

ISSN 2526-0774

# HomaPublica

REVISTA INTERNACIONAL DE  
**DERECHOS HUMANOS  
Y EMPRESAS** 

Vol. VIII | Nº. 01 | Jan - Jul 2024

Recebido: 26.06.2024 | Aceito: 23.08.2024 | Publicado: 17.09.2024

## THE COST OF SUSTAINABILITY: ENERGY TRANSITION IN LIGHT OF BUSINESS AND HUMAN RIGHTS AND ESG FRAMEWORKS<sup>1</sup>

O CUSTO DA SUSTENTABILIDADE: TRANSIÇÃO ENERGÉTICA À LUZ DOS MARCOS NORMATIVOS DE EMPRESAS E DIREITOS HUMANOS E ESG

EL COSTO DE LA SOSTENIBILIDAD: TRANSICIÓN ENERGÉTICA A LA LUZ DE LOS MARCOS NORMATIVOS DE EMPRESAS Y DERECHOS HUMANOS Y ESG

*Ana Cláudia Ruy Cardia Atchabahian*

*PUC-SP | São Paulo, Brasil | ORCID-ID 0000-0001-6964-6561*

*João Roberto Gorini Gamba*

*Universidade São Judas Tadeu | São Paulo, Brasil | ORCID-ID 0000-0002-1502-9426*

### Resumo

Este artigo tem como objetivo compreender os custos que envolvem o processo de transição energética para um planeta mais sustentável considerando os marcos de Direitos Humanos e Empresas e ESG, uma vez que esta transição é impulsionada pela necessidade urgente de enfrentar os impactos irreversíveis das alterações climáticas, exigindo que a sociedade internacional e os Estados se adaptem às novas realidades. Um aspecto negativo importante do desenvolvimento de energia limpa e sustentável é a crescente dependência de minerais frequentemente extraídos nos Estados do Sul Global, marcados por disparidades econômicas, sociais e culturais e por estruturas não democráticas. Estas condições conduzem frequentemente a violações dos direitos humanos, conforme salientado em relatórios recentes sobre a mineração ilegal em Myanmar. A Organização Não-Governamental Global Witness relatou graves violações dos direitos humanos e do meio-ambiente em Myanmar, onde minerais raros são extraídos para veículos elétricos e turbinas eólicas. Estas violações foram exacerbadas pela instabilidade política que se seguiu ao golpe militar de 2021. Este trabalho examina criticamente como a dinâmica de transição energética deve ser redesenhada para evitar a replicação de práticas de exploração comumente vistas na dinâmica corporativa envolvendo o Norte e o Sul Global. Enfatiza, nesse sentido, a necessidade de estes processos apoiarem, em vez de prejudicarem, os padrões democráticos e de direitos humanos. A análise baseia-se em diversas referências: estruturas BHR, práticas empresariais ESG, investigação acadêmica sobre violações dos direitos humanos nas cadeias de abastecimento, literatura TWAIL e considerações acadêmicas sobre o papel da democracia na proteção dos direitos humanos e a sua estreita ligação com a sustentabilidade num sentido amplo.

### Palavras-chave

Transição energética. Direitos Humanos. ESG.

### Abstract

This paper aims to understand cost involving the process of energy transition to a more sustainable planet considering Business and Human Rights and ESG frameworks, since this transition is driven by the urgent need to address the irreversible impacts of climate change, requiring international society and States to adapt to new realities. A major negative aspect of developing clean and sustainable energy is the increasing reliance on minerals often extracted in Global South States, marked by economic, social, and cultural disparities, and non-democratic structures. These conditions frequently lead to human rights violations, as highlighted in recent reports on illegal mining in Myanmar. The Non-Governmental Organization Global Witness reported serious human rights and environmental abuses in Myanmar, where rare minerals are

<sup>1</sup> This paper was presented in 2023 at the 7th Conference of the Global Business and Human Rights Scholars Association but it was not submitted to any publisher.

extracted for EVs and wind turbines. These violations have been exacerbated by the political instability following the 2021 military coup. This work critically examines how energy transition dynamics must be redesigned to avoid replicating exploitative practices commonly seen in the Global North-South corporate dynamics. It emphasizes, on this regard, the need for these processes to support, rather than undermine, democratic and human rights standards. The analysis draws on several references: BHR frameworks, ESG corporate practices, academic research on human rights violations in supply chains, TWAIL literature, and academic considerations on the role of democracy in human rights protection and its close connection to sustainability in a broad sense.

### **Keywords**

Energy transition. Human Rights. ESG.

### **Resumen**

Este artículo tiene como objetivo comprender los costos que implica el proceso de transición energética hacia un planeta más sostenible considerando los marcos de Derechos Humanos y Empresas y ESG, ya que esta transición está impulsada por la urgente necesidad de enfrentar los impactos irreversibles del cambio climático, exigiendo a la sociedad internacional y los Estados se adaptan a las nuevas realidades. Un aspecto negativo importante del desarrollo de energías limpias y sostenibles es la creciente dependencia de los minerales que a menudo se extraen en los estados del Sur Global, marcados por disparidades económicas, sociales y culturales y estructuras antidemocráticas. Estas condiciones a menudo conducen a violaciones de derechos humanos, como se destaca en informes recientes sobre la minería ilegal en Myanmar. La organización no gubernamental Global Witness ha informado de graves violaciones de los derechos humanos y del medio ambiente en Myanmar, donde se extraen minerales raros para vehículos eléctricos y turbinas eólicas. Estas violaciones se vieron exacerbadas por la inestabilidad política que siguió al golpe militar de 2021. Este trabajo examina críticamente cómo se deben rediseñar las dinámicas de transición energética para evitar replicar prácticas de explotación comúnmente observadas en las dinámicas corporativas que involucran al Norte y al Sur Global. En este sentido, enfatiza la necesidad de que estos procesos apoyen, en lugar de dañar, los estándares democráticos y de derechos humanos. El análisis se basa en varias referencias: marcos BHR, prácticas comerciales ESG, investigaciones académicas sobre violaciones de derechos humanos en las cadenas de suministro, literatura TWAIL y consideraciones académicas sobre el papel de la democracia en la protección de los derechos humanos y su estrecha conexión con la sostenibilidad en un sentido amplio.

### **Palabras clave**

Transición energética. Derechos Humanos. ESG.

## **1. INTRODUCTION**

What is the true cost of energy transition to a more sustainable planet? The urgent need to adapt processes and procedures aimed at achieving planetary sustainability and trying to accomplish the Sustainable Development Goals, being in compliance with international and national norms and ESG practices (acronym used to define environmental, social and governance voluntary practices applied by corporations around the globe), as well as the growing discussions about the irreversible impacts of climate change on the planet, bring new challenges to international society as well as to the processes of energy transition and for the adaptation of the States to the new reality that presents itself.

One of the main aspects of the discussions on the processes of energy transition to energies considered clean and sustainable is related to the increasing use of certain mineral components that are often extracted in developing (or underdeveloped) States, marked by deep economic, social and cultural disparities and, if not, structures or political situations that are not aligned with democratic paradigms, including those resulting from the currently existing international instruments for human rights protection.

The present work has its starting point in the 2022 report issued by the Non-Governmental Organization Global Witness (2022), which presents a scenario of serious violations of human rights and the environment in Myanmar in the extraction of rare minerals to serve the technology

industries that produce electric cars (EVs) and windmill turbines (the latter that performs to generate wind power across the planet)<sup>2</sup>. Also, as quoted on the 2024 report, “the use of heavy rare earths originating from Myanmar in EV motors manufactured by many western household brands is almost inevitable” (Global Witness, 2024), which brings us to the question about the lack of due diligence procedures and disclosure of information in supply chains.

In addition to the abuses that commonly affect the base of supply chains and are studied under a Business and Human Rights (BHR) perspective (which also covers ESG matters in the second pillar of the United Nations Guiding Principles on Business and Human Rights, also known as UNGPs), there is the political situation in that country, especially since the coup d’état that took place in 2021 with the seizure of power by the Burmese military forces. Therefore, in light of the international framework on BHR, and based on the observance of the theoretical framework related to the role of democracy in the protection of human rights and its close connection with sustainability in a broad sense, a reflection will be built on how the dynamics of the search for a society that is more attentive to the assumptions of environmental and social protection in the supply chains still need to be reconsidered so that the energy transition processes do not replicate the current exploratory movements of developing States that are widely verified in the corporate dynamics between the global north and south, as well as (i) not serving as mechanisms of political interference that harm or prevent the solidification of democratic standards; and (ii) causing a greenwashing effect to the companies that get involved in these processes.

## 2. STARTING POINT: ENERGY TRANSITION AND THE SEARCH FOR A MORE SUSTAINABLE PLANET

The impact of climate change on the planet is a documented reality, despite possible resistance on the part of States and some private actors. Climate change has already caused an increase in temperature in different parts of the globe, generating droughts, floods, poorly defined seasons and changes in the most varied ecosystems, resulting in destruction and drastic changes in living conditions mainly for vulnerable groups, but not only (Robinson, 2021, p. 133).

According to McKinsey & Company, under a scenario of a global temperature rise of 1.5 degrees Celsius above pre-industrial levels by 2050 instead of 2030, approximately one in four people will be exposed to the most severe climate changes based on what has already been observed (Bowcott et al., 2021).

The numerical perspective is vital: it is imperative that the emissions of carbon dioxide and other fossil fuels on the planet (today in 85% of all emissions, resulting in 51 billion tons of greenhouse gases) resulting from all industrial processes in progress reach zero by the year 2050 so that the consequences do not occur in such magnitude. According to Bill Gates, the number zero is non-negotiable: in other words, any reduction that is not equal to zero will only delay the catastrophic consequences already seen (Gates. 2021. p. 10).

---

<sup>2</sup> It is important to mention that the study of Myanmar’s situation is just a basis for a broader analysis of how mineral extraction works in different jurisdictions around the globe, which also includes the Brazilian overview on the gold extraction in Yanomami’s indigenous lands, for an example.

It is for this reason that the Institute for Human Rights and Business defined the outbreak on climate change and the complete energy transition (or just transition) in its most varied aspects as the main concern in the discussions of Business and Human Rights for the year 2022 (and, why not, for years and decades to come) (Institute for Human Rights and Business, 2022). Moreover, the United Nations (UN), in 2021, recognized that access to a healthy environment is also a human right (Human Rights Council Resolution A/HRC/RES/48/13) (UN, 2021).

This topic has gained space both in the public and private spheres. This is because concern for the environment is the responsibility of all stakeholders (after all, we are all part of Humanity!). Currently, the main data and ambitions to tackle the impacts caused by climate change are found in the so-called Paris Agreement, first treaty on the subject signed by 196 countries in 2015 and which entered into force in 2016, which brings as its main demands the preservation of the global average temperature below 2 degrees Celsius in relation to pre-industrial levels by the year 2050, with efforts to have a limit even to 1.5 degrees Celsius (UN, 2015).

Still regarding the international protection of the environment through regulations and standards, the European Green Deal, adopted by the European Commission in 2019 and which aims at the complete decarbonization of the European continent by 2050 and the reduction by more than half of the gases emitted by 2030 (European Commission, 2022), is based on the adoption of more radical measures to combat carbon emissions, such as the energy renovation of buildings and means of transport, the depollution of the energy system from renewable sources with opening for new jobs in the sector (European Commission, 2022) – all these measures idealized from the mobilization of one trillion Euros for sustainable investments.

In the Latin American context, the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean, also known as the Escazú Agreement, which entered into force in 2021 and requires cooperation between Member States to achieve true climate justice in the region, guaranteeing the protection of individuals whose environmental rights are violated on a daily basis (essentially based on exploratory corporate action in Latin America) (UN, 2018).

Corporations are also responsible for reaching a “Global Green Deal” (Chomsky & Pollin, 2020) regardless of the field of activity and the size of the corporation, the environmental impact is a reality; there is energy expenditure, inputs are used, objects are discarded, and carbon dioxide (CO<sub>2</sub>) is emitted in every company (Henisz et al., 2019). In addition, it is essential that corporations organize themselves beyond the proposed international regulations, especially considering their economic and financial strength in international society, as well as their recognized impact on the environment.

The main highlight is the reduction of carbon emissions in all activities primarily related to the sectors of energy production, land use system, industry, mobility, civil construction sector, agriculture and waste production until reaching the so-called net -zero, when carbon emission levels would match pre-industrial levels (Krishnan et al., 2022). In other words, the adoption of sources known as clean and/or renewable energy is an essential requirement for the permanency of

business on the planet without further compromising the environment. Added to this process, the development of strategies and innovations in the most varied sectors with great environmental impact, such as the energy generation industry and livestock, for example, are essential to mitigate potential impacts on the environment as much as possible. Finally, concurrently with these movements, deforestation must be avoided across the planet and all people protected, in a transition considered fair and completely sustainable (World Economic Forum, 2020).

Those initiatives are being held concurrently with the existing functioning of a global production under supply chains on the planet. In this sense, there is an urgent need to rethink the productive processes, which also runs through the need to guarantee human rights and environmental protection and avoid obstacles and setbacks (Business & Human Rights Resource Centre, 2024).

### 3. THE INTERNATIONAL FRAMEWORK ON BUSINESS AND HUMAN RIGHTS, ESG PRACTICES AND ITS APPLICATION IN THE SEARCH FOR SUSTAINABILITY

The need for a stronger protection of human rights and the environment also constitutes the basis for the international framework on Business and Human Rights. The United Nations Guiding Principles on Business and Human Rights (UNGPs) state that both corporations and States have to engage in human rights and environmental protection, with the application of not only national and international existing rules on the matter, but also, in the second pillar of the UNGPs, with the creation, by corporations, of voluntary standards of protection, taking into consideration the scope and size of each company (UN, 2022). Principles 17 to 22 also state the responsibility of corporations to provide human rights and environmental due diligence processes, as well as periodically reporting its findings in its sustainability reports.

The OECD Guidelines for Multinational Corporations also calls upon the need for corporations to report its activities within a human rights approach (OECD, 2011). Under the ten principles of the Global Compact, principles 7, 8 and 9 also state that businesses should promote initiatives to support a precautionary approach to environmental challenges, promote greater environmental responsibility and encourage the development of environmentally friendly technologies, the latter strongly connected to energy transition processes nowadays (Global Compact).

The Sustainable Development Goals, component of the 2030 Agenda of the UN and whose implementation is the collective responsibility of States, corporations, civil society organizations and individuals (Villas Boas & Cardia, 2021, pp. 30-31). Among the seventeen Goals and their respective targets, not only SDG 13 stands out, expressly addressing to action against global climate change, but also SDG 6, 7, 14 and 15, respectively related to sanitation and drinking water, clean and affordable energy, life in water and life on land. Furthermore, one should not lose sight of the fact that the reading of all SDGs must be joint and holistic, so that one SDG can never be achieved to the detriment of the others.

Under a national framework, nowadays some countries started to develop rules to encourage due diligence procedures and disclosure of information in supply chains. In this sense, it is possible to mention the recent German Supply Chain Due Diligence Act (LkSG) (Bundesgesetzblatt, 2023) and the Norwegian Transparency Act (in complement to French (Assemblée Nationale, 2017) and British rules on the matter, respectively from 2018 and 2015).

In the European Union, the European Parliament and the EU Council - considering the disclosure of information on intangible assets to be essential to make the economy sustainable by 2050 -, approved Directive No. 2014/95/EU, determining that companies belonging to the EU that had more than 500 employees had to include in their respective management reports information on their activities regarding “environmental, social and worker-related issues, respect for human rights, the fight against corruption and attempts at bribery”. In 2024, the EU Parliament and the EU Council also approved the proposal for a Directive on corporate sustainability due diligence (European Commission, 2022), reinforcing the supply chain control (European Council, 2024).

Regarding ESG practices (acronym for environmental, social and governance initiatives voluntarily developed by corporations) - that cannot be mistaken for the entire framework for Business and Human Rights, but only a part of its scope of application, namely in the second pillar of the UNGPs (Cardia, 2022) - it is well-known that businesses have to implement their own programs of human rights and environmental protection, having in mind especially how the reporting of their activities will take place. This is essential when a company is presenting its results to its clients, investors and society. Considering the existing reporting methodologies (such as the ones developed by the Global Reporting Initiative<sup>3</sup>, for an example), it is important that corporations engaged in ESG initiatives not only develop programs based on their own Key Performance Indicators (KPIs), but also explain to their stakeholders if they do not implement any of the expected measures under a human rights and environmental framework (practice/report or explain methodology).

Once presented the main concerns regarding the energy transition in the planet, as well as the existing regulatory framework for human rights and environmental protection by corporations, the following part of this paper will aim at presenting a case study on the impacts of energy transition in its most primitive aspect, namely, in the extraction of minerals used in the production of components that will support the generation of clean energy on the planet.

#### 4. CASE ANALYSIS: MYANMAR AND ITS “POISONED MOUNTAINS”

This item aims to study how the operations for minerals’ extraction in some countries is being held, especially considering its use for products known as vehicles for energy transition, such as solar panels and windmills. In this sense, it will be studied the case of Myanmar, that, within its

---

<sup>3</sup> The Global Reporting Initiative is an entity that aims to help organizations identify and report their impacts on issues such as climate change, human rights and corruption – with the aim of establishing guidelines for the preparation of sustainability reports by corporations. GRI STANDARDS. Consolidated Set of GRI Sustainability Reporting Standards 2020. Available at: <<https://www.globalreporting.org/how-to-use-the-gri-standards/gri-standards-english-language/>>. Access on: Apr. 12, 2022.

political and economic situation, is nowadays an example of a country with serious exploitation of human rights and the environment regarding the supply of minerals in global energy transition.

#### 4.1 BRIEF DESCRIPTION OF GLOBAL WITNESS' REPORT "MYANMAR POISONED MOUNTAINS"

In the report named "Myanmar's poisoned mountains: The toxic rare earth mining industry at the heart of the global energy transition" (Global Witness, 2022), the Non-Governmental Organization (NGO) Global Witness denounces a system of environmental and human rights exploitation of minerals that occurs with the support of a corrupt government and that supplies many production processes of materials used directed for energy transition.

In accordance with that document, rare earth mining in Myanmar is illegal and ran by militias affiliated to the military regime that took place of the country in 2021, after its coup d'état. The illegal mining is being held with the use of chemical products that are affecting the water supply in the region (known as Kachin Special Region 1, situated next to the Chinese border), as well as to the health of local citizens.

By the time of its publication, Global Witness found more than 2,700 mining collection pools of ores in the region. The ores of dysprosium and terbium, two heavy rare earth minerals, are notably used in permanent magnets, which constitute part of motors and generators for electric vehicles and wind turbines across the globe (even though the abovementioned report mentions a strong connection between the Chinese government and the supply of rare minerals from the Burmese mining operations – it is worth mentioning that China controls nearly 90% of global rare earth processing capacity) (Global Witness, 2024). Further, China's imports from Myanmar increased since 2021 and hit record highs in 2023 (Global Witness, 2024).

Moreover, the report states a high risk that the revenues coming from the rare earth mining are being used to fund the military regime and its consequent abuses against civilians. For the Burmese citizens that live close by that region, there is also a fear of denouncing such abuses, especially due to possible retaliation by the Burmese government.

The report also presents the name of some corporations involved in the acquisition of its rare minerals, and even though their statements were presented in a way to show that nowadays rare minerals for technology corporations are being somehow recycled, there is still the uncertainty about its correct use and its connection to the Burmese illegal mining. It ends with the following sentence: "If unregulated mining in Myanmar continues, our rush to embrace a greener future will be devastating for the communities in Kachin Special Region 1 who are now risking their lives to defend their land against the fast-expanding industry" (Global Witness, 2022).

#### 4.2 CONSIDERATIONS ON THE POLITICAL AND ENVIRONMENTAL SITUATION IN THE COUNTRY

Myanmar, in its political and historical aspect, has a long record of domination. In brief, in its modern history – disregarding dominations that occurred in the medieval context – the territory was colonized by the British between 1824 and the Second World War, being still controlled by the Japanese Empire during the years 1942 to 1945.

Given this short history, it is possible to understand Myanmar's subjection to imperialist interests, even under different dominations. The exploitation of the territory and the indifference by the colonizers about the constant ethnic variety in that country deepened the inequalities and social vulnerabilities of the local people that shows its consequences until the present moment.

Although its independence took place in the post-war period (1948), its most recent political history is marked by strong instability, resulting in the 2021 coup d'état, in which Myanmar's military forces took control of the country (Al Mukarramah, 2021) and called the attention of the international society. In this sense, it is possible to briefly understand that Myanmar's territory has historically been the object of the most varied dominations that systematically interrupt attempts the erection of a democratic regime – a common path in the Global South.

Regarding its natural resources, such as oil, natural gas, precious ores, as well as wood and minerals, all have always been explored and used in detriment of national interests, with its exploration favoring foreign interests – an issue that persists to this day. The issue of precious ores (especially jade and ruby) is particularly problematic, involving regions with armed groups in constant conflict with the military forces. Its sensitive economic situation is also a determining factor as the population gets installed in extraction camps left by large mining corporations to seek living conditions, consequently becoming involved in a context marked by armed conflicts and no effective control over environmental, security and health aspects.

Although in 2019 the government launched a National Environment Policy and the Myanmar Climate Change Strategy and Action Plan (2018–2030), in face of the 2021 coup d'état, Myanmar's socio-environmental situation is undergoing an indefiniteness that results in the lack of accountability of the sector in question, thus aggravating its situation. Since 2015, at least 500 citizens have been killed in the mining extraction process (Mongabay, 2022). It is also important to highlight that "its extractive sector accounted for 4.8 per cent of gross domestic product (GDP), 5.2 per cent of state revenues and 35 per cent of total exports in 2017–2018" (International IDEA, 2022). Furthermore, Myanmar was ranked 162nd of 182 countries in terms of vulnerability to climate change and readiness to adapt, according to the University of Notre Dame (2021) (Mongabay, 2022).

The European Union (EU) (European Council, 2023) has published a list of sanctions against Myanmar citizens and entities in view of the serious human rights violations and the escalation of violence due to the February 2021 coup d'état. The sanctions were imposed to the current Minister for Energy and several private companies and are part of a series of declarations and acts that the EU has been taking since the coup. The United States also condemns the coup and seeks to exert pressure through sanctions (US Department of State, 2023), which were renewed in January, 2024 (US Department of State, 2024).

At this point, it is fundamental to problematize the strategy used by the EU and the US in order to carry out sanctions (normally trade embargo) as a form of political pressure, whose purpose is to create an inhospitable environment for foreign direct investments. It is known that sanctions do not stop autocratic regimes or overthrow autocratic leaders – purpose to which, in theory, it is directed (see, historically, the case of Cuba and, recently, of Russia) - although they are effective to generate evasion of foreign capital and drastic reduction of new investments and,



therefore, accelerate the process of local economic deterioration, whose impacts are strongly perceived by the local population (Amnesty International, 2023).

Although EU and US condemned the coup d'état and implemented sanctions, China, Russia and India abstained at the meeting of the UN Security Council which, on December 21, 2022 "demanded an immediate end to all forms of violence throughout the country and urged restraint and the de-escalation of tensions" (UN, 2022). This movement also shows that, regarding the political and economic movements in the region under an international relations perspective, there are more interests involved in Myanmar's political situation, which also results in consequences under an environmental and human rights perspective.

With regard specifically to the situation described on the Global Witness' Report, it is questionable if companies and even States are involved into this mining process that, although truly unsustainable, has its subproduct used to build systems of sustainability in different areas of energy transition.

In this sense, it is important to understand how the international framework on Business and Human Rights and ESG regulations and practices are nowadays designed to tackle this problem in a broader way.

## 5. SUSTAINABILITY AND DEMOCRACY: THE ROLE OF DEMOCRATIC COUNTRIES IN HUMAN RIGHTS AND ENVIRONMENTAL PROTECTION

This work does not intend to present an extensive analysis of the concept of democracy and the complexity of its characterization. However, since this paper proposes to defend the perspective that a more sustainable planet depends on regimes based on human rights protection and the respect for fundamental rights, democracy is nowadays the political regime that, apart from its inconsistencies, best attends this purpose.

It is also essential to mention that it is not possible to present a binary division of political regimes (democratic and autocratic), either because of the difficulty of verifying the adequate or inadequate functioning of institutions, or because there are hybrid regimes or flawed democracies – those concepts include democratic regimes in deconstruction, as well as those that are in the process of improving their institutions, which are still unstable.

Understanding this issue fundamentally involves recognizing that the term democracy can correctly refer to several distinct regimes, which are more or less close to an idealized version of democracy. It will therefore be a question of establishing a reasonable threshold which, evidently, is difficult to be portrayed, and therefore involves not only formal factors, but the understanding of the effectiveness of certain elements that can be identified as characterizing democratic regimes.

Given this, it is certain that the categorization of regimes as democratic or autocratic is not binary, with several theoretical models and empirical analyzes that seek to establish possible classifications for understanding the different regimes.

In empirical terms, the Economist Intelligence Unit (EIU, 2023) publishes an annual report (the Democracy Index) based on the analysis of indicators grouped into five aspects: electoral process and pluralism, functioning of government, political participation and political liberties. From a score assigned to each aspect, an average is obtained that makes possible to rank the political

regimes and place them within the following categories: full democracy, flawed democracy, hybrid or authoritarian regime. The V-Dem's Liberal Democracy Index (LDI) released by V-Dem (Varieties of Democracy) (V-DEM, 2024) uses the work "Polyarchy" by Richard A. Dahl (2005) to analyze the following items: (i) quality of elections; (ii) individual rights; (iii) the media; (iv) freedom of association; (v) the rule of law; and (vi) checks and balances mechanisms between powers.

From these initial considerations, and for the purposes of this paper, it is possible to understand that democracies are political regimes guided by political participation (free and with political-party pluralism), respect for fundamental rights and guarantees and the proper functioning of political institutions, especially those linked to government accountability and checks and balances mechanisms.

It is also worth emphasizing that the idea of democracy has undergone numerous transformations over the centuries, highlighting, for the purpose of this research, its necessary commitment to respect for diffuse rights, notably the environment and, with it, a more sustainable agenda. Evidently, scholars concerned with the subject do not usually point to the commitment to sustainability as a characterizing element of a democratic regime, but it is essential to understand the close link between these two concepts, especially in this 21st century.

Moreover, it is known that the UN, in 2021, recognized that access to a healthy environment is also a human right (Human Rights Council Resolution A/HRC/RES/48/13), with the express appreciation of the three dimensions of sustainable development (social, economic and environmental). According to that document, the enjoyment of other internationally enshrined human rights is only possible based on the existence of healthy climatic conditions for present and future generations, and there must be cooperation between States and other stakeholders in achieving these conditions – which presupposes the existence of democratic aspects in the States involved (UN Human Rights Council, 2021).

In addition to sustainable practices being aligned with the effective fulfillment of fundamental rights (which, ultimately, are settled as the foundation of a democratic regime) and as seen, international human rights, a sustainable agenda associated with a solid political and regulatory context – with legal security for investments – can accelerate economic development and, consequently, accelerate the process of solidification of democratic institutions (Euronews.Green, 2023).

## 6. THE TRUE COST OF SUSTAINABILITY

Within a transnational economy, economic solidity and political stability are inseparable and fundamental factors for emerging countries to receive resources and external support and, with that, enter a theoretical virtuous cycle of strengthening economy and build solid and lasting political institutions.

However, in contexts of extreme vulnerability, it is recurrent that countries with strong economies – aligned or not with Western democratic paradigms – exploit natural resources of emerging economies in a way that is totally out of line with democratic or human rights parameters -

in view of their own interest - undermining, with that, the possibilities of emancipation and construction of solid democracies in such contexts.

This issue, which reaches distressful levels in Myanmar, occurs in different regions across the globe. The “outsourcing” of environmental and labor costs, for example, is commonly used as a form of pressure by stable economies against developing States.

Such pressures are generally endorsed by empowered neoliberal forces within emerging nations, which support the precariousness of labor and environmental laws based on the imperialist rhetoric that survives in the 21st century. In this rhetoric, the reduction of labor and environmental costs can only be achieved by easing relevant regulations and it is only this movement that, according to this narrative, guarantees the injection of foreign resources that can save the economy and, in the medium/long term, generate more jobs and income.

If in the past this outsourcing movement of labor and environmental costs was operationalized by exposed colonization; today a more sophisticated narrative is required provided by the neoliberal ideology that, in the subject under analysis, results from the inevitable vulnerable position of emerging economies of only finding a solution for its problems through foreign direct investment, which, for that, needs “incentives” to be given; in other words, it requires some costs (at least labor and environmental costs) to be lower than in its own territory, thus justifying the internationalization of large corporations’ operations.

Even though this argument can be seen as a coherent narrative from the point of view of the global economy functioning – since, in fact, reduction costs through normative precariousness generates investments – this only occurs due to the contempt and the lack of an effective normative framework that guarantees the verification of supply chains as essential for holding events. Although this situation is changing through some national norms, as seen above, there is still a large path to be developed to a more effective protection of human rights and environmental rights for a more sustainable planet.

In this sense, and in line with the arguments presented in the previous items, it is possible to affirm that democratic systems are less vulnerable to suffering the nefarious effects of this system, although democracy itself is not the only factor that has to be considered when discussing the logics of exploitation that constitutes the capitalist system nowadays.

Moreover, the cost of sustainability is still high: energy transition processes and the development of new tools to address the reduction of carbon emissions across the globe still depends on minerals that are being extracted in underdeveloped countries under a system of exploitation and clear attempts to democratic values. From an ESG perspective, it is still possible to affirm that greenwashing<sup>4</sup> is being held: customers are being deceived with promises of a more sustainable planet through the cost of lives, families, and human rights to promote the means for that transition.

## 7. CONCLUSION

---

<sup>4</sup> Greenwashing is the false appearance of sustainability presented by a company, but which is at odds with its daily practices. (Cardia, 2022)

This paper, that is still in progress, tried to show, by means of the study of Global Witness' Report "Myanmar's poisoned mountains", that the development of a more sustainable and effective energy supply runs through the need for minerals that are found and extracted in underdeveloped countries, many of them marked by non-democratic political regimes, corruption and human rights and environmental violations, which can constitute a breach of Business and Human Right norms, as well as ESG policies and regulations around the globe.

The report mentions solely the case of Myanmar, but it can be extended to other countries that face the same system of exploitation and development of activities based on supply chains. Moreover, considering that this is the conventional way in which transnational corporations operate across the planet, it is possible to conclude that the cost of sustainability is still high: lives and freedoms, the environment, political systems and the global institutional architecture are still being affected under the discourse of a more sustainable planet and the urgent need for clean energy.

In this paper there was also an attempt to relate the human rights and environmental violations committed in Myanmar to the non-existence of democratic regimes, especially after the coup d'état in that country in 2021. However, evidence shows that although democracy and its main aspects are needed to promote a more sustainable planet, there are ongoing human rights and environmental violations in some considered democratic countries, which proves that democracy is needed to better address human rights and environmental violations and abuses, but its existence does not prevent the harm provoked – this one based on the exploitation of vulnerable economies and political systems.

The cost of sustainability, as seems, surpasses the need for more democratic States: it demands democracy as a starting point but must be built upon the deviation of the exploitation of vulnerabilities in the supply chain and taking into consideration the climate emergency and the centrality of the suffering of the victims of human rights abuses committed by corporations. Anything outside of this concept can be seen as greenwashing and a violation of the international framework on Business and Human Rights and ESG best practices.

## REFERÊNCIAS BIBLIOGRÁFICAS | REFERENCES | REFERENCIAS

- AL MUKARRAMAH, N. H. (2021) The Governance Crisis in Myanmar: An International Law Perspective and International Society Response Towards Myanmar 2021 Coup D'Etat. Access on March 15, 2023: <https://ssrn.com/abstract=3835402>
- AMNESTY INTERNATIONAL (2023) Myanmar: New shipments of aviation fuel revealed despite the military's war crimes. Access on June 25, 2024: <https://www.amnesty.org/en/latest/news/2023/03/myanmar-new-shipments-of-aviation-fuel-revealed-despite-the-militarys-war-crimes/>
- ASSEMBLÉE NATIONALE (2017) Proposition de loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (Texte définitif). Access on April 12, 2022: <https://www.assemblee-nationale.fr/14/ta/ta0924.asp>
- BOWCOTT, H., FOMENKO, L., HAMILTON, A., KRISHNAN, M., MYSORE, M., TRITTIPO, A., WALKER, O. (2021) Protecting people from a changing climate: The case for resilience. McKinsey & Company.
- BUNDESGESETZBLATT Lieferkettensorgfaltspflichtengesetz – LkSG. Access on February 27, 2023: [https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBl&jumpTo=bg](https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bg)

- bl121s2959.pdf#\_bgbl\_%2F%2F%5B%40attr\_id%3D%27bgbl121s2959.pdf%27%5D\_\_1677527352935
- BUSINESS & HUMAN RIGHTS RESOURCE CENTRE (2024) Transition Minerals Tracker: 2024 Analysis. Access on June 17, 2024:  
[https://media.business-humanrights.org/media/documents/2024\\_Transition\\_Minerals\\_Tracker\\_EN.pdf](https://media.business-humanrights.org/media/documents/2024_Transition_Minerals_Tracker_EN.pdf)
- CARDIA A., A. C. R. (2022) ESG: Teoria e prática para a verdadeira sustentabilidade nos negócios. São Paulo: Expressa.
- CHOMSKY, N., POLLIN, R. (2020) Crise Climática e o Green New Deal Global: a economia política para salvar o planeta. Trad. Bruno Cobalchini Mattos. Rio de Janeiro: Raça Nova.
- COMISSÃO EUROPEIA Concretizar o Pacto Ecológico Europeu. Access on January 31, 2022:  
[https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal/delivering-european-green-deal\\_pt](https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal/delivering-european-green-deal_pt)
- DAHL, R.A. (2005) Poliarquia: Participação e Oposição. São Paulo: USP.
- EIU Democracy Index 2023. Access on: June 25, 2024:  
<https://www.eiu.com/n/campaigns/democracy-index-2023/>
- EURONEWS.GREEN (2023) 'Brazil is back': Lula takes over with plans to end deforestation and become a green superpower. Access on March 8, 2023:  
<https://www.euronews.com/green/2023/01/03/lula-tells-cop27-brazil-is-back-as-he-vows-to-end-deforestation-in-the-amazon>
- EUROPEAN COMMISSION 2030 Climate Target Plan. Access on January 31, 2022:  
[https://ec.europa.eu/clima/eu-action/european-green-deal/2030-climate-target-plan\\_en](https://ec.europa.eu/clima/eu-action/european-green-deal/2030-climate-target-plan_en)
- EUROPEAN COMMISSION Proposal for a Directive on corporate sustainability due diligence and annex. Access on March 15, 2023:  
[https://commission.europa.eu/publications/proposal-directive-corporate-sustainability-due-diligence-and-annex\\_en](https://commission.europa.eu/publications/proposal-directive-corporate-sustainability-due-diligence-and-annex_en)
- EUROPEAN COUNCIL (2024) Corporate Sustainability Due Diligence: Council gives its final approval. Access on June 12, 2024:  
<https://www.consilium.europa.eu/en/press/press-releases/2024/05/24/corporate-sustainability-due-diligence-council-gives-its-final-approval/>
- EUROPEAN COUNCIL (2023) Myanmar/Burma: EU imposes sixth round of sanctions against 9 individuals and 7 entities. Access on March 8, 2023:  
<https://www.consilium.europa.eu/en/press/press-releases/2023/02/20/myanmar-burma-eu-imposes-sixth-round-of-sanctions-against-9-individuals-and-7-entities/#:~:text=Two%20years%20after%20the%20military,and%20stability%20in%20Myanmar%2FBurma>
- GATES, B. (2021) Como evitar um desastre climático: as soluções que temos e as inovações necessárias. Trad. Cássio Arantes Leite. São Paulo: Companhia das Letras.
- GLOBAL COMPACT The ten principles of the UN Global Compact. Access on March 15, 2023:  
<https://unglobalcompact.org/what-is-gc/mission/principles>
- GLOBAL WITNESS (2022) Myanmar's poisoned mountains: The toxic rare earth mining industry at the heart of the global energy transition. Access on December 15, 2022:  
<https://www.globalwitness.org/en/campaigns/natural-resource-governance/myanmars-poisoned-mountains/>
- GLOBAL WITNESS (2024) Fuelling the future, poisoning the present: Myanmar's rare earth boom. Access on June 25, 2024:  
<https://www.globalwitness.org/en/campaigns/natural-resource-governance/fuelling-the-future-poisoning-the-present-myanmars-rare-earth-boom/>
- GRI STANDARDS Consolidated Set of GRI Sustainability Reporting Standards 2020. Access on April 12, 2022:  
<https://www.globalreporting.org/how-to-use-the-gri-standards/gri-standards-english-language/>
- HENISZ, W., KOLLER, T., NUTTALL, R. (2019) Five ways that ESG create value. McKinsey Quarterly. Access on January 11, 2022:  
<https://www.mckinsey.com/~media/McKinsey/Business%20Functions/Strategy%20and%20Corporate%20Finance/Our%20Insights/Five%20ways%20that%20ESG%20creates%20value/Five-ways-that-ESG-creates-value.ashx>
- INSTITUTE FOR HUMAN RIGHTS AND BUSINESS Top 10 Business and Human Rights Issues 2022. Access on March 15, 2023:  
[https://www.ihrb.org/uploads/top-10/IHRB\\_Top\\_10\\_Business\\_\\_Human\\_Rights\\_Issues\\_for\\_2022.pdf](https://www.ihrb.org/uploads/top-10/IHRB_Top_10_Business__Human_Rights_Issues_for_2022.pdf)

- INTERNATIONAL IDEA Myanmar's environment and climate change challenges. Access on March 8, 2023:  
<https://constitutionnet.org/sites/default/files/2022-12/myanmars-environment-and-climate-change-challenges.pdf>
- KRISHNAN, M., SAMANDARI, H., WOETZEL, J., SMIT, S., PACTHOD, D., PINNER, D., NAUCLÉR, T., TAI, H., FARR, A., WU, W., IMPERATO, D. (2022) The net-zero transition: what it would cost, what it could bring. McKinsey Global Institute in collaboration with McKinsey Sustainability and McKinsey's Global Energy & Materials and Advanced Industries Practices
- MONGABAY Analysis: Myanmar's gemstone riches bring poverty and environmental destruction. Access on March 8, 2023:  
<https://news.mongabay.com/2022/04/analysis-myanmars-gemstone-riches-bring-poverty-and-environmental-destruction/>
- OECD (2011) OECD Guidelines for Multinational Corporations. Access on: March 16, 2023:  
<http://mneguidelines.oecd.org/guidelines/>
- ROBINSON, M. (2021) Justiça climática: esperança, resiliência e a luta por um futuro sustentável. Trad. Leo Gonçalves. Rio de Janeiro: Civilização Brasileira.
- UNITED NATIONS HUMAN RIGHTS COUNCIL (2021) A/HRC/RES/48/13. Access on January 17, 2022:  
<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/289/50/PDF/G2128950.pdf?OpenElement>
- UNITED NATIONS (2011) Guiding principles on business and human rights: implementing the United Nations "protect, respect and remedy" framework. Access on January 24, 2022:  
[http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)
- UNITED NATIONS (2015) Paris Agreement. Access on January 26, 2022:  
[https://unfccc.int/sites/default/files/english\\_paris\\_agreement.pdf](https://unfccc.int/sites/default/files/english_paris_agreement.pdf)
- UNITED NATIONS (2018) Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean. Access on January 31, 2022:  
<https://treaties.un.org/doc/Treaties/2018/03/20180312%2003-04%20PM/CTC-XXVII-18.pdf>
- UNITED NATIONS Security Council Demands Immediate End to Violence in Myanmar, Urges Restraint, Release of Arbitrarily Detained Prisoners, Adopting Resolution 2669 (2022). Access on March 8, 2023: <https://press.un.org/en/2022/sc15159.doc.htm>
- US DEPARTMENT OF STATE Burma Sanctions. Access on June 25, 2024:  
<https://www.state.gov/burma-sanctions/>
- US DEPARTMENT OF STATE Marking two years since the military coup in Burma. Access on March 15, 2023: <https://www.state.gov/marking-two-years-since-the-military-coup-in-burma/>
- V-DEM Democracy Reports. Access on June 25, 2024:  
<https://www.v-dem.net/publications/democracy-reports/>
- VILLAS BOAS, I. Z., CARDIA A., A. C. R. (2021) Mariana e Brumadinho: o (des)compromisso das empresas mineradoras envolvidas nas duas tragédias com a sustentabilidade e com os direitos humanos. In: CARDIA A., A. C. R., VILLAS BOAS, I. Z. (Coord.) Quanto Vale?: uma análise interdisciplinar do Direito sobre as tragédias de Mariana e Brumadinho. Londrina: Thoth.
- WORLD ECONOMIC FORUM (2020) The future of nature and business. Access on February 3, 2022:  
[https://www3.weforum.org/docs/WEF\\_The\\_Future\\_Of\\_Nature\\_And\\_Business\\_2020.pdf](https://www3.weforum.org/docs/WEF_The_Future_Of_Nature_And_Business_2020.pdf)