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# Beyond extraction: Reimagining the right to development through critical minerals governance, climate justice and developmental constitutionalism

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**Abstract:** *The United Nations Declaration on the Right to Development's fortieth anniversary is the right time to discuss whether development law can respond to the rapid development of a global climate change crisis, resource inequality and technological transformation. In this chapter I argue that the right to development needs to be reimagined away from the economic growth and global cooperation that it usually had been associated with. The most pressing challenge in the twenty-first century is the management of indispensable minerals powering the global green and digital*

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*transition. Lithium, cobalt, copper, graphite, manganese, nickel and rare earth elements are now recognised as indispensable to decarbonisation, renewable energy technologies, electric mobility, artificial intelligence and digital technologies. The extraction of these minerals, however, is often done in resource-rich developing countries and in legally plural societies where local communities, customary landholders and indigenous peoples bear the social, environmental and cultural costs of extraction as well as the limited developmental benefits. This contradiction, as the chapter argues, is a structural problem of the international development order. A global transition that drives down carbon emissions but reproduces dispossession, ecological harm and unequal value capture is neither development nor development in a normative sense, as the Declaration on the Right to Development states. Drawing on international human rights law, African human rights jurisprudence, comparative constitutional theory and emerging policy discussions in relation to critical minerals, the chapter presents a developmental constitutionalism framework. It argues that constitutions and governance instruments must transform mineral sovereignty from an imperial licence to extract into a public responsibility to ensure participation, benefit sharing and environmental accountability, intergenerational equity and community-oriented development. Using African and comparative jurisprudence such as SERAC and Endorois and Sarayaku v Ecuador, the chapter shows that in this regard meaningful participation, cultural protection and equitable benefit sharing are not policy preferences, but rather fundamental components of developmental justice. The chapter concludes by suggesting a Global Compact for Sustainable Prosperity based on critical minerals justice, climate justice, digital equity and developmental constitutionalism. The bottom line of the chapter is that the future legitimacy of the right to development will be based not only on the amount of resources extracted, but also on whether resource-rich communities are the authors and beneficiaries of the prosperity created in their name.*

**Résumé :** *Le quarantième anniversaire de la Déclaration des Nations Unies sur le droit au développement est l'occasion idéale pour examiner si le droit du développement peut répondre à l'évolution rapide de la crise mondiale du changement climatique, des inégalités en matière de ressources et de la transformation technologique. Dans*

*cet article, je soutiens que le droit au développement doit être repensé en s'affranchissant de la croissance économique et de la coopération mondiale auxquelles il a généralement été associé. Le défi le plus urgent du XXIe siècle réside dans la gestion des minéraux indispensables qui alimentent la transition écologique et numérique mondiale. Le lithium, le cobalt, le cuivre, le graphite, le manganèse, le nickel et les éléments de terres rares sont désormais reconnus comme indispensables à la décarbonisation, aux technologies liées aux énergies renouvelables, à la mobilité électrique, à l'intelligence artificielle et aux technologies numériques. L'extraction de ces minéraux s'effectue toutefois souvent dans des pays en développement riches en ressources et dans des sociétés caractérisées par un pluralisme juridique, où les communautés locales, les détenteurs de terres coutumières et les peuples autochtones supportent les coûts sociaux, environnementaux et culturels de l'extraction, tout en ne bénéficiant que de manière limitée des retombées en matière de développement. Cette contradiction, comme le soutient l'article, constitue un problème structurel de l'ordre international du développement. Une transition mondiale qui réduit les émissions de carbone mais reproduit la dépossession, les dommages écologiques et la répartition inégale des bénéfices n'est ni du développement, ni du développement au sens normatif du terme, comme l'indique la Déclaration sur le droit au développement. S'appuyant sur le droit international des droits de l'homme, la jurisprudence africaine en matière de droits de l'homme, la théorie constitutionnelle comparative et les débats politiques émergents relatifs aux minéraux critiques, cet article présente un cadre de « constitutionnalisme du développement ». Il soutient que les constitutions et les instruments de gouvernance doivent transformer la souveraineté minière, pour qu'elle cesse d'être un permis impérial d'extraction et devienne une responsabilité publique visant à garantir la participation, le partage des bénéfices et la responsabilité environnementale, l'équité intergénérationnelle et un développement axé sur les communautés. En s'appuyant sur la jurisprudence africaine et comparative, notamment les affaires Social and Economic Rights Action Centre & Another c. Nigeria, Endorois Welfare Council c. Kenya et Sarayaku c. Équateur, l'article montre qu'à cet égard, la participation significative, la protection culturelle et le partage équitable des bénéfices ne constituent pas des préférences politiques, mais bien des composantes fondamentales de la justice en*

*matière de développement. L'article conclut en proposant un Pacte mondial pour la prospérité durable fondé sur la justice en matière de minerais critiques, la justice climatique, l'équité numérique et le constitutionnalisme de développement. En substance, l'article affirme que la légitimité future du droit au développement reposera non seulement sur la quantité de ressources extraites, mais aussi sur le fait que les communautés riches en ressources soient les auteurs et les bénéficiaires de la prospérité créée en leur nom.*

**Key words:** *right to development; critical minerals; climate justice; developmental constitutionalism; customary property rights; resource governance; Africa; legal pluralism; sustainable prosperity; benefit sharing*

## 1 Introduction

The United Nations (UN) Declaration on the Right to Development was adopted on 4 December 1986 at a time when the newly independent and developing states of the world were calling for a more equitable world economy.[1] The Declaration held that all human beings and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms are fully realised.[2] The 1986 Declaration was revolutionary in that it shifted development from charity, aid and state discretion to the language of entitlement, participation and justice.

In 2026, nearly 40 years later, the Declaration remains both urgent and unfinished. Yet, poverty, debt distress, climate vulnerability, digital exclusion and resource conflicts define many people in the Global South. The crisis is not just that development has not reached everyone. It is the fact that current development models have generally produced prosperity for some communities while the prosperity of others is compromised. The right to development was established in response to this developmental injustice.

1 Declaration on the Right to Development, UN General Assembly Resolution 41/128 of 4 December 1986.
2 Declaration (n 1) arts 1 & 2.

This chapter argues that the current understanding of the right to development must be re-imagined through the governance of critical minerals. The global transition to clean energy, electric mobility, battery storage, artificial intelligence and digital infrastructure is dependent on minerals such as cobalt, lithium, copper, graphite, manganese and rare earths.[3] These minerals are now seen as crucial because they are used in strategic industries, supply chain security and low-carbon technologies. However, they are often extracted in countries where governance structures are weak, local communities are marginalised, the rights of customary land rights receive limited legal protection and there is not much environmental oversight.

The result is a new developmental paradox. The minerals needed to save the planet from fossil-fuel dependency can only further deepen localised poverty, land dispossession and ecological harm unless governed by rights-based institutions. The whole green transition may become morally compromised if it pursues decarbonisation in extractive ways that mimic colonial and post-colonial value capture. The issue is not whether critical minerals are needed, but why they are needed and under what circumstances. The question is whether the governance of critical minerals can be transformed from an extractive enterprise to a constitutional and developmental project, and the right to development provides the normative basis for this transformation. The right to development is not merely a matter of international assistance which is the claim for international assistance. It is a legal and political framework for development to be participatory, fair, accountable and human-centred. Development decisions must be made in the communities, and the benefits of development are proportionate to those who are affected and should not be treated as recipients of the benefits.[4] For resource-rich countries, this means that those near mineral-rich land should not be treated as an object of compensation or passive recipients of state policy. They are rights holders whose land, livelihoods, culture and future must define mineral governance.

3 International Energy Agency (IEA) 'The role of critical minerals in clean transition' (2021) 5-12; World Bank 'Minerals for climate action: The mineral intensity of the clean energy transition' (2020) 11-18.

4 A Sengupta 'On the theory and practice of the right to development' (2002) 24 *Human Rights Quarterly* 837.

The argument is presented in six steps: The first part is concerned with the normative content of the right to development. The second part is about how critical minerals are situated in the political economy of the green and digital transition. The third part is about the need for climate justice to provide development justice. The fourth part develops developmental constitutionalism as a legal framework for inclusive resource governance. In the fifth part comparative jurisprudence and policy experiences are discussed. In the last part, I propose a Global Compact for Sustainable Prosperity as a policy contribution to future discussions within the UN framework on the right to development.

## 2 The right to development as a framework for justice

The Declaration on the Right to Development is based on a rather simple and yet powerful point: Development must serve the human person. Development is a human right according to article 1. Article 2 states that development is an inalienable right and, as said earlier, the human being is the most important and should be the partner and beneficiary of the right to development. Articles 1, 2 and 8 call for states to provide equal opportunities for people to access basic resources, education, healthcare services, food, housing, employment and fair distribution of income.[5] These facts show that the Declaration does not relate development with gross domestic product, export revenue or investment flows. Development is a whole process of human well-being, dignity and freedom.

This distinction is critical. For much of the post-Cold War period, development was measured through economic growth, industrialisation and infrastructure expansion. These are still important, but the right to development insists that the extent of economic transformation must be assessed as a matter of the impact on people. Development that increases national revenue while displacing communities, destroying livelihoods, weakening culture and concentration of wealth cannot satisfy the normative meaning of the right to development. It may be growth, but it is not justice.

5 Declaration (n 1) arts 1, 2 & 8.

Scholars have long debated whether the right to development is legally binding, political, or merely programmatic in nature.[6] Critics have argued that the right to development is conceptually ambiguous, failing to resolve tensions between individual human rights and collective state rights. Conversely, legal theorists such as Sengupta, Baxi and Marks have maintained that the right to development provides a necessary legal basis to address structural inequalities embedded in the global economy.[7] Although this is still an important and ongoing debate, it should not obscure the practical legal impact of the Declaration. It is a normative test for the meaning of development legitimacy. Development is legitimate only in the sense that it is participatory in process, fair in distribution and respectful of all human rights and accountable to those living on the ground.

The African human rights system has given tangible expression to the relevance of the right to development. According to article 22 of the African Charter on Human and Peoples' Rights (African Charter), all peoples must have the right to the economic, social and cultural development of their country (in relation to the freedom and identity of their people) and to the same enjoyment of the common heritage of mankind.[8] The wording of article 22 is important as it relates development to peoples, identity, equality and common heritage. It is also clear that development cannot be divorced from society, culture, land and resources.

The decision of the African Commission on Human and Peoples' Rights (African Commission) in *SERAC* is one of the most significant in this regard.[9] The case concerned environmental destruction and social damage caused by oil extraction in Ogoniland. The Commission found that Nigeria violated the principles of the African Charter on health, property, the environment and natural resources.[10] It rejected the notion that the state may use national development to justify environmental

6 J Donnelly *Universal human rights in theory and practice* (2013) 260-269.
7 S Marks 'The human right to development: Between rhetoric and reality' (2004) 17 *Harvard Human Rights Journal* 137; ME Salomon *Global responsibility for human rights: World poverty and the development of international law* (2007) 129-156.
8 African Charter on Human and Peoples' Rights art 22.
9 *Social and Economic Rights Action Centre (SERAC) & Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001) (*SERAC*).
10 *SERAC* (n 9) paras 52-69.

destruction and community suffering. It stated that states must respect, protect, promote and fulfil rights while extracting resources. The significance of *SERAC* lies in its constitutional imagination. Although it is decided by a regional human rights body, the case establishes a theory of developmental accountability. It makes it clear that the governance of natural resources is not simply an administrative or economic question. It is also a human rights matter coalescing around health, land, food, environment, participation and dignity. This implies that *SERAC* is preparing for many current debates over critical minerals. The above-mentioned case also warns that extraction leads to legal responsibility if it causes ecological damage, social exclusion and undermines community rights.[11]

*Endorois* expanded Ogoniland jurisprudence.[12] The African Commission found that Kenya violated the Endorois community's rights by removing it from its ancestral lands without adequate consultation, compensation and benefit sharing. The Commission found that the community was not engaged in the planning and implementation of the development project on its land and, therefore, the community was not able to exercise the right to development.[13] The core principle that emerges is that development is not something done to people; it is something done with communities. Likewise, the Inter-American Court of Human Rights (Inter-American Court) in *Kichwa Indigenous People of Sarayaku v Ecuador* agreed with this in a similar case.[14] Although the case arose within the Inter-American system, its significance extends beyond that regional context. It confirms an emerging transnational legal consensus that participation, consultation and cultural integrity are key to legitimate resource governance.

Collectively, these jurisprudential developments reinforce a contemporary interpretation of the right to development as an imperative of developmental justice. It has at least five components: First, development must be participatory; second, development needs to share benefits and burdens fairly; third, development has to respect ecological

11 *SERAC* (n 9) para 54.
12 *Centre for Minority Rights Development& Another v Kenya* (2009) AHRLR 75 (ACHPR 2009) (*Endorois*).
13 *Endorois* (n 12) paras 277-298.
14 *Kichwa Indigenous People of Sarayaku v Ecuador* IACtHR Series C 245 (2012) (*Sarayaku*).

integrity; fourth, development must protect community identity and land-based relationships; and, fifth, development should be held to account by law and institutions. These elements are the foundation on which to restructure critical minerals governance.

## 3 Critical minerals and the new extractive frontier

What is new is the strategic importance of critical minerals in the global economy. Cobalt, lithium, graphite, copper, nickel, manganese and rare earth metals are of increasing importance to clean energy technologies, electric vehicles, battery storage, digital infrastructure and advanced manufacturing.[15] As a result, access to these minerals is increasingly viewed as critical to industrial competitiveness, energy security and geopolitical influence of countries and corporations.

That paradigm shift toward sustainable development creates major opportunities for developing countries, particularly in African countries, which possess vast quantities of minerals for the green transition. If the African Development Bank has been clear that critical minerals can help develop a country economically, create jobs and achieve regional integration, these are real opportunities for countries that have historically been unable to derive greater value from the export of raw materials; the growing demand for critical minerals presents a significant opportunity to renegotiate their position within global value chains.[16] However, opportunity does not guarantee development. The history of natural resource extraction in Africa, Latin America and parts of Asia indicates that resources can coexist with poverty, conflict and weak systems.[17] It is not because resources are cursed, but because governance structures often allow the removal of wealth without investment in human growth, local industry, environmental protection and democratic accountability. The critical minerals boom may mirror this if resource-rich countries continue to supply raw materials with value addition, technology, finance and manufacturing captured elsewhere.

15 IEA (n 3) 5-12; World Bank (n 3) 11-18.

16 African Development Bank *Critical minerals for Africa's inclusive growth and development* (2025) 6-15.

17 R Auty *Resource abundance and economic development* (2001) 3-18; P Collier *The bottom billion*: *Why the poorest countries are failing and what can be done about it* (2007) 38-52.

The concern is not just theoretical but evident in contemporary extraction sites. The Democratic Republic of the Congo (DRC) supplies over 70 per cent of global cobalt, yet mining regions suffer severe poverty, child labour abuses, hazardous working conditions and inadequate public infrastructure.[18] Zambia and the DRC are highly strategic to global copper and cobalt supply networks, yet both face immense structural challenges in converting mineral extraction into domestic industrial capacity and broader welfare. Similarly, manganese producers such as South Africa and Gabon face the ongoing challenge of establishing downstream processing industries to secure long-term economic transformation.[19] Sierra Leone's history with diamonds, rutile, bauxite and other critical minerals highlights the danger of treating mineral management solely as a fiscal business rather than a constitutional project. If the future economy is built upon critical minerals, the right to development demands an alternative legal approach. Developmental justice does not just require licences for extraction, but involves domestic processing, robust local content policies, mandatory technology transfer, integrated regional value chains, transparent contracting, enforceable community development agreements (CDAs) and strict environmental protections. It also calls for the restructuring of fairer international partnerships; a model in which industrial nations secure low-carbon supply chains while producing communities bear the localised environmental and human costs, which is fundamentally incompatible with international human rights law and can no longer be reconciled with the right to development.

This reality requires a conceptual redefinition of 'criticality'. Historically, the criticality of a mineral has been defined from the perspective of importing states. A mineral is critical because its supply is vulnerable, because it is required for strategic industries or because substitutes are limited.[20] From the perspective of resource-rich developing states and local communities, criticality must be defined differently. A mineral is critical not merely because foreign markets require it, but because its extraction determines whether local populations experience dispossession or dignity, environmental destruction or ecological

18 Amnesty International *Powering change of business as usual?* (2023) 12-25; S Kara *Cobalt red: How the blood of the Congo powers our lives* (2023) 35-60.

19 African Development Bank (n 16) 8-15.

20 International Renewable Energy Agency *Geopolitics of the energy transition: Critical minerals* (2023) 22-30.

balance, economic dependency or structural transformation. Therefore, development means that criticality must be redefined differently. Such a redefinition would produce a different policy agenda. It requires asking whether critical mineral development will strengthen democratic institutions, protect customary land holders, create skilled employment, build local infrastructure, support domestic industry and preserve ecosystems. Critical minerals governance, therefore, should be a rights-based development regime, not just a supply chain management strategy.

## 4 Climate justice and the right to development

Development can no longer be seen as unlimited industrial growth. It must now be done within ecological bounds and based on equity. Climate change is about injustice in that those who contributed least to all the historical emissions suffer the most.[21] African countries , least developed countries, small island developing states, indigenous peoples, as well as women, the youth and rural communities, face disproportionate climate vulnerability despite having contributed comparatively little to the circumstances that have produced it.

The right to development is a legal response to address climate injustice. It insists that all people are entitled to do their part in and benefit from development. It also recognises that international cooperation is necessary to overcome obstacles to development.[22] Climate change is now one of the most serious obstacles to development as it threatens food systems, water security, health, housing, livelihoods, peace and displacement. Climate justice, therefore, is not merely a moral complement to the right to development; it is a necessary condition for its realisation in the contemporary world. However, climate change creates a dilemma of its own as the transition from fossil fuels to renewable energy requires minerals. Everything, from solar panels, wind turbines, batteries, electric vehicles and grid infrastructure, is dependent on minerals. The green transition is mineral-intensive, and if these minerals are extracted in socially unjust and environmentally destructive models, climate action can decrease global emissions but increase local harm.

21 IPCC 'Climate Change 2023: Synthesis report' (2023) 42-58.
22 Declaration (n 1) arts 3 & 4.

When the global imperative for clean energy ignores local costs, mineral criticality becomes a driver of green extractivism, a paradigm that sacrifices local communities to achieve global climate goals. Under this model, rural populations lose their lands and livelihoods to mine the very minerals that power decarbonisation elsewhere. This dynamic creates a stark paradox: Minerals deemed 'critical' for global sustainability simultaneously generate localised displacement and environmental degradation. The same applies, when water sources are polluted for battery supply chains, or when customary land holders are not given a say in the decision-making process or when resource-rich countries export minerals but import expensive finished technologies. In such cases, the green transition can be good for consumers but bad for producers. The right to development puts a hold on this conflict. Climate action should be measured not only in terms of carbon reduction, but also by participation, equity and human dignity. A solar-powered world based on dispossessed communities would be developmentally unjust. A battery economy based on exploitation and ecological destruction would not fulfil the Declaration's promise. Therefore, climate justice demands that critical minerals governance be rooted in a broader rights-based approach.

The Expert Mechanism on the Right to Development 2025 policy work links climate justice, sustainability and the right to development[23] to the future by linking it to climate justice, sustainability and development. It concerns equality, participation and accountability as essential elements of an effective response to climate vulnerability. These are also fundamental to critical minerals governance, as a just transition should not only be for workers leaving fossil-fuel industries, but also for those who are on the mineral frontier, and it must include those nations whose land and ecosystems allow clean technologies to be developed.

Climate justice is also about international economic reform, as many developing countries are saddled with debt, have little fiscal room, technological barriers and unequal trade relations. While resource-rich developing nations are encouraged to supply minerals for the global transition, structural barriers prevent them from processing and industrialising those resources locally. Intellectual property laws,

23 United Nations Expert Mechanism on the Right to Development 'Climate justice, sustainability and the right to development' Policy Brief 6 (2025) 1-3.

investment treaties, export restrictions imposed by powerful states and asymmetric bargaining power can all limit producer countries' development.[24] If the right to development is to remain relevant, it needs to confront these structures.

At this juncture, climate justice needs to be embedded in regional industrial policy for Africa. The African Continental Free Trade Area (AfCFTA), Africa Mining Vision and emerging continental green minerals strategies open up opportunities to move beyond fragmented national strategies.[25] Regional value chains could be used for mineral beneficiation, battery manufacturing, renewable energy production and technology partnerships. That is not just an economic agenda; it is a right to development agenda because it seeks to ensure that African resources contribute to African prosperity.

## 5 Developmental constitutionalism and resource governance

Developmental constitutionalism is the use of constitutional law and institutions to promote transformative development, social justice and democratic accountability. It rejects the notion that constitutions give up state power and, instead, views constitutional law as a framework for the exercise of public authority grounded in human dignity, equality, participation and sustainable development, and ultimately vested in the people.[26]

Mineral governance is often viewed as a policy field governed by mining statutes and investment contracts and administrative discretion. However, decisions about minerals can affect land, livelihoods, environment, culture, revenue, intergenerational equity and national development trajectories. They are thus constitutional questions of: Who owns natural resources? Who decides whether extraction should happen? Who benefits? Who bears the risks? What does one pay as remedies when harm occurs? These are constitutional questions because they concern power, rights and justice.

24 UNCTAD 'Commodities and development report 2023: Inclusive diversification and energy transition' (2023) 45-61.

25 African Union 'Africa mining vision' (2009) 12-20; Agreement Establishing the African Continental Free Trade Area (2018).

26 K Klane 'Legal culture and transformative constitutionalism' (1998) 14 *South African Journal on Human Rights* 146; S Liebenberg, *Socio-economic rights adjudication under a transformative constitution* (2010) 24-35.

The ultimate goal of developmental constitutionalism is to make mineral sovereignty a constitutional responsibility. At present, permanent sovereignty over natural resources has emerged as a post-colonial principle that allows states to recover resources from colonial and foreign control.[27] It has its historical significance, but in many post-colonial contexts, state control over minerals has been used to marginalise local communities. The state claims ownership of minerals, licenses investors for the mineral extraction and views community land interests as perceived as a compensable obstacle rather than constitutional rights.

This is problematic in legally plural societies where customary tenure governs land ownership. In such contexts, land is not just an economic resource but also an identity, a provider of self-determination, a source of meaning, of spirituality, the inheritance of generations of people and social belonging.[28] If mineral rights are separated from land rights without any meaningful protections, customary communities will lose control of development of their territories. Developmental constitutionalism asserts that customary property rights are constitutionally important and should be protected and managed.

The Sierra Leonean context illustrates this challenge. In essence, the Constitution of Sierra Leone protects property rights and recognises customary law in the broader legal order,[29] while the Customary Land Rights Act 2022 promotes the recognition of customary land interests, and the Mines and Minerals Development Act 2022 governs exploration, licensing, compensation and community-related matters,[30] but the constitutional issue is how to reconcile state power over minerals with customary land holders who are affected by mining. This is not just a question of statutory interpretation, but a problem of developmental legitimacy.

A developmental constitutional approach would require at least six changes: First, community participation should be mandatory at every stage of mineral governance, from licensing to closure; second,

27 N Schrijver *Sovereignty over natural resources: Balancing rights and duties* (1997) 1-25.

28 K Deininger *Land policies for growth and poverty reduction* (2003) 57-70; L Cotula *The great African land grab? Agricultural investments and global food system* (2013) 18-35.

29 Constitution of Sierra Leone, 1991 (Act 6 of 1991) secs 21, 27 & 170.

30 Sierra Leone's Customary Land Rights Act 2022; and Mines and Minerals Development Act 2022.

compensation should be based not only on the value of the product for sale, but cultural, economic, ecological and intergenerational loss; third, community development agreements should be enforceable, transparent and democratically monitored; fourth, environmental impact assessment should be based on community knowledge and independent oversight; fifth, benefit sharing should be linked to local development plans; and, sixth, courts and administrative bodies must regard customary land rights as rights with constitutional value and not just administrative needs.

This approach does not deny the state's role in national development, but it disciplines that role. States still have the responsibility for managing national development, attracting investment and resource allocation in public interest. However, public interest cannot be defined without the people who are impacted by development, and the public interest must be democratised.

## 6 Comparative jurisprudence and governance lessons

Comparative legal analysis provides valuable insights into how resource governance can either promote human development or entrench structural inequality. A comparison of institutional frameworks across Africa, Latin America and Southeast Asia demonstrates that mineral outcomes are fundamentally determined by domestic legal institutions.

Botswana is often regarded as a relatively successful example of diamond governance in Africa.[31] Throughout the long-term state planning, strong institutional frameworks, joint-venture partnerships, and reinvestment of resource revenue in human capital development, health care and infrastructure, Botswana converted finite mineral wealth into sustained national development. While Botswana's model faces ongoing diversification challenges, its experience proves that natural resource outcomes are dedicated by institutional choices rather than geological fate.

Norway is another good example of resource wealth governance. With sovereign wealth management, fiscal discipline and intergenerational planning, petroleum revenues can be turned into long-term public

31 A Acemoglu & JA Robinson *Why nations fail: The origins of power, prosperity and poverty* (2012) 405-420.

wealth.[32] The Norwegian experience demonstrates that resource governance can be disciplined by constitutional and institutional safeguards that prioritise intergenerational equity. This principle is vital for critical minerals. Since many critical minerals are finite, extraction should create lasting social assets such as education, health and environmental quality, green industrial capacity and technological capacity.

Conversely, the Niger Delta in Nigeria serves as a sobering example of environmental failure and community displacement. It shows the dilemma of how extraction is not respected and the consequences of this are not properly accounted for. Decades of oil extraction without adequate environmental regulation or community benefit sharing resulted in widespread ecological degradation, economic marginalisation and armed conflict. As established in *SERAC*, the failure to regulate corporate extractivism and protect local livelihoods violates fundamental human rights. This decision remains a legal testament to the failure of environmental governance and community protection.[33] For the critical mineral states, the lesson is clear: There is a need to regulate companies effectively, disclose information, protect communities, ensure remediation and provide remedies for their problems.

The legal protection articulated in *Endorois* further emphasises that development projects undertaken on ancestral lands without meaningful consultation and fair benefit sharing violate the right to development.[34] The African Commission's reasoning undermines paternalistic development, where governments determine what is good for communities without their involvement. While critical mineral extraction is often justified by reference to national revenue or global decarbonisation goals, the *Endorois* decision confirms that global or national priorities cannot override local human rights. A project can be strategic at the national level but even unjust at the community level.

The decision in *Sarayaku* adds a cultural and territorial dimension to resource jurisprudence.[35] The Inter-American Court of Human Rights affirmed that extractive concessions granted without proper consultation

32 T Gylfason 'Natural resources, education and economic development' (2001) 45 *European Economic Review* 847.
33 *SERAC* (n 9).
34 *Endorois* (n 12).
35 *Sarayaku* (n 14).

violate not only property rights, but also the cultural identity and survival of indigenous and land-dependent communities. This ruling is highly relevant to customary landholding contexts across Africa, where land remains deeply tied to community organisation, cultural authority and lineage. Therefore, developmental constitutionalism needs to be about more than simply physical possession, but it must preserve the cultural and ecological relationships through which communities experience land.

In Latin America, recent lithium governance initiatives highlight diverse approaches to mineral sovereignty. Chile's National Lithium Strategy seeks to increase state participation and require public-private partnerships to capture greater domestic value and enforce stricter environmental controls over brine extraction.[36] Bolivian has long designated lithium a strategic resource for state-led development, though it has faced ongoing technical, financial and processing challenges.

In Southeast Asia, Indonesia's nickel ban (downstream processing) policy represents a significant effort by developing nation for a force foreign investor to build domestic refining and smelting capacity rather than exporting raw ore.[37] These examples show that producers are more and more turning off the flood of raw material suppliers. However, industrial policy must also have community rights and environmental responsibility, as value addition without justice might simply move benefits from foreign corporations to national elites.

For African states, the primary legal challenge is to operationalise a continental minerals governance architecture that connects sovereignty, industrialisation and community rights. The Africa Mining Vision (AMV) is a starting point as it lays out the importance of transparent, equitable and optimal exploitation of mineral resources in support of sustainable development.[38] Likewise, AfCFTA can link regional value chains. The emerging Africa Green Minerals Strategy is designed to connect mineral governance with climate and industrial transformation.[39] However, these frameworks will need to be enforced by the nation and national policy if they are to change community reality.

36 D Yergin *The new map: Energy, climate, and the clash of nations* (2020) 387-315.
37 UNCTAD (n 24) 45-61.
38 African Union (n 25) 12-20.
39 African Development Bank (n 16) 6-15.

These comparative experiences demonstrate that resource wealth can be converted into long-term prosperity only when institutions embed accountability, equity and intergenerational planning. Building on such lessons, the proposed Global Compact for Sustainable Prosperity seeks to translate these principles into a structured, multi-level governance framework. At the global level, it should be anchored in UN mechanisms with independent monitoring. Regionally, bodies such as the African Union (AU) and the Economic Community of West African States (ECOWAS) must align mineral governance with industrial policy. National constitutions and statutes must embed benefit sharing and customary land rights, while community development agreements ensure local participation. Implementation should be supported by a Global Minerals Justice Fund, financed by consumer countries and corporations, to guarantee that prosperity is not only extracted but equitably shared. In this way, the Compact is not merely aspirational but provides concrete pathways for implementation across global, regional, national and community levels.

## 7 Towards a global compact for sustainable prosperity

The fortieth anniversary of the Declaration on the Right to Development should not be treated only as a commemorative moment. It should be regarded as a constitutional moment in global development thinking. The world is moving into a mineral-intensive green and digital economy. Therefore, the rules that are developed now will determine whether this transition produces shared prosperity or a new era of extractive inequality.

This chapter proposes a Global Compact for Sustainable Prosperity. The Compact would not replace existing human rights, climate or development instruments. Rather, it would provide a policy framework to align critical minerals governance with the right to development. It would be based on seven principles:

(1) *Critical minerals governance should be human-centred:* Mineral extraction must not only be about exports, supply security or corporate profit. It should be for the benefit of people and communities.

(2) *Participation must be substantive:* The communities in the affected regions should be involved in licensing, environmental assessments, benefit sharing, monitoring and closure planning. Participation

should not be reduced to information sessions after decisions have been made.

(3) *Customary property rights should also be recognised as developmental rights:* In legally plural societies, customary land holders' land interests are socially and constitutionally important. Thus, mineral governance should harmonise state mineral sovereignty with customary land rights.

(4) *Benefit sharing must be enforceable:* Community development agreements, local content agreements, revenue-sharing mechanisms and social investment commitments must be legally binding, publicly disclosed and subject to independent monitoring.

(5) *Climate justice must govern the green transition:* Critical minerals extracted for decarbonisation should not generate local environmental injustice. Clean energy supply chains need to be green in terms of carbon and human rights.

(6) *Producer countries need to shift up value chains:* The right to development is based on fair participation in economic benefits. Resource-rich countries should be supported to develop refining, processing, manufacturing, research and technological capacities.

(7) *Intergenerational equity must be at the heart of it:* Mineral revenues can be used for long-term public goods such as education, health, climate recovery, digital infrastructure, renewable energy and overall economic decarbonisation.

Such a Compact would bring practical meaning to article 10 of the Declaration, which calls for policy, legislative and other measures at national and international levels to ensure the full exercise and progressive enhancement of the right to development.[40] It would also respond to the climate justice imperative by ensuring that the transition to a low-carbon economy is not built on old forms of extraction.

| Pillar | Development Problem | Policy Direction |
|---|---|---|
| Human-centred minerals | Minerals treated mainly as exports | Use mineral governance to advance welfare, dignity and local development |

40 As above.

| | | |
|---|---|---|
| Substantive participation | Communities consulted after decisions | Participation from licensing to closure |
| Customary land as development right | Customary land holders treated as informed occupants | Recognise customary property as constitutionally significant |
| Enforcement benefit sharing | Social commitments treated as voluntary | Make community development agreements binding and monitored |
| Climate justice | Clean technologies built on local harm | Require rights-compliant and environmentally accountable supply chains |
| Value chain equity | Producer states remain raw exporters | Support refining processing, skills and technology transfer |
| International equity | Mineral revenue consumed in the present | Invest in future public goods and sovereign development funds |

## 7.1 Operationalising global compact for sustainable prosperity

The Global Compact for Sustainable Prosperity is not merely a policy preference but a constitutional and developmental necessity. Its success will depend on whether resource-rich communities become the authors and beneficiaries of the prosperity created in their names. By embedding critical minerals justice, climate justice, digital equity and developmental constitutionalism into a coherent framework, the Compact offers a pathway to reconcile global decarbonisation with local dignity. In this way, the right to development can be reimagined for the twenty-first century as both a normative entitlement and a practical governance regime. The Compact will only be effective as a normative document if it is also implemented by institutions that convert its principles into tangible outcomes.

First, states can implement National Sustainable Prosperity Frameworks that embed the Compact's principles in domestic mining laws, environmental regulation, land governance systems and national development plans. Such frameworks would require governments to demonstrate how mineral extraction contributes to poverty reduction, social inclusion, environmental sustainability and long-term structural transformation. States would also be asked to undertake regular right

to development impact assessments alongside environmental and social impact assessments before major extractive projects are approved.

Second, implementation could be supported by multi-stakeholder governance platforms for government representatives, customary authorities, local communities, civil society organisations, industry actors and independent experts. These platforms would constitute a formal framework for licensing decisions, environmental monitoring, benefit-sharing arrangements and project monitoring. Such organisations would make the Compact more ambitious and concrete in terms of engagement with the community, not only in consultation, but throughout the project process.

Third, the Compact can establish minimum governance standards for critical minerals projects. Such standards require publicly available contracts, disclosure of beneficial ownership information, publication of royalty and tax payments and transparent reporting on environmental and social obligations. Compliance with these standards could become a prerequisite for mining licences, international financing or preferential trade arrangements with respect to critical minerals supply chains.

Fourth, an Independent sustainable prosperity review mechanism could be created to monitor implementation. Based on the current peer review system in international governance, states would periodically report the progress in implementing the Compact's principles. Independent experts, community representatives and civil society organisations would be able to help in this review. Then the best practices, implementation gaps and corrective measures would be identified, and the country would learn to become accountable and policy makers would be held accountable.

Fifth, the Compact should encourage the creation of community benefit and development agreements as integral components of large-scale critical mineral projects. Such agreements would secure legally binding commitments on local employment, skills transfer, social infrastructure, environmental protection, grievance systems and revenue sharing. Independent audits and public disclosure requirements would provide for monitoring and verification that commitments actually provide tangible community benefit.

Sixth, international financial institutions, development partners and multilateral development banks could support implementation through sustainable prosperity financing facilities. These facilities would offer

technical assistance and concessional financing and capacity-building assistance to resource-rich developing countries that want to strengthen regulatory institutions, improve mineral governance and move into higher-value segments of mineral supply chains. Focus would be on refining, processing, manufacturing, scientific research and technological innovation.

Seventh, the Compact should be linked to a set of measurable indicators and reporting obligations to be used in the implementation of the Compact. For example, to measure progress on this matter, these would be measured by community participation rates, local content performance, revenue sharing, environmental restoration, downstream industrialisation, gender inclusion and investment in intergenerational public goods. Periodic reporting would help stakeholders to know if the mineral wealth is contributing to sustainable prosperity and, if so, who needs to be monitoring and reporting it.

Finally, regional organisations (African, Latin American and Asian) could help coordinate standards, promote cross-border learning and collective bargaining in the global critical mineral markets. Such regional cooperation would enhance producers' bargaining power and help ensure that there is a uniform governance standard across countries.

Combined, these mechanisms of implementation would transform the Global Compact for Sustainable Prosperity from a statement of principle to an effective governance framework, integrated into broader systems of governance and capable of serving as a genuine framework for mineral governance and development. They would create institutional platforms through which Compact's human-centred vision could be translated into specific obligations and measurable outcomes and long-term developmental benefits in terms of long-term development and human-centred development.

### 7.2 How enforceability can be achieved

Benefit-sharing mechanisms should be embedded in the legal and contractual framework of regulation and agreements. Community development agreements, local content obligations, revenue-sharing arrangements and social investment commitments must be part of mining licences, concession agreements or statutory obligations rather than voluntary corporate undertakings. National legislation should also require these agreements to include provisions on specific obligations,

implementation timelines, funding commitments and monitoring mechanisms and sanctions for non-compliance. Independent regulatory authorities should be able to audit regularly, publish compliance reports and impose penalties if obligations are not met. Where benefit-sharing commitments are not fulfilled, communities should also have access to remedies, including compensation, injunctive relief and independent dispute-resolution mechanisms. To build on accountability even further, all agreements should be publicly disclosed and monitored through multi-stakeholder oversight committees comprised of government, community and civil society representatives. Benefit sharing is now an obligation that is legally enforceable and not just a matter of corporate social responsibility.

## 8 Conclusion

The right to development must be reimagined for the age of critical minerals, climate crisis and digital transformation, as has been argued in this chapter. The most important development struggle of the twenty-first century will not only be about access to aid, trade or investment. It will also boil down to controlling what resources, technologies and institutions will shape the future of the global economy. Critical minerals are at the heart of this struggle.

This chapter has made three major claims: First, the right to development is still normative because it is said that development must be participatory, equitable and human-centred. Second, critical minerals governance is a crucial test of whether the green transition can be made in an ethical way. Third, developmental constitutionalism is a legal framework to transform mineral sovereignty into public responsibility.

The challenge is clear. A world that extracts lithium, cobalt, graphite, copper and rare earth elements from communities burdened by resource poverty and pollution, while relying on these resources to power clean technologies elsewhere, cannot claim moral progress if those communities remain impoverished, polluted and excluded. Therefore, decarbonisation without development justice is incomplete, energy transition without community participation is fragile, and digital transformation without value chain equity is another form of dependency.

The future of the right to development is not extraction, but it is constitutional integration, democratising resource governance and ensuring that communities whose lands sustain global prosperity

are co-authors of that prosperity, as the Declaration on the Right to Development started with the promise that all people should be able to participate, contribute and benefit from development. Forty years later, that promise needs to be renewed in the mines, forests, rivers, customary lands and communities where the green and digital futures are being built. The real measure of the next generation of development policy will not be the amount of critical minerals extracted; it will be whether extraction becomes dignity, whether mineral wealth is human capability, whether climate action is climate justice and if constitutional systems recognise that the people closest to the resources must never be the furthest away from the benefits. That is the unfinished promise of the right to development; and that is the pathway beyond extraction.

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