Critical Raw Materials in the Investment Spotlight: Commitments of Foreign Investors and Azerbaijan's Regulatory Perspective

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Abstract

In recent years, the primary focus of international political debates has been on raw materials essential for economic development. The demand for raw materials critical to the production of modern technological tools, such as cobalt, platinum and lithium, is increasing globally. In general, the processing, development and production of critical raw materials constitute stages of the supply chain and are carried out over a long period, involving enormous investment. For this reason, the intention of foreign investors to make large profits in a short period of time leads to a careless approach to internationally accepted requirements, such as respect for human life, health and the environment. In particular, the dependence of developing countries' economies on these investments leads to a "turning a blind eye" to such violations in those countries and, as a result, to violations of many international obligations assumed by states.

Based on the above, the "sustainable" development of the critical raw materials sector is significant for ensuring the well-being of the local population and protecting the environment. This article examines the obligations of foreign investors in this sector and analyzes, in detail, international experience. At the same time, the Critical Raw Materials Act and other European Union documents, which provide the most detailed regulations in this area, are reviewed with respect to their scope of application, the entities they regulate and the obligations they impose on investors and relevant gaps are identified. Additionally, the article examines the availability of critical raw materials in the Republic of Azerbaijan, the regulation of the investment climate in this area and the legal obligations of foreign investors.

Annotasiya

Son dövrlərdə beynəlxalq siyasi mübahisələrin əsas mərkəzində iqtisadi inkişaf üçün həyati əhəmiyyət daşıyan xammallar dayanır. Kobalt, platinium, litium kimi müasir texnoloji alətlərin istehsalında kritik dərəcədə önəmli xammallara tələbat qlobal səviyyədə artmaqdadır. Ümumilikdə, kritik xammalların emalı, işlənməsi və istehsalatı təchizat zəncirinin mərhələlərini təşkil edir və uzun müddətə, külli miqdarda investisiyaların cəlbi ilə həyata keçirilməkdədir. Bu səbəblə xarici investorların qısa dövr ərzində böyük mənfəət əldə etmək niyyəti onların insan həyat və sağlamlığına hörmət, ətraf mühitin mühafizəsi kimi beynəlxalq sferada qəbul edilmiş tələblərə laqeyd yanaşmasına səbəb olur. Xüsusilə, inkişaf etməkdə olan ölkələrin iqtisadiyyatlarının bu investisiyalardan asılı olması, həmin

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ölkələrdə belə pozuntulara "göz yumulma"sına və nəticədə dövlətlərin öz üzərinə götürdüyü bir çox beynəlxalq öhdəliklərin tapdalanmasına gətirib çıxarır.
Göstərilənlərə əsasən, kritik xammal sektorunun "dayanıqlı" inkişafı, yerli əhalinin rifahının təmin edilməsi və ətraf mühitin mühafizəsi üçün olduqca önəmlidir. Hazırkı məqalədə bu sektorda xarici investorların öhdəlikləri araşdırılmış və beynəlxalq təcrübə detallı təhlil edilmişdir. Eyni zamanda bu sahədə ən detallı tənzimləməni aparan Avropa Birliyi tərəfindən qəbul edilmiş Kritik Xammal Aktı və digər sənədlər tətbiq sahəsi, tənzimlədiyi subyektlər və investorlar üçün qoyduğu öhdəliklər baxımından nəzərdən keçirilmiş və müvafiq boşluqlar təsbit edilmişdir. Bundan əlavə, məqalədə Azərbaycan Respublikasında kritik xammalların mövcudluğu, bu sahədə investisiya mühitinin tənzimlənməsi və xarici investorların hüquqi öhdəlikləri araşdırılmışdır.

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Introduction

In 2023, the activities carried out by Anglo Asia Mining PLC, a UK-registered company,[1] at the gold mines in the village of Soyudlu in Gadabay sparked protests from villagers, who claimed these activities had negative impacts on the environment and their lives and health.[2] The root cause of the protest was the company's construction of a second pond to store hazardous waste from gold mines in the area. Residents claimed that cyanide and other harmful heavy metals emitted from an existing pond used for gold processing were poisoning the environment, harming livestock and crops and

[1] Memorandum of Association of Anglo Asian Mining PLC (2005), angloasianmining.com/documents/memorandum-of-association/ (last visited May 11, 2026).
[2] Eurasianet, Azerbaijani president makes first remarks about blockaded village (2023), https://eurasianet.org/azerbaijani-president-makes-first-remarks-about-blockaded-village (last visited Mar. 16, 2026).

causing the spread of cancer.[3] Speaking about the events, President Ilham Aliyev called the ecological situation in Soyudlu "completely unacceptable" and noted that, due to the Ministry of Ecology and Natural Resources' negligence in conducting the environmental inspections, a foreign investor was polluting the country's environment.[4]

The Soyudlu case, considered the first large-scale environmental protest during the period of independence, questions the necessity of respecting the basic human and environmental rights of the villagers by foreign investors, namely the right to the environment, the right access to transparent information and other guarantees enshrined in both international law and in the legislation of Azerbaijan. While the events in Soyudlu are not specifically connected with the CRM sector, they still reflect the legal and social consequences that may emerge when extractive activities involving foreign investors develop in the absence of effective environmental safeguards and transparent oversight mechanisms. These concerns become even more relevant within the broader RM and CRM sectors discussed below.

Raw Materials (hereinafter RM) have a vital role in ensuring the sustainable functionality of modern societies. It plays a leading role in economic development and prosperity, being used in food, construction, transport and energy infrastructure, as well as in the production of pharmaceuticals and tech products. However, the environmental impact of RM production is enormous, especially in developing and underdeveloped countries, where uncontrolled extraction and production practices cause serious environmental and social problems. For example, in Ghana, there has been a significant increase in cases of kidney failure and other kidney diseases among people living along the Ofin River due to the use of mercury by miners engaged in illegal mining activities.[5]

The Critical Raw Materials (hereinafter CRM) sector, as a part of the RM market, carries significant weight in modern legal regulation due to its complexity. In particular, the investment environment created for CRM within the framework of legislation by underdeveloped and developing host countries with sensitive economic conditions, weak enforcement and supervision mechanisms ultimately leads to widespread environmental disasters and gross human rights violations, which leads to violations of the international obligations that the mentioned countries have undertaken in this area. On the other hand, the state-focused nature of international instruments on the protection of human life and health, as well as the environment, has left the regulation of foreign investors' activities to domestic legislation and investment treaties. Given the mosaic nature of international investment law

[3] *Ibid*.

[4] *Ibid*.

[5] Aboka Yaw Emmanuel et al., *Review of Environmental and Health Impacts of Mining in Ghana*, 8 Journal of Health and Pollution 43, 45 (2018).

and the state-centric regulation of the CRM sector, the current legislative environment has "failed" to control foreign investment in that sector.

Based on the above, current CRM activities underscore the importance of in-depth analysis of the CRM sector to identify the following questions:

1) Why is there a need for specified regulation in the CRM sector? What peculiarities necessitate more detailed enforcement in that area?
2) What are the commitments of foreign investors operating in the CRM sector on the protection of human rights and the environment? How do regional and international mechanisms, as well as investment treaties, address those commitments?
3) What are the drawbacks and gaps of CRM regulation in Azerbaijan? How should it be managed to prevent further legal violations by foreign investors?

Based on the above, the article will analyze the core concept of the CRM sector and the responsibilities of foreign investors in that area, while identifying gaps and shortcomings. At the same time, the article will examine environmental and human rights violations in the CRM sector committed by foreign investors globally and analyze the response of international and state-level regulation.

In addition, the current legal environment in Azerbaijan for CRM and related investment processes will be reviewed and proposals will be made for improved regulation based on CRM experiences in several countries. Finally, the European Union's (hereinafter EU)'s measures in the CRM sector, as well as the possibility of applying Union documents in Azerbaijan, will be examined.

I. The Notion and Importance of the Critical Raw Materials Sector for Foreign Investment: What and Why Should Be Regulated?

In the simplest terms, foreign investment is the investment of funds by individuals, businesses and governments of a given country into another country (via new business establishment, or purchasing property/company shares, or sourcing RM). In that sense, foreign investment in the CRM sector is usually about the involvement of foreign investors in CRM supply chain (including mining, extraction and processing activities) by host States to acquire final products and direct them to trade turnover. Because of that, for host States involving foreign investors in its CRM sector, the first and most important step is to define the scope and the criteria for determining these resources. Thus, a foreign investor should know in advance whether their activity falls within the CRM sector or not and determine their investment strategy accordingly.

Consequently, since there is no single consensus on the definition, scope and regulation of CRM, specific regulations for the activities of foreign investors operating in this sector have not been established. For this reason, the investors' commitments are more often regulated by generally accepted principles of international law, as well as the requirements of international investment law and Bilateral Investment Treaties (hereinafter BITs) and Multilateral Investment Treaties (hereinafter MITs). But why is there an increasing need for host States to separately regulate foreign investors' commitments in that sector? More precisely, what is CRM and why is it important to have a specific investment regulation in that sector?

A. The Contextual Background of the Critical Raw Materials Sector

As stated above, to ensure clear insights for foreign investors and legal transparency, it is important for host States to define which RM are considered "critical". Today, the main problem is that there is no international consensus on the classification of these materials. Since scientists and scholars are mainly evaluating the scope of CRM with respect to a particular State's dynamics, the common approach is about the criticality of minerals, including strategic importance and the risk of supply. In legal doctrine, CRM are expressed as "irreplaceable metal elements and mineral deposits used in advanced industrial sectors such as artificial intelligence, biotechnology and civil defense".[6] Interestingly, in China, the world's largest supplier of CRM, those materials are referred to as "strategic minerals" in the National Plan for Mineral Resources of China for 2016-2020.[7]

Under the U.S. Energy Act of 2020, critical material or mineral means RM that is particularly important in the production of goods and poses a high risk of supply disruption.[8] Thus, if the shortage of these materials creates significant consequences for the national and economic security of the United States, it is considered "high risk".[9] In addition, under the Act, a list of critical materials is determined by the Secretary of the Interior (through the Director of the Geological Survey) based on their functional importance and supply chain risk,[10] and is published in the Federal Register.[11]

[6] Jessica Long, Tina Tong, Four key critical minerals in China likely to be under the spotlight at AFA (2024), https://www.fastmarkets.com/insights/four-key-critical-minerals-in-china-likely-to-be-under-the-spotlight-at-afa-2024/ (last visited Mar. 1, 2026).

[7] International Energy Agency, National Plan for Mineral Resources (2025), https://www.iea.org/policies/15519-national-plan-for-mineral-resources-2016-2020 (last visited Mar. 16, 2026).

[8] Energy Act of 2020, Section 6003(a)(5) (2020).

[9] *Ibid*.

[10] *Id*., Section 7002(a)(2).

[11] *Id*., (c)(1)-(3).

According to Organization for Economic Cooperation and Development (hereinafter OECD) research, a mineral is considered "critical" when it is considered to be of high economic importance and significant supply risks.[12] The EU uses a similar approach as the main criterion for identifying CRM. But in most developing and less developed countries, the legislation does not determine the scope and selection criteria for RM, which are considered critical. This lack of a unified national framework also affects international cooperation, as interstate agreements on critical mineral supply chains often establish their own lists of CRM within the agreement itself rather than referring to the domestic legislation of the signatory states, which may lead to inconsistencies with national CRM policies.[13] The non-existence of a single global approach to the CRM forces foreign investors to screen CRM's regulation of host States separately and makes investment decisions based on the selected CRM strategy.

Moreover, while some countries have CRM reserves, they have no sector-specific regulations, which may affect foreign investors' decisions to some extent: either they refrain from investing due to legal uncertainty or exploit legal gaps. For example, although 350 non-fuel mineral deposits have been discovered in Azerbaijan,[14] there is no provision in the legislation regarding CRM: Azerbaijan's legislation does not define which minerals are considered "critical" or the criteria for determining that. In general, the term "minerals" is defined in the Law of the Republic of Azerbaijan "On Subsoil" as natural mineral derivatives of the earth's crust used in the field of material production.[15] In addition, the formation of an RM base capable of meeting the future needs of the main sectors of the economy and ensuring the efficient use of natural resources has been identified as one of the state's main tasks.[16] However, the relevant Action Plan mainly stipulates conducting exploration and evaluation work in this area but does not specify measures to develop the legal framework.[17]

[12] Renaud Coulomb et al., *Critical Minerals Today and in 2030: An Analysis for OECD Countries*, 13 (OECD Environment Working Papers No. 91, 2015).

[13] Agreement on Strengthening Critical Minerals Supply Chains, Government of the United States of America - Government of Japan, art.2 (2023).

[14] Anvar Mammadli et al., Evaluation of Potentially Critical and Strategic Raw Materials in Azerbaijan, in *Geomining - Systems and Decision-Oriented Perspective* 3, 10 (2024).

[15] "Yerin təki haqqında" Azərbaycan Respublikası Qanunu [Law of the Republic of Azerbaijan "On Subsoil"], art. 1 (1998). Available at: https://frameworks.e-qanun.az/4/c_f_4273.html (last visited Apr. 20, 2026).

[16] "Yerin təkinin geoloji öyrənilməsinə və mineral xammal bazasından səmərəli istifadəyə dair 2020-2024-cü illər üçün Dövlət Proqramı"nın təsdiq edilməsi haqqında Azərbaycan Respublikası Prezidentinin Sərəncamı [Order of the President of the Republic of Azerbaijan on approval of "State Program for 2020-2024 on Geological Study of the Earth's Subsoil and Efficient Use of Mineral Raw Materials"], art. 3.0.1 (2020). Available at: https://e-qanun.az/framework/44766 (last visited Apr. 20, 2026).

[17] *Ibid*.

Furthermore, the Law distinguishes the concept of "commonly distributed minerals", which include widely distributed minerals used for local economic needs in their natural state or with minor changes.[18] However, the Law does not specify which RM are critical or the circumstances that determine that. Based on the current US[19] and EU[20] lists of CRM and on the RM reserves of Azerbaijan, it can be said that the country has reserves of critical materials, including aluminum, copper, gold, gunpowder, cobalt, zinc and manganese.[21]

Due to the absence of the relevant CRM scope, the vast majority of foreign investors intend to carry out common investment practices, ignoring sector-specific requirements universally accepted in this sector. This, in its turn, paves the way to further problems and dissatisfaction among the population, as observed in Soyudlu. In this regard, the first and most crucial action for effective legal regulation in the CRM sector is to define the scope of those resources and the criteria for determining them. In that sense, a foreign investor will have the opportunity to assess whether their activity falls within the CRM sector or not and determine their investment strategy accordingly. For Azerbaijan, such clarification would also help public authorities effectively classify and monitor foreign investors' activities in this field.

B. The Necessity of Separate Regulation in The Critical Raw Materials Sector: Insights from Azerbaijan

Based on the previous section, it is argued that the lack of specific CRM regulation by the host State results in difficulties for foreign investors entering into the market, as they need to determine whether their activities fall within the scope of CRM regulation and, therefore, whether the specific regime applies. From the other side, regulatory gaps may also benefit a group of investors, where they operate more "freely", which means irresponsibly. In the absence of a unified legal definition or regulatory approach to CRMs, how can foreign investors accurately assess whether their investments fall within this strategically sensitive sector? More precisely, why is there a need for special regulation on investment issues in the CRM sector in general and what distinguishes it from classic RM investments?

The answer is actually quite simple: criticality. Unlike traditional RM, which supports current economic flows and daily needs, CRM is considered the "future of development". For example, critical resources such as coal, nickel and aluminum are vital to the sustainability and development of green

[18] *Supra* note 15.

[19] Seth Amgott, Breden Harker, Interior Department releases final 2025 List of Critical Minerals (2025), https://www.usgs.gov/news/science-snippet/interior-department-releases-final-2025-list-critical-minerals (last visited Mar. 16, 2026).

[20] European Commission, Critical Raw Materials Resilience: Charting a Path towards Greater Security and Sustainability, 3 (2020).

[21] United Nations, Geology and Mineral Resources in Azerbaijan, UN Publications, 1, 3 (2000).

energy infrastructure, including solar PVs, wind turbines and battery-storage systems, as well as the electric vehicle market.[22] In addition, CRM, which is included in the Rare Earth Elements (hereinafter REE) class, is considered the backbone of the defense industry (for example, an emporium for night-vision systems and gallium for tactical equipment).[23]

On the other hand, unlike conventional RM, CRM is found in only a very limited part of the world. For example, the vast majority of cobalt reserves are located in the Democratic Republic of Congo, REE reserves are in China and copper reserves are in Chile.[24] This, in turn, makes CRM policy dependent on the dictates and political interests of those countries, as well as their investment and supply requirements.

At the same time, one of the most important issues is the legislative regulation of the CRM supply chain. While the lifecycle and market experience in RM have shaped a responsible foreign investment climate, the process in the CRM sector differs. Since the vast majority of critical minerals are concentrated in underdeveloped and developing countries, the investment climate is shaped by their legislation. For this reason, many CRM are observed to get processed under poor governance with high emissions intensity,[25] which is proof of weak investment mechanisms in itself.

For Azerbaijan, as the country is rich in fossil fuels and industrial and other minerals, after gaining independence from the Union of Soviet Socialist Republics, the country has focused more on attracting foreign investment in the RM sector, such as oil and natural gas.[26] However, given the recent reforms and development trends of Azerbaijan, the following reasons necessitate the separate CRM regulation nationwide:

The first issue is the economic security. From the early days of independence to today, a large part of Azerbaijan's economy has depended on oil and gas exports. Although military operations between Russia and Ukraine, as well as between Iran and the United States of America (hereinafter USA) and the closure of the Strait of Hormuz has increased demand for these RM and raised market prices, in the long term, dependence on oil and gas exports is damaging the country's economy. For this reason, in the event of a decline in oil demand throughout the global energy market, deep diversification of the non-oil/gas sector and compensation for declining oil

[22] International Energy Agency, The Role of Critical Minerals in Clean Energy Transitions, 45 (2021).

[23] Critical Minerals and Defence Technologies, https://www.sfa-oxford.com/knowledge-and-insights/critical-minerals-in-low-carbon-and-future-technologies/critical-minerals-in-defence-and-national-security/ (last visited Apr. 6, 2026).

[24] *Supra* note 22, 121.

[25] *Id.*, 126.

[26] Anar Ibrahimov, Impact of Post-Soviet Transition on the Economy of Azerbaijan, Geopolitica (Jun. 6, 2016), https://geopolitica.info/impact-of-post-soviet-transition-the-economy-of-azerbaijan/ (last visited May 14, 2026).

revenues through foreign exchange revenues from this sector have been identified as one of the state's goals for the next decade.[27] Also, it is stated that the principles of combating climate change, the efficient use of natural resources and the protection of biodiversity should serve as the basis for building a sustainable economy.[28] In this regard, the development of the CRM sector can provide new prospects for the country's economy and strengthen Azerbaijan's role in trade by reducing dependence on oil and gas exports.

The second reason is the "green" goals. Azerbaijan has recently set ambitious decarbonization targets and is investing heavily in renewable energy. As part of the Paris Agreement, a national target has been set to reduce Greenhouse Gases (hereinafter GHG) emissions by 40 percent by 2035 relative to 1990 levels.[29] At the same time, the Law "On the Use of Renewable Energy Sources in Electricity Generation" has established the state's duty to create a favorable investment environment to attract foreign investment in the use of these sources.[30] Also, one of Azerbaijan's National Priorities for socio-economic development by 2030 is to become a "green growth"[31] country. As mentioned earlier, renewable energy infrastructure and technologies require extensive use of CRM. For this reason, regulating the CRM sector and attracting investment in this area are considered a very important stage in achieving green goals.

And last but not least, separate CRM regulation will serve to protect the environment, as well as human rights. As observed in many parts of the world, in Azerbaijan, there are cases of environmental damage and gross

[27] "Azərbaycan Respublikasının 2022–2026-cı illərdə sosial-iqtisadi inkişaf Strategiyası"nın təsdiq edilməsi haqqında Azərbaycan Respublikası Prezidentinin Sərəncamı [Order of the President of the Republic of Azerbaijan "On approval of Socio-economic development strategy of the Republic of Azerbaijan for 2022–2026"], part 1.2 (2022). Available at: https://e-qanun.az/framework/50013 (last visited Apr. 20, 2026).

[28] *Ibid.*

[29] Paris Sazişi çərçivəsində istilik effekti yaradan qazların emissiyalarının azaldılması üzrə milli hədəfin və bu hədəfi ehtiva edən "Yenilənmiş, 3-cü Milli Səviyyədə Müəyyən Edilmiş Töhfələr" sənədinin təsdiq edilməsi haqqında Azərbaycan Respublikası Nazirlər Kabinetinin Qərarı [Decision of the Cabinet of Ministers of the Republic of Azerbaijan on approval of "National Target for Reducing Greenhouse Gas Emissions under the Paris Agreement and the "Updated, 3rd Nationally Determined Contributions" Document Containing This Target"], art. 1 (2025). Available at: https://e-qanun.az/framework/60816 (last visited Apr. 20, 2026).

[30] "Elektrik enerjisi istehsalında bərpa olunan enerji mənbələrindən istifadə haqqında" Azərbaycan Respublikası Qanunu [Law of the Republic of Azerbaijan "On the Use of Renewable Energy Sources in Electricity Generation], art. 4.0.4 (2021). Available at: https://e-qanun.az/framework/47842 (last visited Apr. 20, 2026).

[31] "Azərbaycan 2030: sosial-iqtisadi inkişafa dair Milli Prioritetlər"in təsdiq edilməsi haqqında Azərbaycan Respublikası Prezidentinin Sərəncamı [Order of the President of the Republic of Azerbaijan on approval of "Azerbaijan 2030: National Priorities for Socio-Economic Development"], preamble (2021). Available at: https://e-qanun.az/framework/46813 (last visited Apr. 20, 2026).

human rights violations by foreign investors operating in the CRM reserves. As will be mentioned later, the current RM regulation is unsatisfactory for addressing all concerns in CRM processes and investors are trying to avoid responsibility for their activities by claiming they are following all legal requirements by overlooking possible standards that may apply to them but are not enforceable under local legislation. In that sense, several legal obligations of host States, including, but not limited to, ensuring the protection of human life and health, preservation of the environment and access to information, are under threat due to the lack of CRM regulation and proper control mechanisms. For this reason, foreign investors' activities in the CRM sector require strict regulation and oversight to prevent potential violations and public dissatisfaction.

On the other hand, given Azerbaijan's current progress and strategic priorities, the country's need for CRM will increase. For example, several government acts have been adopted to use nuclear energy for peaceful purposes (for example, Presidential Decree dated 2014 on the establishment of the "National Nuclear Research Center" Closed Joint Stock Company for the peaceful use of nuclear technologies) and the International Atomic Energy Agency has approved a plan to build a nuclear research reactor.[32] This necessitates the acquisition of materials such as uranium, zirconium and plutonium[33] for the construction and use of that reactor.

As a result, the CRM sector, as a separate subsector of the RM sector, is of significant importance and is of a specific weight in countries' economies. The current investment climate and host States' development priorities necessitate complex and well-integrated regulation in the CRM sector. For Azerbaijan, a separate CRM regulation will help the country to reach its strategic goals and ambitions enshrined in the legislative acts. Furthermore, non-existence of an exact definition for CRM and proper regulation creates problems for both foreign investors and host States to a certain extent. Now, moving to the foreign investors' commitments, what is the current situation and what is at stake?

II. Key Legal Issues for Foreign Investors' Commitments in the Critical Raw Materials Sector

As stated in Principle 2 of the Rio Declaration, states have sovereign rights over exploiting their resources. This turns the CRM sector into a "playground" in the struggle for influence and power between states. As it is the sovereign right of states to regulate the use of these resources, resource-

[32] Research Reactor Set to be Built in Azerbaijan (2008), https://azertag.az/en/xeber/research_reactor_set_to_be_built_in_azerbaijan-579766 (last visited Mar. 16, 2026).

[33] Nuclear Power Reactors (2026), https://world-nuclear.org/information-library/nuclear-power-reactors/overview/nuclear-power-reactors (last visited Apr. 16, 2026).

owning countries have adopted investment policies at different levels, depending on the type and quantity of these resources, as well as their economic, social and environmental interests. For this reason, investors' obligations are not determined by a single regulation but by a balanced approach in accordance with the interests of the parties. Nevertheless, despite differences in national regulatory approaches, the increasing global significance of CRM has encouraged the development of international principles aimed at establishing common standards for responsible investment and trade in this sector.

According to the Critical Energy Transition Minerals Guiding Principles proposed by the United Nations (hereinafter UN) Secretary General, investments, finance and trade must be responsible and fair. Considering this principle, international investment law and the multifaceted nature of the CRM sector, it is possible to say that foreign investors' most important obligations are related to sustainability. For this article, regarding public position and environmental concerns, foreign investors' commitments will be examined from a sustainability perspective, namely, the protection of the environment affected by CRM processing and the lives and health of people directly or indirectly involved in this process.

A. Environmental Obligations and Compliance Mechanisms

The whole lifecycle of the CRM sector, particularly the activities carried out by foreign investors within this sector, has undeniable environmental impacts. Also, the role of foreign investors in contributing to or reducing these environmental impacts remains highly contested in academic discourse.

In the literature, two concepts, "Pollution Havens" and "Pollution Halos", are being seriously debated regarding the role of foreign investors in terms of environmental impact.[34] Proponents of the first theory criticize foreign investors, arguing that foreign investment "flees" from countries with high environmental standards to those with lower ones, causing large-scale environmental pollution in developing and underdeveloped countries.[35] On the other hand, proponents of the second theory praise foreign investors as "couriers of environmental protection practices", arguing that they play a key role in the global transfer of environmentally friendly technologies and management practices from developed countries with high environmental standards.[36]

Generally, RM extraction and processing are associated with potentially significant environmental impacts, including contributing to around half of

[34] Organization for Economic Co-operation and Development, Foreign Direct Investment and the Environment, 14 (1999).

[35] *Ibid*.

[36] *Ibid*.

global GHG emissions.[37] At the same time, the RM sector plays a fairly broad role in biodiversity use: the food, drink and tobacco sectors have the highest potential impact on biodiversity among all identified sectors, followed by the materials sector.[38] Given these environmental consequences, the regulation of environmental protection measures and climate-related responsibilities in the RM sector has become an important issue within international law.

Thus, in the international sphere, the obligations under environmental protection agreements are directed not to investors but to host states. For example, the 1992 United Nations Framework Convention on Climate Change (hereinafter UNFCCC) is one of the most prominent international acts addressing climate change, environmental protection and mitigation of GHG emissions. The Convention obliges its members to adopt national policies to mitigate climate change and GHG, taking into account their economic structures and resource bases,[39] to ensure the exchange of technology and data related to climate change,[40] and to coordinate relevant financial and administrative instruments in line with these objectives.[41] However, the Convention does not impose obligations on legal entities or foreign investors that emit large amounts of GHG; they are only obliged to implement state-based national policies.

Under the 2015 Paris Agreement to implement the UNFCCC, Parties committed to strengthening public and private sector participation in implementing nationally determined contributions and in developing plans and policies for the sustainable management of natural resources.[42] However, the Paris Agreement also focused primarily on states (and regional economic integration, such as the EU) and did not address the responsibilities of other actors, including investors. Another issue is that, under both international documents, the parties' commitments are non-binding and no liability mechanism is envisaged for non-implementation. This allows trade actors and investors to commit serious environmental violations in regions with weak state control. For example, the usage of carbon-intensive coal plants by leading Chinese companies operating in Indonesia's nickel sector has made the process the world's most carbon-intensive nickel production, causing landslides and water pollution in ecologically fragile regions.[43] Although

[37] European Environment Agency, Report on "Improving the Climate Impact of Raw Material Sourcing", 9 (2021).
[38] Finance for Biodiversity Foundation, Briefing Paper on "Top 10 Biodiversity-impact Ranking of Company Industries", 1 (2023).
[39] United Nations Framework Convention on Climate Change, art. 4.2(a) (1992).
[40] *Id.*, art. 4.1 (h).
[41] *Id.*, art 4.2 (e).
[42] United Nations Framework Convention on Climate Change, Paris Agreement, art. 6.8(b), 7.9(e) (2015).
[43] Iza Camarillo, Trade and Critical Minerals: The Deadly Cost of Nickel Mining in Indonesia, 5 (2024).

China is a party to both of the above-mentioned international agreements,[44] its investors commit gross violations of the aforementioned provisions of those agreements and no effective remedial measures have been taken against these violations.

Apart from GHG emissions, biodiversity is also essential for the sustainability of ecosystems and their associated investment services at both local and global levels. As stated in the CETM Guiding Principles, the integrity of the planet, its environment and biodiversity must be safeguarded, with respect to CRM, in support of the energy transition.[45] Still, it is increasingly threatened by, among other things, the increasing demand for CRM. In this regard, the 1992 Convention on Biological Diversity regulates the conservation and sustainable use of biological resources and is a valuable document for addressing these challenges. The document clearly states that the decline in biological diversity is an inevitable consequence of human activity.[46] Also, Article 1 of the Convention defines the objectives of biodiversity policy as the conservation of biodiversity and the sustainable use of its components, the fair and equitable sharing of the benefits arising from the utilization of genetic resources and the provision of appropriate access to these resources.[47]

However, the Convention is also considered a state-centric document. Thus, it noted that states, not investors and other actors, must conduct environmental impact assessments and take measures to prevent or minimize serious harm if they are identified.[48] Here, the same issue is observed again: How does biodiversity suffer from the "arbitrariness" of foreign investors and weak enforcement mechanisms? A good example is the concentrates discharged during the exploitation of the gold-coal mine by the foreign investor BHP Billiton, a preferred shareholder in Papua New Guinea, which has created toxic sediments in the Ok Tedi and Fly rivers.[49] These sediments themselves have significantly reduced water quality in rivers and the toxins have destroyed biodiversity in the water and vegetation in areas fed by the

[44] Parties to the United Nations Framework Convention on Climate Change, China, https://unfccc.int/node/180417 (last visited Apr. 29, 2026).

[45] United Nations, Resourcing the Energy Transition: Principles to Guide Critical Energy Transition Minerals towards Equity and Justice, 4 (2024). Available at: https://www.un.org/sites/un2.un.org/files/report_sg_panel_on_critical_energy_transition_minerals_11_sept_2024.pdf (last visited Jan. 6, 2026).

[46] Hanna V. Anisimova et al., *Mechanism of Legal Regulation of Environmental Risks for the Preservation of Biological Diversity in Conditions of Sustainable Development*, Astra Salvensis 311, 317 (2022).

[47] United Nations Convention on Biological Diversity, Principle 1 (1992).

[48] *Id.*, Principle 14(a), (d).

[49] International Institute for Environment and Development, *Mining for the Future Appendix H: Ok Tedi Riverine Disposal Case Study* 8-12 (MMSD, Working paper No. 68a, 2002).

water.[50] Because the income from the export of minerals extracted from the mine is quite significant in state revenues, the Papua New Guinean government disregarded all these environmental disasters. It did not even allow the mine to close 5 years earlier than planned.[51] Although the country is a signatory to the aforementioned Convention, it has grossly violated its provisions, yet there is no adequate mechanism to address those non-compliances.

In light of these international concerns and enforcement gaps, the question arises as to how Azerbaijan regulates the activities and environmental obligations of foreign investors operating in the RM sector. Under Azerbaijani legislation, foreign investors operating in the RM sector enjoy numerous rights and are subject to several sustainability commitments. According to the Law on "Investment Activities", foreigners, stateless persons, foreign legal entities and their branches and representative offices, international organizations and foreign states carrying out investment activities are considered "foreign investors".[52] By law, foreign investors are entitled to freely determine the form of investment activity, to own the income they receive from investment activity and to reinvest this income, as well as to have other rights stipulated in the agreement.[53] At the same time, they must comply with the requirements of legislation on the protection of the life and health of the population, the environment, state security and other objects specified in the Law.[54]

The legislation governing the RM sector establishes several specific obligations for foreign investors regarding environmental protection. For example, investors must prepare an environmental impact assessment document for projects involving the extraction, production, development and processing of minerals and a state ecological expertise must be conducted on this document.[55] In addition, investors must pay appropriate fees and penalties if their activities pollute the environment.[56]

Also, to ensure environmental protection, the use of subsoil may be limited or prohibited for foreign investors.[57] However, the legislative acts do not specify specific environmental obligations related to reducing GHG emissions

[50] *Ibid*.

[51] *Id*., 3.

[52] "İnvestisiya fəaliyyəti haqqında" Azərbaycan Respublikasının Qanunu [Law of the Republic of Azerbaijan on "Investment Activities"], art. 1.1.5 (2022). Available at: https://e-qanun.az/framework/50048 (last visited Apr. 12, 2026).

[53] *Id*., art. 10.

[54] *Id*., art. 11.

[55] *Supra* note 15, art. 10.

[56] "Ətraf mühitin mühafizəsi haqqında" Azərbaycan Respublikasının Qanunu [Law of the Republic of Azerbaijan on Environmental Protection], art. 24 (1999). Available at: https://e-qanun.az/framework/3852 (last visited Apr. 12, 2026).

[57] *Supra* note 15, art. 11.

or protecting biodiversity. The mentioned obligations are considered the most important for foreign investors operating in the CRM sector, as investors in these two areas commit gross violations. At the same time, Azerbaijan is a party to all of the aforementioned international agreements and is obligated to comply with their requirements.[58] In this regard, the country should amend its legislation governing the CRM sector in accordance with its international commitments and ensure that foreign investors operating in this sector comply with environmental protection standards stipulated in international agreements.

The mentioned legislative gaps have become more evident in the Soyudlu case. Thus, the cyanide concentration in the artificial lake, used as a vast reservoir by a foreign investor and mixed with groundwater, caused water pollution, the destruction of biodiversity around the lake, a serious spread of oncological diseases among the rural population and serious damage to local agriculture.[59] Thus, the foreign investor has both grossly violated its environmental obligations and seriously harmed the local population's lives and health. In addition, enforcement and control gaps have led to public dissatisfaction with activities in the CRM sector: as the President also said, the Ministry of Ecology and Natural Resources' failure to exercise its ecological expertise has resulted in gross violations of foreign investors' commitments. From this perspective, it is imperative to amend Azerbaijani legislation to prevent such situations from recurring.

Given poor state management and enforcement by host states, it is also crucial to address the environmental protection obligations of foreign investors in the CRM sector. Currently, their environmental protection obligations are primarily reflected in the BITs and MITs. For example, Free Trade Agreement between EFTA States and Central American States encourages parties to establish Corporate Social Responsibility (hereinafter CSR) Standards and "cooperation on goods, services and technologies that are "environmentally beneficial".[60] The Morocco-Nigeria BIT also requires parties to "maintain an environmental management system".[61] The Agreement

[58] Parties to the United Nations Framework Convention on Climate Change, Azerbaijan, https://unfccc.int/node/61012 (last visited Apr. 29, 2026).

[59] Irena Gonashvili & Agshin Umudov, Protesting Mining in the South Caucasus: What Drives People to the Streets?, Friedrich Schiller University Jena (Apr. 4, 2023), https://www.kaukasiologie.uni-jena.de/460/issue-10 (last visited Apr. 8, 2026).

[60] Free Trade Agreement, The EFTA States-The Central American States, art. 9.7 (2013). Available at: https://www.efta.int/sites/default/files/media/documents/legal-texts/free-trade-relations/central-america/EFTA-Central-America-free-trade-agreement.pdf (last visited Jan. 6, 2026).

[61] Reciprocal Investment Promotion and Protection Agreement, The Government of the Kingdom of Morocco-The Government of the Federal Republic of Nigeria, art. 18.1 (2016). Available at: https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5409/download (last visited Jan. 6, 2026).

between Japan and the US on CRM Supply Chains also addresses the environmental obligations of the parties to establish and maintain appropriate procedures for assessing the environmental impacts of proposed projects that involve critical minerals at any stage in the critical minerals lifecycle,[62] and to implement the multilateral environmental agreements to which they are a party.[63]

Including these obligations in investment agreements also leads investment arbitration tribunals to consider sustainability commitments. For example, in Aven v. Costa Rica, the Investor-State Dispute Settlement Mechanism Tribunal was asked to determine whether an investor had an obligation not to harm the environment.[64] The Tribunal's conclusion that investors would be exposed to environmental claims was based on the treaty's multiple references to the significance of environmental protection and the incorporation of environmental laws into international law.[65]

In Azerbaijan, the main sustainability obligations for foreign investors are set by production-sharing agreements. For example, according to Azeri-Chirag-Deepwater Gunashli Production Sharing Agreements between the State Oil Company of the Republic of Azerbaijan and BP Exploration (Caspian Sea) Limited and others, the contractor (refers to foreign investors) has the obligation to conduct the operations in a diligent, safe and efficient manner in accordance with good practices in the petroleum industry and to take all reasonable actions in accordance with said standards to minimise any potential disturbance to the general environment, including the surface, subsurface, sea and other natural resources.[66]

But for the CRM sector, some transparency problems are observed in that sense: although laws and other legislative acts approving agreements in which the state and foreign investors participate for CRM are public (like, in copper production, Anglo Asian Mining PLC, a British company, operates based on the production sharing agreement made between RVI and the Azergyzil Agreement signed on 20 August 1997 (and having come into force as a law of the Republic of Azerbaijan on its publication on 30 April 1998),[67]

[62] *Supra* note 13, art. 4.4.

[63] *Id*, art. 4.5.

[64] David R. Aven and others v. Republic of Costa Rica, ICSID No UNCT/15/3, § 737-9 (2018).

[65] *Ibid*.

[66] Xəzər dənizinin Azərbaycan sektorunda Azəri, Çıraq yataqlarının və Günəşli yatağının dərinlikdə yerləşən hissəsinin birgə işlənməsi və hasilatın pay bölgüsü haqqında Saziş [Agreement on the Joint Development and Production Sharing for the Azeri and Chirag Fields and the Deep Water Portion Of The Gunashli Field in the Azerbaijan Sector of the Caspian Sea], art 26.1. (2017). Available at: https://www.bp.com/content/dam/bp/country-sites/en_az/azerbaijan/home/pdfs/legalagreements/psas/ea-az-restated-acg-psa.pdf (last visited Apr. 20, 2026).

[67] Azərbaycan Respublikasının 1998-ci il 17 mart tarixli 456-IQ nömrəli Qanunu ilə təsdiq edilmiş Azərbaycan Respublikasının "Azərqızıl" Dövlət Şirkəti ilə ABŞ-ın " R.V. Investment

their texts are not included in those acts. In general, full versions of these agreements are usually not publicly accessible. Because investment agreements are the most effective mechanism for influencing investors in the CRM sector, it is crucial to determine foreign investors' obligations in detail in these agreements and to make them publicly available.

In this regard, all countries with CRM economies should ensure the timely and lawful implementation of foreign investors' environmental protection commitments, particularly regarding GHG emissions and biodiversity conservation. In addition, investment agreements concluded between those countries and foreign investors should detail the environmental protection obligations of both parties (especially the foreign investor) and be publicly available.

B. Human Rights and Social Responsibilities of Foreign Investors

Contrary to popular belief, sustainability commitments are not merely about strictly adhering to environmental standards: they also encompass investors' human rights and other responsibilities in host countries. Despite growing awareness of the connection between business and individual rights in the expression of corporate responsibility for human rights, foreign investors' involvement in human rights remains primarily unregulated. As mentioned in previous parts of the article, the "failure" of international law in clearly defining and effectively monitoring foreign investors' obligations, along with poor state management in this sector, has led to violations of fundamental rights and freedoms of those affected by the CRM sector: specifically, people living in or near the CRM processing and development areas and local minorities.

Similar to environmental obligations, human rights commitments, expressed in international treaties, primarily bind states. For example, according to the International Covenant on Civil and Political Rights (hereinafter ICCPR), states must respect and protect human rights, prevent human rights abuses by corporations and other non-state actors and provide

Group Services, LLC" kompaniyası arasında bağlanmış "Gədəbəy, Qoşa, Ordubad qrupu (Piyazbaşi, Ağyurd, Şəkərdərə, Kələki), Söyüdlü, Qızılbulaq və Vejnəli perspektiv qızıl filiz yataqlarının kəşfiyyatı, işlənməsi və hasilatın pay bölgüsü haqqında Saziş"in icrasının təmin edilməsi barədə" Azərbaycan Respublikası Prezidentinin Sərəncamı [Order of the President of the Republic of Azerbaijan on Ensuring the Implementation of the Agreement on the Exploration, Development and Production Sharing of the Prospective Gold Ore Deposits of Gadabay, Gosha, the Ordubad Group (Piyazbashi, Agyurd, Shekerdere, Kalaki), Soyudlu, Gizilbulag and Vejnali, Concluded between the State Company "Azergold" of the Republic of Azerbaijan and the U.S. Company "R.V. Investment Group Services, LLC", approved by the Law No. 456-IQ of the Republic of Azerbaijan dated 17 March 1998] (1999). Available at: https://e-qanun.az/framework/4869 (last visited Apr. 20, 2026).

remedies when such preventive measures fail.[68] Thus, while international law allows foreign investors to avoid direct liability, it also shifts the burden onto states to ensure that private actors do not violate human rights obligations. However, the notion that private subjects ought to uphold human rights is now reflected in international initiatives that seek to articulate global norms, such as the United Nations Guiding Principles on Business and Human Rights (hereinafter UNGP), the UN Global Compact and the OECD Multinational Enterprises (hereinafter MNE) Guidelines. The UNGP establishes a corporate responsibility for businesses to refrain from violating the human rights of others, to address adverse human rights impacts,[69] and to avoid causing or contributing to them.[70]

The OECD MNE Guidelines stipulate that enterprises should respect human rights, refrain from violating them and adopt public policy commitments to respect them.[71] The UN Global Compact also states that businesses should ensure they are not complicit in human rights abuses.[72] However, because the aforementioned documents are mainly of a guiding nature and do not contain mandatory instructions, their implementation falls to the "mercy" of legal entities and foreign investors.

As a result, the dispositive nature of foreign investors' obligations to comply with international human rights and freedoms, combined with weak control over their activities in many host states, leads to gross human rights violations during investment activities. For example, in 2025, an agreement was signed between the state-owned company Codelco, on behalf of the Chilean government and Rio Tinto, a British and Australian MNE, to extract lithium from the Salar de Maricunga, Chile's largest salt flat.[73] It is said that the agreement supports strategic cooperation between the parties in the global energy transition, as well as the application of technologies that minimize environmental impact and enable the recovery of minerals.

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[68] International Covenant on Civil and Political Rights, art. 2 (1966).

[69] United Nations Human Rights Office of the High Commissioner, Guiding Principles on Business and Human Rights, Principle 11 (2011). Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (last visited Apr. 12, 2026).

[70] *Id*., Principle 13.

[71] Organisation for Economic Co-operation and Development, OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, 25 (2023). Available at: https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/06/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct_a0b49990/81f92357-en.pdf (last visited Jan. 6, 2026).

[72] United Nations Global Compact, The Ten Principles of the UN Global Compact, https://unglobalcompact.org/what-is-gc/mission/principles (last visited Jan. 6, 2026).

[73] Rio Tinto Partners with Codelco to Develop Lithium Project in Chile's Salar de Maricunga, https://www.riotinto.com/en/news/releases/2025/rio-tinto-partners-with-codelco-to-develop-lithium-project-in-chiles-salar-de-maricunga (last visited Apr. 29, 2026).

But what is happening in reality? As lithium is one of the most important CRMs for green energy and the energy transition, its extraction results in significant water loss (85-95%).[74] Thus, lithium production from this salt flat by Rio Tinto, operating as a foreign investor, will have dire consequences for the Colla indigenous population of the desert, including water shortages, ecosystem destruction and pollution of the area by treated wastewater, harming biodiversity. The gradual alienation of the lands inhabited by the Colla people by the state, as well as the failure to consult with communities regarding the lithium extraction project, demonstrates that the government grossly violates the rights of local minorities, which is one of the fundamental human rights under international law, namely under Article 27 of the ICCPR[75] and under Article 6 of the Convention on Indigenous and Tribal Peoples.[76]

So, how are the Colla people's rights being violated? According to Article 7 of the Convention, indigenous peoples shall have the right to decide their own priorities for development as it affects their lives and the lands they occupy or otherwise use.[77] Also, they shall participate in the formulation, implementation and evaluation of plans and programs for national and regional development, which may affect them directly.[78] As the aforementioned international agreements primarily address states and Chile is a member of both,[79] it is possible to say that the Chilean government failed to ensure the implementation of its people's basic rights by not imposing adequate measures.

But what about the foreign investor: Rio Tinto? Since the company mentioned is the main actor in extracting lithium, it committed direct violations against the Colla people. While the above-mentioned agreements do not primarily bind Rio Tinto, according to Article 17 of the UNGP and Chapter II (11) of the OECD MNE Guidelines, business enterprises should carry out human rights due diligence to identify, prevent and mitigate actual and potential adverse impacts that they may cause. In that sense, it showed that Rio Tinto also failed (or ignored) to calculate its impact on the Colla people's lives and interests. Interestingly, Rio Tinto has stated that the project

[74] "The Source of All Life is Here": Plan to Mine Lithium in Chilean Salt Flat Sparks Fears of Water Scarcity, https://www.theguardian.com/global-development/2026/jan/01/chile-lithium-rio-tinto-fears-colla-indigenous-water-atacama-ecosystem (last visited Mar. 11, 2026).

[75] *Supra* note 68, art. 27.

[76] Indigenous and Tribal Peoples Convention, art. 6 (1989).

[77] *Id.*, art. 7.

[78] *Ibid.*

[79] UN Treaty Body Database, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=35&Lang=EN (last visited Apr. 29, 2026); United Nations Treaty Collection, https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800c0136&clang=_en (last visited Apr. 29, 2026).

will focus on deep engagement with local communities by developing power and road infrastructure. But how the local population, forced to move from their homes, will use this infrastructure remains uncertain.

The other problem regarding the impact of foreign investors' activities on human rights concerns one procedural element of the right to a clean, healthy and sustainable environment, recognized by the UN as a fundamental human right: access to information. Under the Aarhus Convention, this right is linked to access to transparent, easily accessible information.[80] The importance of this right is particularly evident in the Soyudlu case. First of all, as mentioned earlier in this article, the unavailability of the investment agreement concluded with the foreign investor, Anglo Asian Mining PLC, left the local population of the village unaware of the investment relations and conditions.

On the other hand, the foreign investor's failure to take adequate measures to address the population's concerns, as well as its failure to inform them of the work being done, led to the expansion of local protests and the worsening of problems. Unfortunately, the fact that the requirements of the Law "On Access to Information" do not apply to foreign investors indirectly hinders investors from establishing meaningful engagement with local communities and relevant social partners and ensuring public oversight of transparency in their activities.[81] From this perspective, it is extremely important for a foreign investor operating in the CRM sector to be transparent in their activities, regularly update local people on the work being done and ensure this process is regulated by legislation in accordance with the host state's international obligations.

The above-mentioned issues necessitate the regulation of human rights and freedoms protection within the framework of investment agreements. In general, applying investor (including foreign ones) obligations on human rights has two main benefits:[82] First, it can serve as a way to apply human rights and commercial standards more broadly. Specified standards on investors' obligations regarding human rights protection will allow for the dispelling of foreign investors' excuses operating in the CRM sector that "our activities are appropriate and justified within the framework of state legislation" and for the application of a standard approach. Second and perhaps more significantly, the interpretation of MITs and BITs can be better contextualized by applying investor commitments on human rights. Since the investment agreements are more investor-focused, especially those signed in

[80] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, art. 5 (1998).

[81] "İnformasiya əldə etmək haqqında" Azərbaycan Respublikasının qanunu [Law of the Republic of Azerbaijan "On Access to Information"], art. 9 (2005). Available at: https://e-qanun.az/framework/11142 (last visited Apr. 20, 2026).

[82] Barnali Choudhury, *Investor Obligations for Human Rights* , 35 ICSID Review - Foreign Investment Law Journal 82, 82 (2020).

the last century, the obligations of investors to respect human rights are not detailed, allowing foreign investors to demand compensation even when they grossly violate human rights. In this regard, tribunals may be reminded by such interpretations that international investment law operates within a framework encompassing issues beyond investment, such as human rights.[83]

Recently, the obligations of foreign investors regarding human rights and fundamental freedoms have also been included in the regulatory scope of BITs and MITs. These clauses sometimes form separate provisions in agreements, while in other situations, they are part of the preambles. For example, the Canada-Burkina Faso BIT stipulates that States "shall encourage enterprises operating in their territory or subject to their jurisdiction to incorporate internationally recognized standards into their practices and domestic policies".[84] Similarly, the Morocco-Nigeria BIT stipulates, under the heading "Corporate Social Responsibility", that investors must protect human rights in the host State, comply with core labor standards and not conduct investments "in a manner that circumvents international environmental, labor and human rights obligations".[85]

The Brazil-Malawi BIT takes a more stringent approach, stating that investors "shall strive to make the highest possible contribution to the sustainable development of the Host Party and the local community" by adopting socially responsible practices.[86] It then elaborates on how this contribution can be made, including strengthening local capacity through close cooperation with the local community, developing human capital and seeking or accepting exemptions not provided for in the host State's environmental and health legislation.[87] In this regard, reflecting the principle of respect for human rights in investment agreements will be helpful to eliminate human rights violations committed by foreign investors.

In this sense, investors' sustainability obligations are not limited to environmental protection measures but also encompass broader issues such as social responsibility and human rights. In this regard, foreign investors operating in the CRM sector should not only comply with the host countries' local standards but also incorporate international environmental and human rights principles into their activities. At the same time, ensuring access to information on CRM activities should be in both parties' utmost interest, as a

[83] *Ibid*.

[84] Agreement for the Promotion and Protection of Investments, Canada-Burkina Faso, art.16 (2015). Available at: https://edit.wti.org/document/show/6145ab88-db09-438c-b022-17e4b6f1a528 (last visited Apr. 21, 2026).

[85] Gonashvili & Umudov, *supra* note 59.

[86] Investment Cooperation and Facilitation Agreement, Brazil-Malawi, art. 9 (2015). Available at: https://edit.wti.org/document/show/e501f10a-cf7a-4d1b-9c88-e54b1d780a0c (last visited Apr. 21, 2026).

[87] *Id*., art. 9(2).

transparent investment environment will help attract responsible foreign investment into the CRM sector and prevent possible human rights violations.

III. The EU Initiatives on Regulating Investors' Activities in the Critical Raw Materials

Today, the EU is heavily dependent on imports of CRM, such as cobalt, platinum, rare earth and titanium, which are essential for sustainable production and environmentally friendly products.[88] This necessity makes the Union take the most detailed approach to regulating the RM sector. For example, the European Commission's 2008 Communication on the Raw Materials Initiative stated that ensuring secure ad undistorted access to RM is a key factor in the EU's competitiveness.[89] European Commission's 2019 Communication "The European Green Deal" also notes that ensuring a sustainable supply of RM and securing CRM for clean technology, digital, space and defense applications through the diversification of both primary and secondary sources constitutes one of the prerequisites for this transition.[90] In that sense, the EU has already adopted dozens of regulations to address both CRM and commitments of foreign investors in that sector. This regulatory approach may seem beneficial for the countries that are having difficulties with their CRM regulations and need to impose better legal practices in their experience, including Azerbaijan.

When analyzing the EU CRM experience, the first conspicuous thing is that the Union is adjusting CRM scope and listing of materials by using its own developed methodology. In accordance with the methodology, the Commission defines RM as "critical" based on two parameters: economic importance and supply risk.[91]

The "economic importance" parameter aims to provide insight into the importance of a material to the EU economy in terms of end-use applications and the value added of the corresponding EU manufacturing sectors.[92] The "supply risk" parameter reflects the risk of a disruption in the EU supply of the material. It is based on the concentration of primary supply from raw-materials-producing countries, taking into account their governance performance and trade factors.[93] Calculations to determine these parameters are also carried out in accordance with the Union's economic demand indicators, based on average data from the last 5 years.[94] Given the lack of

[88] *Ibid*.

[89] European Commission, COM/2008/0699 final, 2 (2008).

[90] European Commission, COM/2019/640 final, 8 (2019).

[91] European Commission, Methodology for Establishing the EU List of Critical Raw Materials, 2 (2017).

[92] *Ibid*.

[93] *Ibid*.

[94] *Ibid*.

legislation or other technical and normative acts regarding the scope and listing of CRM in Azerbaijan, the aforementioned EU methodology may serve as a good starting point for work in this area.

Secondly, in 2024, EU Regulation 2024/1252, known as the EU Critical Raw Materials Act (hereinafter CRMA), was adopted. The Act is seen as one of the very first legal documents to address detailed CRM regulation, as well as investors' commitments in that sector. The CRMA's suggested actions are robust: by 2030, at least 10% of the EU's annual RM consumption should come from locally extracted minerals and 25% from recycled materials and 40% should be processed within the EU.[95] At the same time, no third country should supply more than 65% of Europe's annual consumption of these materials.[96] The EU's growing concern about its reliance on CRM is reflected in this ban, which is primarily aimed at China. For Azerbaijan, extracted CRM is sent to several foreign countries, including China, for subsequent processing.[97] For this reason, setting a processing limit similar to that in the EU and, accordingly, requiring foreign investors to develop local CRM processing infrastructure will serve to strengthen Azerbaijan's strategic independence in CRM.

Another feature of the CRMA is that it regulates the activities of the EU's investors in third countries by recognizing a CRM project as a Strategic Project.[98] One of the recognition criteria is that the project would be implemented sustainably, including:[99]

a) the monitoring, prevention and minimization of environmental impacts;
b) the prevention and minimization of socially adverse impacts through the use of socially responsible practices, including respect for human rights, indigenous peoples and labor rights;
c) potential for quality job creation and meaningful engagement with local communities and relevant social partners;
d) the use of transparent business practices with adequate compliance policies to prevent and minimize risks of adverse impacts on the proper functioning of public administration, including corruption and bribery.

But what is the benefit of this recognition? Obtaining a Strategic Project status under the CRMA allows project promoters (investors) to request a meeting of the financing subgroup, in accordance with Article 16 of the CRMA, to discuss and advise on completing the project's financing, taking into account both private and public funding sources.[100] In short, this status

[95] European Parliament and the Council, Regulation (EU) 2024/1252, art. 5.1(a) (2024).
[96] *Ibid*.
[97] *Supra* note 16.
[98] *Supra* note 95, art. 7.1.
[99] *Id.*, art. 7.1 (a), 6.1 (c).
[100] Frequently Asked Questions about Strategic Projects under the CRMA, https://single-market-economy.ec.europa.eu/sectors/raw-materials/areas-specific-interest/critical-raw-

allows the investor of a CRM project to benefit from EU and national funding and complete the project.

With regard to funding of RM projects in Azerbaijan, it can be said that there is a government-dominant policy for investing in RM. First of all, according to the Law on "Subsoil", the subsoil, as well as geological information about the subsoil, belongs to the Republic of Azerbaijan.[101] Also, in local investments, state-owned companies are mainly observed as investors, like the leading operating entity for aluminum, one of the CRMs, is Azeraluminium LLC,[102] and the operating entity for the development of gold and other metal ore deposits is Azergold CJSC.[103] Also, in foreign investment, there is significant government participation, as in the investment agreement on copper production signed between Anglo Asian Mining PLC, a British company and Azergyzil (Today AzerGold CJSC is recognized as a party of the agreement because of the dissolution of Azergyzil), under which the state holds a 51% preferential right.[104]

This suggests that, as in the EU, both local and foreign investors can receive national funding from the state for CRM investments. One of these methods is obtaining preferential loans. According to the Rules for Granting Concessional Loans at the Expenses of the Entrepreneurship Development Fund of the Republic of Azerbaijan, the Fund's preferential loan funds are directed to financing investment projects in priority areas, especially the development of the non-oil sector and the application of innovative technologies, within the framework of the country's socio-economic development directions.[105] However, sustainability requirements are not specified for granting those preferential loans to the investors. In this regard, it would be a significant innovation to incorporate the EU's aforementioned sustainability criteria into Azerbaijan's potential CRM legislation, enabling investors to access these funds only by adhering to sustainable investment practices. This will not only ensure that foreign investors comply with the mentioned criteria to avoid losing local financial opportunities, but also foster a healthy and transparent investment climate and ensure that the population is not dissatisfied with these projects.

materials/strategic-projects-under-crma/faq_en#benefits-of-strategic-project-status (last visited Apr. 18, 2026).

[101] *Supra* note 76, art. 4, 32.

[102] About us, https://azeraluminium.com/About (last visited Mar. 16, 2026).

[103] About us, https://azergold.az/en/haqqimizda/azergold-qsc (last visited Mar. 16, 2026).

[104] Anglo Asian Mining PLC, Placing of 26,000,000 new ordinary shares of 1p each at 77p per share, Admission to trading on AIM, 14, 162 (2005).

[105] Azərbaycan Respublikası Sahibkarlığın İnkişafı Fondunun vəsaiti hesabına güzəştli kreditlərin verilməsi Qaydası [The "Rules for Granting Concessional Loans at the Expenses of the Entrepreneurship Development Fund of the Republic of Azerbaijan], art. 2 (2020). Available at: https://e-qanun.az/framework/45150#qayda (last visited Apr. 20, 2026).

In addition, CRMA offers another important criterion for sustainable CRM supply: sustainability-related certification schemes for CRM. These schemes are developed and overseen by governments, industry associations and groups of interested organizations and they may apply to have their schemes recognized by the Commission.[106] So what do these schemes do? They are designed to "verify" strategic investment projects outside the EU to ensure that they are being carried out in accordance with environmental and human rights standards. The applicants (including investors) must follow numerous requirements for certification, including but not limited to:[107]

a) requirements ensuring environmentally sustainable practices, as well as ensuring environmental management and impact mitigation in GHG emissions and biodiversity, including damage to habitats, wildlife, flora and ecosystems;
b) requirements for ensuring socially responsible practices, including respect for human rights and labor rights, as well as the community life of indigenous peoples;
c) requirements for ensuring business integrity and transparency, including requirements to apply sound management of financial, environmental and social matters, as well as anti-corruption and anti-bribery policies.

Thus, these schemes ensure that foreign investors meet third-party (public "observers" who prepare those schemes and send them to the Commission for approval) and EU-approved sustainability requirements and support public satisfaction. That means both the EU and investors will take societal expectations into account when making decisions regarding CRM investment by approving and implementing certification schemes. However, different certification schemes developed by various groups, such as industry associations and groups of interested organizations, will lead to chaotic approaches to CRM investment and confusion among investors. In addition, the submission of schemes to the Commission and their approval may take a long time due to the Commission's workload, officials' subjective approaches and complex decision-making methods, which will lead to a loss of time and money for investors wishing to establish CRM activities under those schemes. To address concerns, by 24 May 2027, the Commission will be responsible for adopting and implementing acts to specify a single template for scheme owners to provide the minimum information for applications.[108]

[106] *Supra* note 95, art. 30.1.

[107] *Id.*, Annex IV.

[108] European Union, Establishing a Framework for Ensuring a Secure and Sustainable Supply of Critical Raw Materials and Amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020, art. 8.4 (2024).

The Law of Azerbaijan "On Public Participation" regulates citizens' involvement in state governance;[109] however, public involvement in private decision-making is not determined. Also, the Law "On Investment Activities" does not specify requirements for public oversight of investment activities. In this regard, amending the aforementioned legislative acts by taking into account the EU experience and introducing a similar mechanism in which both the state and foreign investors consider public insights and expectations on CRM investment during decision-making could contribute to the development of investor-society relations and to a faster, more adaptive response by investors to public expectations. In particular, in the CRM sector, this mechanism will play an indispensable role in preventing gross violations of the environment and human rights.

Finally, the EU is also implementing its sustainability practices within the framework of BITs and MITs. Thus, under the EU's 2023 annotation on model BIT clauses, the parties reaffirm their commitments to sustainable development and transparency principles.[110] The Parties also undertake to promote the adoption of responsible business practices to contribute to sustainable development and responsible investment and agree to exchange information, as well as best practices on ways to facilitate this adoption.[111] At the same time, the Partnership Agreement between the European Union and the members of the Organization of African, Caribbean and Pacific States has identified ensuring the sustainable management of natural resources as one of the Agreement's objectives.[112]

More provisions regarding these commitments are noticeable in investment partnerships established, especially for the RM sector. For example, according to the Memorandum of Understanding (hereinafter MoU) on a Partnership on Sustainable RM Value Chains concluded between the Union and Zambia, the objective of the partnership includes developing a closer economic and industrial integration of the sides in the sustainable value chain of RM by identifying and jointly developing innovative, sustainable and

[109] "İctimai iştirakçılıq haqqında" Azərbaycan Respublikasının Qanunu [Law of the Republic of Azerbaijan "On Public Participation"], art. 3 (2013). Available at: https://e-qanun.az/framework/26879 (last visited Apr. 20, 2026).

[110] World Trade Institute, Annotations to the Model Clauses for negotiation or re-negotiation of Member States' Bilateral Investment Agreements with third countries, preamble. https://edit.wti.org/document/show/74fa928b-21bd-4ff6-b80d-e21dda7e13c7, (last visited Apr. 20, 2026).

[111] Ibid., Article on "Corporate social responsibility and business conduct".

[112] Partnership Agreement between the European Union and its Member States, of the one part and the Members of the Organisation of African, Caribbean and Pacific States, of the other part, art. 1.3(e) (2023). Available at: https://www.consilium.europa.eu/en/documents/treaties-agreements/agreement/?id=2021025&DocLanguage=en (last visited Apr. 15, 2026).

responsible RM value chain projects.[113] Also, under the MoU between the Union and the USA on a Strategic Partnership on Critical Minerals, the participants will promote a market environment in which the valuation of critical minerals reflects the real costs of responsible extraction, processing and trade in accordance with the highest standards of transparency and sustainability.[114] In that sense, the EU kind of "forces" both its partners and the involved investors to effectively implement sustainability commitments and the mentioned clauses should serve as model clauses for investment agreements concluded by Azerbaijan.

To conclude, intending to drastically reduce reliance on CRM imports and advance circularity and sustainable sourcing methods, the CRMA is, all things considered, a crucial move by the EU to address the issues of secure and sustainable access to those materials. The CRMA presents obstacles and chances for economic growth, employment creation and competitive advantages for businesses that abide by its rules. Investors will face the task of meeting the criteria for the mining, processing and recycling industries, which will require careful planning, the development of a skilled workforce and increased compliance costs with new regulations.

Furthermore, certification and reporting requirements must be unified, clarified and simplified to ensure the CRMA is implemented successfully. At the same time, ensuring access to finance, cooperation between investors and governments and close citizen involvement in the process are also crucial for the emergence of responsible investment practices under the CRMA və for ensuring a robust CRM supply chain. By addressing these challenges and seizing opportunities, CRMA can support the growth of the clean technology sector in the EU and sustainable resource management. Overall, EU CRM practices should serve as an example for all countries, including Azerbaijan, in effectively regulating foreign investors' behavior in the CRM sector.

Conclusion

Based on the above, the CRM sector and foreign investment involvement in it are becoming increasingly important, which necessitates comprehensive and balanced legal regulation at both national and international levels. The growing demand for CRMs, combined with the active participation of foreign investors, creates significant economic opportunities for states; however, insufficient regulation may also lead to serious environmental degradation, human rights violations and social dissatisfaction. Although the Soyudlu case is not directly related to the CRM, it nevertheless generally demonstrates how

[113] Memorandum of Understanding on a Partnership on Sustainable Raw Materials Value Chains between the European Union, Represented by the European Commission and the Republic of Zambia, part 3 (2023).

[114] Memorandum of Understanding between the European Union and the United States of America on a Strategic Partnership on Critical Minerals, Section III, p. 2 (2026).

regulatory gaps concerning foreign investors' obligations, weak monitoring mechanisms and non-compliance with internationally accepted environmental and human rights standards by those investors may negatively affect both public welfare and the state's international reputation.

For this reason, the article argues that stronger sustainability-oriented regulation of the CRM sector is required. In particular, effective enforcement and monitoring mechanisms, transparency of investment conditions and meaningful local participation should be ensured to prevent investor arbitrariness and maintain public trust. Furthermore, the sustainability obligations of foreign investors should be clearly incorporated into BITs, MITs and production sharing agreements, while foreign investors should be obliged to comply with universally recognized environmental, human rights and corporate governance standards.

The article also proposes broader international reforms aimed at extending the application of fundamental environmental and human rights principles to MNEs and foreign investors, rather than limiting them solely to states. In this regard, the establishment of international or cross-border implementation and monitoring mechanisms would contribute to more effective enforcement of sustainability obligations in investment relations. At the same time, considering the differing approaches of developed and developing countries toward foreign investment, regional cooperation and exchange of experience are necessary for the development of minimum common standards, with the EU CRM framework serving as a useful example.

With regard to Azerbaijan, the article emphasizes the need to define CRM at the legislative level, establish a national CRM list aligned with the country's economic interests, and take practical steps to develop domestic CRM infrastructure and processing capabilities. Additionally, Azerbaijan should impose sustainability obligations on foreign investors operating in the CRM sector in accordance with internationally recognized standards, including obligations related to greenhouse gas emissions, biodiversity protection, transparency and local engagement. Ultimately, stronger state expertise, effective supervision and state-investor cooperation are essential to ensuring a sustainable investment climate and achieving public satisfaction throughout the investment lifecycle.