell assess climate-related adverse impacts within its human rights due diligence process. The District Court of The Hague upheld the plaintiffs’ claim, interpreting the “unwritten duty of care” under the *Dutch Civil Code* in light of the *Guiding Principles*,²² and ordered Shell to ensure its global net carbon emissions were at least 45% lower by 2030 compared to 2019 levels.²³ The court also ruled that, given Shell’s “policy-setting influence” within its group, it bore differing levels of responsibility for emissions from various sources across its value chain.²⁴ In 2020, 14 French cities jointly issued Total Energies with four NGOs, based on the French *Duty of Vigilance Law*, further clarifying the normative attributes of corporate climate due diligence. The plaintiffs

¹⁶ UN 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*, A/HRC/31/52, February 1, 2016, para. 66.

¹⁷ OHCHR, *Key Messages on Human Rights and Climate Change*, July 26, 2016, para. 8, accessed July 31, 2023, https://www.ohchr.org/sites/default/files/KeyMessages_on_HR_CC.pdf.

¹⁸ UN 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*, A/HRC/37/59, January 24, 2018.

¹⁹ OHCHR, *Key Messages on Human Rights, Climate Change and Business*, 2022, accessed July 31, 2023, <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/materials/KMBusiness.pdf>.

²⁰ Gao Lihong, “The Legal Path of Climate Litigation in China: A Comparative Law Study,” *Journal of Shandong University (Philosophy and Social Sciences Edition)* 1 (2022): 170-171.

²¹ Michael Burger and Maria Antonia Tigre, *Global Climate Litigation Report: 2023 Status Review*, accessed January 10, 2024, https://scholarship.law.columbia.edu/sabin_climate_change/202.

²² The District Court of The Hague considered that the *Guiding Principles* are “an internationally recognized and authoritative ‘soft law’ instrument that sets out the responsibilities of states and enterprises with regard to human rights (4.4.11).” Since they reflect global norms and the European Commission’s expectations regarding corporate human rights responsibilities, the *Guiding Principles* “are an appropriate guideline for interpreting unwritten duty of care obligations” (4.4.11). Similarly, regardless of whether Shell has publicly committed to adhering to the *Guiding Principles*, it has an obligation to bear human rights responsibilities independent of governments. See District Court of The Hague, *Milieudefensie et al. v. Royal Dutch Shell PLC*, C/09/571932/HA ZA 19-379, May 26, 2021 (English version), paras. 4.4.11-13.

²³ *Ibid.*, para. 5.3.

²⁴ *Ibid.*, paras. 4.4.16-4.4.39.

argued that Total, as a recognized global “carbon major,” had a due diligence obligation to identify climate risks and implement mitigation measures.²⁵ Although the Paris Court dismissed the case on grounds including the plaintiffs’ lack of standing,²⁶ it demonstrated that the “open-ended due diligence” obligation contained in the *Duty of Vigilance Law* “can be used to comprehensively interpret a company’s duty of care according to various international human rights, environmental, and climate standards.”²⁷ During the ongoing proceedings, Total proactively adopted more stringent climate change strategies.²⁸ Concurrently, France strengthened the implementation of its *Duty of Vigilance Law*, and climate due diligence was incorporated into the latest EU legislation. Thus, globally interconnected climate judicial activism has provided a practical pathway for enhancing corporate climate accountability, serving as a “bridge for the domestic implementation of international norms (concerning corporate climate responsibility).”²⁹

Concurrently, certain countries and regions have begun legislating on corporate climate responsibilities, promoting the institutionalization of climate due diligence. The European Union is one of the earlier jurisdictions to enact corporate climate due diligence legislation. In 2022, the EU promulgated the *Corporate Sustainability Reporting Directive* (CSRD), requiring in-scope enterprises to disclose non-financial information related to climate change mitigation and adaptation, biodiversity, and other matters concerning their production and operational activities, business relationships, and specific supply chains.³⁰ More recently, in 2024, the EU formally adopted the *Corporate Sustainability Due Diligence Directive* (CSDDD). Beyond imposing environmental and human rights due diligence obligations on specific enterprises by reference to mandatory human rights due diligence legislation in member states, the CSDDD also establishes a corporate climate due diligence obligation. It requires specific enterprises to develop and effectively implement a “climate change mitigation transition plan” to ensure their business models and strategies align with the climate objectives set by the *Paris Agreement* and the *European Climate Law*.³¹ The CSRD and CSDDD complement each other,

²⁵ Aline Robert, “Oil Giant Total Sued for ‘Climate Inaction’ in France’s First Climate Case,” January 29, 2020, accessed July 31, 2023, <https://www.euractiv.com/section/climate-environment/news/oil-giant-total-sued-for-climate-inaction-in-frances-first-climate-case/>.

²⁶ Business & Human Rights Resource Centre, “Climate Change Trial against TotalEnergies: A Worthy Ruling that the Action Brought by Associations and Local Authorities is Inadmissible,” July 6, 2023, accessed July 31, 2023, <https://www.business-humanrights.org/en/latest-news/france-une-action-contre-totalenergies-pour-inaction-climatique-jug%C3%A9-irrecevable/>.

²⁷ Chiara Maggi, “The Climate Change Dimension of Business and Human Rights,” 142.

²⁸ “Total Energies Reports on the Progress Made in 2021 and Expands Its Ambition towards Carbon Neutrality,” *Business Wire*, March 24, 2022, accessed July 31, 2023, <https://www.businesswire.com/news/home/20220324005819/en/TotalEnergies-Reports-on-the-Progress-Made-in-2021-and-Expands-Its-Ambition-towards-Carbon-Neutrality>.

²⁹ Ludovica Chiussi Curzi, “Climate Change and Its ‘Grotian’ Effects on a Principle of Corporate Liability in International Law,” 25 *International Community Law Review* 3-4 (2023): 328.

³⁰ Directive (EU) 2022/2464 of the European Parliament and of the Council of December 14, 2022 amending Regulation (EU) No.537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (Text with EEA relevance), PE/35/2022/REV/1, OJ L 322, December 16, 2022.

³¹ European Parliament, “Due Diligence: MEPs Adopt Rules for Firms on Human Rights and Environment,” April 24, 2024, accessed April 28, 2024, <https://www.europarl.europa.eu/news/en/press-room/20240419IPR20585/due-diligence-meps-adopt-rules-for-firms-on-human-rights-and-environment; Full text available at:>

establishing the normative foundation for corporate climate accountability in the EU through the dual dimensions of climate information disclosure and climate due diligence obligations. Furthermore, an increasing number of countries have enacted laws and regulations requiring enterprises to disclose climate information or take substantive measures to address climate change and its adverse impacts. According to statistics, over 80 countries worldwide have issued nearly 400 ESG-related normative documents, with climate change being a key indicator in ESG reporting.³² The *French Climate and Resilience Law* of 2021 requires specific enterprises to disclose the climate impact of their activities and the use of their goods and services, as well as their social commitments regarding sustainable development and the circular economy. It explicitly makes the development and implementation of human rights due diligence and the lawful disclosure of climate and other non-financial information a condition for eligibility in public procurement.³³ In October 2023, the US state of California enacted corporate climate transparency bills, requiring specific enterprises to assess their carbon footprint, disclose carbon information, and explain how they manage climate-related risks.³⁴ Some developing countries have also begun legislating on corporate climate responsibility. For example, Uganda's *National Climate Change Act* of 2021 requires relevant departments to establish a corporate climate accountability system, specifying the content of corporate climate obligations and mechanisms for supervision and enforcement.³⁵

Against this backdrop, the UN Human Rights Council's Working Group on Business and Human Rights has formally interpreted the applicability of the *Guiding Principles* in the context of climate change, detailing corporate human rights responsibilities in this setting.³⁶ The 2023 revised *OECD Guidelines for Multinational Enterprises* also require enterprises, within the "Environment" chapter, to integrate climate change into their "risk-based due diligence" systems and take appropriate measures to improve their environmental and climate performance.³⁷ Evidently, climate change and human rights issues continue to merge in law and practice. Climate due diligence is gradually becoming the "overlapping consensus"

https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/JURI/DV/2024/03-19/8_ANNEXC OREPERletterCSDD15_03_2024_EN.pdf, Article 15.

³² John Niemoller, "25 ESG Statistics You Need to Know in 2023," January 6, 2023, accessed July 31, 2023, <https://www.perillon.com/blog/esg-statistics#:~:text=The%20number%20of%20ESG%20reporting%20provisions%20issued%20by,in%20the%2080%20countries%20included%20in%20the%20study>.

³³ Loi no 2021-1104 du 22 août 2021 portant lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets, Articles 35 and 138, accessed July 31, 2023, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043956924>.

³⁴ Brent W. Thompson, "California's Climate Disclosure Requirements: An Overview of Senate Bills 253 and 261," California Lawyers Association, November 2023, accessed January 10, 2024, <https://calawyers.org/business-law/californias-climate-disclosure-requirements-an-overview-of-senate-bills-253-and-261/>.

³⁵ The Republic of Uganda, *The National Climate Change Act 2021*, Articles 23 and 26, accessed July 31, 2023, https://cdn.climatepolicyradar.org/navigator/UGA/2021/national-climate-change-act-2021_54d82dea4d1d85dca314a17cba045210.pdf.

³⁶ Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Information Note on Climate Change and the Guiding Principles on Business and Human Rights*, June 2023, accessed July 31, 2023, <https://www.ohchr.org/sites/default/files/documents/issues/business/workinggroupbusiness/Information-Note-Climate-Change-and-UNGPs.pdf>.

³⁷ *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, 2023 edition, accessed July 31, 2023, <https://mneguidelines.oecd.org/mneguidelines/>.

and normative expression of international expectations for corporate climate responsibility. This “emerging climate due diligence obligation is becoming one of the latest trends in corporate human rights due diligence legislation,”³⁸ potentially heralding a “Grotian Moment” that facilitates a paradigm shift in corporate climate responsibility.³⁹

B. Conceptual characteristics of climate due diligence

As climate due diligence is an inherent dimension of human rights due diligence, it can be defined based on the latter as follows: a risk management mechanism that all types of business enterprises should continuously implement, tailored to their specific circumstances, to identify, prevent, address, and disclose the risks that their related business activities and relationships will exacerbate the impacts of climate change and consequently cause adverse effects on human rights. Climate due diligence shares the general characteristics of human rights due diligence but also possesses its own specificities.

First, the continuous nature of human rights due diligence means that it should be integrated throughout business operations, relationships, or specific projects.⁴⁰ Unless the relevant business and operational context remains unchanged, enterprises should conduct human rights due diligence on an ongoing and recurring basis. This characteristic of continuity requires enterprises to integrate climate due diligence into the entire human rights due diligence process, continuously assessing and promptly addressing climate risks throughout the lifecycle of their operations, relationships, or specific projects.

Second, the comprehensive nature of human rights due diligence is reflected in its application to all business enterprises, to both actual and potential human rights risks, and to human rights risks that enterprises may cause or contribute to through their own activities or that are linked to their business relationships.⁴¹ In the context of climate due diligence, comprehensiveness implies diversity in terms of the obligated entities, scope, and content. First, all business enterprises, including “carbon majors” and micro-emitters, should perform climate due diligence. Since the “climate crisis is triggered by the accumulated emissions from numerous actors with small individual footprints,”⁴² the “*Guiding Principles* do not allow enterprises to claim exemption from climate due diligence based on relatively low emission levels.”⁴³ Therefore, effectively addressing the climate crisis requires both strengthening accountability for “carbon majors” and obliging other enterprises to bear responsibilities according to the principle of proportionality. Second, comprehensiveness requires enterprises to assume responsibility for actions that exacerbate climate risks across different scopes. That is, enterprises need to be accountable for climate risks they “cause” through their own activities, those they

³⁸ Li Zhuolun, “A Review of Corporate Human Rights Due Diligence Legislation in the EU and Its Member States,” *Chinese Journal of Human Rights* 2 (2022): 65.

³⁹ Ludovica Chiussi Curzi, “Climate Change and Its ‘Grotian’ Effects on a Principle of Corporate Liability in International Law,” 316-332.

⁴⁰ UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, A/HRC/17/31, March 21, 2011, principle 17.

⁴¹ *Ibid.*, principles 17-18.

⁴² Florian Wettstein, *Business and Human Rights: Ethical, Legal, and Managerial Perspectives*, 355-356.

⁴³ Chiara Maggi, “The Climate Change Dimension of Business and Human Rights,” 158.

“contribute to,” and those “directly linked to” their business relationships. Furthermore, as biodiversity loss weakens humanity’s capacity to cope with climate change, the international community is increasingly emphasizing corporate responsibility regarding biodiversity.⁴⁴ Consequently, it is necessary for enterprises to incorporate indirect climate risk factors, such as biodiversity, into their climate due diligence systems.

Third, the context-specific nature means that while all enterprises should perform human rights due diligence, the substantive and procedural elements of such due diligence will differ depending on the specific context.⁴⁵ Thus, although all types of enterprises share the responsibility to address climate change, the content and scope of their responsibilities vary according to their emission profiles and degree of responsibility. The ruling in *Milieudefensie et al. v. Royal Dutch Shell PLC* demonstrates that there is no one-size-fits-all “correct emissions reduction path;” enterprises have the right to autonomously design and implement their climate policies in accordance with international standards.⁴⁶ As long as a specific enterprise diligently adopts due diligence measures proportionate to its capacity and the severity of the risks, among other objective circumstances, it is considered to have fulfilled its climate due diligence obligations. Simultaneously, the context-specific nature also requires enterprises to pay particular attention to the adverse impacts of their actions on disadvantaged groups, emphasizing the internal diversity among disadvantaged and marginalized populations when identifying and addressing human rights and climate risks.

Climate due diligence is also characterized by its scientific nature and dual nature. The complexity and uncertainty inherent in climate change issues necessitate that enterprises base their climate due diligence on scientific evidence and engage in evidence-based decision-making. The *Oslo Principles* state that enterprises should reduce their greenhouse gas emissions based on levels established through the assessments of authoritative climate change experts. The 2023 version of the *OECD Guidelines for Multinational Enterprises* explicitly requires enterprises to ensure their environmental policies are aligned with scientific and technical standards when formulating and implementing them.⁴⁷ Interpretations of the *Guiding Principles* by the Human Rights Council also mandate that enterprises adopt scientifically-grounded, verifiable methods supported by expert technical input to identify their Scope 1 to 3

⁴⁴ As mentioned above, the OECD officially incorporated climate change and biodiversity into the *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* in 2023, requiring companies to conduct due diligence. Additionally, on July 6, 2023, the world’s largest sovereign wealth fund — Norway’s Government Pension Fund Global — removed PowerChina from its investment portfolio, citing that the Batang Toru hydropower project “poses a serious threat to the survival of orangutans and other critically endangered species”. This move may further drive biodiversity to become a new dimension of value investing, which deserves attention from both the Chinese government and enterprises. See Council on Ethics, Power Construction Corp China Ltd, July 6, 2023, accessed July 31, 2023, <https://etikkradet.no/power-construction-corp-china-ltd-2/>.

⁴⁵ UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, A/HRC/17/31, March 21, 2011, principle 17(b).

⁴⁶ District Court of The Hague, *Milieudefensie et al. v. Royal Dutch Shell PLC*, C/09/571932/HA ZA 19-379, May 26, 2021 (English version), para. 4.4.39.

⁴⁷ *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, 2023 edition, accessed July 31, 2023, <https://mneguidelines.oecd.org/mneguidelines/>, page 34-35.

greenhouse gas emissions. Therefore, enterprises must assess climate risks, develop climate policies, and implement climate actions based on climate science research findings and relevant measurement standards. The dual nature refers to the requirement for climate due diligence to address both the opportunities and challenges that climate change presents to business operations, and the potential negative impacts of enterprise activities on the natural environment and stakeholders. This duality originates from the “double materiality principle” in sustainability reporting. Given that international expectations for corporate climate responsibility are gradually shifting from procedural disclosure to substantive due diligence, and considering this principle promotes the synergistic development of corporate economic and social benefits, it can be regarded as a fundamental principle of climate due diligence.

C. The essential elements of climate due diligence

The essential elements of climate due diligence constitute the fundamental steps that enterprises must undertake in their implementation. Human rights due diligence typically consists of four core components: identifying and assessing actual and potential adverse human rights impacts; taking measures to prevent and mitigate such impacts; tracking and monitoring the effectiveness of the response measures; and disclosing how the enterprise addresses these impacts.⁴⁸ Since a corporate human rights policy commitment is a prerequisite for conducting human rights due diligence, and providing remediation is a necessary extension of its implementation, climate due diligence — as an inherent dimension of human rights due diligence — should encompass six fundamental elements: establishing a climate policy, assessing climate risks, addressing climate risks, tracking the effectiveness of responses, disclosing climate information, and providing remediation.

First, a climate policy is a public statement through which an enterprise communicates its climate vision, strategy, and commitment to respecting human rights in the context of climate change. It serves as a necessary prerequisite for embedding respect for human rights and sustainable development into corporate culture and acts as the “top-level design” for effectively integrating and implementing human rights and climate due diligence. First, a corporate climate policy should meet five procedural requirements: it a) is approved at the most senior level of the business enterprise; (b) is informed by relevant internal and/or external expertise; (c) stipulates the enterprise’s human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services; (d) is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties; (e) is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.⁴⁹ Second, the content of a corporate climate policy includes the dual dimensions of setting climate targets and defining clear climate commitments. Enterprises should establish quantifiable “dual-carbon targets” based on the climate goals of the *Paris Agreement*, national climate strategies, and their specific operational contexts. Simultaneously, enterprises should also

⁴⁸ UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, A/HRC/17/31, March 21, 2011, principle 17 and commentary.

⁴⁹ *Ibid.*, principle 16 and commentary.

commit to: (1) not promote unsustainable consumption or undertake greenwashing; (2) link incentives for directors and executives with positive performance in combating climate change; (3) phase out both the use of fossil fuels and the production of greenhouse gas emissions; and (4) ensure their value chains and practices are in line with the goal of achieving a just transition to a zero-carbon economy.⁵⁰

Second, assessing climate risks. First, enterprises need to comprehensively assess climate risks associated with their own operations, business relationships, and value chains. They should categorize these risks according to the definitions of “cause,” “contribute to,” and “directly linked to,” referencing climate science standards such as the *Greenhouse Gas Protocol*.⁵¹ Second, enterprises should integrate climate risk assessment into the “six-step” strategy outlined in *Guiding Principles* 18: (1) conduct ex-ante assessments of direct and indirect climate risks of enterprise activities, e.g., whether GHG emissions comply with legal requirements (direct risk) or if business activities could cause biodiversity loss (indirect risk); (2) identify potentially affected stakeholder groups; (3) aggregate human rights, environmental, and climate standards, and inventory the key concerns of local communities; (4) anticipate potential adverse impacts on stakeholders resulting from business activities and relationships; (5) while conducting the preceding four steps, fully consider the “context-specific” nature, assessing the impacts of enterprise activities on vulnerable and marginalized groups, and integrating a gender perspective;⁵² and (6) to ensure the comprehensiveness and accuracy of the risk assessment results, enterprises should engage in dialogue with stakeholders throughout the assessment process.

Third, addressing climate risks. After assessing risks and mapping the risk profile, enterprises need to promptly take targeted measures to prevent and mitigate risks and provide remediation when harm has occurred. First, enterprises should adopt targeted measures for different types of risky conduct. When an enterprise “causes” or “contributes to” an adverse impact, it should cease the infringing activity and take corrective and remedial measures. In “contribution” scenarios, the enterprise should also use its “leverage” to halt the infringement and mitigate the adverse impact.⁵³ When an enterprise is “directly linked to” an infringement through its operations or value chain relationships, it needs to exercise and develop its “leverage” to halt the infringement and mitigate the adverse impact. The typology of corporate infringements in the *Guiding Principles* corresponds, to some extent, to the “three scopes” of the *Greenhouse Gas Protocol*. In summary, Scope 1 encompasses direct emissions from sources owned or controlled by the enterprise; Scope 2 includes

⁵⁰ Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Information Note on Climate Change and the Guiding Principles on Business and Human Rights*, June 2023, accessed July 31, 2023, <https://www.ohchr.org/sites/default/files/documents/issues/business/workinggroupbusiness/Information-Note-Climate-Change-and-UNGPs.pdf>, paras. 18-19.

⁵¹ *Ibid.*, para. 17(d).

⁵² Li Zhuolun, “Corporate Social Responsibility from a Feminist Legal Perspective: Concurrently on the Guiding Significance of the ‘Business and Human Rights Principles,’” in *Anti-discrimination Review No.9*, ed. Liu Xiaonan and Wang Liwan (Beijing: Social Sciences Academic Press, 2022), 202-223.

⁵³ In the context of corporate human rights responsibilities, “leverage” refers to a company’s ability to influence or exacerbate improper practices by a party due to its commercial position and bargaining power. See UN Office of the High Commissioner for Human Rights, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, HR/PUB/12/02, (2012): 48.

indirect emissions from the generation of purchased electricity, steam, heating, or cooling; Scope 3 covers all other indirect emissions that occur in the enterprise's value chain. Typically, an enterprise bears direct responsibility for emissions in "Scope 1" and "Scope 2" falling within its corporate group, fulfilling this responsibility by ceasing emissions, improving process technologies, using clean energy, etc. When "Scope 2" emissions fall outside the enterprise's group, the enterprise should bear responsibility consistent with its approach to "Scope 3,"⁵⁴ namely using its "leverage" to prevent or reduce emissions and mitigate associated adverse human rights impacts. After determining the scope of responsibility, the enterprise should internalize the response measures into all departments and processes of its operations through internal decision-making, ensuring sufficient budgeting and robust oversight procedures to implement climate risk response measures effectively.⁵⁵

Fourth, tracking response measures. Enterprises should evaluate and review the effectiveness of their response measures to confirm whether the climate policy has been properly implemented and whether adverse impacts caused by exacerbating climate change have been eliminated. *Guiding Principles 20* requires enterprises to adopt appropriate quantitative and qualitative indicators and, where appropriate, draw on feedback from internal and external sources to track the implementation effectiveness of response measures. Given that "human rights" themselves are difficult to quantify and qualitative analysis may be subject to bias and omissions, enterprises should employ a combination of quantitative and qualitative methods to ensure the assessment results are accurate, comprehensive, and objective. Enterprises may consider using the number of grievances received and related lawsuits as reference indices for quantitative assessment, while qualitative assessment is typically conducted through questionnaires and interviews, among other methods. Simultaneously, enterprises should establish and improve internal and external evaluation channels, ensuring, in particular, the effective participation of vulnerable or marginalized groups in the assessment process. Enterprises can also engage professional third-party organizations to conduct verification, which can comprehensively evaluate the implementation effectiveness of the enterprise's response strategies, identify potential risk exposures, and enhance the authenticity and credibility of the internal assessment results.

Fifth, disclosing climate information. *Guiding Principles 21* requires that disclosures take a form and frequency commensurate with the enterprise's impact, ensure the comprehensiveness and accessibility of the disclosed information, avoid creating risks for affected groups and individuals, and avoid unlawfully disclosing commercial secrets. Since accurate and truthful information is a prerequisite for

⁵⁴ Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Information Note on Climate Change and the Guiding Principles on Business and Human Rights*, June 2023, accessed July 31, 2023,

<https://www.ohchr.org/sites/default/files/documents/issues/business/workinggroupbusiness/Information-Note-Climate-Change-and-UNGPs.pdf>, para. 17(g).

⁵⁵ UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, A/HRC/17/31, March 21, 2011, principle 19 and commentary.

internal and external communication and the effective participation of stakeholders, information disclosure should be integrated throughout the entire climate due diligence process, including climate policy formulation, climate risk assessment, response, tracking, and remediation. In this process, enterprises should ensure accessible channels for information acquisition, providing the necessary information for evaluating the effectiveness of their climate change response measures. Also, they commit to transparency in communicating scientific assessment results and stakeholder consultation processes.⁵⁶ The continuous nature of climate due diligence indicates that information disclosure should not be viewed as the final step of the process, but rather as the endpoint of one phase of due diligence management and the starting point of a new cycle. Only by continuously conducting climate due diligence through the closed loop of “assessment-implementation-feedback-disclosure” can its instrumental value in preventing and addressing risks be fully realized.

Sixth, providing remediation. The *Guiding Principles* categorize remediation mechanisms into “state-based judicial mechanisms,” “state-based non-judicial grievance mechanisms,” and “non-state-based grievance mechanisms.”⁵⁷ Following a climate-related rights infringement, the primary obligation of the enterprise is not to hinder the affected rights-holders from seeking remedy through state-based judicial mechanisms or state-based non-judicial mechanisms. In cases involving potential criminal offenses, enterprises should actively cooperate with judicial authorities, striving to provide remediation to affected parties through compliance reforms, prevent escalation of risks, and seek leniency. Second, enterprises should establish or participate in operational-level grievance mechanisms. These mechanisms, falling under “non-state-based grievance mechanisms,” are a critical component of the corporate climate due diligence process. They can unblock communication channels between the enterprise and affected groups⁵⁸ and help the enterprise adopt remedial measures that best meet stakeholder expectations. Simultaneously, operational-level grievance mechanisms also serve functions of risk identification and prevention, helping enterprises promptly understand the interests and concerns of affected groups, and taking timely measures to prevent escalation of conflicts and exacerbation of harm. Enterprises can provide operational-level grievance channels by establishing hotlines, online grievance platforms, anonymous mailboxes, etc., or by collaborating with industry associations, multi-stakeholder initiatives, nongovernmental organizations, and others to establish such mechanisms. Beyond adhering to the criteria outlined in *Guiding Principles* 31 — legitimacy, accessibility, predictability, equity, transparency, rights-compatibility, a source of continuous learning, and being

⁵⁶ Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Information Note on Climate Change and the Guiding Principles on Business and Human Rights*, June 2023, accessed July 31, 2023,

<https://www.ohchr.org/sites/default/files/documents/issues/business/workinggroupbusiness/Information-Note-Climate-Change-and-UNGPs.pdf>, para. 21.

⁵⁷ UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, A/HRC/17/31, March 21, 2011, principle 25 and commentary.

⁵⁸ *Ibid.*, principle 29 and commentary.

based on engagement and dialogue⁵⁹ — enterprises, when establishing and operating operational-level grievance mechanisms, should also uphold the principle of being “rights-holder-centered.” This requires being sensitive to the diverse experiences of rights-holders, providing affordable, adequate, and timely remediation, and ensuring that victims seeking remedy are not targeted, persecuted, or retaliated against.⁶⁰

III. Specific Practices in Regulating Climate Due Diligence of Chinese Enterprises

The state is the core force driving the institutionalization of corporate climate due diligence. As a significant contributor to global climate governance and a key participant and leader in the construction of global ecological civilization, China has made certain achievements in corporate climate accountability. However, academic communities, both domestic and international, have paid insufficient attention to China’s regulatory practices regarding corporate climate responsibility. This section will, based on the essential elements framework of corporate climate due diligence outlined above, comprehensively review China’s stance, laws, regulations, and policy documents related to corporate climate accountability. This aims to provide a basis for further evaluating China’s regulatory practices and proposing optimization strategies.

A. China’s position on the issue of corporate climate accountability

Political will is currently the most significant obstacle to establishing a corporate climate accountability mechanism. Unlike the inconsistent attitudes of Western countries in advancing global climate governance and strengthening corporate climate accountability, China’s stance on actively participating in global climate change governance, leading international cooperation on climate change, and regulating corporate climate responsibilities is resolute. China has elaborated its position in detail at multiple global, regional, and domestic occasions. First, at the global level, the Chinese government explicitly stated in *China’s National Plan for Implementing the 2030 Agenda for Sustainable Development* (2016), under Goal 12, the need to “encourage companies, especially large companies and transnational corporations, to adopt sustainable practices and integrate sustainability information into their reporting cycles.” The Chinese government is also committed to implementing sustainable public procurement policies covering environmental protection, energy conservation, and low-carbon aspects, based on national policies and priorities.⁶¹ In September 2021, General Secretary Xi Jinping proposed the Global Development Initiative at the 76th session of the UN General Assembly, calling on countries to uphold the people-centered core philosophy, prioritize cooperation in climate change, poverty reduction, food security, and green development, and advance the implementation of the 2030 Agenda for Sustainable Development.

⁵⁹ Ibid., principle 31 and commentary.

⁶⁰ UN General Assembly, *Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Businesses Enterprises*, A/72/162, July 18, 2017, paras. 18-37.

⁶¹ “China Releases *National Plan for Implementing the 2030 Agenda for Sustainable Development*” (October 13, 2016), Government of China website, accessed July 31, 2023, https://www.gov.cn/xinwen/2016-10/13/content_5118514.htm.

Simultaneously, China actively promotes a green Belt and Road. In 2019, dozens of state leaders, including China's, emphasized in the *Joint Communiqué of the Leaders' Roundtable of the Second Belt and Road Forum for International Cooperation* the need to ensure project sustainability and environmental friendliness, calling on all market participants along the Belt and Road to fulfill corporate social responsibilities and adhere to the UN Global Compact.⁶² In June 2021, China, along with nearly 30 countries, including Afghanistan, jointly launched the "Initiative for Belt and Road Partnership on Green Development," advocating to "strengthen climate and environmental risk assessments for projects, draw on internationally recognized standards and best practices, and encourage relevant enterprises to assume social responsibilities and protect the local ecological environment."⁶³ In September of the same year, the Alliance of Chinese Business in Africa for Social Responsibilities was established. This cross-sector nongovernmental organization, formed in response to General Secretary Xi Jinping's call, aims to promote the fulfillment of social responsibilities by Chinese enterprises in Africa and foster coordinated economic, social, and environmental development in Africa. Climate change mitigation and adaptation is one of the ten principles in the *Code of Conduct for Alliance of Chinese Business in Africa for Social Responsibilities*.⁶⁴ In the *Guiding Opinions on Promoting Green Development in Jointly Building the Belt and Road* released in March 2022, the National Development and Reform Commission and other departments emphasized adhering to principles such as government guidance, enterprise leadership, compliance with laws and regulations, and risk prevention. They stressed continuously consolidating the primary responsibility of enterprises for ecological and environmental protection, requiring enterprises to highly value the green development and environmental protection demands of local people. The document commits to "guiding enterprises to enhance their awareness of environmental risks, strengthen environmental management of overseas projects, conduct environmental impact assessments before investment and construction of overseas projects, promptly identify and prevent environmental risks, and take effective ecological and environmental protection measures. It will organize the compilation of green and sustainable development guidelines for key industries, guiding enterprises to effectively manage the environmental impacts of overseas projects. Through positive guidance, follow-up services, and other measures, it will strengthen environmental guidance and services during the project construction and operation phases."⁶⁵

Furthermore, the Chinese government is committed to extensively advancing sustainable development and strengthening corporate climate accountability

⁶² "Joint Communiqué of the Leaders' Roundtable of the 2nd Belt and Road Forum for International Cooperation (Full Text)" (April 27, 2019), Government of China website, accessed July 31, 2023, https://www.gov.cn/xinwen/2019-04/27/content_5386929.htm.

⁶³ "Initiative for Belt and Road Partnership on Green Development (Full Text)" (June 24, 2021), Government of China website, accessed July 31, 2023, https://www.gov.cn/xinwen/2021-06/24/content_5620487.htm.

⁶⁴ China-Africa Corporate Social Responsibility Alliance, *Code of Conduct for Alliance of Chinese Business in Africa for Social Responsibilities*, 2021, principle 8, <http://api.acbasr.org.cn/upload/Attach/121/638083111976012238.pdf>.

⁶⁵ National Development and Reform Commission et al., *Guiding Opinions on Promoting Green Development in Jointly Building the Belt and Road*, Fa Gai Kai Fang [2022] No.408, March 29, 2022, Articles 2, 9, 11, and 13.

domestically, injecting strong momentum into global climate governance. Notably, the *Guidelines on Building a Modern Environmental Governance System* issued in 2020 by the General Office of the Communist Party of China Central Committee and the General Office of the State Council identified “strengthening the leading role of the government as the key, and deepening the principal role of enterprises as the foundation” as one of the guiding principles for constructing a modern environmental governance system. It requires implementing the basic principle of multi-stakeholder co-governance, clarifying the rights and responsibilities of various entities, including the government, enterprises, and the public, facilitating channels for participation, and fostering a positive landscape for whole-of-society advancement of environmental governance. A primary goal set for 2025 is to establish a sound system of corporate responsibility within environmental governance.⁶⁶ The *National Human Rights Action Plan of China (2021-2025)* released in September 2021 included a dedicated section on “Addressing Climate Change” within the chapter on “Environmental Rights,” indicating the Chinese government’s high regard for the adverse impacts of climate change on environmental rights and its focus on adopting a human rights-based approach to climate change. To continuously meet the people’s growing needs for a beautiful ecological environment, the Chinese government committed to strengthening environmental rule of law, strictly cracking down on illegal activities in the ecological and environmental domain according to the law, and improving the mandatory corporate environmental information disclosure system. Simultaneously, the Chinese government pledged to promote responsible business conduct within global supply chains, encouraging enterprises to adhere to the *Guiding Principles* in their foreign economic, trade cooperation, and investment activities, and to implement human rights due diligence.⁶⁷ In October of the same year, the State Council’s *Action Plan for Carbon Dioxide Peaking Before 2030* stated the need to guide enterprises in proactively adapting to green and low-carbon development requirements and strengthening their sense of environmental responsibility. It specified that central state-owned enterprises must formulate and implement corporate carbon peaking action plans, and relevant listed companies and bond-issuing enterprises must perform their statutory environmental information disclosure obligations and regularly publish their carbon emission information.⁶⁸

In July 2022, the Ministry of Industry and Information Technology and other departments jointly issued the *Guidelines to Establish a Standard System for Carbon Peaking and Carbon Neutrality in the Industrial Sector*, proposing to “improve incentive and constraint mechanisms oriented toward emission reduction and carbon reduction, fully mobilize the enthusiasm of enterprises, and stimulate the endogenous motivation of market entities for low-carbon transformation,” “leverage the leading role of central state-owned enterprises and state-owned enterprises in key sectors by taking the lead in making voluntary energy conservation commitments,” “guide small

⁶⁶ *Guidelines on Building a Modern Environmental Governance System*, March 3, 2020, Articles 1-3, Government of China website, accessed July 31, 2023, https://www.gov.cn/zhengce/2020-03/03/content_5486380.htm.

⁶⁷ *National Human Rights Action Plan of China (2021-2025)*, September 9, 2021, Government of China website, accessed July 31, 2023, https://www.gov.cn/xinwen/2021-09/09/content_5636384.htm.

⁶⁸ State Council, *Notice on Issuing the Action Plan for Carbon Dioxide Peaking Before 2030*, Guo Fa [2021] No.23, October 26, 2021, Article 9.

and medium-sized enterprises to enhance their carbon reduction capabilities,” and “encourage enterprises meeting specified conditions to disclose their carbon footprint.” It also stated that “state-owned enterprises should, based on their reality, formulate and implement corporate carbon peaking plans, implement task measures, carry out major technology demonstrations, and play a leading role. Small and medium-sized enterprises should enhance environmental awareness, strengthen the disclosure of carbon reduction information, actively adopt advanced and applicable technological processes, and accelerate green and low-carbon transformation.”⁶⁹ In August 2022, seven departments, including the Ministry of Industry and Information Technology, jointly issued the *Action Plan for Green and Low-carbon Development of the Information and Communication Industry (2022-2025)*, announcing measures to guide enterprises in establishing and improving carbon information disclosure systems, and to compile corporate green and low-carbon development plans and annual sustainability reports for public release. Concurrently, the plan committed to increasing policy support for the green and low-carbon development of the information and communications industry, incorporating eligible enterprises and projects into green development guidance catalogues and the coverage of transition finance support.⁷⁰

In April 2023, the National Standardization Administration and other departments jointly released the *Guidelines to Establish a Standard System for Carbon Peaking and Carbon Neutrality*, clearly identifying the alignment of domestic and international standards in areas such as greenhouse gas management and carbon footprint as a work objective. It also emphasized adhering to coordinated planning to enhance the synergy between national and industry standards for carbon peaking and carbon neutrality, and promoting the accelerated development and revision of relevant national and industry standards across various sectors according to the framework of the carbon peaking and carbon neutrality standards system,⁷¹ thereby providing quantifiable and comparable reference standards for enterprises to fulfill their climate responsibilities. China’s stance on strengthening corporate climate accountability provides the political foundation and top-level design for institutionalizing corporate climate due diligence.

B. Advisory documents urging enterprises to conduct climate due diligence

The Chinese government has long placed great importance on the role of enterprises in addressing climate change and has urged them to fulfill their climate responsibilities through a series of advisory policy documents. As early as 2013, the *Environmental Protection Guidelines for Foreign Investment and Cooperation* issued by the Ministry of Commerce and the Ministry of Environmental Protection initially reflected the Chinese government’s basic requirements for environmental and climate

⁶⁹ Ministry of Industry and Information Technology, National Development and Reform Commission, and Ministry of Ecology and Environment, *Notice on Issuing the Guidelines to Establish a Standard System for Carbon Peaking and Carbon Neutrality in the Industrial Sector*, Gong Xin Bu Lian Jie [2022] No.88, July 7, 2022, Articles 2, 5, 6, 7, 11, 19, and 20.

⁷⁰ Ministry of Industry and Information Technology et al., *Notice on Issuing the Action Plan for Green and Low-carbon Development of the Information and Communication Industry (2022-2025)*, Gong Xin Bu Lian Tong Xin [2022] No.103, August 31, 2022, Actions 13 and 15.

⁷¹ Standardization Administration of China et al., *Guidelines to Establish a Standard System for Carbon Peaking and Carbon Neutrality*, Guo Biao Wei Lian [2023] No.19, April 24, 2023, Articles 2 and 3.

due diligence by enterprises in their outbound investments. These guidelines called on enterprises to integrate environmental protection principles into their development plans and operational strategies, establish internal environmental protection systems and emergency management mechanisms, conduct environmental impact assessments and environmental due diligence, and take responsive measures based on the assessment results, such as pollution prevention, risk mitigation, active remediation, and timely reporting. They also encouraged enterprises to study and draw on international standards and practices to regularly disclose environmental information, including environmental protection measures and compliance performance, and to establish sound communication and dialogue mechanisms for corporate environmental social responsibility.⁷² The *Measures for the Administration of Overseas Investment* issued by the Ministry of Commerce in 2014 set out general provisions requiring Chinese enterprises to ensure their overseas investments fulfill responsibilities regarding social, environmental, and labor rights protection. Also, it pledged to supervise enterprises' lawful and compliant operations abroad by issuing guidance such as environmental protection directives.⁷³ In 2015, the State Council's *Guiding Opinions on Promoting International Cooperation in Capacity Building and Equipment Manufacture* urged Chinese enterprises to prioritize ecological environmental protection and shoulder social responsibilities in their overseas operations.⁷⁴

In 2017, the National Development and Reform Commission (NDRC), in its *Administrative Measures for Enterprise Outbound Investment*, advocated for enterprises to respect local public order and good customs, fulfill social responsibilities, and pay attention to environmental protection.⁷⁵ Subsequently, the NDRC and other departments jointly issued the *Code of Conduct for Overseas Investment Operations of Private Enterprises*, encouraging private enterprises to operate in an environmentally friendly manner overseas, integrate resource and environmental protection into their development strategies and business plans, establish sound environmental and resource protection systems, conduct environmental impact assessments and take measures to promptly mitigate adverse impacts, and maintain open communication mechanisms with local governments and communities.⁷⁶ As the negative socio-economic impacts of the climate crisis intensified, the Chinese government gradually tightened requirements for corporate climate responsibility and began setting stricter behavioral standards. In 2021, the Ministry of Commerce and other departments jointly issued the *Guidelines for Green Development of Outbound Investment and Cooperation*, encouraging enterprises to

⁷² Ministry of Commerce and Ministry of Environmental Protection, *Notice on Issuing the Environmental Protection Guidelines for Foreign Investment and Cooperation*, Shang He Han [2013] No.74, February 18, 2013, Articles 6-14, 20, and 22.

⁷³ Ministry of Commerce, *Measures for the Administration of Overseas Investment*, Order [2014] No.3, September 6, 2014, Articles 20 and 27.

⁷⁴ State Council, *Guiding Opinions on Promoting International Cooperation in Capacity Building and Equipment Manufacture*, Guo Fa [2015] No.30, May 13, 2015, Article 23.

⁷⁵ National Development and Reform Commission, *Administrative Measures for Enterprise Outbound Investment*, Order No.11, December 26, 2017, Article 41.

⁷⁶ National Development and Reform Commission et al., *Code of Conduct for Overseas Investment Operations of Private Enterprises*, Fa Gai Wai Zi [2017] No.2050, December 6, 2017, Articles 26, 27, 29, and 31.

fulfill environmental responsibilities in their outbound investments in accordance with host country laws, regulations, and internationally accepted practices, by conducting environmental assessments and due diligence to identify potential environmental risks, thereby promoting coordinated economic, social, and ecological development in host countries.⁷⁷

C. Normative documents requiring enterprises to conduct climate due diligence

1. Legal norms

China's climate change governance framework has begun to take shape. Laws such as the *Civil Code*, the *Environmental Protection Law*, and the *Environmental Impact Assessment Law* impose regulatory requirements on enterprises to fulfill their climate responsibilities to varying degrees, while some departmental rules directly impose different types of climate obligations on specific enterprises, collectively forming a normative system for climate due diligence. First, the provisions of the *Civil Code* provide a foundational basis. Article 9, which articulates the "green principle," and Article 509, which requires the avoidance of resource waste, environmental pollution, and ecological damage during contract performance, set forth principle-based requirements for green operations and "emission reduction and pollution abatement" by enterprises. The seventh chapter on Tort Liability for Environmental Pollution and Ecological Damage in Book Seven further refines China's system of environmental tort liability. It provides a normative basis for affected groups to pursue environmental private interest tort claims against relevant enterprises and establishes the substantive legal foundation for environmental public interest litigation.⁷⁸

Second, the *Environmental Protection Law* (revised in 2014) contains specific mandates. Article 6 stipulates that all entities and individuals must prevent and reduce environmental pollution and ecological damage, and are legally liable for harm caused. Article 42 requires specific enterprises to establish an environmental protection responsibility system and adopt pollution prevention measures to control pollution and hazards arising from production, construction, or other activities, such as waste gas and wastewater. Article 43 mandates that enterprises and institutions discharging pollutants pay sewage charges to the state. Article 56 requires specific construction units to explain the situation and solicit opinions from the potentially affected public when preparing environmental impact statements. Articles 57 and 58 grant citizens, legal persons, and other organizations the right to report acts of environmental pollution and ecological destruction to government departments, and allow eligible environmental protection public interest organizations to file environmental public interest lawsuits in people's courts. Articles 59 to 64 further specify the penalties under the *Environmental Protection Law*.

Third, the *Environmental Impact Assessment Law* (revised in 2018) sets out systematic requirements for conducting environmental impact assessments on relevant construction projects. Article 2 defines "environmental impact assessment" as "the

⁷⁷ Ministry of Commerce et al., *Guidelines for Green Development of Outbound Investment and Cooperation*, Shang He Han [2021] No.309, July 9, 2021, Article 3.

⁷⁸ Wang Xuguang, "The Rule Construction and Understanding of the 'Green Provisions' in the Civil Code," *Journal of Law Application* 23 (2020).

methods and institutions for analyzing, predicting and appraising the impacts of programs and construction projects that might incur after they are carried out so as to propose countermeasures for preventing or mitigating the unfavorable impacts and make follow-up monitoring,” which fundamentally aligns with the procedural requirements of climate due diligence in a narrow sense. The supporting regulation, the *Measures for Public Participation in Environmental Impact Assessment* (2018), details the legal obligations of construction units to publicly disclose environmental impact statements and the rights of public participation. Specifically, Article 11 requires construction units to publicly disclose the draft environmental impact assessment report for comment through three channels: online platforms, newspapers easily accessible to the local public, and public notices posted in locations easily known to local residents, while also encouraging disclosure via new media. Article 13 stipulates that construction units must provide channels for communication with the public and ensure that personal information of citizens submitting comments is not unlawfully disclosed. Article 20 requires construction units to disclose the full text of the environmental impact statement to be submitted for approval and explain the public participation process via online platforms before submitting it to the competent authority.

Last, the *Law on Air Pollution Prevention and Control* (revised in 2015) adopts a coordinated control approach for pollutants and greenhouse gases, further clarifying the obligations and responsibilities of enterprises in air pollution prevention. Article 7 states that enterprises, institutions, and other producers and operators shall take effective measures to prevent and reduce air pollution and are legally liable for damage caused. Regarding specific obligations, Article 18 requires enterprises to include projects impacting ambient air quality within the environmental impact assessment system, ensuring compliance with air pollutant emission standards and total emission control requirements for key air pollutants. Articles 19 and 24 stipulate that enterprises emitting industrial waste gas or toxic and hazardous air pollutants must obtain pollutant discharge permits, monitor emissions, and retain original monitoring records. Key pollutant discharge units shall install and use automatic monitoring facilities for air pollutant emissions, ensure the normal operation of monitoring equipment, and publicly disclose emission information in accordance with the law. Meanwhile, Article 31 requires competent ecological and environmental departments to publish reporting hotlines and email addresses to facilitate public reporting of air pollution information. Where a whistleblower reports their own unit, the unit is strictly prohibited from retaliating against the whistleblower. According to Chapter VII of the *Law on Air Pollution Prevention and Control* on legal liability, enterprises violating this law face administrative penalties, and may even be ordered to suspend production or business for rectification. Furthermore, as China focuses its efforts on achieving the “Dual Carbon” goals on highly polluting, high-energy-consumption enterprises and key industries, a series of national and local-level “Dual Carbon” policies and regulations have developed rapidly. These expand the scope of environmental impact assessment, enrich the content of corporate environmental responsibility, and compel enterprises to fulfill their environmental

obligations. Also, these continuously refine and implement new dimensions of corporate climate responsibility under the “Dual Carbon” goals.⁷⁹

2. Departmental rules and policy documents

Guided by the top-level design of national ecological civilization construction and the aforementioned legal norms, the Chinese government’s functional departments have formulated a series of departmental rules and policy documents requiring enterprises to fulfill their climate responsibilities. The requirements for corporate climate responsibility in these normative documents closely resemble climate due diligence, further establishing the prototype of China’s normative system for climate due diligence. For example, in 2018, the NDRC and other departments jointly formulated the *Guidelines for Compliance Management of Enterprises’ Overseas Operations*. These guidelines require Chinese enterprises “going global” to comply with relevant laws, international treaties, regulatory provisions, industry standards, business practices, ethical norms, and internally established rules according to law.⁸⁰ Article 4 requires enterprises to define the content of compliance management, establish a sound compliance management structure, formulate compliance management systems, improve operational mechanisms, strengthen the identification and handling of compliance risks, evaluate and improve compliance work, and cultivate a corporate compliance culture. Articles 8 and 9 require enterprises engaged in overseas project contracting and daily operations to ensure full-process and comprehensive compliance with specific requirements regarding environmental protection and labor rights protection. Article 11(3) stipulates that enterprises should monitor compliance risks related to third parties such as suppliers, agents, distributors, consultants, and contractors. Simultaneously, Articles 20 and 21 require enterprises to establish and improve compliance reporting systems, ensure that employees, clients, and third parties can report and file complaints, promptly accept reports, and strictly investigate and hold parties accountable for violations. Accordingly, enterprises should develop compliance frameworks addressing climate risks based on Chinese and host country laws, the *Guiding Principles*, the *OECD Guidelines for Multinational Enterprises*, and other international norms.

In 2021, the Ministry of Ecology and Environment issued the *Measures for the Administration of the Legal Disclosure of Environmental Information by Enterprises*, formally establishing a mandatory corporate environmental information disclosure system and a climate information disclosure system for listed companies.⁸¹ Articles 4 and 5 state that enterprises are the responsible entities for disclosure, must establish sound disclosure management systems, scientifically collect and aggregate environmental information, use data and language conforming to standards, and disclose information lawfully, timely, truthfully, accurately, and completely, ensuring it is concise and understandable, without false records, misleading statements or major omissions. Article 12 stipulates that annual reports must include basic

⁷⁹ Chen Haisong, “Corporate Environmental Compliance and Legal Mechanism Construction under the ‘Dual Carbon’ Goals,” *Oriental Law* 1 (2023): 134.

⁸⁰ National Development and Reform Commission et al., *Guidelines for Compliance Management of Enterprises’ Overseas Operations*, Fa Gai Wai Zi [2018] No.1916, December 31, 2018, Article 3.

⁸¹ Ministry of Ecology and Environment, *Measures for the Administration of the Legal Disclosure of Environmental Information by Enterprises*, Order No.24, December 11, 2021.

enterprise information, environmental management information, and carbon emission information. Article 13 requires listed companies and bond-issuing enterprises involved in ecological and environmental violations to disclose information related to climate change response and ecological environmental protection for the projects financed by their funds. Article 25 stipulates that citizens, legal persons, or other organizations have the right to report to the competent ecological and environmental authorities upon discovering any enterprise violating environmental information disclosure obligations. The competent authorities shall facilitate reporting and complaint channels, guiding the public and news media to supervise enterprises in fulfilling their responsibilities. Articles 27 to 30 clearly define penalties for non-compliant enterprises, stating that enterprises failing to fulfill disclosure obligations in accordance with the law, along with their directly responsible supervisors or other directly accountable personnel, will face administrative penalties.

In 2022, the State-owned Assets Supervision and Administration Commission (SASAC) issued the *Measures for Compliance Management of Central Enterprises*.⁸² Article 18 explicitly stipulates that central enterprises shall formulate special compliance management systems or specific guidelines for key areas such as ecological and environmental protection, as well as business with higher compliance risks. This provision provides a normative basis and action direction for central enterprises to establish and improve climate due diligence systems or targeted compliance systems focusing on climate risks. Specifically, Article 9, Paragraph 1 of this Measure requires central enterprises to formulate a compliance management system construction plan approved by the board of directors. Article 17 further stipulates that the basic compliance management system shall specify the overall objectives, institutional responsibilities, operational mechanisms, performance evaluations, supervision, and accountability, among other aspects. Articles 20 to 28 elaborate on the compliance operational mechanisms for central enterprises, including: (1) establishing risk identification and assessment warning mechanisms to comprehensively identify compliance risks; (2) embedding compliance reviews into business management processes, with the compliance review opinions for major decision-making matters requiring the signature of the Chief Compliance Officer; (3) promptly addressing compliance risks and reporting significant compliance risk incidents to the SASAC in a timely manner; (4) establishing mechanisms for rectifying violations and continuously improving compliance effectiveness by refining rules and regulations and optimizing business processes; (5) setting up business-level grievance mechanisms such as whistleblowing platforms, hotlines, email, or mailboxes to promptly investigate and handle reported issues, and transferring cases involving suspected violations of laws or discipline to disciplinary inspection and supervision departments; (6) ensuring strict confidentiality of whistleblowers' identities and reported matters, providing appropriate rewards for verified reports, and prohibiting any form of retaliation against whistleblowers; (7) improving accountability mechanisms for violations, using the nature, frequency, and severity of

⁸² State-owned Assets Supervision and Administration Commission of the State Council, *Measures for Compliance Management of Central Enterprises*, Order No.42, August 23, 2022.

violations as key criteria for performance evaluations and job grade assessments; (8) establishing and improving collaborative mechanisms between compliance management and legal affairs, internal controls, and risk management; (9) conducting regular assessments of the effectiveness of the compliance management system and performing specialized evaluations of compliance management for key business areas as needed; (10) incorporating compliance management as a critical component of legal system development. However, the *Measures for Compliance Management of Central Enterprises* do not explicitly require central enterprises to publicly disclose compliance policies, violations, and disciplinary actions.

With the steady advancement of green finance initiatives, China's corporate climate information disclosure mechanism has been continuously improved alongside the vigorous development of ESG reporting systems, essentially establishing a reporting regime primarily based on voluntary disclosure supplemented by mandatory requirements. Among these, Article 95 of the China Securities Regulatory Commission's (CSRC) *Code of Corporate Governance for Listed Companies* requires listed companies to disclose social responsibility information, including environmental aspects, in accordance with the law; Article 91 encourages listed companies to voluntarily disclose information that may influence the decisions of shareholders and other stakeholders, beyond mandatory disclosures. The *Guidelines for Contents and Formats of Information Disclosure of Companies Offering Securities to the Public No.2 — Contents and Formats of Annual Reports* (revised in 2021) added a new section on "Environmental and Social Responsibility," adopting a tiered mandatory disclosure rule for environmental information: (1) All listed enterprises must publicly disclose information about administrative penalties related to environmental issues; (2) If a listed company or its important subsidiary is designated as a "key pollutant discharge unit," it needs to disclose environmental information such as pollutant discharge situations and pollution prevention measures; (3) For other environmental information disclosures by other listed companies, a "comply-or-explain" rule applies. Simultaneously, companies are encouraged to voluntarily disclose environmental and social responsibility information concerning ecological and environmental protection, sustainable development, and the protection of stakeholders' rights and interests.

On April 12, 2024, the State Council issued the *Several Opinions on Strengthening Supervision, Preventing Risks, and Promoting High-quality Development of the Capital Market*, explicitly stating the need to "improve the sustainable information disclosure system for listed companies".⁸³ On the same day, the Shanghai Stock Exchange (SSE), Shenzhen Stock Exchange (SZSE), and Beijing Stock Exchange (BSE) successively released their respective *Guideline on Self-regulation of Listed Companies — Sustainability Report* (the "Guidelines").⁸⁴

⁸³ State Council, *Several Opinions on Strengthening Supervision, Preventing Risks, and Promoting High-quality Development of the Capital Market*, Guo Fa [2024] No.10, April 12, 2024.

⁸⁴ Shanghai Stock Exchange, *Shanghai Stock Exchange Guidelines No.14 on Self-regulation of Listed Companies — Sustainability Reporting (Trial)*; Shenzhen Stock Exchange, *Shenzhen Stock Exchange Guidelines No.17 on Self-regulation of Listed Companies — Sustainability Reporting (Trial)*; Beijing Stock Exchange, *Continuous Supervisory Guidelines No.11 for Companies Listed on Beijing Stock Exchange — Sustainability Report (Trial)*. It should be noted that the guidance documents issued by the three major exchanges are largely consistent in terms

These documents require constituent companies of indices such as the SSE 180 Index and the SZSE 100 Index, as well as companies listed both domestically and overseas, to disclose their 2025 sustainability reports by 2026, while encouraging other listed companies to disclose voluntarily. All three sets of Guidelines require listed companies to integrate the concept of sustainable development into their corporate development strategies and operational management activities, and identify “Addressing Climate Change” as an independent topic within the environmental dimension (Articles 20-28). Reporting entities must follow the “double materiality principle,” disclosing climate-related governance systems, corporate strategy, impact assessment and response mechanisms, and climate indicators and targets (Article 5). Among these requirements, reporting entities should assess the adaptability of their operational strategies and business models to climate change based on identified climate risks and opportunities (Article 22), and disclose the transition plans, measures, and progress undertaken to address climate risks and opportunities (Article 23). The Guidelines use the term “shall,” a legal expression, when stipulating these climate disclosure items, clearly imposing substantive obligations on reporting entities. Accordingly, it can be argued that the provisions related to corporate climate disclosure obligations in the Guidelines go beyond procedural disclosure and embody the normative implications of substantive due diligence. Furthermore, Article 52 encourages reporting entities to conduct due diligence on issues such as climate change; Article 9 requires reporting entities to solicit stakeholder opinions on the report content through methods such as interviews; Article 61 stipulates self-regulation measures or disciplinary actions for reporting entities that violate the Guidelines’ requirements.⁸⁵ The Guidelines issued simultaneously by the three exchanges formally fills the gap in localized sustainability reporting standards within China’s domestic capital market, establishes a mandatory climate disclosure system and a (quasi-)climate due diligence system for listed companies, and will encourage more business entities to disclose climate information and perform climate due diligence through the demonstration effect of listed companies and the transmission role of the capital market.

In addition to the normative requirements directly or indirectly related to the various elements of climate due diligence mentioned above, the Chinese government has also taken a series of measures to encourage enterprises to reduce pollution and carbon emissions, fulfilling their climate responsibilities. For example, Article 22 of the *Environmental Protection Law* requires the government to encourage and support enterprises that proactively exceed requirements in reducing pollutant emissions through fiscal, tax, pricing, and government procurement measures. Ministries such as the Ministry of Finance and the State Taxation Administration have also incorporated

of overall framework, core requirements, and textual content. The main difference lies in the scope of applicable entities, with the Shanghai and Shenzhen exchanges requiring mandatory disclosure, while the Beijing Stock Exchange encourages and advocates for disclosure. However, according to the requirements of the Beijing Stock Exchange’s guidance document, if a specific company chooses to disclose, it must carry out the disclosure work in accordance with the guidance document.

⁸⁵ The penalties stipulated in the *Continuous Supervisory Guidelines No.11 for Companies Listed on Beijing Stock Exchange — Sustainability Report (Trial)* are reflected in Article 60.

technological upgrades for energy conservation and emission reduction, and the use of renewable energy, into corporate income tax incentive programs.⁸⁶

D. The climate-related rights remedy system for Chinese enterprises

The three pillars of the rights remedy system in the business and human rights field are “state-based judicial mechanisms,” “state-based non-judicial grievance mechanisms,” and “non-state-based grievance mechanisms,” with effective judicial remedy mechanisms being key to ensuring access to remedy. Regarding state-based judicial mechanisms, China’s rapidly developing system for adjudicating climate-related cases can provide judicial remedy channels for victims of corporate climate-related rights infringements. Since the Supreme People’s Court first proposed the concept of “cases addressing the judicial response to climate change” in 2016, a highly proactive approach to climate adjudication has formed, characterized by a policy orientation focused on the “Dual Carbon” goals, a multi-pronged strategy involving civil remedies, administrative supervision, and criminal sanctions, and the participation of government, courts, procuratorates, and environmental public interest organizations.⁸⁷ Among these, compared to the dual challenges of evidence presentation and causation faced by traditional climate change litigation against companies, China’s plaintiff-friendly environmental civil public interest litigation system provides formal and standardized channels for nongovernmental organizations to impose private law responsibilities for climate governance on business enterprises.⁸⁸ First, regarding the burden of proof, this system adopts a “reversal of the burden of proof” rule, requiring the defendant to bear the burden of proving the absence of a causal link between environmental torts, such as emissions and the alleged harm. Second, the plaintiff’s burden of proving the fact of damage is also reduced; in practice, litigators often only need to prove illegal pollutant discharge by the defendant. Simultaneously, the defendant has an obligation to provide emission information upon request; refusal can lead the court to presume the plaintiff’s claim valid.⁸⁹ Beyond this litigation system, scholars suggest that a systematic interpretation of China’s *Civil Code* can argue for a corporate duty of care, providing a basis for victims of related infringements to seek a remedy.⁹⁰

In addition to state-based judicial mechanisms, China’s state-based non-judicial grievance mechanisms and non-state-based grievance mechanisms also provide channels for complaints. First, the central ecological and environmental protection inspection mechanism is a major institutional innovation in China’s efforts to advance ecological civilization and rectify failures in environmental regulatory systems. It has

⁸⁶ State Taxation Administration et al., *Announcement on Publishing the “Catalogue of Enterprise Income Tax Preferential Items for Environmental Protection, Energy and Water Conservation Projects (2021 Edition)” and the “Catalogue of Enterprise Income Tax Preferential Items for Comprehensive Resource Utilization (2021 Edition)”*, Announcement [2021] No. 36, December 16, 2021.

⁸⁷ Zhao Yue, “Research on China’s ‘Moderately Proactive’ Climate Adjudication under the Background of Carbon Peaking and Carbon Neutrality: Extraterritorial Practices and Realization Paths,” *Journal of China University of Geosciences (Social Sciences Edition)* 2 (2023): 35.

⁸⁸ Gao Lihong, “The Legal Path of Climate Litigation in China: A Comparative Law Study,” 170-171.

⁸⁹ Zhao Yue, “Research on China’s ‘Moderately Proactive’ Climate Adjudication under the Background of Carbon Peaking and Carbon Neutrality,” 35.

⁹⁰ Yu Liang, “The Dimension of Civil Liability in Corporate Human Rights Due Diligence,” *Chinese Journal of Human Rights* 2 (2023): 98-103.

played a significant role in ensuring government agencies diligently fulfill their ecological protection responsibilities and enhancing the effectiveness of ecological and environmental governance.⁹¹ Although the mechanism primarily targets public authority departments and central enterprises, along with their subsidiaries, whose production and operational activities have significant impacts on the ecological environment, the mechanism, through its “overt inspections and covert visits,” identifies local environmental governance issues during its operation. This exerts external pressure on industrial and commercial enterprises beyond central enterprises, playing an “indirect inspection” role. Second, the “12369” environmental complaint hotline has been established across all regions of China, allowing any individual to report environmental pollution or ecological damage issues to environmental protection authorities at all levels. Article 4 of the *Management Measures for Environmental Complaint Hotlines* requires that the hotline must “respond to all reports, investigate all violations, ensure results for every case, and provide feedback for each report.” Article 70 clearly stipulates the processing deadlines for various types of complaints, stating that, except under special circumstances, complaints should be resolved within 60 days from the date of acceptance.⁹² Moreover, as mentioned above, laws such as the *Environmental Protection Law*, the *Law on Air Pollution Prevention and Control*, and the *Administrative Measures for the Legal Disclosure of Enterprise Environmental Information* all stipulate that individuals have the right to report relevant illegal activities of enterprises to the competent government authorities. These channels serve as beneficial supplements to the national judicial remedy mechanism, facilitating smooth reporting avenues for citizens and ensuring effective remedies for affected groups through diversified approaches.

China’s non-state-based grievance mechanisms primarily manifest as operational-level grievance mechanisms established by enterprises and those operated by industry organizations. Currently, only a few laws and regulations in China explicitly require companies to facilitate communication channels with society and accept public oversight by setting up hotlines, email addresses, and suggestion boxes, such as the *Environmental Protection Law*, the *Environmental Impact Assessment Law*, and the *Measures for Compliance Management of Central Enterprises* mentioned earlier. In practice, most Chinese companies have adopted the convention of providing service hotlines and online customer support. While these communication channels theoretically serve the function of operational-level grievance mechanisms, their actual capacity to handle human rights and environmental complaints from stakeholders remains subject to further analysis. At the industry association level, organizations such as the China Federation of Industrial Economics, the China National Textile and Apparel Council, the China Association of Communication Enterprises, and the China Chamber of Commerce of Metals,

⁹¹ Huang Xin, “Research on the Connection of the Ecological and Environmental Protection Inspection System from the Perspective of Deepening the Reform of the National Supervision System,” *Academic Exploration* 8 (2021): 94.

⁹² Ministry of Environmental Protection, *Management Measures for Environmental Complaint Hotlines*, Order No. 15, December 15, 2010.

Minerals & Chemicals Importers & Exporters have established operational grievance mechanisms within their respective sectors. These mechanisms play a significant role in coordinating risk assessments, managing risk responses, resolving conflicts between enterprises and society, and promoting responsible business conduct and sustainable development. For example, to help enterprises cope with increasingly severe social and environmental risks, the China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters leverages the platform and resources of the “Responsible Cobalt Initiative” to provide services such as stakeholder communication, dispute resolution, grievance handling, and public opinion monitoring for a large number of enterprises, including China National Gold Group, Huayou Cobalt, and Zijin Mining. In 2021, it officially launched the “China Mineral Industry Grievance and Consultation Mechanism” project, continuously advancing the proceduralization, standardization, and institutionalization of grievance mechanisms at the industry operational level.⁹³

IV. Assessment and Refinement of Regulatory Practices on Climate

Due Diligence for Chinese Enterprises

A review of China’s stated positions on enhancing corporate climate accountability, the normative documents urging or requiring enterprises to conduct climate due diligence, and the system for remedying corporate climate-related infringements reveals that the Chinese government places significant importance on the role and potential of enterprises in addressing climate change and has adopted a series of measures to strengthen corporate climate accountability. Although the specific term “climate due diligence” has not been used in China’s regulatory practices related to corporate climate responsibility, the preceding analysis demonstrates that various norms requiring enterprises to fulfill their climate responsibilities reflect, to varying degrees, the normative requirements of climate due diligence (see Table 1). Based on this, evaluating China’s regulatory practices against international standards is beneficial for objectively and comprehensively understanding the current state of corporate climate responsibility governance in China and providing a reference for continuously improving its effectiveness. Also, it is beneficial for accelerating the construction of a “climate due diligence” normative system with Chinese characteristics and better sharing China’s experiences and solutions in regulating corporate climate responsibility with the international community.

Table 1: Normative Documents Requiring Enterprises to Conduct Climate Due Diligence in China and Their Normative Elements⁹⁴

⁹³ Tang Yingxia and Sun Lihui, “Progress in China’s Responsible Mineral Supply Chain Practices: Investigation Report on the Human Rights Due Diligence Management of the China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters,” in *Blue Book on Human Rights: Report on the Development of Human Rights in China No.12 2022*, Li Junru ed. (Beijing: Social Sciences Academic Press, 2022): 456-472.

⁹⁴ Table compiled by the author based on the analysis above. “√” indicates the normative provision directly or indirectly contains elements related to climate due diligence; “-” indicates that the relevant normative element can

| Normative Documents | Climate Policy Development | Climate Risk Assessment | Climate Risk Response | Tracking Response Measures | Climate Information Disclosure | Remedial Measures |
|---|----------------------------|-------------------------|-----------------------|----------------------------|--------------------------------|-------------------|
| <i>Civil Code</i> | - | - | √ | - | - | √ |
| <i>Environmental Protection Law</i> | √ | √ | √ | - | - | √ |
| <i>Environmental Impact Assessment Law</i> | - | √ | √ | √ | √ | √ |
| <i>Law on Air Pollution Prevention and Control</i> | - | √ | √ | √ | √ | √ |
| <i>Compliance Guidelines for Overseas Operations of Enterprises</i> | - | √ | √ | √ | - | √ |
| <i>Administrative Measures for the Legal Disclosure of Enterprise Environmental Information</i> | - | - | - | - | √ | √ |
| <i>Measures for Compliance Management of Central Enterprises</i> | √ | √ | √ | √ | - | √ |
| <i>Code of Corporate Governance for Listed Companies</i> | - | - | - | - | √ | - |
| <i>Guidelines for Contents and Formats of Information Disclosure of Companies Offering Securities to the Public No.2 — Contents and Formats of Annual Reports</i> | - | - | - | - | √ | - |
| <i>Shanghai Stock Exchange Guidelines No. 14 on Self-regulation of Listed Companies — Sustainability Reporting (Trial)</i> | √ | √ | √ | - | √ | - |
| <i>Shenzhen Stock Exchange Guidelines No.</i> | √ | √ | √ | - | √ | - |

be derived through open argumentation, or the provision is advisory in nature.

| Normative Documents | Climate Policy Development | Climate Risk Assessment | Climate Risk Response | Tracking Response Measures | Climate Information Disclosure | Remedial Measures |
|--|----------------------------|-------------------------|-----------------------|----------------------------|--------------------------------|-------------------|
| <i>17 on Self-regulation of Listed Companies — Sustainability Reporting (Trial)</i> | | | | | | |
| <i>Continuous Supervisory Guidelines No. 11 for Companies Listed on the Beijing Stock Exchange — Sustainability Report (Trial)</i> | √ | √ | √ | - | √ | - |

A. Overall assessment of regulatory practices for climate due diligence of Chinese enterprises

Human Rights, Climate Change and Business — Key Messages issued by the UN Office of the High Commissioner for Human Rights sets out principle-based requirements for states and enterprises to implement the *Guiding Principles* in the context of climate change.⁹⁵ Its “Pillar I: The state duty to protect human rights” can be viewed as an action guide and evaluation basis for states to implement a corporate climate due diligence system. This pillar consists of four criteria: (1) States must protect against climate change-related human rights abuse by business (Criterion 1); (2) States should adopt “a smart mix of measures” to make business respect human rights in the context of climate change (Criterion 2); (3) Address the state/business nexus and take additional steps to meet their human rights obligations within such relationships (Criterion 3); and (4) Ensure policy coherence (Criterion 4).

Criterion 1 reiterates the state’s duty to protect human rights from abuses by business enterprises within its territory and/or jurisdiction, including those related to climate change. Current practice shows that China has repeatedly articulated its position supporting enhanced corporate climate accountability at international and domestic levels. It has issued a series of advisory documents urging, and normative documents requiring, enterprises to conduct climate due diligence, clearly expressing baseline expectations for domestic enterprises and Chinese enterprises “going global” to fulfill their human rights and climate responsibilities within their own operations, business relationships, and supply chains. More importantly, China’s multi-layered remedy system, composed of “state-based judicial mechanisms,” “state-based non-judicial grievance mechanisms,” and “non-state-based grievance mechanisms,” can provide judicial and non-judicial remedies to affected groups across different

⁹⁵ OHCHR, *Key Messages on Human Rights, Climate Change and Business*, 2022, accessed July 31, 2023, <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/materials/KMBusiness.pdf>.

dimensions — state, local, industry, and enterprise. These actions concretely reflect China's fulfillment of its duty to protect human rights under international human rights law, namely to "prevent, investigate, punish and redress" business-related human rights abuses "through effective policies, legislation, regulations and adjudication."⁹⁶

Criterion 2 requires states to clearly communicate their expectations that all business enterprises will meet their human rights and climate responsibilities in the context of climate change. This should be done through laws, regulations, and policy documents that encourage or require enterprises to reduce emissions and adopt measures such as human rights due diligence, climate impact assessments, and disclosure of greenhouse gas emissions to avoid adverse human rights impacts exacerbated by climate change. First, China has repeatedly articulated its expectations and requirements for responsible and sustainable business conduct at UN-level engagements, regional cooperation initiatives like the Belt and Road Initiative, and in domestic macro-policies and various documents, demonstrating the government's firm resolve to strengthen corporate climate accountability. It employs diverse means to encourage, support, guide, and require enterprises to fulfill their climate responsibilities. Second, the regulatory journey of corporate climate responsibility in China has evolved gradually from advisory norms to mandatory rules. The scope of required corporate climate responsibility has expanded from singular duties like information disclosure to systematic responsibilities including setting climate targets, implementing climate due diligence, and improving operational management. The norms governing corporate climate responsibility span different levels, including policy guidelines, laws, regulations, and normative documents, fully embodying "a smart mix of measures."

Criterion 3 requires states to take additional steps to ensure that state-owned enterprises, state-controlled enterprises, and other enterprises receiving substantial support from state organs do not cause adverse human rights impacts. The Chinese government has long emphasized cultivating and leveraging the demonstrative and leading role of state-owned enterprises and state-controlled enterprises in fulfilling social, environmental, and human rights responsibilities. The analysis of Chinese practices above indicates that the government currently primarily imposes mandatory climate due diligence obligations on state-owned enterprises and state-controlled enterprises. For instance, the *Measures for Compliance Management of Central Enterprises* requires central enterprises to establish specialized compliance systems for climate change issues and explicitly mandates their obligations in areas such as policy commitment, risk identification, risk response, evaluation and tracking, information disclosure, and establishing operational-level grievance mechanisms, collectively reflecting the normative elements of climate due diligence. Furthermore, compared to private and other non-state-owned enterprises subject to indirect supervision, central enterprises and their subsidiaries are direct targets of the central ecological and environmental protection inspection mechanism, requiring them to

⁹⁶ UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, A/HRC/17/31, March 21, 2011, principle 1.

adhere to stricter climate responsibilities. Thus, China's regulatory practices align with the requirements for "state-business linkages," imposing more stringent demands on enterprises with such affiliations.

Criterion 4 requires states to consistently articulate expectations for corporate human rights and climate responsibilities within national policy systems, such as National Human Rights Action Plans and Nationally Determined Contributions. The fundamental expectations and normative requirements for corporate climate responsibility in China are fully reflected across various levels of the normative system. A regulatory network propelled by the concerted efforts of legislation, judiciary, and administration has essentially formed, establishing a multi-dimensional governance ecology characterized by "state guidance, industry leadership, societal supervision, and enterprise implementation." This approach effectively utilizes regulatory techniques that combine penalties and positive incentives, simultaneously clarifying the red lines for corporate responsibility and helping to stimulate corporate initiative for active participation in climate governance.

Therefore, it is evident that China's current governance system for corporate climate responsibility largely aligns with the normative expectations set by the UN. The steady improvement in the climate responsibility performance of Chinese enterprises also strongly validates the effectiveness of the implementation of China's normative system for corporate climate responsibility. Overall, in 2022, the number of Chinese enterprises participating in CDP disclosure exceeded 2,700, a year-on-year increase of 43%. Among them, over 20% of enterprises actively assessed climate risks and opportunities, and over 30% provided incentives to enhance climate management effectiveness. Additionally, nearly 60% of enterprises had established carbon emission targets, and more than 70% had elevated climate governance issues to the board level.⁹⁷ In recent global ESG ratings, Zijin Mining Group ranked first among 671 global companies in the metals and mining industry, with its performance in the environmental dimension being leading globally.⁹⁸ Analyzing Zijin Mining's *Climate Change Action Plan* reveals that the company not only prepares climate change reports in accordance with international standards such as the TCFD recommendations and integrates climate governance into its corporate governance framework, but has also set low-carbon transition targets, outlined pathways, and defined specific measures,⁹⁹ reflecting the six essential elements of corporate climate due diligence. Since 2008, Huawei Technologies Co., Ltd. has consecutively published annual corporate sustainability reports for 15 years, proactively disclosing its sustainable development strategy and risk assessment results to internal and external stakeholders. It is commendable that Huawei explicitly commits to adhering to the *Guiding Principles* in its reports and incorporates issues such as human rights protection and climate response into its supply chain management system. Its climate

⁹⁷ PwC China, *2022 Report on CDP Disclosure by Chinese Companies*, April 2023, 4, accessed July 31, 2023, <https://cdn.cdp.net/cdp-production/cms/reports/documents/000/006/988/original/Chinese-companies-2022-CDP-disclosure-report.pdf?1681838998>.

⁹⁸ Zijin Mining Group, "Zijin Mining Ranks First Globally in Refinitiv ESG Ratings for Its Industry," January 10, 2024, accessed January 10, 2024, <https://www.zjky.cn/sustainable/esg-message-detail-119953.htm>.

⁹⁹ Zijin Mining Group, *Climate Change Action Plan*, January 2023, accessed January 10, 2024, <https://www.zjky.cn/upload/file/2023/02/13/c6664fd728f246958b7978049cc80cb2.pdf>.

due diligence practices demonstrate the continuous and comprehensive nature fundamental to corporate climate due diligence, and its *Sustainability Report* also meets the five procedural requirements for a corporate climate policy. In 2022, Huawei was included in the “CDP Climate Change A List 2022” by the authoritative international environmental non-profit organization CDP, becoming an international exemplar of corporate climate responsibility practice.¹⁰⁰

Nevertheless, there remains room for improvement in China’s corporate climate responsibility governance system. Generally speaking, first, China currently lacks dedicated legislation or even specific legal provisions that comprehensively govern corporate climate responsibility. Relevant norms are scattered across various laws and regulations, such as the *Environmental Protection Law*, the *Measures for Compliance Management of Central Enterprises*, and other policy documents. Simultaneously, there is insufficient coordination in norms concerning corporate responsibilities between ecological and environmental protection and climate change response. The implementation and supervision mechanisms for these norms are managed by different functional departments, failing to form a long-term mechanism for systematic governance and coordinated law enforcement. Second, China’s normative system for corporate climate due diligence has shortcomings in terms of the scope of entities covered, the content of the norms, and specific institutional arrangements. Regarding the entities, the current advisory documents urging and normative documents requiring enterprises to conduct climate due diligence primarily focus on central state-owned enterprises, listed companies, other large and medium-sized enterprises, and the overseas investment activities of Chinese enterprises. Regulation of the climate responsibilities of domestic enterprises, especially small and medium-sized enterprises and foreign-invested enterprises, still needs strengthening. The limitation in the scope of regulated entities is not conducive to the fair and rational distribution of climate responsibilities among enterprises and could, to some extent, weaken the overall effectiveness of China’s corporate climate responsibility governance system. Regarding the normative content, the current legal and policy system mainly addresses narrow, direct climate risk factors, such as greenhouse gas emissions, while attention to indirect climate risk factors increasingly emphasized by the international community, such as biodiversity, remains inadequate. In terms of specific institutions, the current normative system still relies heavily on voluntary norms and climate information disclosure rules, with mandatory climate due diligence only applicable to some business enterprises. Furthermore, the existing normative system often generally requires enterprises to fulfill their climate responsibilities without fully incorporating the responsibility allocation principle of “cause-contribute-directly linked” into institutional design and practice.

B. Recommendations for improving climate due diligence regulations for Chinese enterprises

Although China’s “climate due diligence” regulatory framework largely aligns with the UN normative expectations, it remains necessary for China to adopt “a smart

¹⁰⁰ Huawei Technologies Co., Ltd., *Sustainability Report 2022*, July 2023, accessed January 10, 2024, <https://www-file.huawei.com/-/media/corp2020/pdf/sustainability/sustainability-report-2022-cn.pdf>.

mix of measures,” implementing multiple strategies simultaneously at both international and domestic levels to continuously refine the country’s corporate climate responsibility norms and governance ecosystem. At the international level, the evolution of global climate due diligence norms presents a favorable “window of opportunity” for China to enhance its influence and voice in global business and human rights governance. China can seize this opportunity to transition from a participant to a leader in this field, contributing to the formation of a fair and reasonable international framework for business and human rights. First, China should highlight its practical experience in strengthening corporate climate accountability and promoting responsible business conduct to the UN and the international community. For instance, the Chinese government could consider organizing side events on corporate climate accountability during UN Human Rights Council sessions or hosting thematic sub-forums at platforms such as the China-Europe Human Rights Seminar, South-South Human Rights Forum, and Beijing Forum on Human Rights. These events could bring together renowned scholars, industry representatives, and civil society organizations to discuss China’s stance, showcase its regulatory practices, and foster cooperation and mutual learning among governments, enterprises, and civil society across nations. Second, the Chinese government could commission national human rights education and training bases or specialized think tanks to compile a *Blue Book on Corporate Climate Responsibility in China*, along with case studies, based on thorough research and systematic analysis. Multilingual translations of these publications should be disseminated to help the international community and stakeholders better understand China’s regulatory practices in corporate climate responsibility. This would also provide diverse perspectives for an objective and fair assessment of the climate and human rights practices of the Chinese government and enterprises. Third, China could leverage its embassies and consulates abroad to regularly organize forums and dialogues on corporate social responsibility between Chinese enterprises and host countries. These engagements would serve to gather feedback, concerns, and suggestions from the business community, clarify government positions, and address industry apprehensions. Last, after sufficient deliberation, China could constructively engage in proposals related to corporate climate due diligence during negotiations on the “Binding Treaty on Business and Human Rights.” When the time is ripe, China could proactively propose incorporating corporate climate due diligence into the treaty text, drawing attention to its institutionalized practices in this area. By encouraging more developing countries to participate in the treaty process and dialogue, while respecting their legitimate concerns, China could help shape international norms on corporate climate due diligence.

Domestically, China can continue to refine laws, regulations, and policy documents to guide, encourage, support, and urge enterprises to fulfill their climate responsibilities. At the legislative level, first, China could consider enacting a dedicated and comprehensive “Climate Change Response Law,” which would comprehensively stipulate the legal obligations and scope of application for corporate climate due diligence. In addition to appropriately referencing the “five key

characteristics” and “six stages” of corporate climate due diligence proposed above to define its conceptual meaning and legal components, the law could also adopt a tiered and categorized approach to mandate compulsory due diligence obligations for large and medium-sized enterprises, as well as those in high climate-risk industries such as energy and mining, while setting voluntary due diligence requirements for small and micro enterprises. Enterprises should be required to establish and improve grievance mechanisms at the operational level through various means. Second, ecological and environmental protection legislation should be strengthened to enhance corporate responsibility-related systems, clarifying the specific obligations and responsibilities of enterprises in ecological protection and climate change response. A coordinated mechanism for corporate climate responsibility supervision and enforcement should be established, while continuously improving the corporate climate tort remedy system to form a “prevention-supervision-remedy” trinity of corporate climate responsibility regulation. Third, China could also start with corporate governance by reinforcing the implementation of corporate social responsibility clauses in the *Company Law*. When interpreting and applying these clauses, consideration could be given to incorporating climate change mitigation and adaptation into the scope of corporate social responsibility. Furthermore, the connection between ESG disclosures covering climate responsibilities and directors’ fiduciary duties should be clarified, ESG disclosure standards aligned with ESG evaluation systems should be refined, and mandatory disclosure rule frameworks should be strengthened. At the policy level, China first needs to improve the top-level design for corporate climate responsibility, integrating the enforcement of such responsibility into the overall layout of ecological civilization construction and embedding it throughout the carbon peaking and carbon neutrality policy system. Meanwhile, clearer normative expectations and basic requirements for corporate climate responsibility should be established. For example, government departments could jointly issue policy documents on corporate climate responsibility under the “dual carbon” framework or include climate change and biodiversity protection in the “human rights due diligence” provisions when drafting the 5th *National Human Rights Action Plan*. When the time is ripe, a dedicated “National Action Plan on Business and Human Rights” could be considered, with sections detailing normative expectations and specific requirements for corporate climate due diligence. Additionally, China could consider strengthening guidance and incentives for enterprises to fulfill climate responsibilities. For guidance, relevant authorities could instruct industry associations to develop comprehensive or sector-specific “Corporate Climate Responsibility Implementation Guidelines” and compile “Case Studies of Corporate Climate Responsibility Practices in China” to help enterprises better understand and implement climate responsibilities. Last, it is also necessary to enhance incentive measures, such as further promoting green financial market innovation, improving climate investment and financing disclosure mechanisms, and providing appropriate support in government procurement and tax incentives for enterprises actively fulfilling climate responsibilities.

Against the backdrop of China’s orderly advancement of the “dual carbon” goals and the urgent need to mitigate global warming, it is imperative for the Chinese

government to appropriately consider adopting the framework and discourse of climate due diligence, regardless of the approach taken to refine the corporate climate responsibility regulatory system. The theoretical essence and normative structure of climate due diligence are conducive to advancing the legalization, standardization, and systematization of corporate climate responsibilities under the “dual carbon” goals. Furthermore, it aids in narrating China’s story — addressing the global climate crisis, enhancing human rights protection, and strengthening corporate climate accountability — in a language that is readily accepted and easily understood by the international community. This approach promotes the establishment of a fair and reasonable transnational supply chain governance system and contributes to the realization of global climate justice and the betterment of business practices.

(Translated by *CHEN Feng*)