

# HUMAN DIGNITY IN THE SHADOW OF SUSTAINABILITY: THE EU'S GREEN TRANSITION AND THE EXCLUSION OF INFORMAL MINING COMMUNITIES IN SUB-SAHARAN AFRICA

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**Abstract:** *The European Union's ambition to be carbon-neutral by 2050 has significantly increased demand for critical minerals, particularly from Sub-Saharan Africa, where informal mining is predominant. Although these objectives are based on the EU's commitment to international law and constitutional principles, their external implications raise profound questions on inclusivity, equitability, and global justice. Through a critical legal analysis approach, this article highlights the tensions between the EU's green ambitions and its global distributive justice. It argues that the rigidity and the lesser sensitivity to the social, economic, and institutional fragilities in the EU climate policy measures risk exacerbating structural inequalities and global economic exclusion.*

**Key words:** *EU Green Deal, critical minerals, constitutional principles, structural inequalities, sub-Saharan Africa.*

## 1. Introduction

The European agenda to decarbonise and transform Europe into a fossil-free continent by 2050 makes the European Union a pioneer in the global north in addressing climate change and promoting sustainability. However, achieving these ambitious objectives relies on the increased demand for and extraction of critical raw materials (CRMs) such as cobalt, copper, lithium, and other rare earths sourced primarily from the Global South and particularly Africa. This demand has not only made competition between capitalist countries in the Global North much stronger, but it has also made competition between different interest groups in resource-rich countries. Relatively, this competition has exacerbated structural inequality and political fragility. The extractive sector in Sub-Saharan Africa, particularly the CRM industry, is an economic backbone and plays a fundamental role in sustaining millions of the most vulnerable populations and contributes substantively to the national revenues that support the implementation of

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many of the national strategic plans (Landry and Johnson, 2021; Weng, 2025). Despite its decades of resilience and maintaining its important role in upholding the social and economic fabric in the region, the informal mining sector faces persistent political vulnerability and legal exclusion, which mirrors the global structural inequalities embedded in the green transition (Brown, 2016; Bali and Kambhampati, 2022; Ward, 2024). In response, the European Corporate Sustainability Due Diligence Directive (CSDDD) seeks to address some of these structural issues that are true to the nature of the extractive industries by compelling companies to take due diligence and be responsible in their supply chain management. However, while the directive is viewed as a strategic mechanism to mitigate human rights and environmental risks, especially in countries with weak corporate governance legal frameworks, its strict compliance measures may create barriers for African informal mining supply chains, preventing them from accessing European markets and sharing in the global benefits of the green transition.

This article, therefore, argues that, although the CSDDD promotes the EU's constitutional and international commitment to sustainability and human dignity, there is a disjunction between these legal aspirations and the lived realities in Africa. In particular, the directive imposes uniform compliance measures, with the assumption that all global stakeholders in the supply chains have similar institutional and economic capacity and the structure to meet these obligations. Drawing on doctrinal legal analysis, the study examines EU constitutional law and the international legal framework in the context of Sub-Saharan Africa. It is argued therein that a genuine green transition should be equitable and ethically grounded. Europe cannot pursue its green goals at the cost of human dignity in the Global South. To ensure that no one is left behind, the European policy mechanisms must be both globally transformative and just.

## **2. Theoretical and Conceptual Framework**

This study is based on an interdisciplinary theoretical foundation that incorporates international law and human rights, EU constitutional law, political economy, and global development governance. It applies these dichotomies to postcolonial and dependency theories, global justice theory, and the emerging discourse on environmental governance to better understand how sustainability and environmental standards are exported from the European Union to the Global South. The global justice theory explains the extent to which these Global North policies genuinely and equitably distribute the costs and benefits within the green transition supply chains. The global justice theory underlines the persistent structural inequalities that accompany these strategic policies, which are designed to accumulate and add value to developed economies while externalising burdens to developing countries (Pogge, 1988; Pogge, 2008).

The postcolonial and dependency theories complement and question these dynamics. It is contended that, despite their justification for promoting sustainability and human rights, these policies can reproduce colonial legacies in economic and power asymmetries (Said, 1977; Prebisch, 1981; Ghosh, 2019). From the perspective of the Global South, Africa is a primary supplier of nearly all critical raw materials needed by

the EU, and these sectors are predominantly informal, exhibiting significant human rights vulnerabilities. The informal mining sector is not legally recognised as legitimate and has always been labelled as illegal in all the European policy structures and designs on environmental governance (Hilson, 2017; Zvarivadza, 2018; Lahiri, 2018). In contrast, the ongoing discourses on transformative environmental governance and global equity theories and the evolving principles of global climate justice examine the CSDDD and the European Green Deal in a broader paradigm of transformative and inclusive environmental governance (Francis, 2022; Francis, 2020). This new perspective emphasises the need for integral development and environmental policies that are accountable and promote inclusive participation and justice as key elements to a green transition.

These theoretical perspectives, therefore, help us to understand the CSDDD and its comprehensibility in bringing justice and fairness as well as its scope in understanding global diversities in both environmental and CRM governance. Particularly, the paper contends that in reference to CRM governance, the nature of the extractive sector differs across regions, and it would be a legal error to make a reference to the principles that govern this sector and the due diligence therein as homogeneously formal. These structural and governance differences, therefore, should be key in drafting Global North policies that have extraterritorial impacts on the Global South.

Thus, the article contributes to the global discourse on the relationship between the Global North and the Global South and the power asymmetries in the governance mechanisms and how these phenomena could be transformed in creating a more just and equitable relationship between the two spheres.

### **3. The Principles of Sustainability and Due Diligence as Fundamental Principles in the European Union**

Sustainability and due diligence are constitutional obligations under Articles 2 and 3 of the Treaty on the European Union (TEU), and the European Union is mandated under Article 21 of the TEU to extend these mandates in its external dimensions. These principles underpin key policy instruments such as Regulation 2021/1119 (it formalized climate neutrality by 2050 as a legal obligation); Regulation 2023/1542 on the EU's progressive environmental principles; and recently the Directive on Corporate Sustainable Due Diligence (CSDDD), where EU-based companies are required to ensure that environmental protection is integrated into their business culture and operations, including those in the supply chains.

The Court of Justice of the European Union (CJEU) provided extensive legal and substantive meaning to these obligations, underlining that environmental protection and sustainable development are not merely programmatic objectives and political aspirations; they are constitutional principles with legally binding powers. In *Commission v Council* (Case C-176/03), the CJEU agreed to the view that the Union's competence to legislate for environmental protection was an essential element of its objectives.

In *Air Transport Association of America v Secretary of State for Energy and Climate*

Change (Case C-366/10) and Ålands Vindkraft AB v Energimyndigheten (Case C-573/12), the court further underscored that the requirement to achieve environmental objectives was an integral part of the Union's constitutional identity and legitimises its regulatory and policy measures, even when these may have extraterritorial implications. Reading it together, the CJEU jurisprudence affirms that Article 3(3) TEU is non-derogable in regard to the Union's commitment to sustainable development and environmental protection, and these principles now constitute the Union's constitutional law.

The Treaty on the Functioning of the European Union (TFEU, Articles 3, 11, and 191) emphasises this constitutional obligation by requiring the integration of environmental protection into the definition and implementation of all Union policies and activities, hence highlighting the need for coherence between economic growth, social progress, and sustainable development. Article 191 TFEU in particular sets out four guiding principles as cornerstones of environmental protection, namely the precautionary, the preventive, rectification, and the "polluter pays" principles that aim at ensuring a high level of environmental protection. The court in *United Kingdom v Council* (C-84/94) and later in the *PFIZER Animal Health* case (C-13/99 P) argued that environmental principles are not mere guidelines; they are considered general principles of EU law that require states to take all necessary precautions to ensure that no harm is done to the environment.

In fact, according to the recently adopted EU Directive 2024/1203, EU member states, upon ratification of this convention, will be required to amend their national criminal laws to ensure that environmental violations are felony and could be penalised under domestic criminal law. Therefore, there is no doubt that the European Green Deal represents these constitutional commitments, and it translates these strict mandates into a comprehensive policy framework aimed at achieving climate neutrality by 2050, promoting a circular economy, and fostering social inclusion. In this framework, sustainable development and environmental protection cut across constitutional imperatives; it requires all sectors that depend on critical raw materials, such as transport, industries, and energy, to be consistent with those principles. However, the effective implementation of these legal obligations reveals a structural vulnerability. The Europeans' transition to no fossils and a low-carbon economy highly depends on the stable global supply chains for CRMs such as lithium, cobalt, nickel and rare earth elements, whose extraction and processing are prone to gross human rights violations and environmental degradation in resource-rich countries. This dependency is relational to the "developmental dissonance" of the Green Deal. Although the Union's internal mechanisms and policy framework advance sustainability and human rights, its external dimensions and actions may perpetuate and reinforce the very harm it seeks to address.

Article 208 TFEU aims at mitigating this tension by obliging the EU and its member states to apply development policy coherence in all their external development projects and not to undermine the development cooperation objectives. However, this provision leaves out some practical solutions to the procedural gaps, especially where the EU's demand for critical minerals has a direct link to ecological harm in partner states and vis-à-vis its policy framework, such as the CSDDD, since it exports its strict requirements to the Global South without consideration of their different vulnerabilities and struggles to

fit into the global economic structure. This legal and moral link illustrates the fragility between the EU Green Deal and its commitments to sustainable development and environmental protection.

#### **4. The Corporate Sustainability Due Diligence Directive (CSDDD) and the Critical Raw Materials Governance**

The CSDDD operationalises the EU's sustainability commitments by mandating companies to identify, prevent, and mitigate human rights and environmental risks throughout their "chain of activities." Recitals 24 and 25 of the Directive explicitly extend due diligence to upstream activities, including raw material extraction. This expansion of the directive exports and externalises the Union's regulatory power in sub-Saharan African mining contexts and realities. However, while the directive promotes corporate accountability and due diligence in the supply chain's governance, its strict due diligence requirements assume that all actors in the global supply chain have comparable institutional and economical capacity, technological infrastructure and uniform governance of the mining sectors. This assumption misaligns with the lived economic and political realities in the Sub-Saharan Africa mining sectors. In this region, the extractive industry is very homogeneous, and it is legally and structurally hard to draw a line between goods and services that are purely formal, hence creating compliance challenges and difficulties for companies to conduct comprehensive due diligence (Eskelinen, 2024). The informal mining sector, despite its legal invisibility, contributes half of the African supply of critical minerals, and it supports the livelihood of most of the vulnerable and politically excluded communities (World Bank 2017).

Some scholars highlight that the procedural architecture of the CSDDD, despite its consistence with the EU fundamental principles and its position to close the legal gap on corporate due diligence in international law, faces structural limitations in ensuring that extraterritorial victims have access to justice and equity (Bonfanti and Fasciglione, 2023; Brino, 2018). Relatively, through its reliance on contractual assurance under Recital 46, the Directive, empowers companies to terminate their business relations under Articles 7–11 and to disengage from high-risk suppliers instead of empowering their transitions towards adopting European standards. This contradiction exposes a paradox and a policy gap where the achievement of the European green transition objectives is dependent on critical minerals extracted from the Global South but, at the same time, imposes strict due diligence and compliance measures that most of these developing countries are incapable of meeting (Chenery, 1975; Bobba et al., 2023).

Regarding CRMs such as copper, cobalt, lithium and other rare earth elements, the European-based companies have the power to establish the global standards on what is considered "sustainable" in their supply chains, hence risking excluding African producers from accessing not only the European market directly but also the global supply chains. These structural power asymmetries risk reinforcing dependencies and regulatory hierarchies between Europe and Africa, and it calls into question the ongoing debates over dependency theory in Prebisch (Prebisch, 1950), global value chains (Gereffi et al., 2016) and climate justice (Rawls, 1971).

Therefore, to reconcile this policy gap, the CSDDD should be understood and applied not merely based on technical compliance formalities, but also on understanding its capacity to form a global value chain governance that transforms lives beyond European borders. It should be interpreted in a globally sensitive context that underscores the realities of the sectors across countries and the difficulties that developing countries are facing in meeting their global commitments on human rights and environmental protection.

### **5. Corporate Sustainability Due Diligence Directive (CSDDD) and the Structural Exclusion of Informal Mining Actors**

Sub-Saharan Africa holds a key position in the green European transition as the core supplier for almost all of Europe's needed critical raw materials (World Bank, 2017). However, environmental policies such as the CSDDD structurally exclude the informal miners from legal recognition, and the strict measures in the directive disconnect African lived realities from being part of the EU's policy framework. For instance, the directive under Articles 7–11 requires contractual assurance from suppliers that demonstrates their compliance mechanisms in the extraction, resourcing, processing, etc., and based on those periodical reports, companies are empowered to suspend or terminate business relations if suppliers fail to meet those requirements. Of course, there is no doubt that such measurements would transform the extractive industries and make them more human and that companies would be made accountable; however, many studies have proved that corporate accountability is a "Global North suitable principle", and companies have always "greenwashed" the idea and provided false information in their reports on due diligence in the Global South (Laufer, 2003; De Jong, 2018).

Further still, Recital 46 mandates companies to extend financial and technical support to small and medium-sized enterprises (SMEs) in their supply chains. However, these proposed support mechanisms are exclusively limited to the SME, hence not recognising the potentiality of empowering the informal mining sectors. Similarly, recitals 61 and 68, alongside Articles 15 and 16, establish strict monitoring and reporting measures supported by blockchain verification methods and satellites, among others. These innovative technological measures are good, and they should be used to empower governance measures in the informal mining sector. However, the CSDDD focuses on empowering the already empowered formal sectors, hence continuing to legally and politically exclude the informal sector from visibility and traceability.

From a human right and a global justice perspective, this illegal exclusion raises profound normative questions on the equitability of the CSDDD and whether the EU's policy architecture aligns with its constitutional and international law commitments. This disconnection raises tensions between environmental governance and the lived realities in the Global South, particularly regarding how policies such as the CSDDD could be implemented without externalising green impacts onto already globally marginalised communities.

## 6. Conclusions

It should be concluded that the EU's green transition must reconceptualise due diligence as a discussional and shared responsibility beyond European borders. This requires the CSDDD to incorporate the common but differentiated responsibilities and respective capabilities (Article 3 (1) of the UNFCCC and Article 10 of the Kyoto Protocol) and to understand that the CRM supply chains are not homogeneously formal and should not legally and solely be evaluated through the EU legal lenses. Relatively, the nature of the CSDDD and all other EU climate policies should be guided by the principle of extraterritorial participatory justice, making the Global South, in particular Sub-Saharan Africa, the center of these policy discourses. These policies should further be transformative and avoid shifting policy impacts to the already vulnerable communities in the Global South.

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