TRANSFORMING CLIMATE FINANCE IN AN ERA OF SOVEREIGN DEBT DISTRESS

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Edited by James Thuo Gathii,
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and Nona Tamale

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Introduction

James Thuo Gathii, Adebayo Majekolagbe and Nona Tamale

The global financial industry is now widely regarded as a key source to fill the financing gap needed to address the climate crisis. Yet, the global financial architecture within which this industry operates is fundamentally broken. This is exemplified by the recurrent global debt crisis indebted countries face on a perennial basis. This book critically appraises the intersection of climate finance and sovereign debt. In each of the chapters, the authors examine how to truly transform climate finance so that it can enable a green transition and address questions such as loss and damage without entrenching the already broken global financial and debt architecture.

The authors in this book recognize that if finance is inadequate and developing countries are weighted down by external indebtedness, ecological and developmental challenges will remain intractable, and the global economy will lack dynamism. The foregoing insight is not new. It was first articulated over 30 years ago as part of Agenda 21,[1] a document described as reflecting "a global consensus and political commitment at the highest level on development and environment cooperation."[2] To fund Agenda 21 and other outcomes of the 1992 United Nations Confeence on Environment and Development (UNCED), new and additional resources were expected to be generated through Official Development Assistance (ODA) and grant and concessional funding from International Development Association (IDA), regional development banks, and the Global Environment Facility.[3] Debt relief, debt swaps, fiscal incentives, and tradable permits were also listed as innovative finance pathways.

[1] United Nations Sustainable Development, Agenda 21, para 2.2 (1992).

[2] *Id.,* at para. 1.3.

[3] *Id.,* at paras. 33.12–33.14.

The same imperatives and understanding underpinning Agenda 21 similarly informed the climate finance provisions in the United Nations Framework Convention on Climate Change (UNFCCC)—the world's first binding climate change specific treaty and an outcome of the 1992 UNCED. Like Agenda 21, the UNFCCC mandates developed States to provide new and additional financial resources to "meet agreed full costs incurred by developing country Parties" in complying with their climate obligations.[4] The UNFCCC further recognizes that developing States' ability to implement their commitments is dependent on developed States' effective implementation of their financial obligations under the Convention.[5] The financial obligation of developed countries under the UNFCCC regime is consistent with and in addition to the commitment developed States have to "take the lead" in addressing climate change, including by undertaking economy-wide absolute emission reduction targets.[6] Although much has been written about the evolution of the differentiation principle which animated the distinction in the obligations assumed by developed and developing States under the UNFCCC,[7] not much has changed in respect of climate finance obligations. The 2015 Paris Agreement, for example, requires developed States to provide financial resources to assist developing States "in continuation of their existing obligations under the Convention."[8]

Although the Paris Agreement retains the mandatory framing of developed States' climate finance obligations, a more than cursory dive into the Agreement quickly reveals that there is more than meets the eye. Sarah Bracking has described the complexity involving climate finance as a form of anti-politics.[9] This anti-politics pretends to remove power and politics from decision making, and enthrones science, pseudo-science and technical logics which are "more often than not contained in a

[4] United Nations Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S. 107 art. 4(3) [hereinafter UNFCCC].

[5] *Id.,* at art 4(7).

[6] Paris Agreement, U.N. Doc. FCCC/CP/2015/L.9/Rev/1 art. 4(4) (Dec. 12, 2015) [hereinafter Paris Agreement]; *see also* UNFCCC, art. 3(1), 4(2).

[7] Lavanya Rajamani, *Ambition and Differentiation in the 2015 Paris Agreement: Interpretative Possibilities and Underlying Politics,* 65 Int'l & Comp. L.Q. 493 (2016).

[8] Paris Agreement, *supra* note 6, at art. 9(1).

[9] Sarah Bracking, *The Anti-Politics of Climate Finance: The Creation and Performativity of the Green Climate Fund,* 47 ANTIPODE 281 (2016).

financialized policy document."[10] Examples of the anti-politics of climate finance under the Paris Agreement abound. For example, the Paris Agreement adopts a commitment to finance flows with low greenhouse gas (GHG) emissions as well as climate resilient development as one of three objectives of the Agreement.[11] The Kyoto Protocol notwithstanding its many failures has been revived and rebranded under multiple 'voluntary' instruments designed to "incentivize and facilitate participation ... by private entities."[12] Further, through the Global Climate Action Portal recognized under the Paris Decision,[13] thousands of industry-led initiatives now exist through which industries have taken leadership in designing standards and guidelines on vital areas of climate governance like financial disclosure.[14]

It is within these "post-political" margins that corporations and the interest of capital thrive. The inroads that the global financial industry has made into the very quickly emerging and solidifying global climate finance architecture have opened a new lucrative avenue for this industry. Yet, if we take a step back, this key role that the global financial industry is playing in climate governance is not new. Afterall, global environmentalism, including dominant approaches to addressing climate change, remain rooted in the Brundtland doctrine—otherwise known as sustainable development. Under this doctrine, economy, society, and nature are equivalent imperatives that must be "balanced." Sustainable development has turned out to be nothing than greenwashing free market governance as the savior of the environment. Under this logic, nature can be limitlessly commodified, and there can be no solution to the world's ecological crises if it is not technocratic and market based.[15] This financialized game is, however, not victimless. As Bracking puts it, "the game itself is financialized,

[10] *Id.,* at 295.

[11] Paris Agreement, *supra* note 6, at art. 2(1)(c).

[12] *Id.,* at art. 6(4)(b), (8)(b).

[13] Adoption of the Paris Agreement - Decision 1/CP. 21, para. 117, 133–136, FCCC/CP/2015/10/Add.1.

[14] Task Force on Climate-Related Financial Disclosures (TCFD), *Final Report: Recommendations of the TCFD* (2017); *see also* Olabisi Akinkugbe & Adebayo Majekolagbe, *International Investment Law and Climate Justice: The Search for a Just Green Investment Order,* 46 Fordham Int'l L.J. 169, 202–204 (2023).

[15] Maxine Burkett, *Root and Branch: Climate Catastrophe, Racial Crises, and the History and Future of Climate Justice,* 134 Harv. L. Rev. 326, 339 (2021).

and as such the poor and vulnerable can expect little from it."[16] It is a game played in what has been described as "sacrifice zones"[17]—the green colosseum where the poor, vulnerable, and racialized bear the brunt of climate response measures, while private interests and powerful States profit.

The argument here is not that private entities and the market do not have a role in addressing climate change. Rather, we argue against the corporatization of climate governance and the commodification of climate solutions. The market is, at best, a means not an end. The failure of the world to heed the warnings and attain the aims of Agenda 21, and the flagrant dereliction that characterizes developed countries' posture towards finance obligations under the UNFCCC and the Paris Agreement is not without consequence. It has resulted in lost lives, despoiled ecosystems, and countries forced to triage between development-based survival and ecology-oriented survival. Climate finance is, fundamentally, not about figures and ledgers. It is simply about opportunity—an opportunity to survive and to thrive for those most vulnerable to the worst effects of climate change. A cursory review of the data illustrates this sheer deprivation of opportunities, especially where they are needed the most, developing countries. According to the Climate Policy Initiative, although global climate finance doubled in the last decade (2011–2020), the annual average (USD 480 billion) is only about 10% of the required annual flow by 2030 (USD 4.3 trillion).[18]

The situation becomes even more stark when the details are peeled back. 76% of the cumulative USD 4.8 trillion committed to climate finance between 2011–2020 was raised domestically with concentration in East Asia, North America, and Western Europe. Only 16% of the total climate finance was concessional finance, with grant finance lower than 5%.[19] With just about 20% of global climate finance sourced through concessional loans and grants, climate finance has become a major amplifier of the debt crisis in developing countries. Africa is at ground zero of the climate

[16] Bracking, *supra* note 9, at 296.

[17] Carmen Gonzalez, *Racial Capitalism, Climate Justice, and Climate Displacement*, 11 Oñati Socio-Legal Series 108, 114–117 (2021); Dayna Scott & Adrian Smith, *"Sacrifice Zones" in the Green Energy Economy: Toward an Environmental Justice Framework,* 62 McGill L.J. 861 (2017).

[18] Baysa Naran, *et al., Global Landscape of Climate Finance: A Decade of Data: 2011–2020,* Climate Policy Initiative, at 4 (2022).

[19] *Id.,* at 5.

finance and debt crises. As of 30 June 2023, nine of the eleven debt-distressed low-income countries in the world are in Africa.[20] These countries double as some of the most climate vulnerable and with the least climate finance globally. A 2022 study found that about 55% of the total multi-country climate finance received by debt distressed African countries was in the form of loans, and debt servicing in these countries exceed their climate adaptation bills.[21]

The link between climate finance and sovereign debt is therefore very clear. Developing countries are being drawn into even further debt distress in their bid to avoid or address the devastating impacts of climate change.[22] On the mitigation side of the coin, there is pressure on developing countries to prioritize low or zero emission aligned developmental pathways. These pathways require colossal financial resources that developing countries simply do not have. That is why borrowing has become an option. Yet the cost of borrowing has become punitive given the depletion of their natural capital from climate change, climate related macroeconomic risks, and the fiscal implications of mitigation and adaptation policies.[23]

This book builds on the work that the African Sovereign Debt Justice Network (AfSDJN) has been doing in the last three years.[24] It takes stock, analyzes, and critiques dominant solutions and ideas animating the climate finance and debt conversation. The chapters in the book do not merely focus on institutional reformism,

[20] IMF, *List of LIC DSAs for PRGT-Eligible Countries as of June 30, 2023,* https://www.imf.org/external/pubs/ft/dsa/dsalist.pdf.

[21] Afronomicslaw, Debt, Climate Finance and Vulnerability: A Brief on Debt and Climate Vulnerable Countries in Africa, (2022) available at https://www.afronomicslaw.org/sites/default/files/pdf/A%20Brief%20on%20Debt%20and%20Climate%20Vulnerable%20Countries%20in%20Africa.pdf.

[22] A 2018 study finds that "for every USD 10 paid in interest by developing countries, an additional dollar will be spent due to climate vulnerability." It also finds that climate vulnerability has already raised the average cost of debt in developing countries by 117 basis points, translating into USD 40 billion in additional interest payments over the past 10 years on sovereign debt alone. *See* Bob Buhr, *et al., Climate Change and the Cost of Capital in Developing Countries: Assessing the impact of climate risks on sovereign borrowing costs,* UNE, at iv (2018).

[23] John Beirne *et al., Feeling the heat: Climate risks and the cost of sovereign borrowing* (Asian Development Bank Institute, Working Paper No. 1160, 2020).

[24] Nona Tamale & Adebyao Majekolagbe, *Debt, Climate Finance and Vulnerability: A Brief on Debt and Climate Vulnerable Countries in Africa,* in How to Reform the Global Debt and Financial Architecture (James Gathii ed. 2023).

incremental improvement of instruments, or the creation and adoption of "new" tools that have characterized the climate finance industry. The Bridgetown Initiative is perhaps the best illustration of these approaches from which this book departs. Indeed, as the Agenda 21 experience teaches us, neither paper-innovation, half-hearted measures, nor mild reformist efforts hold the answer to the substructural and systemic defects of the global climate finance architecture. This is because while some of the key interventions of the climate finance agenda are cloaked in novelty, (such as debt-for-climate investment swaps as well as green and blue bonds), they are mostly new wine in old wineskins.

Beyond closely examining the innovations of climate finance, however, each chapter in this book sketches an agenda of transformation. In doing so, this book rejects minimalist reforms of the global debt and financial architecture that tend to entrench existing problems as reflected in the recently published African Sovereign Debt Justice Network book on reforming the global debt and financial architecture.[25] Such an approach unfortunately postpones deeper and more meaningful transformations.[26] In the context of loss and damage finance, Falzon *et al.* show how the minimalist tactics of developed countries like issue narrowing, concept dilution, concept swapping, and strategic ambiguity are deployed as tools of obstruction within the UNFCCC regime.[27] A catalogue of the implications of the fraught financial system on climate finance and what must be done to rebuild key pillars were well articulated by the leaders of developing countries at the Summit for a New Global Financing Pact. Prime Minister Mottley of Barbados, who is at the vanguard of the climate finance discussion has made a case for "transformation, not reform." For his part, South African President Ramaphosa has argued in favor action over rhetoric. Brazil's Lula da

[25] *Id.,* at xii; *see* James Thuo Gathii, *Reform and Retrenchment in International Investment Law* (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3765169 (similarly, in the context of the reform of international investment law, well-meaning but superficial reforms end up entrenching fundamental shortcomings).

[26] *Id.*

[27] Danielle Fazon *et al., Tactical Opposition: Obstructing Loss and Damage Finance in the United Nations Climate Negotiations,* Global Environmental Politics 1, 10–11 (2023).

[28] Zia Weise & Zack Colman, *Paris Climate Finance Summit Delivers Momentum but Few Results,* POLITICO (June 23, 2023), https://www.politico.eu/article/paris-new-global-financing-pact-summit-macron-climate/.

Silva summed up a key theme of this book when he noted that "if we do not change our institutions, the world will remain the same."[28]

A bad tree cannot produce good fruits.[29] A hegemonic system founded on the tyranny of capital and with private interests serving as its puppeteers, as the global finance industry has done in the context of climate change, will only further the cause of global inequality. It will utterly fail to deliver equitable and adequate climate finance. While many reform initiatives of the climate finance industry are superficial, a few, like the Bridgetown Initiative, may have transformative potential. Like Agenda 21, however, Bridgetown is being defanged by the hegemonic neoliberal context within which it operates. It is the curse of pragmatism—the need to make an otherwise radical idea acceptable and workable as Chioneso Kanoyangwa highlights in her chapter. She shows how "Bridgetown 1.0" evolved into a "Bridgetown 2.0" that is more acceptable and palatable to the interests of the global financial industry.

The evolution of the Bridgetown initiative accords with one of the primary claims Nciko wa Nciko makes in his chapter. Nciko powerfully shows how the climate crisis has become a new platform for capital accumulation. Further, the increased involvement and influence of France in the design of Bridgetown 2.0 raises additional concerns about its capture by countries of the Global North which have disowned any liability for the climate crisis. The Bridgetown Initiative may therefore have scored an inadvertent own goal by giving life to the decades-long preference of developed States to have conversations of climate and development outside the UNFCCC framework. While some might frame this as a diplomatic necessity to avoid the political muddiness of the UNFCCC terrain, the shift deprives developing states of the normative and institutional protections under the UNFCCC.[30] Of course, an equally tenable argument can be made that Bridgetown is more of a generic development finance intervention, than a climate finance specific framework.

[29] *Matthew* 7: 17–23.

[30] *See* James Gathii & Cynthia Ho, *Regime Shift of IP Lawmaking and Enforcement from WTO to the International Investment Regime,* 18 Minn. J.L. Sci. & Tech. 427, 439–44 (2017), for more on regime shifting albeit in a non-climate law context. It is, however, noteworthy that the UNFCCC regime is also a terrain extremely vulnerable to neutralization and the capture of powerful states and private entities. *See* Bracking, *supra* note 9, at 296–98.

Recognizing the foregoing limitations of the climate finance governance regime, the contributors to this book propose a transformation agenda anchored on four principles:

- First, that climate change response measures, including climate finance, must center the interest of people, communities, and ecosystems most impacted by climate.
- Second, that global climate finance and debt management and governance priorities must reflect and align with the inevitability, unpredictability, and devastating magnitude of climate impacts, particularly in developing countries.
- Third, that meaningful participation of the most vulnerable in the design and implementation of the global climate finance and debt agenda, and the holistic socio-economic and ecological wellbeing of those most impacted by climate change are key metrics for adjudging the success of reform initiatives.
- Fourth, that the principle of ecological debt according to which the countries that contributed most to the climate crisis bear the most responsibility is a key starting point in addressing the tension between climate finance and sovereign indebtedness for the poorest countries.

The chapters in this book address these themes in depth. In chapter one, Marie-Louise Aren takes a critical approach in reviewing the history and current architecture of climate finance. She traces the evolution of the climate finance regime and how various funding mechanisms within and outside the UNFCCC regime have proliferated over the years. She shows how this proliferation has increased the complexity of the regime without meaningful impact on available finance. Marie-Louise also demonstrates how the global climate finance architecture is at its root infected by historical and continuing climate injustices. This is reflected in the deliberate ambiguity that attends climate finance—what it means, from where it should be sourced, and to whom it should go. It also manifests in climate finance pledges that are never fulfilled as well as in the profit-oriented preference of private finance for climate mitigation over and above adaptation and loss and damage finance. The unsustainable

debt levels in developing States and the complicity of climate finance in that crisis is for Marie-Louise's "a tell-tale sign of climate injustice at work." To address these limitations, she recommends that climate justice should be prioritized over access to market opportunities for the climate finance industry. Marie-Louise's message is clear, climate change is an existential reality that must not be made the new frontier of unbridled profiteering. She also recommends the increased influence of global south development banks in the governance of global climate finance, and greater clarity in climate finance arrangement, burden sharing, and resource allocation.

In her chapter, Nona Tamale brings the promises and defects of the climate-oriented efforts to address the sovereign debt crisis into sharp focus. The chapter discusses adoption of natural disaster clauses, the incorporation of climate risks in debt sustainability analyses (DSAs), and debt relief or cancellation premised on climate considerations. She shows that despite the seeming recognition of the interrelatedness of the debt and climate crises, the Bretton Woods institutions continue to treat them as distinct and separate. Chad's recent debt restructuring experience under the G20 Common Framework is a case in point. Climate change did not feature, in any meaningful way, in Chad's debt restructuring despite the acknowledgment by the IMF and World Bank of the extreme vulnerability of Chad to climate change and the real implications for its debt standing. It is noteworthy that the G20 Common Framework has no requirement for such consideration.

The very visible hand of private finance was also a very sticky point in the Chad restructuring process. Glencore, headquartered in Switzerland but with the Qatar Investment Authority as biggest shareholder, holds 98% of Chad's private debt (at 33%, is highly indebted to private lenders). Glencore's reluctance to participate in the restructuring process is partially responsible for the more than two-year protracted period it took. Nona's chapter buttresses a key insight in this book, that current climate finance and sovereign debt initiatives are at best stop-gap measures as evidenced by the fact that no debt reduction or cancellation was achieved through the Chad restructuring. The restructuring further locked in Chad's dependence on the fossil economy. This is because the prospect of increased income from fossil fuels was used as a justification by lenders for refusing to reduce Chad's debt or to cancel any part of it. Nona argues that natural disaster clauses and the reform of DSAs could hold some promise for the just greening of debt restructuring. So far, however, these tools have

been rendered blunt by the narrowness of their design, technicality of their processes, and the continued resistance of multilateral creditors. In any case, even if the potential of these tools were maximally realized, they still fall far short of actual climate-oriented debt relief and cancellation which Nona describes as the "low hanging fruit."

It is the promise of a radical rethinking and recalibration of the global finance and debt architecture that has, arguably, excited proponents and allies of the Bridgetown Initiative. Chioneso Kanoyangwa's chapter provides a critical survey of the Bridgetown Initiative, particularly its viability for Africa. There is little doubt that if the Initiative could have grown from its original framing, it would be one of the most consequential reforms within the international financial regime in recent times. In that initial iteration, it would have, as Chioneso shows, had the potential to creatively increase climate funding opportunities, widen access to concessional climate finance, facilitate the scaling-up of multinational development banks' concessional climate finance capacity, give real teeth to the proposed loss and damage fund, and re-orient DSAs in the climate direction. That was not to be. Chioneso traces how the Bridgetown Initiative was captured by the global north and interests of global capital in a process that led up to the June 2023 Summit for a New Global Financing Pact in Paris.

While Bridgetown 2.0 was being discussed at the Paris Summit, an alternate gathering under the motif "New Washington Consensus" convened by the United States was being held in the United States. Hence, important stakeholders like India and United States were absent at the Paris Summit where the Bridgetown Initiative was front and center. Little wonder, as Chioneso aptly notes, "concrete commitments failed to materialize" at the June 2023 Paris Summit for a New Global Financing Pact. She traces the hand of the private finance in Bridgetown 2.0's adoption of underwriting its funding through a trust fund with structures that lack the transparency and clarity as those of multilateral lenders. Chioneso proposes an African led initiative that would emphasise a stronger connection between debt restructuring and risk insurance.

Like Chioneso, Nciko wa Nciko also centers Africa in his critical appraisal of debt for nature and climate swaps (climate swaps) as a tool for addressing the climate finance and sovereign debt crises. The crux of his argument can be easily discerned from his very apt title—the misery of others has become the new site for capital

accumulation. In his chapter, Nciko draws from the African Development Bank's (AfDB) 2020 report on climate swaps. Nciko's choice of the AfDB as case study emphasizes a key insight of this book—the need for old and new Global South institutions to be more involved in the governance of climate finance and resolution of the sovereign debt crisis. He, however, shows that when global south institutions simply domesticate the positions of Bretton Wood institutions and base their operations and engagements on similar values and principles, their transformative potential is undermined. This is the case with the AfDB's endorsement of climate swaps. According to Nciko, despite decades of experimentation with debt for nature swaps, the concept has at best had very negligible impact on the debt profiles of its beneficiaries. Worse still, climate swaps have also had very minute long-term benefits. Nciko shows how the AfDB, and the Paris Club creditors extract capital from indebted countries through climate swaps. Monetary penalties in the event of failure to meet climate swap targets is an example of how these instruments are yet another site of capital accumulation. In lieu of conditional frameworks like climate swaps, Nciko makes a case for the recognition of ecological debt as an important reorganizing principle of the sovereign debt and climate finance matrix. With ecological debt as a reorganizing principle, there is a role reversal between developing states and their creditors—the economic debtor becomes the ecological creditor, and *vice versa*.

Ecological debt in the climate finance and sovereign debt context as one of the key contributions of this book is taken up further in Geoffrey Adonu's, Akinyi Eurallyah's and Godwin Dzah's chapters. These chapters explore different dimensions of how climate finance, debt, and bonds intersect. Geoffrey provides an overview of various sustainability themed bond instruments including green bonds, social bonds, blue bonds, sustainability bonds, and sustainability-linked bonds. Geoffrey notes that sustainable bonds can generally be designed as a cheaper alternative to traditional bonds. Yet, Geoffrey questions the usefulness of bonds as a viable tool for bridging Africa's climate finance gap particularly given the already onerous state of African States' debt profile and the worsening vulnerability to climate impacts. He argues that incurring more debts through bonds will more likely than not compound Africa's debt problem. This is because bonds replicate the same flaws that have made other debt instruments an albatross around the neck of African countries such as the use of credit ratings in pricing sustainable bonds. Since bond markets also generally favor the use

of dominant currencies (e.g., USD and Euro), this ineluctably draws developing countries to de-risk climate investments for private investors through their balance sheets, and de facto criteria like the minimum issue requirements. These requirements, he notes are inherently discriminatory against African States which often lack largescale bankable projects that wealthy investors seek. Addressing the flaws of the sustainable bonds market in Africa requires structural change and product innovations including the development of African Domestic and Regional Debt Markets.

Godwin Dzah's criticism of sustainability themed bonds and green finance instruments is based on their potential use as instruments of socio-ecological despoilation in the Global South. This seeming counter-intuitive argument uncovers the not-too-attractive underbelly of acclaimed green initiatives which sustainability themed bonds are expected or required to finance. Like Nciko wa Nciko, Godwin sounds the alarm that "the ecological crisis can become a window of opportunity to reinject and embed capitalist and neoliberal paradigms into global governance." Technocentric green initiatives must necessarily be fuelled by an immense quantity of minerals and natural resources. In fact, the great scramble for critical minerals has begun, and green finance is central to it. Godwin notes that hitherto unattractive financing of extractivism has been made more attractive. In this context he shows that the organizing principle of economic growth at the expense of the environment remains untouched. Godwin argues that in engaging within the green finance landscape, African countries should develop a legal framework which centers the new frontier of natural resource extraction. Such a re-design would address the imbalance between peripheral and core economies, and design and implement an approach to monitor and evaluate the implications of green finance for resource exploration and consequential socio-ecological impacts.

For her part, Akinyi Eurallyah emphasizes the place of human rights in the context of climate finance and debt. In contrast to Godwin's skepticism about the viability or desirability of bond instruments, Akinyi has a slightly more positive outlook particularly towards Sustainability Linked Bonds (SLBs). The focus of SLBs on predetermined sustainability performance objectives distinguishes them from other types of bonds. Akinyi's main argument is that by focusing on socio-ecological objectives, SLBs could help African States to realize climate-based objectives in a human rights compliant manner. She observes that SLB standards and practices currently fail to adequately

account for human rights. She argues that this gap can be filled by ensuring investors in SLBs should identify and assess how human rights are implicated by SLB-funded projects. She says that these investors should also comply with the mandatory disclosure of the impacts of their instruments. She recommends that SLB investors should draw lessons from the field human rights due diligence for businesses.

Afshin Nazir continues Akinyi's measured optimism about the potential of existing tools to help address climate finance and sovereign debt challenges. Afshin's chapter argues that a carefully designed environmental tax regime could play a useful role in resolving the climate finance and debt conundrum. The types of environmental taxes in her chapter include taxes on energy, transportation, pollution, and resources. Carbon tax is the most prominent example in the climate change context. Regardless the form of tax, the Pigouvian nature of these taxes, i.e., capturing, accounting for, and reflecting the negative external cost of pollution in the real price of commodities, is a feature shared by environmental taxes. On the link between tax, debt, and climate finance, Afshin draws from ex ante studies based on some European countries. She cites studies that show that when combined with reduction in labour taxes, environmental taxes could be useful in reducing public debt and achieving environmental outcomes. While noting that African countries like Malawi, South Africa, and Zambia have introduced variations of environmental taxes, Afshin notes that the environmental and fiscal impacts of these initiatives are at the moment largely unknown. Tunisia and Morocco have, however, recorded some minimal fiscal and environmental gains from their respective taxes on motor vehicles and plastic. She notes that the existing narrow tax base, low tax morale, lack of public trust in government, and overall distributional challenges which afflict environmental taxes limit their utility in the African context. To address some of these challenges, Afshin argues for options beyond carbon taxes. She proposes, for example, deforestation taxes. Further, tax regimes and revenue use, she argues, must be carefully fashioned to avoid the exacerbation of inequities while at the same time ensuring that polluters are effectively deterred and the most vulnerable are protected and catered for. Like other chapters in the book, she invites African States to explore the possibility of regional approaches to integrating and framing a tax, debt, and climate finance agenda.

While by no means exhaustive, the critique and recommendations in this book provides a pathway for in-depth institutional and normative recrafting of approaches

and frameworks for addressing climate finance needs and the sovereign debt crisis. In this respect, Harrison Mbori's chapter on green energy purchasing and sovereign debt in Africa is a fitting concluding chapter. It powerfully brings together the normative and institutional critiques, and the transformative recommendations which characterize the other chapters in the book. For example, he shows how the current climate finance and sovereign debt interventions put African States at an increased risk of sovereign debt distress. He explores this theme using green energy purchasing as case study. In his view, green energy purchasing is worsening the sovereign debt crisis because of hidden nature of debt accumulated through public-private partnerships (PPPs) and power purchase agreements (PPAs). This includes direct indebtedness of State-owned corporations involved in the generation, transmission, and distribution of electricity, and the contingent liability through the sovereign guarantees they provide to major "green" energy projects. He illustrates his argument using examples from Ghana, Nigeria, Kenya, Zambia, and Tanzania. In each of these countries, he painstakingly shows the dangers posed by current green energy purchasing arrangements. These downsides include the dominance of loans as a source of funding, and the imposition of stringent and unfavourable terms. Hydroelectricity projects provide an apt example of how green purchasing is implicated in aggravating sovereign indebtedness.

Harrison frames his recommendations as non-reformist reforms invoking the important work being done on abolitionism. Central to the non-reformist reform agenda is a rejection of the prescription of PPPs and PPAs in addressing energy poverty in Africa, the design of a climate change focused debt cancellation scheme, and the establishment of a reparation framework that centers climate justice.

This project continues AfSDJN's efforts to nurture and amplify African voices on the transformation of the global debt and financial architecture in a post-fossil era. The book covers a spectrum of existing climate finance and sovereign debt interventions ranging from potentially radical initiatives like Bridgetown 1.0 to proposals such as environmental taxes. This book will hopefully spur more research on these and related themes particularly those that relate to the necessary transformation of the global climate finance and sovereign debt architecture. There is, for example, the need to track the evolving postures of African governments in respect of climate finance and what the change in policy position means for the operation of institutions and negotiation dynamics.

There is, also, need to study the cumulative impact of diverse interventions. The focus of most chapters in this book has been on individual initiatives. While some focused on multiple initiatives such as Tamale's and Adonus's, we emphasize the need for more work that assesses the cumulative impacts of climate finance interventions. The wisdom of assessing interventions cumulatively lies in the possibility of such initiatives very likely having adverse or positive multiplier effects. One major takeaway from this book that lays the foundation for such further work is that there is need for new institutional arrangements which will address the unique circumstances of African countries given the unique challenges posed by the debt crisis and the need for accelerated and adequate climate finance. For example, some of the chapters in this book persuasively made the case for the creation of an African Sovereign Debt Forum that will serve as a centre of excellence for debt sustainability on the continent.[31] That, however, does not substitute for the long overdue overhaul of the global debt and financial architecture that stands in the way of climate justice for the countries and peoples least responsible for the current climate crisis.

[31] Magalie Masamba, *The Pressing Call for an International Debt Restructuring Framework and the Potential Gains its Creation will have for African Countries,* in How to Refprm the Global Debt and Financial Architecture 25, 25–48 (James Gathii ed. 2023).

CHAPTER ONE

Climate Justice and Debt: Exploring Regulatory Complexities in the Global Climate Finance Architecture Inhibiting Finance Flows for Africa's Climate Action

Marie-Louise F. Aren*

1 Introduction

Many countries, especially in the Global South,[1] unequally suffer harmful impacts from climate change among other developmental challenges vis-a-vis Global North countries.[2] Due to the urgency of climate change, different international climate agreements have been adopted and contain provisions on climate finance. Accordingly, a global climate finance architecture has emerged to channel domestic and international funds towards climate action.[3] The 2009 Copenhagen Accord and the UN Climate Negotiations in Cancun in 2010 delivered a more concrete basis for future climate finance discussions by urging *"scaled up, new and additional, predictable, and adequate funding"* be provided to developing countries.[4] In furtherance of the new and additional funding goal, the Paris Agreement supports a concrete one-off goal of mobilization of USD 100 billion in annual climate finance by developed

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[1] Please note that Global North/developed countries and Global South/developing countries are used interchangeably in this chapter.

[2] United Nations Climate Change, *The Paris Agreement: What is the Paris Agreement?,* https://unfccc.int/process-and-meetings/the-paris-agreement).

[3] Smita Nakhooda, Smita, Charlene Watson & Liane Schalatek, *The Global Climate Finance Architecture,* Overseas Development Institute, (Nov. 2016).

[4] Chiara Armeni, *The Copenhagen Accord and Beyond,* 12 Environmental L. REV. 132 (2010).

countries for developing countries including African countries by 2020.[5] At the moment, this goal has not been met.

Achieving the greenhouse gases (GHGs) as well as mitigation and adoption (M & A) targets of climate change comes with huge costs, especially investment in energy transitions which is estimated to cost over $800 billion per annum.[6] The annual climate finance need for African countries alone exceeds the $100 billion pledge by developed countries.[7] It is estimated that the cost of climate adaptation alone is likely to increase from $140 billion to $300 billion annually by 2030 and to $500 billion by 2050.[8] The Copenhagen Accord for mobilizing resources beyond existing development cooperation budgets does not indicate how the financing should be raised. Private-sector finance is looked up to and publicized as the additionality to scale up access to resources for climate finance mobilisation given the limited availability of public resources.[9] However, calls to leverage the private sector around project finance for climate mitigation have not produced any meaningful impacts. Meanwhile, a large investment gap between Global North/developed countries and Global South/developing countries remains.[10] The private sector's contribution to climate finance has stayed relatively lackluster and where it is available, it is channeled towards M & A efforts in developed economies.[11] At the Global North to South level, there is an apparent disinterest by the Global North in financing climate action in the Global South. This is despite the linkage between the climate crisis and

[5] *Id.*

[6] *Why climate finance matters: Your questions answered,* IFAD, Nov. 11, 2022.

[7] UNCC, Background note on the USD 100 billion goals in the context of UNFCCC process, concerning advancing on SDG indicator, para 2 https://unstats.un.org/sdgs/tierIII-indicators/files/13.a.1_Background.pdf.

[8] UNEP, *Adaptation Finance Gap Report 2016,* http://web.unep.org/sites/default/files/gapreport/UNEP_Adaptation_Finance_Gap_Update.pdf.

[9] ICC, *ICC views on adaptation to climate change Discussion paper* (2009).

[10] Alex Bowen, Emanuele Campiglio & Sara Herreras Martinez, *An 'equal effort' approach to assessing the North-South climate finance gap,* 17 Climate Policy 231 (2017) (a global North-to-South annual financial transfer of around USD 400 billion is required by 2050 and in some cases, it increases up to $2 trillion).

[11] Axel Michaelowa, *Carbon Markets or Climate Finance?: Low Carbon and Adaptation Investment Choices for the Developing World* (Axel Michaelowa, 1st ed. 2012).

past and ongoing commercial environmental abuse, amid rising foreign debt unsustainability, neo-colonialism, labour exploitation, and racism.

African countries emit GHGs of less than five percent which accounts for the lowest global emissions, yet are most vulnerable to climate change.[12] Despite the provisions of the Paris Agreement requiring developed countries to lead in climate finance mobilization, Africa struggles to receive adequate levels of public and private finance for climate action.[13] The World Bank Group's billions to trillions agenda, which aims to use billions in public finance to catalyse trillions from the private sector for developing countries, remains a pipe dream in meeting the financing gap to implement Africa's Nationally Determined Contributions (NDCs).[14] Some of the challenges Africa faces in meeting its climate obligations include prolonged recession and inflation from the Covid-19 pandemic aftermath, shortages from the Russian-Ukraine Conflict, dependence on the fragmented donor-dominated model of the global climate finance architecture, private sector focus on mitigation, huge debt servicing costs, so on.[15] Maximizing the efficiency of climate finance is urgent for the climate action, especially the disbursement of public finance to enable climate-compatible development.

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[12] The World Bank, *CO2 emissions (metric tons per capita) - Sub-Saharan Africa,* 2023, https://data.worldbank.org/indicator/EN.ATM.CO2E.PC?locations=ZG. *See* African Development Bank Group, Climate Change in Africa, https://www.afdb.org/en/cop25/climate-change-africa.

[13] Stephan Hoch, Valentin Friedmann & Axel Michaelowa, *Mobilising private-sector investment to mitigate climate change in Africa,* Stockholm Environment Institute, Apr. 2018, at 1. *See also* Nqobizitha Dube, *Political Economy of Climate Finance in Africa,* African Forum and Network on Debt and Development (2022), at 1.

[14] WBP Rep. No. 1-98023, *From billions to trillions: MDB contributions to financing for development (English).* Washington, D.C.: World Bank Group. http://documents.worldbank.org/curated/en/602761467999349576/From-billions-to-trillions-MDB-contributions-to-financing-for-development. *See* S Attridge and Lars Engen. Blended finance in the poorest countries: the need for a better approach. ODI Report, 2019.

[15] Romy Chevallier, *The Urgent Race to Net Zero: Exploring African Priorities for COP 26,* SAIIA (June 23, 2021); Philip Antwi-Agyei *et al., Alignment between nationally determined contributions and the sustainable development goals for West Africa,* 18 Climate Policy 1296 (2018); Hermas Abudu, Presley K. Wesseh Jr & Boqiang Lin, *Are African countries on track to achieve their NDC pledges? Evidence from difference-in-differences technique,* 98 Environmental Impact Assessment Review (2023).

A successful climate finance architecture ideally should be one designed to mobilize vast quantities of capital at scale with the most favourable conditions, while efficiently directing capital flows to the worst-hit communities. The next sections describe the historical context of climate change discussions, resultant conventions, and the objectives driving the mobilization of climate finance. The inequities of the existing global climate funds in terms of mobilization, focal areas, governance, allocations, disbursement and outcome monitoring are described and analyzed. Finally, the chapter, from a climate justice prism, recommends clarity in the climate finance taxonomy and stronger provisions on the responsibility of developed and high emitting countries. It is hoped that the analyses and recommendations create conditions where climate finance flows are consistent and sufficient for low-carbon and climate-resilient development in Africa.

2 Climate Change and Finance: Regulatory Framework Overview

The unprecedented impacts of climate change from shifting weather patterns to rising sea levels make the climate change problem global in scope.[16] Overall, the global focus on climate change has been informed by scientific reporting on the earth's rising average temperature from human activities, especially fossil fuels overuse and deforestation.[17] This has resulted in the increase of GHGs emissions, especially atmospheric carbon dioxide, which contributes to global warming. As a result, climate change is believed to contribute to adverse occurrences such as moisture deficits and surpluses and reduced crop yields—with strong impacts on food insecurity, fragility and conflicts especially among indigenous and marginalized communities.[18] Efforts to reduce and avoid the worst impacts of climate change led to international cooperation on climate change, beginning from the 1970s.[19] This commenced in

[16] Stephen H. Schneider, *What is 'dangerous' climate change?,* 411 Nature 17 (2001).

[17] Richard P. Allan *et al.,* Climate Change 2021: The Physical Science Basis, Intergovernmental Panel on Climate Change, 6–20 (2021), https://report.ipcc.ch/ar6/wg1/IPCC_AR6_WGI_FullReport.pdf.

[18] Hans-Otto Portner et al., Climate Change 2022: Impacts, Adaptation and Vulnerability, Intergovernmental Panel on Climate Change, 44–69 (2022), https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryVolume.pdf.

[19] Lisa Schipper & Mark Pelling, *Disaster risk, climate change and international development: scope for, and challenges to, integration,* 30 Disasters 19 (2006) (the genesis of the environmental issues commenced in the 1949s from the United Nations Scientific Conference on the conservation and utilization of resources for economic and social development).

earnest with the UN's recognition of environmental issues, especially the Economic and Social Council's inclusion of environmental protection in its agenda. The UN General Assembly endorsed environmental concerns as a global issue and held the United Nations Conference on the Human Environment in Stockholm, Sweden in 1972.[20] The conference produced the first international declaration to acknowledge environmental issues, including climate change and set out principles for the preservation and enhancement of the human environment. It also set out an action plan and recommendations for the international community's engagement in preserving the environment.[21] The first international convention on climate called the Convention on Long-Range Transboundary Air Pollution 1979 emerged from long-term studies conducted on the effect of air pollutants. It was followed shortly afterwards by the 1985 Vienna Convention for the Protection of the Ozone Layer and the Protocol to the 1979 Transboundary Air Pollution Convention.

The successful formation of these instruments prompted studies showing tangible evidence of climate change resulting from pollution, which led to the establishment of the Intergovernmental Panel on Climate Change (IPCC) in 1988. The IPCC aimed to provide consensus-based reports on climate change. Through these reports, it advised that carbon emissions needed to be reduced to the point where global warming occurs at no more than an additional 1.5 °C (~3 °F) and reach net zero carbon emissions by 2050.[22] In 1989, the General Assembly identified climate change as a specific and urgent issue leading to a comprehensive review, strategies, and recommendations on mitigating climate change, in preparation for a Convention on Climate Change.[23] The insistence and need for stronger international action on the environment, including climate change, led to the United Nations Conference on Environment and Development, in Rio de Janeiro, Brazil. The conference

[20] Peter Jackson, *From Stockholm to Kyoto: A Brief History of Climate Change,* 44 UN Chronicle (2007).

[21] *Id.* (alerts Governments to be mindful of activities that could lead to climate change and evaluate the likelihood and magnitude of climatic effects)).

[22] John W. Zillman, *The IPCC: A view from the inside. In Proceedings of Conference on Countdown to Kyoto, Canberra* (1997); James J. McCarthy, *Climate Change 2001: Impacts, Adaptation, and Vulnerability* (2001).

[23] *Id.* (the Malé Declaration on Global Warming and Sea Level Rise, the Helsinki Declaration on the Protection of the Ozone Layer, and the Montreal Protocol on Substances that Deplete the Ozone Layer entered into force).

produced the Rio Declaration of 1992.[24] The Rio conference also led to the signing of the United Nations Framework Convention on Climate Change (UNFCCC), aimed at stabilizing atmospheric concentrations of GHGs at a level that would prevent interference with the climate system.[25] Subsequent protocols like the Kyoto Protocol extended the scope of the UNFCCC by requiring industrialized countries and economies in transition to reduce GHGs emissions in agreement with established specific targets.[26]

The UNFCCC set the background for the Paris Agreement, a major climate finance agreement adopted in 2015.[27] The Paris Agreement covers climate change mitigation, adaptation, loss and damages, and finance mobilisation towards low GHGs emissions and climate-resilient development.[28] Article 9 of the Paris Agreement reaffirms the responsibility of developed countries to provide and lead in the mobilisation of financial resources to assist developing countries in their mitigation and adaptation efforts in continuation of their existing obligations under the UNFCCC. This is in recognition of the fact that many developing countries have contributed the least to climate change yet suffer the most from its effects. The Paris Agreement was also developed on the financial pledges of the 2009 Copenhagen Accord, aimed at scaling up public and private climate finance for developing nations to USD 100 billion a year by 2020.[29] The USD 100 billion commitment was not met in 2020 and has been extended to 2025.[30] Theoretically, the Paris Agreement has been instrumental in putting mechanisms in place to scale up climate finance,

[24] Allan *et al., supra* note 17.

[25] United Nations Climate Change, *What is the United Nations Framework Convention on Climate Change?,* https://unfccc.int/process-and-meetings/what-is-the-united-nations-framework-convention-on-climate-change.

[26] United Nations Climate Change, *What is the Kyoto Protocol?,* https://unfccc.int/kyoto_protocol.

[27] Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.

[28] *Id.* at Article 2.

[29] United Nations Framework Convention on Climate Change, Dec. 18, 2009, FCCC/CP/2009/L.7; OECD, Climate Finance and the USD 100 Billion Goal, http://www.oecd.org/climate-change/finance-usd-100-billion-goal/#:~:text=At%20the%2015th%20Conference%20of,actions%20and%20transparency%20on%20implementation.

[30] Richard Kozul-Wright, *A climate finance goal that works for developing countries,* UNCTAD, June 14, 2023.

however its real achievement is meagre and its future effectiveness is doubtful. The USD 100 billion goal is grossly insufficient against the $2.8 trillion adaptation financing need between 2020 and 2030 to implement Africa's National Determined Contribution (NDCs).[31]

The lackadaisical response by developed nations in climate financing mobilization and disbursement arises mostly from the weak financing provisions in the key climate agreements. This, in turn, encourages fragmentation and financial flows inertia in the global climate finance architecture. The Climate Agreements have been drafted in a manner that ensures that developed nations are not legally bound to contribute a specific amount to the mitigation and adaptation efforts of developing countries. Developed countries are merely encouraged to provide financial support and report on mobilized climate financing. Indeed, while some countries attempt to uphold their commitments, the collective effect has been less than stellar. The lack of responsiveness appears to arise from global divergence on whether developed countries should carry the blame for climate change, curb their emissions, and financially contribute to climate change redress. Climate-vulnerable developing countries argue that through industrialization, developed countries emitted GHGs to grow their economies without restraint. Indeed, developed economies like the United States continue to emit high levels of GHGs in conjunction with new developing economies in transition like India and China.[32] However, the per capita GHGs emission of India and China is significantly lower than the emission of developed economies, whose historical emissions are responsible for climate change.[33] For these reasons and more, it is relevant for the global finance architecture to incorporate stronger considerations like climate justice to improve climate finance mobilisation and disbursements.

2.1 The Intentionality of Climate Injustice: Racial and Colonial-Classist Capitalist Roots

Climate change has caused destructive effects on the environmental and socio-economic structure of Global South countries and vulnerable groups like indigenous

[31] Sandra Guzman *et al., The State of Climate Finance in Africa: Climate Finance Needs of African Countries,* CPI, June 2022 at 3.

[32] Johannes Friedrich, Mengpin Ge, Andrew Pickens & Leandro Vigna, *This Interactive Chart Shows Changes in the World's Top 10 Emitters,* World Resource Institute, Mar. 2, 2023.

[33] *Id.*

people. The consequences of climate change have arisen from injustices deeply embedded in power asymmetries through extreme capitalism and racism.[34] Mabasa presents a compelling argument that highlights how the racial global capitalism structure is responsible for unequal wealth levels and uneven development between the Global North and South nations.[35] This dominant structure undermines the human and environmental rights of peoples in marginalized Global South countries, including the right to a healthy environment. While the Paris Agreement recognizes the duty of States to respect human rights, it does not sufficiently require enforcement of these rights in righting historical and ongoing climate injustices. Incorporating climate justice considerations in climate change efforts, especially around finance mobilization and disbursement, becomes imperative. This would move climate discourse beyond the question of rights and common but differentiated responsibilities, to acknowledging the global economic systemic issues at the root of climate change.

Climate injustice reflects inequity in the distribution of the costs and benefits of climate change policy. In riverine communities for instance, this may include fishermen paying more for climate change through income loss as a result of being unable to fish due to oil pollution.[36] Climate injustice imposes contrasting environmental burdens on the communities who are victims of environmental and economic exploitation. They are forced to be largely responsible for taking action to adapt to climate change arising from colonial economic activities that have and continue to enrich the Global North. Thus, climate justice relates to addressing the unjust distribution of the impacts of climate change felt by different vulnerable groups.

Climate justice, in its ethical sense, represents reforming the political-economic aspects of climate change to ensure past and present polluters pay. Climate justice also reflects the intersectionality of environmental equity that advocates for marginalized stakeholders to enjoy their right to a healthy environment.[37] Climate justice, in its most practical sense, requires that countries that became wealthy through

[34] Julius McGee & Patrick Trent Greiner, *Racial Justice is Climate Justice: Racial Capitalism and the Fossil Economy,* Hampton Institute, May 6, 2020 at 5–8.

[35] Khwesi Mabasa, *Racial Capitalism: Marxism and Decolonial Politics,* in Marxism and Decolonization in the 21st Century: Living Theories and True Ideas, 233–235 (Sabelo J. Ndlovu-Gatsheni & Morgan Ndlovu eds., 2021).

[36] Eze S Osuagwu & Eseoghene Olaifa, *Effects of oil spills on fish production in the Niger Delta,* 10 PLOS ONE 1, 11 (2018).

unrestricted carbon emissions should have the greatest political and economic responsibility to address climate change and repair damages from the structural violence of emissions.[38]

The root cause behind climate injustice in Africa and other developing countries can be traced to the racial capitalism of western civilisation characterised by race-creation for profit making.[39] The purpose of this insidious exploitation is to amass economic wealth and socio-political power. Forbes describes the system of profit driven domination as a *"wetiko disease and cannibalism"* from the *"intentional commercial exploitation of every conceivable thing."*[40] The Berlin Conference Scramble for Africa in 1776 subverted indigenous African economies and resources for use in developing Europe through race creation as a prelude to appropriating and exploiting lands, human labour, and natural resources.[41] Eventually, globally hegemonic institutions driven by values consumerism, excessive accumulation, and zero-sum economic development were established to accelerate massive colonial wealth transfer.[42] The unilaterally-made rules of extraction ensured raw materials were priced cheaply vis-a-vis finished products, because of the "value addition" to raw materials, creating an

[37] Stephen M. Gardiner, *Climate Justice,* in The Oxford Handbook of Climate Change and Society, 309 (John S. Dryzek *et al.,* 2011).

[38] Carmen G. Gonzalez, *Climate Justice and Climate Displacement: Evaluating the Emerging Legal and Policy Responses,* 36 Wisconsin Int'l L.J. 366, 388 (2019).

[39] Cedric J. Robinson, *Black Marxism: The Making of the Black Radical Tradition* 116–120 (Zed Press ed., 1983).

[40] Jack D. Forbes, *Columbus and other Cannibals: The Wetiko Disease of Exploitation, Imperialism, and Terrorism* 75 (Steven Stories Press ed., 2011) (Wetiko is an Algonquin word for a cannibalistic spirit that is driven by greed, excess, and selfish consumption. Wetiko reduces people's ability to see themselves as an interdependent part of a balanced environment, instead, it exalts self-serving and benefits from exploitation regardless of its effect on others as the supreme standard.).

[41] Carmen G. Gonzalez, *Bridging the North-South Divide: International Environmental Law in the Anthropocene,* 32 Pace Envtl. L. Rev. 407, 411 (2015).

[42] Carmen G. Gonzalez & Athena Mutua, *Mapping Racial Capitalism: Implications for Law,* 2 Journal of Law and Political Economy 127, 137 (2022) (race has no biological and scientific basis; Race is a purely social construct created for world-wide domination and exploitation through white supremacy in all areas of human existence and enterprise. These areas include Economics, Entertainment, Labour, Education, Law, Politics, Sex, Religion, and War). *See* Neely Fuller, Jr., *The United-Independent Compensatory Code/System/Concept Textbook: A Compensatory Counter-Racist Code* 1–37 (1957); Claud Anderson, *Black Labor, White Wealth : The Search for Power and Economic Justice* 1–15 (Edward D. Sargent & Reginald B. Scott, Jr., eds., 1994).

economic deficit from the exploitative underpayment of African labour and resources. As a result, Global South countries grappled with environment degradation from extractive activities, while the Global North benefited from the "value added" finished goods and a relatively preserved environment. These goods, in turn, were expensively sold and exported to Africa and other nations, contributing to wealth accumulation in the Global North at Africa's expense. During the political decolonisation era, an already rich Global North further exploited the glaring income inequalities between Africa and itself by providing accumulated capital from colonial capitalistic activities as costly loans for Africa's development, resulting in high debt levels.

Epochs of racial capitalism and colonisation have created and cemented climate injustices through socio-economic inequality. In present times, neo-liberal economic institutions, which have replaced colonial capitalist systems, continue to drive climate injustice and its attendant underdevelopment in several ways. Through the neo-liberal economic development policies of the Washington Consensus, the Global South's detrimental colonial legacy of environmental and economic dependency on a raw commodity-based economy remained in place.[43] Neo-liberal capitalism through multi-national corporations (MNCs) contributes to climate injustice through unending environmental abuse to meet the Global North's huge consumer-goods demand from excessive consumerism. Environmental degradation from consumerism drives climate change and debt sustainability issues that often lead countries to adopt austerity measures. Most IMF-mandated austerity measures have debilitated the capacity of African countries to respond to climate risks.[44]

In addition, the Bretton Woods institutions, which purport to finance climate action, have supported policies that have been environmentally destructive and continue to do in furtherance of neoliberal capitalism. In 2022, it was reported the IMF has actively supported, as part of its loan program, Liquefied Natural Gas in Mozambique, especially the Rovuma Basin Area 1 Mozambique development plan

[43] Margot Salomon, *Poverty, privilege and international law: the millennium development goals and the guise of humanitarianism,* 51 German YB Int'l Law 39, 42 (2008).

[44] Nona Tamale, *Debt Restructuring under the G20 Common framework: Austerity Again? The Case of Zambia and Chad,* in How to Reform the Global Debt and Financial Architecture 301, 301–03 (James T. Gathii ed., 2023).

(Mozambique LNG) in the Cabo Delgado Province.[45] The IMF policy reforms for the Mozambique project include electricity/tariff subsidy reduction, new producer subsidies for coal and gas, new legislation to facilitate public finance for gas, among others.[46] While these institutions have a global fund/trust for the protection of the environment on one hand, their lending activities preserve climate injustice in Africa and other Global South economies. Toussaint aptly describes these conflicting positions as *"... leaving the fox to guard the chicken coop."*[47]

Climate injustice operates as an intersection of existing injustices in other spheres of the global economy. It brings to light other dimensions of the international economic system, upheld by international laws which marginalize African countries. Akinkugbe and Majekolagbe attribute these injustices to historical, structural and goal misalignments found within the international climate and investment law regime.[48] In turn, these misalignments lead to multiple discords with catastrophic effects on the effectiveness of for Global South climate actions.[49] Relatedly, Gonzalez maintains that international environmental laws (including the key climate change laws) cannot address climate injustice alone without reviewing the ways in which international law, including international trade and investment law, supports climate injustice.[50] Thus, effectual climate justice requires addressing of structural discords found in international trade and investment treaties (where the environment is centred as an object of exploitation for capital accumulation) in order to align them with standards of environmental protection.

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[45] Tess Woolfenden & Sindra Sharma Khushal, *The debt and climate crises: Why climate justice must include debt justice,* CAN Discussion Paper (Oct. 2022) 7; *see also* Heike Mainhardt, *IMF in Mozambique and Mongolia: Exacerbating climate crisis with more tax breaks for coal and gas,* Recourse at 3–15 (2020).

[46] *See* Mainhardt at 3–5.

[47] Erik Toussaint & Damien Millet, *Debt, IMF and the World Bank: Sixty Questions, Sixty Answers* 208 (1st ed. 2006).

[48] Olabisi D. Akinkugbe & Adebayo Majekolagbe, *International Investment Law and Climate Justice: The Search for a Just Green Investment Order,* 46 Fordham Int'l L.J. 169, 171–74 (2022).

[49] *Id.* James T. Gathii, *Africa and the history of International law* (2012) 48 Albany Law School Legal Studies Research Paper Series 1–28 (on the contribution and marginalisation of Africa in International Law).

[50] Robinson, *supra* note 39.

Remedying historical and existing climate injustices also requires higher levels of inclusivity aimed at challenging the Global North-centric normative standards of climate change and finance, from Global South and African perspectives. Gathii argues that the time has come to address the deliberate and epistemic suppression of Global South agency, knowledge, and experiences in major climate change discourses.[51] Ideally, the global climate finance architecture reforms should occur with legal, procedural, distributive, socio-economic, political, and corrective justice considerations in mind. Holistic climate justice considerations should positively impact mobilization of funds and direct regular flows to worst-hit countries, without expectation of rewards such as "green and transition profiteering" from the climate crisis.[52] Climate justice thus ensures that richer countries begin to engage and dismantle structures that preserve biased relationships exhibited in "climate bully" states and "climate-vulnerable" states. Given the frequency and magnitude of climate change risks in Africa, the global climate finance architecture should incorporate climate justice considerations that allow adequate and fair flows of climate finance to tackle climate change and its devastating after-effects including unsustainable sovereign debt levels.

3 Sovereign Debt in Africa

African States needs about USD 3 trillion by 2030 to meet their commitments under the Paris Climate Agreement. This financing need couples with fiscal challenges and high unsustainable debt crisis levels, a tell-tale sign of climate injustice at work.[53] Over twenty African countries are in or at risk of debt distress.[54] As of 2022, African countries owe above USD 600 billion to external creditors, with an approximate USD 69 billion in debt service by the end of 2023.[55] Previously, Africa's sovereign debt was

[51] James T. Gathii, *Without Centering Race, Identity, and Indigeneity, Climate Responses Miss the Mark,* in 11 Wilson Center and Adelphi (eds.), Climate Change, Equity and the Future of Democracy, at 3–10 (2020).

[52] Joel Bakan, *The Corporation: The Pathological Pursuit of Profit and Power* (Free Press 2012); Antony Loewenstein, *Disaster Capitalism: Making a Killing Out of Catastrophe* (2015); *see also* Nnimmo Bassey, *To Cook a Continent: Destructive Extraction and the Climate Crisis in Africa* (2012).

[53] Geoffery Adonu, *Closing Africa's Climate Funding Gap: Viability of Sustainable Bond Instruments for African States* Afronomics Paper (forthcoming 2023).

[54] *Id.* at 12.

[55] Alex Vines, Creyon Butler & Yu Jie, *The response to debt distress in Africa and the role of China,* Chatham Policy Paper (Dec. 15, 2022).

mostly acquired through loans from IFIs and bilateral lenders. However, increasingly, African states have borrowed large sums of expensive debt from commercial banks and international capital markets.[56] Sovereign debt remains a thorn in the flesh of African development and climate change M & A efforts. High debt levels affect "debt sustainability" and further drive climate injustice from reduced climate finance flows to climate vulnerable and debt distressed countries. Furthermore, the macroeconomic shock resulting from the COVID-19 pandemic and the Russian-Ukraine crisis continues to increase Africa's debt due to rising interest rates. Arguably, though Africa's sovereign borrowing has helped somewhat to buffer its growing economy from adverse macroeconomic shocks, the long-term impact is that sovereign indebtedness has backpedalled African growth through continuous financial distress from multiple crisis episodes.

Rising unsustainable debt in Africa amid climate change risks functions as a tool of economic domination and sabotage for subordinating African debtor states to their creditors' will. Sovereign debt preserves set-ups of inequalities that allows external interference in the political-economic sovereignty of African countries using the global financial system.[57] Despite the frequency of climate-change impacts experienced by African countries resulting from Global-North economic activities, there is still an expectation by Global North financiers for Africa to honour debt obligations without the benefit of *force majeure* considerations. The impact is that the burden of debt, as a future obligation, falls on future populations and limits the fiscal capacity of countries to respond to climate crisis.[58] Whether in Latin America or Africa, the ruling classes in the Global North have weaponized debt for wealth accumulation and imperialistic domination.[59] History demonstrates that since the nineteenth century, domination through external debt was a substantial part of the imperialist policies of the major capitalist powers. It served as an effective means to maintain ties and exercise financial control over the foreign and commercial policy of the new capitalist states. For example, while Haiti gained independence from French colonization in

[56] Jonathan Eaton & Raquel Fernandez, *Sovereign debt,* 3 Handbook of Int'l Economics 2031 (1995).
[57] Bharath Gururagavendran, *The Coloniality of Sovereign Debt in the Global South,* in How to Reform the Global Debt and Financial Architecture 301, 301–03 (James T. Gathii ed., 2023).
[58] Eric Toussaint, *The Debt System A History of Sovereign Debts and Their Repudiation* (2019).
[59] *Id.*

1804, it was made debt dependent on France in 1825. The same modus operandi is in effect today.

Several African countries are struggling with a heavy debt burden currently, including Zambia, Malawi and Ghana, which are in debt distress. This heightens the risk of the imposition of austerity measures that will likely lead to socio-economic turmoil and continue the cycle of indebtedness as more debt is injected to remedy the problem.[60] Austerity programs weaken the capacity of affected states to respond to natural calamities and leads to more economic exploitation. Highly unsustainable debt deliberately perpetrates the doctrine of shocks whereby countries respond to shocks while their resources are drained to the benefit of the perpetuators of socio-economic shocks. The doctrine of shocks is based on empirical evidence of Global North's orchestration of crises that ensures that the Global South countries focus on quenching man-made fires of back-to-back crises, such as wars, diseases and so on, rather than focusing on dismantling structures of exploitation and driving development.[61] Unsustainable debt undermines the capacity of countries to channel their available resources to meet their M & A and loss and damage (L & D) efforts. These resources are diverted towards servicing debt repayments to countries and institutions responsible for the climate crisis in the first place, through activities that placed profits ahead of clean environments. Developing countries are grappling with the injustice of "double jeopardy" by dealing with the consequences of Global North actions and at the same time rewarding Global North creditors and systems with "debt servicing payments" for economic and environmental violations against humanity. Many climate-vulnerable States incidentally have high debt levels. As a result, these countries are force to rely on debt creating financial instruments to access capital to respond to climate change and fund climate action. The continued use of debt to fund climate action increases debt levels which may spiral into a debt crisis. Excessive debt levels could stifle the attainment of the Agenda 2063 development goals for numerous of African countries and exacerbate global economic inequalities, which, if left unaddressed, may morph into a collapse of the global economic system.

[60] Nona Tamale, *supra* note 44.

[61] Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (2007) 10–25, 395.

3.1 Connecting the Dots: The Nexus between Climate Injustice and Sovereign Debt in Africa

Climate change and sovereign debt share a strong correlation as the adverse impacts of climate change aggravate indebtedness of countries. Climate change impacts the physical environment, socio-economic and fiscal space, and policies of sovereign States, while worsening enduring debt pressures in a variety of ways.[62] midst high debt levels and climate risks, Global South sovereigns are encouraged and pushed to continue borrowing to fund climate transition and development efforts. Thus, unsustainable debt levels coupled with climate change threats facilitates widespread poverty and economic inequality.

Climate risks affect the pricing and yield of sovereign bonds.[63] Given the climate crisis and potential risks of devastating impacts, investors pay attention to climate risks to analyze the viability of bond investments and yields. Studies show that climate vulnerability and risk readiness are strong factors in determining the cost of borrowing.[64] For instance, a one percent increase in the risk of climate vulnerability for developing countries increases the long-term government bond spreads by about three percent.[65] The result is that the cost of borrowing from the global capital markets for these countries increases the more climate risks they are exposed to. This increases the sovereign debt burden as developing governments are pressured by reduced fiscal space, low access to grant finance and increased occurrence of climate impacts to borrow from financial markets to finance climate needs. Closely connected to this is that climate risks also contribute to sovereign debt from a rating perspective. Negative credit ratings from rating agencies such as Moody's and S & P affect the sovereign's reputation as well as the cost of borrowing. Creditors'/investors' perception of climate risks from credit ratings can increase borrowing as well as debt servicing costs,

[62] Harrison Mbori, *Green Energy Purchasing and the Evolving Sovereign Debt Unsustainability in Africa,* Afronomics (2023).

[63] Stavros A. Zenios, *The Risks from Climate Change to Sovereign Debt,* 17 Climatic Change 1, 3–4 (2022). "There are today more than 40,000 securities globally issued by sovereigns, agencies, or supranationals, for a total nominal value of $74 trillion with $65 trillion for the G20. They comprise 68% of the bond markets."

[64] *Id.*

[65] *Id.*

hampering the ability of Global South countries to respond to the mounting impacts and costs of the climate crisis.

EURODAD reports that between 2020–2023, small island developing states like Cabo Verde in West Africa have diverted between fifteen per cent to forty per cent of public revenue to debt servicing.[66] In the same vein, extreme climate incidents and insufficient grant-based climate finance push highly indebted countries deeper into debt since majority of climate finance in Africa is directed through loans.[67] Further, unsustainable debt keeps countries locked in a cycle of exploitation of natural resources by encouraging investments in mining and exploration to increase exports and revenues to service debt. In turn, more exploration of cheaply traded raw materials contributes to GHGs emissions that drive climate change.[68]

Climate change impacts international financial flows. Due to the impact of climate change disasters on trade, labour and productivity, climate-vulnerable countries may experience trade and current accounts deficits. A distortion of trade and current account values may signify potential debt problems which would negatively impact financial flows due to decreasing access to global financial markets.[69] Climate risks, low access to capital markets, and decreased productivity all stunt economic growth, leaving the climate-vulnerable sovereign States between a rock and a hard place of costly finance and climate action. Developing countries become trapped in debt which affects their ability to deliver on their development goals. Without grant-based financing for addressing climate risks from loss and damages, it is estimated that African countries will have to take on an additional USD 996 billion in debt. This is because countries will be forced to take on more debt or push the costs of climate financing to households, especially poorer households, through regressive taxes like value added tax (VAT).[70]

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[66] Press Release, EURODAD, *Small island developing states (SIDS) have spent 18 times more in debt repayments than they receive in climate finance, says new research* (Oct. 11, 2022).

[67] Afronomicslaw Policy Brief, *Debt, Climate Finance And Vulnerability: A Brief On Debt And Climate Vulnerable Countries In Africa* (Nov. 2022), https://www.afronomicslaw.org/sites/default/files/pdf/A%20Brief%20on%20Debt%20and%20Climate%20Vulnerable%20Countries%20in%20Africa.pdf (Zambia's climate loan proportion is at 55% and Ethiopia's at 43%).

[68] Mbori, *supra* note 60.

[69] Emilio Carnevali *et al., Cross-border Financial Effects of Global Warming* 2-6 (Amherst Econ., Working Paper No. 2019-02).

[70] Zenios, *supra* note 62.

Climate injustice and unsustainable debt levels encourage the imposition austerity programs that typically affect economic development, labour, human rights, and environmental policies. Austerity measures harm developmental trajectories of African states by subverting States' responsibility of managing their natural resources and ecological balance in the common interest of its people as provided in the African Charter.[71] In turn, such programs transfer the control over wealth of the Global South to profit-motivated private interests hiding behind the veil of international finance institutions, at the expense of people. As climate-related crises occur more frequently, the ability of Global South countries to address mounting climate challenges is skewed by unsustainable debt burdens. Achieving climate-resilient structural transformation will require urgent reform of the international finance and debt architecture to ensure access by climate and debt vulnerable countries to grant-based finance. The financing terms should be amenable to development, debt sustainability and historical reparation for past injustices that continue to expose Global South countries to underserved climate risks.

4 The Global Climate Finance Architecture

The mobilization of finance is very crucial in achieving climate change M & A plans.[72] An acceptable definition of what climate finance is yet to be agreed on internationally, which contributes to the complexity of the climate finance architecture. Despite the lack of a global consensus on its definition, the scope of climate finance can be recognized from the aim of climate change efforts—achieving low-carbon, climate-resilient development.[73] Climate finance includes all financial resources generated and mobilized from private and public sources to fund actions that mitigate and adapt to the impacts of climate change, including loss and damage.[74] These sources include private sector investment and public finance pledged to the key climate change

[71] Org. of African Unity [OAU], *African Charter on Human and Peoples' Rights,* OAU Doc. CAB/LEG/67/3 (June 27, 1981) (see preamble and Art 21 (5) against foreign monopolistic exploitation of resources).

[72] Takayoshi Kato *et al., Scaling up and Replicating Effective Climate Finance Interventions,* OECD, May 2014.

[73] *Id.*

[74] Matthew J. Kotchen, *On the scope of climate finance to facilitate international agreement on climate change,* 190 Economics Letters (2020).

instruments such as the UNFCCC, the Paris Agreement and so on. The legal obligation of developed countries to provide climate finance under international climate change agreements is the basis of evolving legal regimes on climate finance. The principles and rules of climate finance such as common and differentiated responsibilities are enshrined in binding treaties. Article 4.3 of the 1992 UNFCCC, for example, provides that,

> Developed nations shall provide *new and additional financial resources to meet the agreed full costs incurred by developing countries*. Parties in complying with their obligations under Article 12, paragraph 1 ... meet the agreed full incremental costs of implementing measures ... The implementation of these commitments shall take into account the *need for adequacy and predictability in the flow of funds* and the importance of appropriate burden sharing among the developed country.[75]

Arguably, the Paris Agreement extends the principles of climate finance, especially common and differentiated responsibility, with more responsibility on developed countries. Specifically, Article 9(1) and (2) provide *inter alia* that,

> Developed country Parties shall provide financial resources to assist developing country Parties concerning both mitigation and adaptation in continuation of their existing obligations under the Convention. Other Parties are encouraged to provide or continue to provide such support voluntarily.[76]

The global climate finance architecture is continually evolving as funds flow within and outside established climate financial set-ups at the international, regional, and national levels. The global climate finance architecture consists of multilateral

[75] United Nations Framework Convention on Climate Change, May 9. 1992, S. Treaty Doc No. 102-38; *see also* UNFCCC Standing Committee on Finance (SCF), 2014 Biennial Assessment and Overview of Climate Finance Flows Report, https://unfccc.int/files/cooperation_and_support/financial_mechanism/standing_committee/application/pdf/2014_biennial_assessment_and_overview_of_climate_finance_flows_report_web.pdf.

[76] Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.

climate finance initiatives like the UNFCCC Financial Mechanism, as well as regional and national climate change finance mechanisms with funding from multiple contributors—each with divergent governance terms, objectives, and operations.[77] Within these funds are climate grants and concessional loans mostly from international financial institutions like the IMF, country member contributors and national initiatives.

4.1 Multilateral Climate Funds and Mechanisms

Multilateral climate finance mechanisms mostly arise from the obligations and commitments present in the different international climate change conventions. They are typically mobilized and disbursed by the key multilateral development banks. Under the Copenhagen Accord, the Cancun Decision and the Durban Platform, all under the auspices of the UNFCCC, developed countries pledged billions of dollars in climate change financing. Over the years since the first COP and climate change convention, various multilateral climate funds (MCFs) in furtherance of raising the climate change pledges have emerged. While several MCFs exist, there are four main MCFs as follows:

a) Global Environment Facility

The Global Environment Facility (GEF), established in 1991, operates as the financial apparatus of the major environmental agreements and provides funding to developing countries to meet the objectives of international environmental conventions.[78] These agreements include the Convention on Biological Diversity (CBD), United Nations Framework Convention on Climate Change (UNFCCC), Stockholm Convention on Persistent Organic Pollutants (POPs), UN Convention to Combat Desertification (UNCCD), and Minamata Convention on Mercury. These conventions provide strategic guidance to the GEF operational guidelines for GEF-funded projects. The GEF, at the governance and operational level, is organized around an Assembly, the Council, the Secretariat, 18 agencies, a Scientific and Technical Advisory Panel, and the Evaluation Office. Resources contributed to the fund are allocated to various environmental focus areas such as curbing biodiversity losses and

[77] *Id.*

[78] GEF, *Who we are,* https://www.thegef.org/who-we-are.

climate change. The GEF also administers several funds including the Least Developed Countries Fund (LDCF) and the Special Climate Change Fund (SCCF). The Special Climate Change Fund assists vulnerable nations in addressing the negative impacts of climate change. Its new climate change adaptation strategy 2022–2026 includes key priority areas such as supporting the adaptation needs of Small Island Developing States (SIDS). It also facilitates the creation of strong, climate-resilient economies and communities by helping countries address a range of barriers, from insufficient access to climate-resilient technologies and infrastructure to poor institutional capacity proactivity in managing climate risks.[79]

As of December 2022, the LDCF had approved USD 1.4 billion for 312 projects, with cash transfers to projects of USD 530 million, while the SCCF had approved USD 284 million for 73 projects, making cash transfers of USD 181 million.[80] During the GEF replenishment process every four years, countries pledge funds which are allocated to various focal areas of environmental protection. Currently, for the eighth replenishment period (GEF-8, 2022–2026), 29 donor governments pledged USD 5.33 billion with less than twenty percent dedicated to the climate change focal area.

b) The Adaptation Fund (AF)

The Adaptation Fund is a climate fund created under the Kyoto Protocol to finance tangible adaptation projects and programs in member developing countries which are vulnerable to the adverse effects of climate change.[81] The AF is financed through a two per cent levy on the sale of emission credits from the Clean Development Mechanism (CDM) of the Kyoto Protocol and the carbon market mechanism developed under the Paris Agreement. The AF is being set up to receive five percent of the share of proceeds from the sale of emissions credits under the new CDM-replacement mechanism. So far, since its operational commencement in 2009, it has received a total contribution of over $1 billion. The Adaptation Fund is supervised

[79] *Id.*

[80] *Id.*

[81] Adaptation Fund, https://www.adaptation-fund.org/about/governance/.

and managed by the Adaptation Fund Board (AFB) composed of 16 members and alternates respectively, who hold periodic meetings throughout the year.[82] The AFB is administered by a Secretariat which provides research, advisory, administrative, and other services to the Board. The AF provides direct access to climate finance for developing countries through accredited National Implementing Entities that can meet agreed fiduciary as well as environmental, social and gender standards. As a result, its modus operandi is not through the UN agencies or multilateral development banks (MDBs) as implementing agencies. Since, 2010, the Adaptation Fund has committed more than $850 million for climate change adaptation and resilience projects and programs. These include over 100 local projects in the most vulnerable communities. The fund has also pioneered access to climate finance through its active combination of standards and procedures. However, due to its heavy reliance on carbon-based clean energy financing, it is primarily dependent on developed country financiers.

c) The Green Climate Fund (GCF)

The Green Climate Fund is an offshoot of the Paris Agreement and the world's largest climate fund. Its mandate supports developing countries to raise and realize their ambitions under their ADCs towards low-emissions, climate-resilient pathways per the Paris Agreement.[83] Its financing commitment is towards a 50:50 balanced allocation of finance to adaptation and mitigation efforts. The initial resource mobilisation process for the GCF raised $10.3 billion. The GCF is governed by the GCF Board with oversight supervision of the Fund's management. The Board was established by 194 sovereign governments which are party to the UN Framework Convention on Climate Change (UNFCCC). The Board is independent and guided by the Conference of the Parties (COP) to the Convention. In November 2022, the GCF's formal replenishment (GCF-1) received pledges from 34 contributors amounting to USD 10 billion for financing climate change. The GCF has been criticized for its failure to disburse and pay out committed allocations to projects. So far, the GCF has

[82] Asa Persson & Elise Remling, *Equity and efficiency in adaptation finance: initial experiences of the Adaptation Fund,* 14 Climate Policy 488 (2014).

[83] GFC, *Governing Instrument for the Green Climate Fund,* GCF (Dec. 11, 2011).

committed USD 10 billion to 190 projects, but only USD 2.1 billion has been paid out.[84] The GCF has transparency issues demonstrated by its dubious classification of funding, complicated application processes, and a lack of accountability regarding its financing.[85] The impact is that countries with the greatest vulnerability to climate change have little to no financial flows for climate action, particularly for adaptation through the Green Climate Fund.

d) The Climate Investment Funds (CIF)

The Climate Investment Funds, established in 2008, adopts a multi-stakeholder design process of equitable governance that fosters dialogue, partnership, and transparent decision-making.[86] The CIF works in partnership with governments, the private sector, civil society, local communities, and six major multilateral development banks (MDBs). The CIF emerged from the recognition of the linkage between climate change and development and the relevance of climate-smart investment to the delivery of Goal 13 of the UN's Sustainable Development Goals (SDGs). The CIF comprises two trust funds. These are the Clean Technology Fund (CTF) and Strategic Climate Fund (SCF) which are governed by a Trust Fund Committee that oversees and designs strategic policies, direction, operations, and other activities of the Fund. The SCF has three Technical Committees to govern its targeted programs, namely the Forest Investment Program (FIP), Pilot Program for Climate Resilience (PPCR), and Scaling Up Renewable Energy Program in Low-Income Countries (SREP); as well as a Sub-Committee to govern its new Programs. Its governance structure has equal numbers of representatives from contributor and recipient countries who serve as decision-making members on the CIF Committees. It also has within its deliberation process, observers from stakeholder groups who advocate for their causes in the deliberation process.

Six-member Multilateral Development Banks (MDB) Committees and the CIF Administrative Unit support the governing bodies by providing strategic policy

[84] Emma Rumney & Simon Jessop, *Insight: That sinking feeling: Poor nations struggle with U.N. climate fund,* Reuters, Nov. 11, 2021.

[85] Jessica Omukuti *et al., The green climate fund and its shortcomings in local delivery of adaptation finance,* 22 Climate Policy 1225 (2022).

[86] Strategic Climate Fund, *Climate Investment Funds* (2008).

guidance and recommendations and reporting on operational, financial, and administrative matters among others. The CIF's major mandate is supporting low- and middle-income countries to adapt to and mitigate climate change. Since its establishment, it has supported more than 370 projects in 72 countries. CIF's highly modest financing reduces climate financing risk for investors whilst lowering barriers to piloting new technologies and mobilizing private sector capital for climate action. One of the great innovations of the CIF is that it assembles key stakeholders to meet their ambitious climate goals together and spreads the risk of climate financing among contributors.

Beyond these, there are other MDB-led financing initiatives and facilities such as the World Bank's Forest Carbon Partnership Facility (FCPF) which explores how carbon market revenues reduce GHGs, the Biocarbon Fund, the European Investment Bank's Global Energy Efficiency and Renewable Energy Fund (GEEREF) among others as well as the USD 100 billion pledge by developed countries.[87]

4.2 Unilateral Funds for climate finance

Some portion of climate finance is bilaterally created and administered largely through existing development agencies like the United Kingdom International Finance Fund (ICF) and so on. Between 2000–2019, bilateral climate finance flows increased from USD 0.5 billion to USD 7.7 billion. Some of the major bilateral climate funds include:

a. The International Climate Finance (ICF)

The ICF is the United Kingdom's bilateral climate fund administered by its Departments for International Development, Energy and Climate Change and Environment and Food and Rural Affairs.[88] Its focal area is poverty reduction via adaptation support, promotion of low-carbon growth, reduction of deforestation, capacity-building, and program support at the country level. In 2019, it announced increasing investment to help developing countries to combat climate change in the

[87] Charlene Watson *et al., The Global Climate Finance Architecture,* at 5–6 (Feb. 2023).

[88] UK International Climate Fund, *Tackling climate change, reducing poverty,* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/48217/3389-uk-international-climate-fund-brochure.pdf.

period 2021–2026. The ICF channels a substantial share of funding through dedicated multilateral funds, including the CIFs and the GCF.

b. The Internationale Klimaschutzinitiative (IKI, international climate initiative)

The IKI is a climate fund administered by the German Ministry of the Environment, Nature Conservation, and Nuclear Safety and the GIZ.[89] It has been funded partly through the sale of national tradable emission certificates and provides financing that is largely additional to existing development finance commitments. Its focal areas are climate change mitigation, adaptation, carbon sinks, and biodiversity. Its mode of financing is through project-focused technical and financial assistance and contributions to multilateral funds.

c. Norway's International Climate and Forest Initiative (NICFI)

The NICFI is run by the Norwegian Ministry of Climate and the Environment. Its focal area is the reduction of deforestation and achieves its objectives through country and regional partnerships and contributions to multilateral funds like the CIF.[90] Some of its achievements include its annual USD 350 million pledge since 2008 to support bilateral partnerships, multilateral channels and civil society. It has also supported some REDD+ activities in Asia, Africa and Latin America.

4.3 National and Regional Climate Funds

Several developing countries have set up climate funds to finance M&A plans and other climate change functions. Many of these are funded and replenished through international finance and/or domestic budget allocations. Some of the National Climate Funds include the Brazilian Amazon Fund, which is administered by the *Banco Nacional de Desenvolvimento Econômico e Social* (BNDES), with funding of USD 1.3 billion from Norway and Germany.[91] There are also national climate change funds in Benin, Ethiopia, Mali, Mexico, South Africa among others.

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[89] Watson *et al., supra* note 84.

[90] *Id.*

[91] Baysa Naran *et al., Global Landscape of Climate Finance: A Decade of Data: 2011–2020,* Climate Policy Initiative (2022), https://www.climatepolicyinitiative.org/wp-content/uploads/2022/10/Global-Landscape-of-Climate-Finance-A-Decade-of-Data.pdf.

One of the big national NCFs is the Rwanda Green Fund (FONERWA) with capitalization commitments of USD 37 million from the UK and USD 13 million from other sources.[92] This fund has disbursed since its creation USD 40 million in 35 projects in Rwanda through climate change investment products and credit. The country is also creating the Rwanda Catalytic Green Investment Facility (RCGIF) which will adopt the green bank approach. The RCGIF will be administered by the AFDB, in partnership with the government of Rwanda, with funding from the UNDP and Nordic Development Fund. It aims to use blended financing structures for potential climate change projects through the Development Bank of Rwanda (BRD) direct loans and lines of credit and a project preparation facility (PPF) at Rwanda's Green Fund (FONERWA) to provide grants for climate change projects.

At the regional level, the Climate Finance Facility (CFF) of the Development Bank of Southern Africa (DBSA) has a specialized lending facility that aims to pioneer the green banking model in developing countries. The primary aim is to increase private investments in the Southern African Development Community (SADC) region by providing credit enhancement focused on first loss or subordinated debt and medium to long-term tenor extensions to infrastructure projects that reveal climate mitigation and adaptation benefits. The CFF raised an initial USD 110 million from the DBSA and the GCF as the two primary funders. The CFF aims to invest in projects to reach a control ratio of 1:5. From the description of some of the main climate change funds, the driver behind the provision of climate finance has evolved from general environmental concerns to addressing climate change impacts specifically.

5 African Regional Climate Funds Structure

A recent African Sovereign Debt Justice Network's (AfSDJN) Statement shows that Africa requires close to $300 billion for its M&A needs from 2021–2023.[93] Africa does not have a stand-alone climate fund which is not reliant on multi-lateral or bilateral support and pledges of global financing to Africa.[94] This makes African Climate

[92] Faustin Munyazikwiye & Axel Michaelowa, *The Rwandan approach to maximising benefits from international climate finance, in Handbook of International Climate Finance* 242 (2022).

[93] The African Sovereign Debt Justice Network, African Sovereign Debt Justice Network's Statement on the 2023 Spring Meetings of the IMF and the World Bank, Afronomics Law, Apr. 10, 2023.

[94] Watson *et al., supra* note 84.

Financing heavily dependent on the existing global climate funds to achieve its M&A plans. Many of these funds, because of their funding structure, are legally administered by international climate agreements supporting the contributor funds like the Paris Agreement and its policies and strategies. Several African-themed climate funds exist including:[95]

- The African Risk Capacity (ARC) is a climate fund that exists as a specialised agency of the African Union (AU) that offers index insurance against climate change impacts such as drought.
- Africa Renewable Energy Initiative (AREI) Trust Fund is a climate fund financed by African Development Bank.
- Africa Adaptation Acceleration Program: The African Development Bank and the Global Centre on Adaptation partnered to develop this program to address the impacts of the COVID-19 pandemic and climate change on economies. The primary goal of the fund is to mobilize USD 25 billion by 2025 to scale up innovative and transformative actions on climate change adaptation, which is currently the least funded compared to mitigation efforts.
- African Financial Alliance on Climate Change: This alliance was launched by the AfDB Bank to catalyse private capital for low-carbon and climate-resilient development. It utilizes African financial institutions to promote knowledge sharing, climate risk–mitigating financial instruments, climate risk disclosure, and climate finance flows.
- Africa Adaptation Benefit Mechanism mobilizes public and private finance for climate change adaptation. It aims to de-risk and incentivize investments by facilitating payments for delivery and certification of adaptation benefits as a way of guaranteeing the credibility of adaptation activities to investors.
- African Climate Change Fund. The major financier for this Fund is Germany and it aims to ensure readiness of climate change transition for African countries. The ACCF was established with an initial contribution of EUR

[95] AFDB, *Financing Climate Resilience and a Just Energy Transition in Africa: New Strategies and Instruments,* in African Economic Outlook 2022, https://www.afdb.org/sites/default/files/2022/05/25/aeo22_chapter3_eng.pdf.

> 4.725 million from Germany, and subsequently benefited from an additional funding commitment of EUR 4.7 million from the government of Italy and a commitment of EUR 2 million from the government of Flanders, Belgium, bringing the total contributions to the ACCF since its inception to over EUR 11.4 million.[96] The fund is governed and administered by a secretariat, a technical committee and the AfDB's Board of Directors. The objective of the Africa Climate Change Fund is to support regional member countries (RMCs) in their transition to a more climate-resilient and low-carbon mode of development; to prepare to access greater amounts of climate finance and use funds received more efficiently and effectively; and to facilitate the scaling of climate change activities at the AfDB.[97]

Despite the abundance of climate funds within the global climate architecture, the viability of climate financing within the current international finance and debt architecture remains doubtful. Foremost, the climate funds and their governance frameworks do not factor in the historical and ongoing globalized capitalism, through neo-liberal policies, that is still largely responsible for climate risks in Africa and other Global South countries.[98] Secondly, the climate fund frameworks utilize the same financial innovations, which have been employed in extracting value from Global South nations for centuries, to channel capital to finance climate action in developing countries as envisaged in Article 9 of the Paris Agreement.[99] Thirdly, the contributions made by donors, especially in bilateral climate funds, are paltry and limit the ability of African governments to effectively address climate change. The reason for this is not far-fetched. Given the market-centric focus of many of the climate funds, the governance and operational frameworks are based on perception of risks, which is tied to profit-making. Characterizing Global North's responsibility to fund climate change as "investments" automatically creates an aversion or hedging from

[96] NDC Partnership, *Africa Claimate Change Fund,* https://ndcpartnership.org/funding-and-initiatives-navigator/africa-climate-change-fund-accf.

[97] Mainhardt, *supra* note 45.

[98] Keston K. Perry, *The new 'bond-age', climate crisis and the case for climate reparations: Unpicking old/new colonialities of finance for development within the SDGs,* 126 *Geoforum* 361 (2021).

[99] Paris Agreement to the United Nations Framework Convention on Climate Change, *supra* note 73.

risks, leading to insufficient mobilization and outflows for climate action. Under the risk-profit making model of climate finance, the Global North's interest in climate financing remains hugely motivated by profit derived from high yields from taking on climate risks.

The climate funds within the financing architecture consist of numerous pledges/financing commitments that are generally unenforceable. The structure and policies of the climate funds (due to their mostly market-oriented and debt financing approach for climate action) instead increase the financing obligations for Global South countries including hiking debt levels. This creates a vicious cycle of debt, austerity, and more debt.

Many of the climate funds also ignore the need for directing some of the existing climate finance towards loss and damages action. Under the UNFCCC, a dedicated fund for loss and damages has been planned to complement the GCF. Until then, the adaptation funds within the UNFCCC such as the Least Developed Countries Fund (LDCF), the Adaptation Fund (AF) and others continue to finance adaptation, while largely ignoring loss and damages. Given these issues, it is quite challenging to take the financial options within the climate finance architecture seriously in light of their stated objectives of "financing climate action." Some of the issues within the international and regional climate finance set-up are explored in detail in the subsequent section.

6 Intrinsic complexities and injustices within larger climate architecture, the funds, and their underlying structure

Climate finance flows, from both private and public sources, have increased without a proportional outflow due to a proliferation of the channels and funds through which the financing is administered. At a cursory glance, the global climate finance architecture is riddled with complexity in terms of the fund structure and governance, monitoring, reporting, and verification of climate finance flows. These adjustment of funding channels contributes to a fragmented climate finance architecture and creates coordination challenges, overlapping objectives, replication of climate fund sources and consequently inefficiencies in meeting the ambitious climate M & A outcomes. Challenges and inherent injustices embedded within the larger multilateral, bilateral and regional climate finance flow channels will be considered thematically below.

a. Unclear Global Consensus on the Characterization of Climate Finance and Opportunity for issuing debt for climate action.

As discussed im earlier sections of this chapter, one of the problems present in global finance is ambiguity regarding the scope of climate finance.[100] Article 9 of the Paris Agreement, in delineating the primary responsibility for Global North countries to mobilize climate finance, did not clarify what it entails, its metrics, or its ideal sources. Perhaps this ambiguity is aimed at allowing a wide scope of financing towards M & A and L& D efforts. While this is commendable on one hand as it could increase access to climate finance, it opens the door for developed countries to expand the scope of climate finance to include loans.[101] For example, the Green Climate Fund has been faulted, particularly by small island states, for its preference for issuing loans rather than grants for climate action.[102]

This creates an opportunity for developed countries to benefit from the problem of climate change initially caused by their economic activities through loan interest profiting and mitigation greening projects in what Kila et al. have referred to as *Green Capitalism*.[103] In addition, loans advanced by developed countries to developing countries do not lead to a net transfer of finance to developing countries, especially in Africa's low income countries to meet the full incremental costs of tackling climate change as envisaged by the climate change agreements.[104] Instead, the ambiguity around the climate finance definition allows for developed countries to count loans as part of financing M & A projects.This loophole contributes to Africa's rising

[100] Romain Weikmans & J. Timmons Roberts, *The international climate finance accounting muddle: is there hope on the horizon?,* 11 Climate and Development 97 (2019).

[101] AFSDJN, *Sixty-Ninth Sovereign Debt News Update: The World Bank approves $246 million to strengthen Coastal Resilience in West Africa—The Double Tragedy of Climate Vulnerability and Climate Finance Debt in Africa,* Afronomics Law, Mar. 13,2023.

[102] Kirsty Anantharajah & Abidah B Setyowati, *Beyond promises: Realities of climate finance justice and energy transitions in Asia and the Pacific,* 89 Energy & Social Science (2022).

[103] Arnold Nciko wa Nciko, *Misery of others as a new site for capital accumulation: African Development Bank's position on debt-for-nature/climate swaps* Afronomics Paper (forthcoming 2023); *see also* Kikelomo Kila *et al., Corporate Participation in Climate Change Mitigation in Developing Countries: 'Green Capitalism as a Tool for Sustainable Development,* in Corporate Social Responsibility in Developing and Emerging Markets: Institutions, Actors and Sustainable Development 315 (2020).

[104] Llewellyn Leonard, *Tackling Climate Change in Africa: Effective or Rhetoric Interventions?,* 2 Humanities & Social Sciences Rev. 213 (2013).

sovereign debt from climate loans fuelled by the absence of differentiation between standard development loans and climate loans.[105] Also, a lack of internationally agreed standards and discord over the equivalence of types of financing including grants, loans, export credits and guarantees leads to more use of debt. As a result, debt has remained the financial instrument of choice for developed countries in meeting their Article 9 obligation under the Paris Agreement.

Estimates of climate finance raised in 2019–20 showed that over sixty per cent of climate financing to developing countries was directed through debt financing.[106] A recent report by the African Sovereign Debt Justice Network also shows that in Africa, climate finance is mainly channeled through loans to climate-vulnerable and debt-distressed countries including those undergoing debt restructuring under the G20 Common Framework.[107] Several low income countries in Africa are dealing with the economic downturn arising from the back-to-back crises of Covid-19 and the Russian-Ukraine Conflict that has left them in debt distress and limited their fiscal space to address climate change. Thus, the use of debt-laden investments in combating climate change is an unquestionable burden-shifting, misaligned with the developmental needs of African countries and perpetuates inequality in climate finance flows. In addition, the meager climate finance flows received on the continent are directed to sub-regions with lesser need for these finances.[108] The implication is that climate finance flows are generally higher for countries which have more sustainable debt levels and are more climate resilient than those with high debt levels and climate vulnerability. Against Africa's annual financing gap of over USD 200 million, some sub-regions have received less climate finance especially the Southern African region despite having the largest financing gap. South Africa alone, in the Southern African region, has a climate finance need of USD 107 billion annually. In terms of climate

[105] *Id.*

[106] Barabara Buchner *et al., Global Landscape of Climate Finance 2021,* Climate Policy Initiative, Dec. 14, 2021.

[107] Afronomicslaw Policy Brief, *Debt, Climate Finance And Vulnerability: A Brief On Debt And Climate Vulnerable Countries In Africa* (Nov. 2022), https://www.afronomicslaw.org/sites/default/files/pdf/A%20Brief%20on%20Debt%20and%20Climate%20Vulnerable%20Countries%20in%20Africa.pdf (Zambia's climate loan proportion is at 55% and Ethiopia's at 43%).

[108] Guzman *et al., supra* note 31.

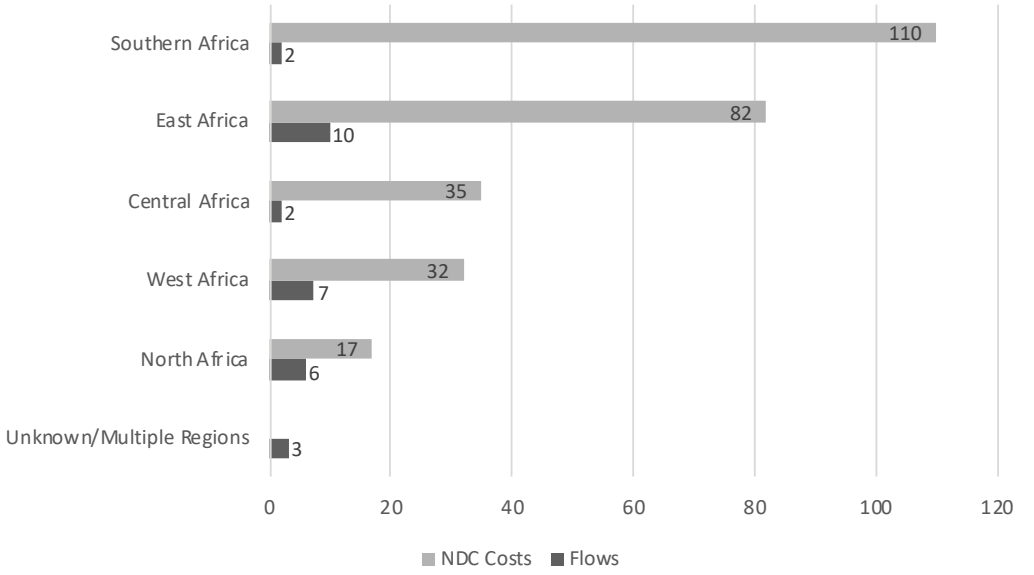

FIGURE 1 African Sub-Regional Climate Finance Flows and Needs (measured in $ billions). (*Source: CPI*[110])

investment as a percentage of GDP, Central and East Africa face the largest climate investment gaps averaging 26% and 23% respectively.[109]

Similarly, most of the climate finance flows to Africa are concentrated in ten African countries. These are Egypt, Morocco, Nigeria, Kenya, Ethiopia, South Africa, Mozambique, Cote d'Ivoire, Tunisia, and Ghana.[111] Recent IMF data lists the Central African Republic, Comoros, and Kenya, among others at high risk of debt distress.[112] Countries already in debt distress like São Tomé and Príncipe, Somalia, Zambia, and Zimbabwe are not the top recipients of climate finance flows. According to the latest climate vulnerability index 2021, Africa's most vulnerable countries (Chad, Central African Republic, Eritrea, Guinea Bissau, Democratic Republic of Congo, Sudan,

[109] *Id.*

[110] Chavi Meattle *et al., The Landscape of Climate Finance in Africa,* Climate Policy Initiative (Sept. 2022).

[111] Although these countries have varying degrees of climate vulnerability, they are not as vulnerable as Africa's small island developing states (SIDS) like Madagascar.

[112] IMF Debt Sustainability Analysis, (Apr. 2023), https://www.imf.org/external/pubs/ft/dsa/dsalist.pdf.

Niger, Liberia, and Somalia) are not the priority recipients of climate finance disbursements.[113] The reason for this is not far-fetched. Many of these countries are low-income countries with high debt levels and do not have sufficient market access to climate investment funds, amidst the ambiguity of what climate finance entails. The ambiguity around the scope of climate financing limits and compromises the effectiveness of the global goal of reducing GHGs emissions and renders the long-term climate ambitions futile. International consensus on rules providing a clearer scope will help to create more certainty around climate finance.

b. Ambiguity in Climate Financing Responsibility and Reporting financing flows rooted in Colonial Capitalist Legacy

While the Paris Agreement and UNFCCC place greater responsibility on developed countries to "provide additional financial resources," there remains a lot of leeway for absolving this responsibility.[114] To date, developed countries have not met their climate finance commitments.[115] Their apathy towards financing climate action is attributable to the fact that the climate change agreements leave the execution of this responsibility to developed nations' discretion. The absence of strict compliance obligations coupled with the evasiveness of "common and differentiated responsibility" for developed countries, continues the legacy of the racial capitalist and neo-colonialist exploitation of nature and people, with no financial consequences.[116]

Ciplet *et al*. note, from a world-view perspective, that the responsibility and distribution of climate finance are guided by relations of dependent capitalism developed over centuries of colonialism, capitalist expansion, and decolonization.[117] This view indicates the reason why the climate agreements place responsibility on developed

[113] AFDB, *Focus Africa,* https://www.afdb.org/en/cop27/focus-africa.

[114] Art 4. UNFCCC, 1992: United Nations Framework Convention On Climate Change. United Nations, FCCC/INFORMAL/84 GE. 05-62220 (E) 200705.

[115] M Azam *et al., Macroeconomic-Financial Policies and Climate Change Nexus: Theory & Practices,* in Crises and Uncertainty in the Economy 51 (2023).

[116] *10 Climate injustices — and how to fight them,* Concern worldwide, Dec. 1, 2022.

[117] David Ciplet, Danielle Falzon, Ike Uri, Stacy-ann Robinson, Romain Weikmans & J. Timmons Roberts, *The unequal geographies of climate finance: Climate injustice and dependency in the world system,* 99 Political Geography (2022).

countries, yet fail to develop identifiable measures or key performance indicators at an individual and collective level to achieve the ambitious GHGs goal. Eventually, this culminates into a lack of transparency and accountability. The lack of financing measures gives discretion to developed country parties to interpret the sources of funding and decide on an individual basis the measures to determine whether the financial resources provided for climate change M &A are new and additional.

Furthermore, information available on the volume and character of climate finance flows repoted by developed countries is contentious. Specificall, there is no consensus on the accounting standards and methods to guide reporting on the finances mobilized towards the USD 100 billion goal. This leaves room for developed countries to overstate the meagre climate finance provided. Climate finance flows are being greenwashed and over-elaborated by focusing on pledges instead of actual flows.[118] Oxfam notes that high-income countries have not met the USD 100 billion pledge since its undertaking in 2009.[119] Likewise, multilateral climate finance institutions like the World Bank are not exempt from overstating climate financing.[120] The SCF biennial assessment of climate finance flows showed that less than USD 56 billion flowed from developed countries to developing countries, including Africa in 2016, which is only thirty percent rise from 2014 figures.

From this, it is clear to see that most funds mobilized for climate action remain in the Global North to fund commercially viable projects like renewable energy projects. The IMF Regional Economic Outlook reports that African countries have only received USD 7 billion approved funds and USD 3 billion disbursements of the worldwide official USD 28 billion set aside for approved projects, for which only less

[118] Thomas Johansmeyer, *Greenwashing and Divestment: The Hidden Problem in an Old Sustainable Finance Strategy,* 3 The Journal of Impact and ESG Investing (2023).

[119] Tracy Carty & Jan Kowalzig, *Climate Finance Short-changed: The real value of the $100 billion commitment in 2019–2020,* Oxfam Briefing Notes (2022) (The official reports of developed countries show that climate finance mobilized reached $83.3 billionn in 2020, however, the real estimates show only climate finance USD around $21–24.5 billion was mobilized).

[120] Jason Farr, James Morrissey & Christian Donaldson, *Unaccountable Accounting: The World Bank's unreliable climate finance reporting,* Oxfam Briefing Note (2022) (The Bank's public disclosure of its climate finance is reported at $17.2 billion, meanwhile, actual estimates show it could be off by 40 percent).

than USD 11 billion has been paid.[121] Most of the $3 billion received flows to bigger economies such as Egypt, Ghana, South Africa, Kenya, Ethiopia, and Nigeria, with fairly developed financial markets for debt and the ability to provide returns on climate investments. The key institutions and MBDs monitoring global climate finance flows increasingly appear to adopt a view of climate finance as any financing whose objective is to support climate action through mitigation and adaptation. They fail to prioritize options that do not exacerbate the climate crisis and indebtedness of developing countries. The inertia in developing of common standards for climate finance and its flows, both public and private, contributes to the ambiguities and injustices in the climate finance architecture.

c. Inefficiencies from the Proliferation of Climate Funds

The proliferation of climate funds has contributed to the inefficiency in the directing and delivering of finance to the most climate-vulnerable countries. Over the last two decades, there has been a rise in the number of bilateral and multilateral funds providing climate finance for similar purposes at different times.[122] While this may bebeneficial in terms of providing financing options, it promotes inefficiency in financing flows insofar as it creates difficulty in tracking the impact of funds responding to similar needs. For instance, within the UNFCCC framework, the Green Climate Fund (GCF), the Global Environment Facility (GEF), the Adaptation Fund, and the sub-funds such as the Least Developed Countries Fund (LDCF) and the Special Climate Change Fund (SCCF) respond to similar mitigation mandates. These overlapping roles lead to a cyclical unproductive dispersing of climate finance flows which in turn contributes to a lack of coherence and complementarity in responding to developing country needs as they occur.[123] Consequently, the motivation of donor countries in climate financing allocation decisions and flows may become adversely affected.

[121] IMF, *Closing the Gap: Concessional Climate Finance and Sub-Saharan Africa,* in IMF Regional Economic Outlook: Sub-Saharan Africa—The Big Funding Squeeze (2023).

[122] Niranjali M Amerasinghe *et al., Future of the Funds: Exploring the Architecture of Multilateral Climate Finance,* World Resources Institute, Mar. 10, 2017.

[123] *Id.*

d. Overabundance of (Paltry) Climate Pledges and Climate Financial Flows Distortion

Various ethical frameworks such as climate justice suggest that developed countries should finance climate efforts based on the benefits they have drawn from creating the climate crisis. What has happened instead, in response to gospel of climate responsibility and reparation, is an overabundance of pledges—mere promises without contractual exchanges of terms. Climate pledges are provided on a legal but largely unenforceable platform under the key climate agreements. These pledges function within a system of harmonized autonomy as against a system of hierarchical multilateral legal regulations, which guarantees enforceability. The perceived legitimacy accorded to the acceptance of pledges has been referred to as the "pledging world order" in climate finance.[124] While pledging may work towards providing speedy financial relief during acute disasters without the burden of red-tapes, it is severely detrimental to the urgency of climate action financing. The glut of climate pledges substitutes the advancement of healthy multilateralism in climate financing with an *alter ego* of shallow cooperation. Pledging climate finance underhandedly entrenches climate injustice by absolving the Global North countries of their responsibility, particularly paying reparations for the historical and systemic injustices in the wake of ecological degradation. Pledging fosters the "illusion of participation," whereby the Global North is showcased as a champion of climate change yet it sabotages progress on effective climate action through patterns of inertia with respect to finance flows. Nowhere is this seen more than in the unmet 2009 pledge to mobilize USD 100 billion a year to support developing countries to deal with climate change.[125] Durkee further argues that pledging supports nationalist and populist trends which aim for isolation from global multilateralism, while favoring function over status—departing from the deep cooperation common to the post-war legal order towards entrenching a new world order of pledges.[126]

[124] Melissa J. Durkee, *The Pledging World Order,* 48 Yale J. Int'l L. 1 (2023).

[125] Joycelin Timperly, *The broken $100-billion promise of climate finance — and how to fix it,* Nature, Oct. 20, 2021.

[126] Amerasinghe *et al., supra* note 119.

Though the climate agreements recognize the role of both the private and public sectors in M & A efforts, there is no stipulation on the balance between private and public sources of finance for mobilizing climate funds and the channels for raising the finances. The construction, flow, and ratio of the global climate finance architecture between debt and equity are uneven, with a bias for debt financing.[127] Studies conducted on climate flows using the Bloomberg New Energy Finance (BNEF) database show a marginal positive difference in the pre-and post-Paris era climate finance flows.[128] The received share of developing countries was reported to be negligible although new finance channels were opened in 8 low-income African nations (Mali, Uganda, Burundi, Mozambique, Niger, Eritrea, Madagascar and Gambia). Private sector financial flows are distributed even more unequally with just 0.1 percent of finance reaching pre-Paris and 2.3 percent post-Paris, while low-income countries represent 9 percent (pre-Paris) and 20% (post-Paris) of all countries receiving private finance.[129] In 2019, the public sector provided 51 percent (USD 321 billion) of annual climate finance and the private sector's contribution amounted to 49 percent.[130] However, most of the private finance funds flowed to climate-change projects in Western Europe, the US and Canada and majority of climate finance mobilized stayed within the country of origin.[131]

The promised annual flows of USD 100 billion from developed countries are insufficient, based on the IPCC's estimation, to meet the needs of developing countries. African and other developing countries have inadequate agency over the flow of bilateral, multilateral, and private finance which explains the paltry and unpredictable flows of finance for their domestic climate plans. For example, the German

[127] Raghu D. Tirumala & Piyush Tiwari, *Exponential Growth of Sustainable Debt: Green Bonds Surge,* in Advances in Infrastructure Finance 79 (2023).

[128] Jamie Rickman *et al., The Unequal Distribution of International Climate Finance Flows and Its Underlying Drivers* (Feb. 9, 2022).

[129] *Id.*

[130] Mannat Jaspal & Terri B. Chapman, *Exploring the Inequities of Climate Finance,* Observer Research Foundation (May 16, 2022).

[131] *Id.* (only 20 per cent of climate-related development finance reported to the OECD went to least developed countries in 2017–18 while most remained in the OECD countries).

climate fund provides little to meet the needs of countries in M & A efforts. Ultimately, pledges and the abundance of funding options should be treated cautiously and not taken too seriously until deep structural reforms centred on climate justice considerations are adopted and implemented.

e. Emphasizing Mitigation Financing at the Expense of Adaptation and Loss and Damage Financing

The Paris Agreement calls for balance in adaptation and mitigation financing, yet mitigation finance flows to developing countries makes up 90 percent of the total climate finance provided by developed countries. This appears to be caused by a conflict with respect to the balance of mitigation and adaptation financing. Specifically, Articles 7.2, 7.6 and 9.4 of the UNFCCC and Paris Agreement appear to place emphasis on mitigation. These agreements state that climate financing should be responsive to the "particularly vulnerable" developing countries and to the "specific, urgent, and immediate needs as well as the special circumstances'" of such vulnerable developing countries to protect people, livelihoods, and ecosystems.[132] As a result, financial flows for adaptation continue to be much lesser than mitigation financing flows. Currently, adaptation funding represents 26 percent of the total climate funding cost required by vulnerable developing countries compared to 72 percent in mitigation funding.[133] In addition, private investors provided nearly 54 percent of all mitigation finance flows to the renewable energy sector in 2019–20.[134] Major multilateral funds also tend to focus more on mitigation. Recently, there has been more attention to loss and damage, however the intense focus on mitigation financing may impact global commitment towards operationalizing a financing mechanism for loss and damage.[135]

[132] United Nations Climate Change, *supra* note 26; Paris Agreement, *supra* note 27.

[133] Rickman *et al., supra* note 125.

[134] Ciplet *et al., supra* note 114.

[135] Arthur Wyns, *COP27 establishes loss and damage fund to respond to human cost of climate change,* 7 The Lancet Plenary Health (2023).

The financing of mitigation is often driven by debt funding while almost all adaptation finance gets sourced from public sources and is grossly insufficient.[136] Some of the reasons adduced for more mitigation projects include more financial incentives offered to mobilize support from private sector actors and the prospect of larger investments averting more serious climate consequences in the longer run. Also, mitigation financing tends to favour certain sectors like the energy and transport projects that are more commercially viable because of their return-potential compared to agricultural and land-use sectors in Africa which carry the brunt of the climate crisis and offer less market-oriented opportunities for minimizing GHGz.

At the end of the day, displays of ambiguous financing commitments and the diversity of funds purported to finance climate efforts in the Global South cannot be taken too seriously. This is because the complexities found within the climate funds and the broader climate finance architecture unveil a deficiency of genuine concern for just climate action financing. The architecture and its funds remain riddled with cumbersome procedures, delays, lack of transparency, poor accountability, unclear strategies, resource and time-consuming accreditations especially in the GCF, low access to climate finance, exclusion of intended and highly climate vulnerable beneficiaries, among others.[137]

7 Policy Recommendations

Developing countries, mostly African and small island states are at the receiving end of the climate crisis. Climate finance reforms should include robust dialogue with global stakeholders on the mobilisation and disbursement of more climate finance. This section focuses on recommendations that may contribute to addressing the inequalities present in the current set-up.

a. Reform Emphasis on Climate Justice Rather Than Market Opportunities Access

One of the inequalities present in the current climate change financial arrangement is its excessive focus on and replacement of climate justice considerations with

[136] Manish Bapna & Patricia Fuller, *Nature-based Solutions for Adaptation Are Underfunded—But Offer Big Benefits,* World Resources Institute, Mar. 22, 2021.

[137] John O. Kakonge, *Why is accreditation necessary to access Green Climate Fund cash?,* Nation, May 23, 2023.

climate profit-oriented opportunities. It positions the hostile realities and experiences resulting from climate injustice as a market opportunity from which to draw economic value. Profound structural reforms of the entire climate finance architecture cannot be overlooked as a component of just climate action. There should be a robust inclusion of climate justice into the global climate finance architecture along five primary components. These are legal (substantive and procedural), distributive, social equity, political econom, and restorative components of climate justice. Substantive legal climate justice redress should focus on reviewing the substantive provisions on climate finance and responsibilities found in the key climate agreements for stronger provisions on the obligations of developed nations. This sets the foundation for the other dimension of justice. Procedural legal climate justice reforms should focus on addressing the barriers and bottlenecks in the climate finance framework processes to ensure that mobilized climate funds reach their intended beneficiaries.

Distributive climate justice reform activities should focus on setting the right grant financing mechanism. It should guarantee that wealth transfers from the historical exploitative activities of developed countries in developing countries are mobilized from both private and public sectors of the former towards financing climate action in the latter. Thus, distributive justice reforms should focus on channeling adequate financial flows to address climate injustice. Social equity climate justice reforms should focus on considerations of the vulnerable groups most affected by climate change in the Global South. These include women, children, perons with disabilities (PWDs), the aged, extremely poor and migrants. Political-economy reforms should focus on redressing institutions and their policies within developed national governments as a starting point for genuine multilateral interaction towards regular and adequate financing fot Global South climate action. Lastly, restorative climate justice reforms should obligate financial flows from developed countries as a step to correcting environmental abuse/climate change attributed to colonial and post-colonial economic policies, while restoring affected countries to their pre-climate change states.

Reform efforts should also be geared towards operationalising climate justice from a loss and damage perspective in the sourcing, allocation, and disbursement of climate finance. The UNFCCC and Paris Agreement should be reformed to provide stronger adaptation and loss and damages provisions that accommodate the needs of vulnerable countries from a climate impacts perspective rather than a predominantly

GHGs reduction perspective. In addition, as it is done for mitigation, clearer and stronger individual and collective responsibility for developed countries should be specified and metrics designed. This may help in leveraging and catalyzing more public finance flows to climate-vulnerable African countries, where the marginal cost of reducing GHGs emissions and safeguarding measures against severe climate change impacts can be maximized. There is need to tread with caution with respect to loan based private climate financing given the debt vulnerabilities of African countries and their susceptibility to predatory investment practices like vulture funding/investing.[138] Placing more focus on improving public climate financing flows may help in curbing the financial globalisation of international development and humanitarian challenges, including climate change.

b. Creating and Hosting a more Global-South Centric Climate Financing Fund within the UNFCCC Framework and channeled through the BRICS Bank

Most of the climate funds present within the current architecture appear to meet the objectives of their funders by exploiting more market-based opportunities in mitigation. It is recommended that a L & D grant fund be created and hosted under the UNFCCC in order to offset funding gaps in the other funds. It is believed that African countries can benefit from this fund especially if it is administered through Brazil, Russia, India, China, and South Africa (BRICS) New Development Bank (NDB), which may serve as a signal for consolidating and routing both public and private capital towards more L &D and adaptation projects, as part of their global corporate social responsibility rather than a purely profit based purpose.

BRICS is preferable because of its rising path geopolitics and increasing bargaining power in global economic affairs. Moreso, its financing arm, NDB, aims to gather resources for infrastructure and sustainable development projects in emerging markets and developing countries (EMDCs). Although they do have carbon-intensive economic systems, which contribute to total GHGs emissions, the BRICS have committed to net-zero emissions by 2050 in the quest for a climate-neutral and sustainable global economy. The creation of the BRICS bank may be utilized to gather and disburse climate finance to vulnerable Global South countries, since there are

[138] Daniela Gabor, *The Wall Street Consensus,* 52 Development and Change 429 (2021).

glaring failures among traditional funders to deliver on their commitments, especially through infrastructure investment. This is worth considering in climate discussions. While some criticisms have been leveled against the BRICs bank for following neo-liberal ideals, the aims of the BRICs bank absolves it of imputed predatory capitalist intents. Its main purpose is to foster the infrastructure and sustainable development efforts in BRICS countries, developing nations, and emerging economies. As a multilateral body, the bank intends to use its resources to support its member nations by providing more positive outcomes than the traditional Western controlled development banks. The BRICS bank provides an avenue for creating financial multipolarity in the global economic system and for countries that have long been dismissed as "developing" to finally hold their own.

As the BRICS Bank works to reshape and improve its policies, its focus on South-South cooperation and global-south-centric financing may be the opportunity to aid in clarifying the definition of climate finance to design and promote the standardization of frameworks, boost transparency in disclosures, and to innovate suitable financial instruments and adopt inclusive climate policies especially for the indigenous populations. It also provides an opportunity for Global South countries, including African states to mobilize as a bloc in implementing inclusive climate finance policies that serve their interests and oblige developed countries to fulfil their responsibilities in climate financing mobilization. Furthermore, a Global South centric fund allows current emerging economy GHGs emitters such as China and India to contribute to financing climate action. This may provoke climate financing competition that may direct financing flows to where they are most needed.

c. Clarity in Climate Finance Arrangements and Assignment of Responsibility

Various climate finance funds channel support through loans, mainly targeting mitigation efforts, worsening the debt of climate vulnerable Africn countries. This chapter recommends a clear definition of climate finance and better coordination among existing global climate financing funds. Also, it is essential that there is a consensus on the types of climate finance instruments that should be used to direct flows to the most climate-vulnerable countries. This has the potential of limiting greenwashing while concretizing reporting obligations of developed countries when they furnish information on the amount of climate financing provided to developing

projects. This in turn may help vulnerable countries to attract more public and private financing to achieve the aims of the climate change agreements,

d. Streamlining climate funds according to comparative advantages.

While having a multiplicity of climate funds has some advantages such as the availability of funding choices, it creates inefficient duplications in climate financing decisions and flows. It is recommended that at the global and multilateral level, funds that provide similar financing objectives should be merged to streamline the financing pipeline. For example, the AF and LDCF have similar adaptation financing objectives. Instead, these funds can be merged and compartmentalized into small-scale and large-scale adaption sub-funds. At the African regional level, all AfDB funds like the African Adaptation Benefit Mechanism, and the African Financial Alliance on Climate Change may be re-organised and administered under the African Climate Change Fund and repurposed to provide adaptation grants, while guaranteeing the credibility of adaptation activities.

8 Conclusion

Inadequate climate finance flows to vulnerable countries vis-a-vis the "trillion-dollar climate financing goal" remains a glaring challenge to achieving climate resilience in Africa and other Global South countries. Apart from the obvious challenge of raising adequate financing, the concentration of existing flows on mitigation projects through debt financing rather than grant financing cripples efforts to respond to the climate change problem. An effective resolution of these problems hinges on addressing foundational inequities present in the global climate structure and agreements. There should be clearer standards and metrics on the responsibility of developed countries to provide adequate funds, financing flow allocation, financing objectives, and climate financing instruments. A climate justice-based approach based on clarity around the climate finance taxonomy and obligations may be useful in satisfying the vast array of stakeholders. This, in turn, may improve the legitimacy of the global climate finance regime, promote consensus, and prompt collective action to lessen the regulatory complexities that impede the sufficient flow of climate finance to where it is most needed.

CHAPTER TWO

The Feasibility of Greening Debt Restructuring in Africa

Nona Tamale*

1 Introduction

Over the past few years, the linkage between debt and climate change has been brought to the fore of global policy debate. This connection is not new. During the 1980s debt crisis, there were attempts to address indebtedness and environmental concerns through debt for nature swaps, particularly in Latin America.[1] Currently, these debt-for-nature deals are being fronted to jointly tackle these two global concerns alongside financial instruments such as green, blue, sustainable and sustainability-linked bonds.[2] For countries grappling with heavy debt burdens and severe climate impacts, however, these options may not be sustainable as illustrated by Adonu's chapter in this book.[3] Indeed, it has been argued, including by the International Monetary Fund (IMF), that comprehensive debt restructuring would offer more far-reaching benefits.[4] This notwithstanding, it is noteworthy that not all debt restructurings will result in long-term debt sustainability.

Climate shocks pose a high risk to the debt outlook of climate-vulnerable countries. Africa is the most vulnerable to climate change globally and is estimated to lose

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[1] Maurizio Levi Minzi, *The Pied Piper of Debt-for-Nature Swaps,* 14 Univ. PA. J. INTL L. 37 (1993).

[2] Anna Belianska *et al., Climate Change and Select Financial Instruments: An Overview of Opportunities and Challenges for Sub-Saharan Africa,* in IMF Staff Climate Notes (2022).

[3] *See* Geoffrey Adonu, *Towards Closing Africa's Climate Financing Gap: Scaling African Governments' Access to the Sustainable Bond Market,* Chapter 5 of this book.

[4] Marcos D. Chamon *et al., Debt-for-Climate Swaps: Analysis, Design, and Implementation,* 162 IMF Working Papers (2022).

between 5–15% of its GDP as a result.[5] Recent studies have revealed that Africa needs approximately USD 3 trillion (USD 250 billion annually) for its climate needs between 2020 to 2030.[6] The continent is also home to the most indebted countries globally.[7] The debt and climate challenges intersect in multiple ways. Debt servicing tends to crowd out public spending on investment in a country's development goals and climate needs. For countries at high risk of or in debt distress, this can slow down their development. This is especially the reality for the poorest countries as they are typically inclined to undertake austerity to lower their debt levels.[8] In addition, recent studies have shown that following climate disasters, borrowing rises to fund the emergency response and rebuilding and so do borrowing costs as lenders are increasingly charging climate risk premiums.[9] The bulk of climate finance in Africa is channeled through loans[10] and more borrowing of approximately USD 1 trillion is expected by 2030 specifically for loss and damage from climate disasters.[11]

This connection between debt and climate is the basis for the analysis of the viability of greening debt restructuring processes in this chapter. This concept has no fixed definition. For purposes of this chapter, it refers to the resolution of debt problems of a country while taking into account its specific climate needs. Exploring the adoption of green or climate elements is necessary if climate-vulnerable nations are to

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[5] African Development Bank Group, *Supporting Climate Resilience and a Just Energy Transition in Africa,* African Economic Outlook 2022.

[6] Sandra Guzman *et al., The State of Climate Finance in Africa: Climate Finance needs of African Countries,* Climate Policy Initiative (2022).

[7] *See* IMF, List of LIC DSAs for PRGT-Eligible Countries (2023) (currently 21 out of 36 low-income countries (over 50%) at high risk of or in debt distress are African countries).

[8] Shakira Mustapha, *Using the right mix of financial instruments to provide and mobilize climate finance: lessons for the Global Stocktake* Financing Climate Action: iGST Discussion series (2022).

See also Nona Tamale, *Debt Restructuring Under the G20 Common Framework: Austerity Again? The Case of Zambia and Chad,* in How to Reform the Global Debt and Financial Architecture (2023). Nona Tamale, *Adding Fuel to Fire: How IMF demands for austerity will drive up inequality worldwide,* Oxfam intl. (2021).

[9] UNCTAD, Trade and Development Report Update: Global Trends and Prospects (2023).

[10] Nona Tamale & Adebayo Majekolagbe, *Debt, Climate Finance and Vulnerability: A Brief on Debt and Climate Vulnerability,* Afronomicslaw (2022).

[11] Tess Woolfenden & Sindra Khushal, *The Debt and Climate Crisis: Why Climate Justice Must Include Debt Justice,* Debt Justice and Climate Action Network Intl. (2022).

derive substantial long-term advantages from restructuring. The chapter focuses on three key features namely:

1. natural disaster clauses;
2. incorporation of climate risks or shocks in debt sustainability analyses (DSAs) of climate-vulnerable countries; and
3. climate-tied debt relief or cancellation.

To make the argument, the chapter relies on the recently concluded Chad debt restructuring deal under the G20 Common Framework. Despite being among Africa's most climate-vulnerable countries, Chad received minuscule debt relief[12] and the deal did not include any green or climate-related components. I argue that while there are potentially substantial benefits from greening debt restructuring processes, reaping them will require structural reform of the sovereign debt architecture, particularly the creation of an independent global sovereign debt restructuring mechanism. It proposes that such a mechanism centers climate justice considerations in debt treatments of climate-vulnerable countries.

The chapter is presented in four parts. Part 2 provides a brief picture of the current restructuring framework available to indebted countries and highlights the key outcomes of the recent Chad debt restructuring deal. Part 3 expounds on the concept of green debt restructuring. It specifically analyses natural disaster clauses—which featured in previous restructurings in Grenada and Barbados, incorporation of climate risks or shocks in debt sustainability analyses (DSAs) and climate-tied debt relief. Part 4 makes the case for greening debt restructuring in Africa and explains its linkage to the need for urgent reform of the international sovereign debt architecture. Part 5 concludes the chapter.

2 Debt Restructuring under the G20 Common Framework

The G20 Common Framework was launched as a platform for low-income countries to restructure their debt with creditors following an economic downturn associated

[12] Andrea Shalal, *World Bank's Malpass criticizes Chad creditors' plan for failing to reduce debt,* Thomas Reuters, Nov. 1, 2022.

with the COVID-19 pandemic.[13] To date, four African countries have applied to the Common Framework—Chad, Ethiopia, Zambia and Ghana, most recently. From the onset, there was skepticism towards the Common Framework[14] and three years down the road, several shortfalls have been observed. Among these are the lack of transparency, significant delays, duplication of the unequal power relations between creditors and debtors as in the Paris Club and failure to compel private creditors to participate.[15] Although there are efforts to revamp the Common Framework Global Sovereign Debt Roundtable, the proposed changes do not address the structural problems plaguing the global sovereign debt architecture.[16]

Specific to climate change, the G20 Common Framework does not require creditors to take into consideration the impact of climate vulnerability on the debt standing of participating countries.[17] Chad's recently concluded restructuring deal demonstrates this.

Chad applied to the G20 Common framework to restructure its debt in January 2021.[18] By the end of 2021, its external debt burden amounted to USD 2.9 billion mainly owed to multilateral (32.8%), bilateral (28.2%) and commercial lenders (33%).[19] Glencore Energy, the main commercial creditor, holds 98% of Chad's private

[13] Paris Club, G20 Common Framework for Debt Treatments beyond the DSSI (2020).

[14] Daniel Munevar, *The G20 "Common Framework for Debt Treatments beyond the DSSI": Is it bound to fail? Part 1,* European Network on Debt and Development, Oct. 22, 2020.

[15] Munevar, *The G20 "Common Framework for Debt Treatments beyond the DSSI": Is it bound to fail? (II),* European Network on Debt and Development, Oct. 28, 2020.

[16] *See* Nona Tamale & The African Sovereign Debt Justice Network, *Zambia Debt Alliance and African Sovereign Debt Justice Network Statement on Zambia's Debt Situation ahead of Visits by the IMF Managing Director and the U.S. Treasury Secretary,* Afronomicslaw, Jan. 24, 2023. For more on systemic reform of the debt architecture, *see* Yuefen Li, *Systemic reform of the international debt architecture is yet to start,* 95 South Centre Policy Brief (2021).

[17] *See* Luma Ramos *et al., Debt Relief for a Green and Inclusive Recovery: Guaranteeing Sustainable Development,* B.U. Global Dev. Pol'y Ctr. (2023).

[18] Ryadh M. Alkhareif & Emmanuel Moulin, *What the Chad Debt Deal Means,* Fin. Dev. Lab., Apr. 19, 2023.

[19] *See* IMF, Chad: first and second reviews under the extended credit facility arrangement, requests for waivers and nonobservance of performance criteria and modification of performance criteriaa—Debt Sustainability Analysis (2023) (calculations by the author based on IMF data).

debt, the equivalent of 8.21% of the country's GDP.[20] Between 2021 to 2023, debt repayments stand at USD 1.3 billion with commercial creditors receiving the bulk amounting to 75% of total external debt service (USD 983 million).[21] It is noteworthy that commercial creditors refused to participate in the Debt Service Suspension Initiative (DSSI) during the COVID-19 pandemic.[22]

Chad was the first country to conclude a debt restructuring deal under the G20 Common Framework in November 2022.[23] The deal reached with its official and private creditors was delayed partly due to the reluctance of its main commercial creditor, Glencore, to get on board. The agreement has not been publicly disclosed. However, drawing from IMF reports, three key outcomes of the deal stand out.[24]

First, the creditors agreed to reconvene if the need for further debt treatment arises. Secondly, Glencore accepted to reschedule the country's debt repayments falling due in 2024 to ensure that Chad's debt remains sustainable with the bilateral creditors agreeing to step in if the contribution from the private lender is insufficient. Thirdly, the deal did not include any debt reduction or cancellation. The supposed rationale for this was the hike in oil prices hence the country was assessed not to be in need of debt reduction given the expected rise in oil revenues.

The terms of the deal fall are problematic for various reasons. It neglects the fact that Chad is one of the most climate-vulnerable countries globally,[25] despite the IMF and World Bank's own acknowledgement of the risk of climate shocks to the country's debt standing.[26] It cannot be ignored that there is a plausible connection between the complete disregard for climate considerations in Chad's debt restructuring and the controversial stance of the previous World Bank President, David Malpass on climate

[20] *Id.*

[21] *Id.*

[22] Rakan Aboneaaj *et al., The ABCs of Sovereign Debt Relief,* Ctr. Global Dev. (2022).

[23] Alkhareif & Moulin, *supra* note 18.

[24] IMF, *See* IMF, Chad: First and second reviews under the extended credit facility arrangement, requests for waivers on nonobservance of performance criteria and modification of performance criteria—PRESS RELEASE; STAFF REPORT; STAFF SUPPLEMENT; AND STATEMENT BY THE EXECUTIVE DIRECTOR FOR CHAD (2023).

[25] Notre Dame Global Adaptation Initiative, *Rankings,* Univ. Notre Dame (2023).

[26] IMF, *supra* note 24.

change.[27] The World Bank came under heavy criticism for its high investments in fossil fuel projects during his leadership.[28] In fact, and rather ironically, amidst the current global call for a transition from fossil fuels towards a low-carbon economy, Chad is expected to continue its reliance on oil revenues to pay debt obligations.[29] The latest restructuring under the G20 Common framework is one of the multiple restructurings which the country has undergone with its creditors since 2015.[30] Previous restructurings were attributed to the volatility of oil prices.[31]

This deal demonstrates the structural challenges embedded in the existing debt architecture which remains far from delivering deep and comprehensive debt treatment required for indebted countries to achieve long-term debt sustainability. Chad was a prime opportunity for creditors, including the IMF and World Bank, to consider the adoption of green features in the debt restructuring agreement. Both the IMF and World Bank are increasingly influencing the global climate agenda and concurrently play a central role in the debt restructuring processes. The next part discusses some of the key green features which can potentially be explored in future debt restructurings in Africa.

3 Potential Green Debt Restructuring Features for Africa

For purposes of this chapter, the greening of debt restructurings or workouts refers to the resolution of debt problems of a country while taking into account its specific climate needs. It includes the adoption of features which recognize climate vulnerability and aim to improve climate resilience alongside debt sustainability during and in the aftermath of restructuring processes between creditors and indebted countries. There have been a number of measures proposed to green restructuring over the past recent years. These include debt for climate swaps, natural disaster clauses,

[27] Steven Mufson, *Criticized for climate stances, World Bank president will step down,* Wash. Post., Feb. 15, 2023.

[28] The Big Shift Global, *Investing in climate disaster: World Bank Group Finance for Fossil Fuels* (2022).

[29] Bretton Woods Project, *Chad gets debt rescheduling, not relief, and is left dependent on oil revenues,* Dec. 8, 2022.

[30] World Bank Group, *Joint World Bank IMF Debt Sustainability Analysis,* Feb. 2022.

[31] *Id.*

climate-annexed debt relief and debt cancellation. This chapter will focus on natural disaster clauses, the incorporation of climate shocks in DSAs of climate-vulnerable countries in Africa and climate-tied debt relief.

3.1 Natural Disaster Clauses

There is growing interest in state-contingent debt instruments (SCDIs) in the sovereign debt space. They "link a sovereign's debt service payments to its capacity to pay" based on specific pre-defined variables or events such as GDP or commodity prices.[32] In the context of climate change, natural disaster clauses (also termed hurricane clauses or climate-resilient debt clauses) are an example of state-contingent debt instruments. Intended to offer immediate short-term liquidity relief rather than address solvency, they trigger the suspension of debt payments, both principal and interest, when a country faces a qualifying natural disaster.[33]

Natural disaster clauses are fairly new in practice as they have only been used in the restructurings of two countries so far, Grenada and Barbados.[34] There has been a recent push for their mainstreaming in debt contracts including in the 2022 Bridgetown Initiative, a plan to finance climate action launched by the Prime Minister of Barbados, Mia Mottley which is the subject of Samantha Kanoyangwa's chapter in this book.[35] This part of the chapter analyzes the structure of natural disaster clauses

[32] *See* IMF, *State-Contingent Debt Instruments for Sovereigns,* IMF Policy Papers (2022) (The main idea behind SCDIs is to help sovereigns preserve policy space in "bad times." Sovereigns require policy space (both fiscal and monetary) to undertake measures that can help mitigate the economic impact of adverse shocks. By tying sovereign obligations to a state variable (like GDP) that proxies the sovereign's capacity to pay, SCDIs seek to stabilize the sovereign's debt indicators and/or financing needs, thus helping preserve policy space precisely when it is most needed, e.g., in a downturn).

[33] *Id. See also* Sui-Jim Ho & Stephanie Fontana, *Sovereign debt evolution: the natural disaster clause* 11 Cleary Gottlieb Emerging Markets Restructuring J. (2021).

[34] Mustapha, *supra* note 8.

[35] For more, *see* Barbados Ministry of Foreign Affairs and Foreign Trade, *The 2022 Bridgetown Initiative for the reform of the global financial architecture* (2022).

For more recent updates on the Bridgetown Initiative, *see* BARBADOS GOVERNMENT INFORMATION SERVICE, *Bridgetown Initiative 2.0 highlights six key action areas (2023).*

See Chioneso Samantha Kanoyangwa, *Fiscal Sustainability and Sovereign Risk: The Feasibility of the Bridgetown Initiative for Africa,* chapter 3 in this book.

adopted in the Grenada and Barbados debt restructurings. It also examines the model clauses developed by the International Capital Markets Authority (ICMA) and the UK Private Sector Working Group (PWSG). This is followed by a discussion of what a natural disaster clause in the African context would entail.

3.1.1 GRENADA DEBT RESTRUCTURING 2013–15 Grenada restructured its debt in 2005 following severe climate impacts following Hurricane Ivan in 2004 which caused damage of over 200% of its GDP.[36] Between 2013 to 2015, the country underwent another debt restructuring in which it adopted a natural disaster clause for the first time. The country's debt service payments would be rescheduled upon the occurrence of a hurricane or other specified natural disaster for up to a maximum of one year following the qualifying event.[37] Based on the severity of the disaster, the clause permits the country to suspend principal and interest payments as follows: 1) one semi-annual payment if it experiences losses between USD 15–30 million; and 2) two semi-annual payments for losses of USD 30 million or more.[38] The clause permits Grenada to defer its debt repayments only three times.[39]

The Caribbean Catastrophe Risk Insurance Facility (CCRIF), an independent regional insurance body, determines what constitutes a qualifying tropical cyclone as well as the extent of losses based on the country's parametric insurance policy.[40] The Grenada government would be required to present to the bond trustee a certificate confirming the occurrence of a natural disaster, which qualifies for a deferral, and a report from the CCRIF confirming that the event is covered by insurance as well the extent of the damage.[41]

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[36] IMF, *Grenada: Climate Change Policy Assessment,* IMF COUNTRY REPORTS (2019).

[37] Ho & Fontana, *supra* note 33.

[38] *Id.*

[39] *Id.*

[40] *Id.* (Parametric insurance differs from traditional insurance as it is anticipatory in nature, relying on data to offer pre-determined cover in the event of occurrence of a specified natural disaster).

See Lesley Ndlovu, *Can Parametric Insurance Mitigate Africa's Climate Risk?,* WORLD ECONOMIC FORUM, Aug. 4, 2022.

[41] *Id.* (Once Grenada has elected to make its deferral, all deferred interest amounts are capitalized into principal and the remaining principal amortizations are increased pro rata to take into account the interest capitalization and the deferred principal payments).

3.1.2 BARBADOS DEBT RESTRUCTURING 2018–2019 Barbados followed suit in its 2018–19 restructuring of both domestic and external debt.[42] The island country was grappling with soaring unsustainable debt levels—a debt to GDP ratio of over 100%. In addition to a 26.3% debt reduction, the restructuring featured natural disaster clauses for the first time, permitting the deferral of debt payments for two years to respond to a natural disaster.[43] The clause in the 2018 domestic debt restructuring was designed in a similar way to that of Grenada's especially the requirement of a payout under the CCRIF for a qualifying natural disaster.[44] However, the clause differed from Grenada's in various ways. Unlike Grenada, the Barbados clause can trigger a two-year debt payment deferral;[45] has a broader scope of natural disasters which can trigger the clause including earthquakes and excess rainfall; and the extent of loss for which a deferral can be triggered is USD 5 million.[46] Similarly, with regard to reporting to the creditors, the government is expected to issue a notice with information on the natural disaster but is not required to submit a certificate and a report from CCRIF.[47]

Interestingly, the terms of the natural disaster clause were modified in its 2019 external debt restructuring. The extent of loss for which a debt payment deferral could be triggered was set at USD 5 million for earthquakes and floods and USD 7.5 million for hurricanes.[48] While the country can defer its payments up to three times, it is restricted from doing so in the last two years prior to the final maturity of the bond.[49] The clause also incorporated a "blocking mechanism" which gives bondholders of

[42] *See* U.S. DEP'T. TREASURY, REPORT TO CONGRESS ON THE INTERNATIONAL MONETARY FUND'S LOANS TO BARBADOS AND SURINAME (2022).

[43] Brian Lawson, *Capital Markets Weekly: Barbados completes debt restructuring and Lebanon facing growing risks,* S&P GLOBAL MARKET INTELLIGENCE (2019).

[44] Myrin Athony *et al., 'Barbados' 2019–19 Sovereign Debt Restructuring—A Sea Change?,* IMF WORKING PAPERS (2020).

[45] Ho & Fontana, *supra* note 33.

[46] *Id.* (All deferred interest amounts are capitalized into principal as they would have come due and the remaining principal amortizations are increased pro rata to take into account the interest capitalization and the deferred principal payments).

[47] *Id.*

[48] *Id.*

[49] *Id.*

50% of the principal the option to block a deferral within 15 days of receipt of notice from Barbados.[50] This is demonstrative of pushback from creditors to have some control over when the clause can be triggered and guard against its "potential abuse."[51]

3.1.3 MODEL NATURAL DISASTER CLAUSES In 2018, the ICMA developed a model term sheet for Caribbean countries, drawing on some aspects of the Grenada and Barbados structure.[52] The UK Private Sector Working Group published an updated standardized term sheet on Climate Resilient Debt Clauses in 2022.[53] Developed for private lenders, the sheet expands the scope of application of natural disaster clauses to other continents, including Africa.[54] It lists low-income African countries which can potentially incorporate natural disaster clauses in their debt contracts with private creditors including countries eligible to apply for the G20 Common Framework.[55] It also has a wider scope of natural disasters including tropical cyclones, droughts, tsunamis, floods/excess rainfall and earthquakes.[56]

With regard to the terms, the deferral would apply to both the principal and interest for a standard period of one year and a maximum of two years.[57] Three debt repayment options of the deferred debt are provided including 1) pro-rata repayment; 2) full repayment at maturity; and 3) repayment over three years after the occurrence of the trigger natural disaster, within the original maturity date.[58] It departs from the

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[50] *Id.*

[51] *Id.*

[52] Ho & Fontana, *supra* note 33 (For instance, the determination of a qualifying event which triggers the clause is hinged on the insurance policy with CCRIF; reporting requirements of the issuer under the Grenada clause; and extension of the scope of natural disasters as in the Barbados clause. It differed from the previous structures insofar as it did not indicate the extent of loss required for a natural disaster to trigger the clause as well as the maximum number of deferrals).

Clifford Chance and ICMA, *Indicative Heads of Terms for Facility with Hurricane Linked Extendible Feature (Debt Service Deferral Version),* ICMA (2018).

[53] UK Private Sector Working Group, *Term Sheet relating to the new Climate Resilient Debt Clauses,* ICMA (2022). For more on the background, *see* UK Private Sector Working Group, *Climate Resilient Debt Clauses (CRDCs) Chair's Summary,* ICMA (2022).

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] *Id.* (This position departs from the earlier 2018 term sheet with respect to the extension of bond maturity by permitting a deferral of all principal payments until three years after the original date).

Barbados and Grenada clauses insofar as it does not set a monetary threshold for events which will trigger debt deferral. Instead, it sets a criterion which can be used to determine if a climate shock is of a severe magnitude to warrant the trigger of the natural disaster clause.[59]

3.1.4 VIABILITY OF INCORPORATION OF NATURAL DISASTER CLAUSES IN DEBT RESTRUCTURING AGREEMENTS IN AFRICA Natural disaster clauses can potentially play a significant role in averting debt problems resulting from climate shocks for climate-vulnerable countries. A key question which arises is what role natural disaster clauses, a short-term liquidity relief measure, could play in the context of debt restructuring aimed to address solvency problems.

First, these clauses are specifically designed to allow more fiscal space for countries to adequately respond to a climate shock in the immediate aftermath of its occurrence.[60] The value of having such buffers in place was demonstrated by the continued heavy debt repayments by low-income countries in the early months of the COVID-19 pandemic, prior to the launch of the Debt Service Suspension Initiative (DSSI). Secondly, these clauses make more practical sense during the negotiation of a restructuring agreement, than an individual contract, in order to avert future debt defaults.[61] Having several creditors at the table presents a good opportunity to negotiate for the incorporation of a natural disaster clause across multiple contracts.[62] In addition, more substantial financing can be saved through the incorporation of natural disaster clauses across various debt instruments.[63]

The main challenge for Africa is the technical aspects of designing the clause in a manner which is specific to and meaningfully takes into account the needs of climate-vulnerable countries. Specifically, the identification of the events which trigger the debt deferral (triggers). It is promising that the PSWG model clause expands the range of climate shocks which can trigger debt deferral to include drought and floods which

[59] *Id.* (The term sheet highlights the following features of the trigger mechanism include: i) timeliness and reliability; ii) independent and reliable verification; iii) relevant, hazard-specific and attuned to the country's specific needs; and iv) mutual agreement on the trigger by all parties).

[60] IMF, *State-Contingent Debt Instruments for Sovereigns,* IMF POLICY PAPERS (2017).

[61] Clemence Landers & Rakan Aboneaj, *Should MDBs be leading the adoption of debt clauses?,* CTR. GLOBAL DEV. (2023). *See also,* Shakira Mustapha, *supra* note 8.

[62] *Id.*

[63] *Id.*

particularly affect African countries.[64] However, as shown by the existing and model clauses discussed above, the position is that not all climate shocks trigger the clause thus raising the question of the magnitude or extent of loss. This has been dealt with differently. In the restructurings of Grenada and Barbados (domestic restructuring), the extent of loss which triggers debt deferral is quantified and set at USD 15 million and USD 5 million respectively. The determination of loss is tied to a payout from CCRIF in the aftermath of a disaster as per the parametric insurance policy of the country. Parametric insurance differs from traditional insurance as it is anticipatory in nature, relying on data to offer pre-determined cover in the event of the occurrence of a specified natural disaster.[65] As such, the payout under the parametric insurance policy is determined by a pre-defined set of objective triggers for climate events.[66]

Borrowing from the Barbados and Grenada clauses which rely on the CCRIF to determine the qualifying climate shocks, the African Union, through its agency, African Risk Capacity (ARC), can play a pivotal role. The ARC undertakes regional risk pooling which offers insurance cover for climate disasters including drought, cyclones and more recently, floods.[67] ARC has existing parametric insurance products against climate risks from which some countries such as Mozambique, Malawi and Madagascar have received payouts.[68] The primary focus of the ARC thus far has been to provide insurance services to disaster risk-prone countries although it has also been involved in lobbying for concessional finance from development banks.[69]

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[64] UK Private Sector Working Group, *supra* note 53. (The term sheet notes that private creditors can also consider including pandemics among the trigger event.)

[65] Ndlovu, *supra* note 40. *See also,* David Maslo, *How anticipatory insurance can help Africa better prepare and respond to natural disasters,* World Economic Forum (2022).

[66] African Union and World Food Programme, *African Risk Capacity: A Pan African Disaster Risk Pool* (2011).

[67] African Risk Capacity, *How the African Risk Capacity Works.* For more on ARC's sovereign risk pooling, *see* Lesley Ndlovu, *Parametric insurance: an effective tool in helping African fight climate change,* Prevention Web, Nov. 1, 2022. *See also,* African Risk Capacity, *African Risk Capacity launches the first flood risk insurance product in African,* June 6, 2023.

[68] See Ndlovu, supra note 40. (Madagascar took on parametric cyclone insurance protection and was paid a claim following the cyclone Batsarai in 2022).

[69] African Risk Capacity, *African Risk Capacity Group Strategy 2020–2024.*

There is an opportunity for a much broader role of the ARC in linking climate disaster risk management and sovereign borrowing. It is envisaged that countries typically consider multiple options to finance their response to climate disasters. These include: insurance, sovereign borrowing (ex post), creating a specific reserve fund (ex ante), contingent credit and budget reallocation (ex post).[70] Specifically, with respect to borrowing, due to the perception of risk of lending by investors, African countries incur higher costs of borrowing from international financial markets compared to other regions as discussed in Aren's chapter in this book.[71] A 2023 IMF study analyzing 1,592 sovereign bonds issued by 89 countries in the period between 2003–2021 found that Sub-Saharan African countries paid higher interest rates in the primary market compared to countries from other regions.[72] A similar trend was observed in the secondary markets.[73] In addition to this "African risk premium," recent studies have revealed that countries facing climate vulnerability or low climate resilience are charged a higher interest rate on their sovereign bonds than those which do not.[74] As the agency of the African Union, it is pertinent that the ARC plays a more active role in resolving this predicament given its impact on climate financing on the continent, mainly channeled in the form of debt.[75] ARC, and the AU on the whole, can advocate for debt relief and debt cancellation for African countries at high risk of or in debt distress including during restructuring processes. Such saved funds can potentially be directed to i) the creation of a reserve fund by the ARC specifically for emergency response as well as adaptation and mitigation efforts of climate-vulnerable countries; and ii) fund insurance premiums for countries under the ARC. For

[70] Berber Kramer *et al., Five years of regional pooling: An updated cost-benefit analysis of the African Risk Capacity,* 01965 Intl. Food Pol'y Rsch. Inst. Discussion Paper 32–33 (2020).

[71] For a related argument, *see also* Olabisi Michael & Howard Stein, *Sovereign bond issues: Do African countries pay more?,* 2 J. Afr. Trade, 87, 87–109 (2015).

[72] William Gbohoui *et al., Sub-Saharan Africa's risk perception premium: In search of missing factors,* 23/ 130 IMF Working Papers (2023).

[73] *Id.* (The study also found that Sub-Saharan African countries "pay higher refinancing costs in the secondar market" from an analysis covering 107 countries over the period of 1990–2022).

[74] Serhan Cevik & Joao Tovar Jalles, *This changes everything: Climate shocks and sovereign bonds,* 20/79 IMF Working Papers (2020).

[75] Tamale & Majekolagbe, *supra* note 10.

countries which are not members of ARC, the Agency could play an advisory role to these governments and lenders on setting customized parametric triggers to include in their restructured debt agreements.[76] Such a broader role could potentially incentivize more African countries to consider joining the ARC membership.[77]

African countries should consider collectively designing a model natural disaster clause suited to their specific needs under the auspices of the African Union. While the existing and model clauses can be helpful in designing natural disaster clauses, African countries do not have to limit themselves to these terms. This is particularly key for the debt payment deferral period as well as the monetary threshold of climate disasters which can trigger the clause. In the event of loss and damage of a great magnitude, as in the case of Hurricane Ivan for Grenada, debt payment suspension for a period of one or two years is likely to be of negligible consequence. A recent report reveals that the Vulnerable Twenty (V20) Group economies lost USD 525 billion between 2000 and 2019 due to climate change impacts.[78] Other studies have shown that climate disasters including drought, flood and landslides impacted over 54 million people between January 2021 to September 2022.[79] In addition, the extent of loss ranging between USD 5–15 million which triggers a debt deferral for Barbados and Grenada is on the much higher end. The loss from some of Africa's notable natural disasters has been costed much lower in monetary terms yet devastating human impacts were registered nonetheless. A case in point is Mozambique following Cyclone Idai in 2019. In addition to loss and damage worth USD 2 billion, 1.5 million people were affected, including 600 deaths and the country's poverty rate was

[76] UK Private Sector Working Group, supra note 53. (This is an option provided for under the PSWG Standardized term sheet discussed above.).

[77] African Union, *Agreement for the Establishment of the African Risk Capacity (ARC) Agency,* Nov. 23, 2012 (To join the ARC, AU member states are required to sign the ARC Establishment Agreement). African Risk Capacity, *ARC Member States* (The current ARC membership stands at 35 members).

[78] Vulnerable Twenty roup, Climate Vulnerable Economics Loss Report: Economic Losses Attributable to Climate Change in V20 Economies over the Last Two Decades (2000–2019).

[79] Global Center on Adaptation, *Climate Risks in Africa* (2022).

[80] United Nations Development Programme, *Mozambique Cyclone Idai: Post Disaster Needs Assessment* at 19–26 (2019).

projected to increase by 15%.[80] There is a potential role for the African Union to take the lead in designing what a natural disaster clause for Africa should entail. It is particularly important for the measurement of the economic and non-economic impact of climate disasters to take into consideration the climate vulnerability and low resilience of numerous countries.

Another key challenge to reaping the potential benefits of natural disaster clauses is the resistance by multilateral creditors to participate in debt restructuring processes due to their preferred creditor status.[81] While the World Bank recently announced that it is going to incorporate natural disaster clauses in its loans,[82] it remains to be seen whether it will allow for natural clauses to be applied to its debt in debt workouts. As discussed above, these clauses make more practical sense in the context of a restructuring where several creditors are able to apply them across all types of debt. The exclusion of multilateral debt from restructurings for African countries in which natural disaster clauses are adopted is likely to water down their potential benefits. Though these clauses have primarily been incorporated in bonds, in the African context, multilateral lenders ought to be involved because they hold a substantial proportion of the debt of several climate-vulnerable countries.[83] As of 2021, private creditors held the largest proportion of Sub-Saharan African debt (USD 216 billion) followed by multilateral lenders (USD 150 billion).[84] Despite the rise of private debt over

[81] *See* Tito Cordella & Andrew Powell, *Preferred and non-preferred creditors,* 8941 World Bank Group Pol'y Rsch. Working Paper (2019) (Preferred creditor treatment (PCT) for international financial institutions and multilateral development banks means "they are expected to be repaid even if the borrower restructures private or bilateral debt." The justification for this has been that they lend at low rates, continue to lend to countries during crises and have to maintain their AAA credit rating. However, PCT majorly arises from market custom rather than contract law or international law).

[82] World Bank, *World Bank Group announces comprehensive toolkit to support countries after natural disasters,* June 22, 2023.

[83] Rishikesh Ram Bhandary & Sara Jane Ahmed, *Why multilateral development banks must step up on debt,* Org. Econ. Co-Operation & Dev. (2022).

[84] World Bank, International debt report 2022: Updated international Statistics (2022).

[85] Melissa Butler *et al., Climate Resilience as a Proposed New Feature of Sovereign Debt Instruments,* White & Case, Feb. 9, 2023.

the past decade, only a few African countries are currently issuing sovereign bonds[85] hence multilateral lenders remain significant lenders on the continent, especially for low-income countries.

As such, for the impact of the clauses to be felt, it is crucial that they are applied to multilateral debt in restructuring agreements. Further, the buy-in of bilateral and multilateral lenders could reduce resistance from private creditors and ensure that the deferred sums are channeled to climate response and resilience efforts.[86] Credit rating agencies are also positively rating natural disaster clauses in sovereign bonds of low-income countries.[87] This is a positive sign and a possible indicator that the AAA rating of multilateral lenders would not be affected by the application of these clauses to their debt contracts during the restructuring process.[88] In addition, since debt deferrals are at net present value (NPV) neutral, all creditors can expect to be repaid in full without any debt reductions. This is sufficient justification for all debt, including multilateral debt, to be subjected to the application of natural disaster clauses in restructuring agreements.

3.2 Incorporation of climate risks in the debt sustainability analysis (DSA) of climate-vulnerable countries

Climate risks are not typically taken into consideration in the assessments of the debt sustainability of African countries. Debt sustainability analyses (DSAs) evaluate risks and vulnerabilities associated with a country's debt standing. DSAs are usually relied upon to ascertain whether a country is dealing with a liquidity or solvency problem. The practical implication of DSAs during restructuring is that they are instrumental in determining the nature and extent of debt relief that a country requires to return to the path of debt sustainability.[89]

Increasingly, literature is revealing the linkage between debt sustainability and climate vulnerability. This relationship can be illustrated in two main ways. First, as

[86] *Id.*

[87] Fitch Ratings, *Fitch Rates Its First Natural Disaster Clause Sovereign Bond,* Oct. 24, 2022.

[88] Landers & Aboneaj, *supra* note 61.

[89] Aboneaaj *et al., supra* note 22.

highlighted above in this chapter, climate vulnerability has a significant impact on the cost of borrowing as climate vulnerable countries are paying a climate risk premium.[90] Secondly, unsustainable debt affects the capacity of countries to adequately respond to climate shocks or invest in their climate needs.[91] Currently, debt restructuring for low-income countries is being conducted under the G20 Common framework and is hinged on a World Bank/IMF DSA.[92] One of the key criticisms levied against these DSAs is their primary focus on a country's ability to repay debt. This narrow framing of sustainability fails to take into account climate risks and costs including emergency response and investment in climate resilience, a shortfall recently admitted by the World Bank.[93]

It is an oversimplification to state that climate shocks are completely disregarded in the World Bank/IMF DSA. The DSA relies on standardized, tailored or customized stress test scenarios to evaluate the threat of specific risks to debt sustainability.[94] The standardized tests are applied to all countries on macroeconomic variables including GDP growth, export growth, and exchange rate depreciation among

[90] *See* Enrico Malluci, *Natural disasters, climate change and sovereign risk,* 139 J. Intl. Econ. (2022) (Studies have shown that there is a relationship between sovereign risk and natural disasters which is embedded in the pricing).

For more on the relationship between climate vulnerability and sovereign borrowing, *see* John Beirne *et al., Feeling the Heat: Climate Risks and The Cost of Sovereign Borrowing,* 1160 Asian Dev. Bank Inst. (2020).

See also Bob Buhr *et al., Climate change and the cost of capital in developing countries,* United Nations Environment Programme (2018).

[91] Ulrich Volz, *The debt and climate crises are escalating—it is time to tackle both,* Brookings Inst., July 8, 2022.

[92] Paris Club, *supra* note 13.

[93] David Malpass, *Shaping tomorrow's debt restructuring system* World Bank Blogs, May 10, 2023.

[94] *See* IMF, *Guidance Note on the Bank-Fund Debt Sustainability Framework for Low Income Countries,* IMF Policy Papers, Dec. 26, 2017 (Tailored stress tests consider risks that are common to only some sets of countries" while "fully customized scenarios are optional, and can be used to capture idiosyncratic risks where relevant").

[95] *Id.* at 32. (Other macro variables include primary balance, other flows inclusive of foreign direct investment (FDI) and transfers and contingent liabilities).

others.[95] The tailored stress tests "consider risks that are common to only some sets of countries" such as commodity price volatility and natural disaster shock risks.[96] They were introduced in the 2017 reform of the Debt Sustainability Framework (DSF), the guiding framework for DSAs for low-income countries.[97] Customized stress tests, on the other hand, are optional.

It is noteworthy that the tailored natural disaster shock tests are only conducted in World Bank/IMF DSAs of low-income countries which fall under the following categories:[98]

a) Small states vulnerable to natural disasters. Only 14 countries qualify namely: Comoros, Dominica, Grenada, Kiribati, Maldives, Micronesia, Samoa, São Tomé and Príncipe, Solomon Islands, St. Lucia, St. Vincent and the Grenadines, Tonga, Tuvalu, and Vanuatu.
b) Low-income countries that meet a frequency criteria (2 disasters every 3 years) and economic loss criteria above (5% of GDP per year) based on the International Disaster Database (EM-DAT). Only nine countries qualify namely: Bangladesh, Haiti, Honduras, Nepal, Madagascar, Mozambique, Myanmar, Nicaragua, and Tajikistan.

Interestingly, despite being the most climate vulnerable region,[99] only four African countries qualify for natural disaster shock tests in their DSAs. In the case of Chad, while the latest DSA included a shock test for commodity prices, a "natural disasters" stress test, which would presumably take into account climate shocks, was deemed not applicable.[100] It is evident that debt burden and service indicators such as the ratio of debt service to revenue ratios are affected by climate impacts yet these were not considered in the DSA which was relied upon in the Chad debt restructuring under the G20 Common Framework. Although the DSA highlighted that climate

[96] *Id.*

[97] *Id.*

[98] IMF, Review of the Debt Sustainability Framework in Low-Income Countries: Proposed Reforms (2017).

[99] United Nations Environment Programme, *Responding to climate change.*

[100] IMF, *supra* note 24.

shocks are a downside risk which could result in a negative debt outlook, this was not factored in the assumptions that resulted in the optimistic conclusion that Chad's debt is sustainable.[101]

It appears that the narrow scope of countries which qualify for natural disaster shock tests is informed by the equally limited threshold of qualifying climate disasters. The focus on the frequency of and economic loss from climate disasters eliminates several low-income countries which face occasional but devastating natural disasters. Similarly, it does not account for potential future disasters or the costs of climate adaptation and resilience for climate vulnerable countries.[102]

The absurdity of the narrow qualification of natural disasters is demonstrated by Chad's exclusion by this criterion, despite being ranked among the world's most climate vulnerable countries.[103] Indeed, the IMF/WB template for Chad's DSA does not require the country to report information on natural disasters.[104] Intriguingly, the IMF acknowledges that Chad is a climate-vulnerable and poor country which requires climate funding[105] thus it is considering extending climate-related loan support under its new Resilient and Sustainability Trust.[106] A key observation is that the IMF Sovereign Risk and Debt Sustainability Framework (SRDSF), which applies to market access countries rather than low-income indebted countries, introduced a climate change module to analyse climate risks in DSAs.[107] It includes two sub-modules namely mitigation and adaptation. The adaptation module is mandatory when a country is undertaking debt restructuring or is highly prone to natural disasters so as to inform the formulation of the debt restructuring deal.[108] In the case of Chad, while

[101] *Id.*

[102] Modeste Some, *Challenges for Debt Sustainability Analysis in Small States: Incorporating Natural Disaster Risks in the DSA,* International Monetary Fund Strategy, Policy and Review Dept.

[103] Notre Dame Global Adaptation Initiative, *supra* note 25.

[104] World Bank, *Debt & Fiscal Risks Toolkit: Debt Sustainability Framework (DSF).*

[105] IMF, *supra* note 24.

[106] IMF, *Statement by IMF Deputy Managing Director Kenji Okamura at the conclusion of his visit to Chad, Mar. 13, 2023.*

[107] IMF, *Staff Guidance Note on the Sovereign Risk and Debt Sustainability Framework for Market Access Countries,* 2022/039 Policy Paper (2022).

[108] *Id.* at 86.

the SRDSF is not applicable since it's a low-income country, it is rather discouraging that the country could not benefit from such a tool which could potentially have resulted in a more favorable restructuring deal, cognisant of its climate vulnerability. This is not a challenge limited to Chad. Other climate vulnerable African countries undergoing debt restructuring are not guaranteed the appropriate debt relief required, taking into account their climate investment needs due to this exclusion.

The foregoing analysis demonstrates that the current parallel treatment of debt and climate change during debt restructuring despite the substantial evidence of their connectedness. For climate-vulnerable countries, an analysis of debt sustainability which does not incorporate climate risks is far from accurate. In addition, it remains questionable whether the IMF and World Bank are best suited to conduct DSAs given their conflict of interest as major lenders of low-income countries. This is discussed in more detail in part IV of this chapter below.

3.3 Potential of Climate-tied Debt Relief in Africa

In the context of restructuring, climate-tied debt relief refers to measures taken to alleviate heavy debt burdens while addressing climate needs. These can include debt service standstills during restructuring processes and debt cancellation or reductions. Similar to the arrangement in the Debt Service Suspension Initiative (DSSI), debt relief can be extended to an indebted country under an arrangement in which the saved funds are channeled to its climate needs. For instance, debt relief can be linked to Nationally Determined Contributions (NDCs) of countries such that funds are directed to meeting specific national climate commitments. Such finances can also be saved in a special reserve fund for climate response and investment hosted and managed by the ARC as discussed above. Currently, the majority of the most indebted African countries rely heavily on external funding to finance their adaptation and mitigation measures.[109]

Of the green features discussed in this chapter, this measure is arguably the lowest hanging fruit. Adopting natural disaster clauses in restructuring deals poses challenges especially around creditors and borrower countries arriving at a mutual agreement with respect to qualifying triggers of the clause to kick in debt deferral. On the other hand, the incorporation of natural disaster shocks in DSAs for all climate

[109] Tamale & Majekolagbe, *supra* note 10.

vulnerable countries will arguably require reform of the debt sustainability framework. Climate-tied debt relief and debt cancellation is a more readily available option to adopt during a debt workout. The G20 Common Framework negotiations for Chad, Zambia and Ethiopia commenced when the Debt Service Suspension Initiative (DSSI) was still ongoing. However, upon its expiry in December 2021, no debt service standstill was offered to the indebted countries pending the conclusion of the debt treatment negotiations.

The outcomes of the Chad deal—no debt cancellation nor meaningful debt relief—were particularly disappointing. Despite an acknowledgement of Chad's climate vulnerability by the IMF and World Bank in their DSA, the final agreement did not take into cognizance the county's climate needs. The requirement for creditors to meet again in the event of a shock which affects debt sustainability is reactionary rather than forward-looking. It demonstrates the structural challenges indebted countries face due to the absence of a multilateral debt restructuring mechanism. This is discussed in detail in the following part of the chapter.

4 Why Reform of the Global Debt Architecture is Required to Facilitate the Greening of Debt Restructuring Processes in Africa

Sovereign debt is a space of contestation between politics, finance, law and economics.[110] At the root of sovereign debt restructuring are the diverse interests of various actors. In the absence of a global debt restructuring mechanism to play the umpire role in balancing the conflicts, the power dynamics remain skewed against debtor countries. This chapter argues that greening debt restructuring offers a viable opportunity to jointly address the debt and climate challenges affecting numerous African countries. However, its effectiveness, within the current debt and climate architecture, remains debatable.

Without addressing the historical inequities embedded in the global financial system,[111] the structure of green features in debt restructuring could potentially be

[110] Chavi Meattle *et al., The Landscape of Climate Finance in Africa,* Climate Policy Initiative (Sept. 2022).

[111] Olabisi D. Akinkugbe & Adebayo Majekolagbe, *International Investment Law and Climate Justice: The Search for a Just Green Investment Order,* 46 Fordham Int'l L.J. 169 (2023).

designed to primarily accommodate lenders' interests. For instance, climate features such as natural disaster clauses are more likely to receive buy-in from creditors as they play a key role in their design and can limit potential triggers.[112] In the case of Barbados' external restructuring, creditors included a veto right which allows them to challenge the country's debt deferral. Similarly, for Grenada, the country is required to meet several reporting requirements to creditors before the debt deferral can be triggered. In addition, high monetary thresholds for the extent of loss for which a debt deferral can be obtained can limit the number of African countries which could potentially benefit from the clauses in the aftermath of a natural disaster.

On the flipside, resistance can be expected from creditors on features which require deeper transformation, including reform of the existing debt sustainability framework. From the central role of the IMF and World Bank in restructuring, both lenders with an interest, to the reluctance to incorporate climate considerations and investment needs, DSAs are deeply problematic. The course of action to be taken during debt restructuring is informed by the DSA, including the extent of debt relief required by an indebted country. The Chad deal, discussed in this chapter, is emblematic of the problem faced by developed countries in attempting to restructure their debt in the current system. The ongoing G20 Common Framework continues to perpetuate unequal power relations between debtors and creditors. Its disregard for the impact of climate vulnerability on debt sustainability is one of its several shortfalls. It is therefore an ill-suited platform for implementing green debt restructuring.

As the intersection between climate change and debt sustainability is gaining global traction,[113] the slow response of developed countries towards addressing both dilemmas is palpable. On the climate side, they have also stalled in meeting their climate finance commitments as revealed by several studies which show that the reported figures are much less than is actually channeled.[114] This is discussed in detail in Aren's

[112] UK Private Sector Working Group, supra note 53. (The private sector has in fact taken the lead in designing the model natural clauses including the 2018 ICMA model term sheet as well as the 2022 model term sheet prepared by the Private Sector Working Group. These are discussed in part 3 of this chapter above.).

[113] United Nations Commission on Trade and Development, *Tackling debt and climate challenges in tandem: A policy agenda,* UNCTAD Policy Brief No. 104 (2022).

[114] *See also* Tracy Carty & Jan Kowalzig, *Climate finance short-changed: The real value of the $100 billion commitment in 2019–2020,* Oxfam (2022).

chapter in this book.[115] Drawing from Akinkugbe and Majekolagbe, as with the investment regime, climate change also deepens the preexisting inequities in the global debt and financial architecture.[116] It increases the cost of borrowing and exacerbates debt vulnerabilities thus inhibiting their capacity to fund adaptation and mitigation measures as well as emergency climate response in the aftermath of climate disasters.[117]

The incorporation of climate justice in the global debt and finance architecture is therefore not a far-fetched prospect. Specifically, the principle of common but differentiated responsibility requires that developed countries which contributed the most to the climate crisis, through emissions, shoulder more responsibility in its resolution.[118] Debt restructuring provides an opportunity to extend climate reparations to developing countries, for instance through climate-linked debt relief. However, it cannot be reasonably expected that climate justice considerations will be fairly and equitably addressed given the glaring inequities in the current sovereign debt architecture. Debt restructuring is convened by lenders who double as the same developed countries that have been reluctant to finance climate resilience despite their role in creating the current climate crisis.

This chapter reiterates the call for a global sovereign debt restructuring body by African voices including scholars such as Masamba and Mbithi.[119] The United Nations has been identified as a potential host for various reasons.[120] It is likely to be less biased since it is not a lending institution and its General Assembly is a more representative and democratic structure compared to the IMF and World Bank. Such

[115] *See* Marie-Louise Aren, *supra* note 71.

[116] Akinkugbe & Majekolagbe, *supra* note 110.

[117] United Nations Commission on Trade and Development, *Global debt and climate crises are intertwined: Here's how to tackle both,* Mar. 1, 2023.

[118] Sarah Mason-Case & Julia Dehm, *Redressing Historical Responsibility for the Unjust Precarities of Climate Change in the Present,* in Debating Climate Law (Beniot Mayer & Alexander Zahar, eds. 2021).

[119] Magalie Masamba, *The pressing call for an international debt restructuring framework and the potential gains its creation will have for African countries,* in How to Reform the Global Debt and Financial Architecture (James Thuo Gathii, ed. 2023). *See* Kelvin Mbithi, *Supervising sovereign debt restructuring through the United Nations,* in How to Reform the Global Debt and Financial Architecture (James Thuo Gathii, ed. 2023).

[120] Mbithi, *supra* note 119. (For more on the proposal for a sovereign debt restructuring mechanism under the United Nations).

a body would be in a position to take into consideration the structural issues affecting countries on both the debt and climate fronts. For instance, one of the criticisms made against the World Bank and the IMF is their narrow focus on the ability to repay debt in analyzing debt sustainability. The UN is well placed to adopt a broader definition of debt sustainability, incorporating climate considerations, as the overseer of the Sustainable Development Goals (SDGs) Agenda 2030, climate commitments under the UNFCCC as well as the UN Basic Principles on Sovereign Debt Restructuring. Further, the UN is the best avenue to bring the responsibilities of advanced countries in resolving the climate crisis under a climate justice lens into the debt discourse. It is not disputed that Africa is the least contributor to emissions yet it's the most vulnerable to climate impacts. The continent's climate funding needs for this decade stand at USD 3 trillion yet despite commitments from advanced countries, their climate finance contributions have remained minuscule. The linkage between indebtedness and climate change requires deeper reform of the global debt architecture.

5 Conclusion

The aim of this chapter was to explore the viability of the adoption of climate considerations in debt restructuring processes in Africa. This proposal is in response to the compounding nature of the ongoing debt and climate change crises affecting numerous African countries. It discussed three main proposals namely: 1) the adoption of natural disaster clauses; 2) the incorporation of climate risks in debt sustainability analyses (DSAs) of climate vulnerable countries; and 3) climate-tied debt relief or cancellation. Relying on the recently concluded debt restructuring for Chad under the G20 Common Framework, it demonstrated that these proposals are viable insofar as there are potentially significant benefits from their adoption in debt treatments. However, it emphasized that the adoption of these green features in and of themselves is insufficient. In order to yield substantial results for African countries on both the debt and climate fronts, structural changes to the current sovereign debt architecture are required. Specifically, it calls for the creation of an independent global sovereign debt restructuring mechanism which centers climate justice considerations in debt treatments of climate-vulnerable countries in Africa.

CHAPTER THREE

Fiscal Sustainability and Sovereign Risk: The Feasibility of the Bridgetown Initiative for Africa

Chioneso Samantha Kanoyangwa*

Introduction

The global context of perpetual and multiple crises, including the ongoing COVID-19 pandemic, escalating external debt, climate change, Russia-Ukraine conflict, and deepening processes of financialization, have continued to destabilize the world in one way or another. Be that as it may, discourse around the intertwined debt and climate crises has significantly gained momentum globally as no country or continent has been spared from the devastating ramifications of climate change. Rising global temperatures continue to fuel environmental degradation, natural disasters, food and water insecurity, economic disruption, conflict, and in some cases, terrorism as in the Chad Basin of Africa.[1] The world has witnessed a rise in sea levels with the arctic glaciers melting, coral reefs dying, oceans acidifying, and forests burning, hence, loss of biodiversity. The world over, heatwaves, droughts, typhoons, and cyclones and hurricanes causing mass destruction have increased. Madagascar, for example, has witnessed its worst drought in 40 years and Europe is experiencing extreme temperatures in 500 years.

According to the Intergovernmental Panel on Climate Change (2021) if left unchecked, global warming will rise beyond 2 degrees in the next decade.[2] Africa is

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[1] Dennis Tirpak, Louise Brown, and Athena Ronquillo-Ballesteros, "Monitoring Climate Finance in Developing Countries: Challenges and Next Steps." Working Paper (Washington, DC: World Resources Institute, 2014).

[2] Intergovernmental Panel on Climate Change (IPCC), 6TH Assessment Report (2021), available at https://www.ipcc.ch/reports/.

now the second most climate vulnerable continent in the world.[3] Globally, between 2000–2023, over 1.3 million people have lost their lives as a direct consequence of more than 11,000 extreme weather events accounting for approximately USD 2.56 trillion in purchasing power parities.[4] Although at least 84% of Parties to the UN Framework Convention on Climate Change (UNFCCC) have made positive strides with respect to adaptation plans, laws, strategies, and policies which prioritize vulnerable and marginalized groups, the financing capacity of these laws and policy is wanting.[5] International Adaptation Finance Flows (IAFF) are 5 to 10 times below the estimated needs and the financing gap is widening .[6]

The UNEP Adaptation Gap Report 2022[7] reveals that the climate change financing gap is increasing tremendously. Annual global climate adaptation requires around USD 160 billion and will grow to about USD 340 billion by 2030. The same, annual adaptation cost is expected to be around USD 315 billion and USD 565 billion by 2050. Costs resulting from residual risks or unavoidable loss and damage are not covered in these numbers. Current estimates of climate finance needs for residual loss and damage in developing countries range between USD 290 billion to USD 580 billion in 2030.[8] In addition, the Intergovernmental Panel on Climate Change (IPCC) estimates in its Special Report "Global Warming of 1.5°C" that the "mean net present value of the costs of damage from warming in 2100 for 1.5°C and 2°C (including costs associated with climate change induced market and non-market impacts, impacts due to sea level rise, and impacts associated with large scale discontinuities) are USD 54 trillion and USD 69 trillion, respectively, relative

[3] World Meteorological Organization (WMO), State of the Climate in Africa (2020), available at https://www.ipcc.ch/reports/.

[4] United Nations, Disasters: UN report shows climate change causing "dramatic rise" in economic losses (2018), available at https://news.un.org/en/story/2018/10/1022722.

[5] United Nations Environment Programme, UNEP's Adaptation Gap Report 2022: Too Little, Too Slow—Climate adaptation failure puts world at risk (2022) at p. 11, available at https://www.unep.org/resources/adaptation-gap-report-2022.

[6] AON. Weather, Climate & Catastrophe Insight (2019), available at http://thoughtleadership.aon.com/Documents/20200122-if-natcat2020.pdf.

[7] *Ibid.*

[8] Global Catastrophe Recap: First Half of 2019, available at https://www.preventionweb.net/files/63630_20190207analyticsifjanglobalrecap.pdf.

to 1961–1990."[9] This indicates that the gap between the funding needed to deal with climate-induced risks and impacts is even greater than earlier projected. On the other hand, the report highlights the importance of enhanced mitigation action towards limiting the global temperature increase to well below 2°C or even to 1.5°C to avoid economic and non-economic loss.

Moreso, the effects of climate change have reinforced the fact that both vulnerability and risk are intertwined and systemic. Emerging economies are the most vulnerable ones and they are at substantial risk to the damaging effects of climate hazards, yet they have weak adaptation and coping capacity. Eight out of the ten countries most affected by the quantified impacts of extreme weather events in 2019 belong to the low- to lower-middle income category.[10] The Climate Risk Index for 2021 shows that the top 50 of the most vulnerable nations are Least Developed Countries (LDCs). It is, therefore, prudent to strengthen climate change resilience of the most vulnerable and emerging economies to enhance climate adaptation and livelihood sustainability. This can only be done by better alternative sources of climate financing that does not leave LDCs impoverished and in debt-trap.

At present, Africa contributes less than 4% of the world's greenhouse gas emissions, yet the continent warms more quickly, its glaciers melt more quickly, and it has a higher rate of sea level rise than the rest of the world.[11] While the African continent continues to face a disproportionate share of the burden of the global environmental crisis, the disparities are, ironically, further reinforced in the "efforts" to counteract the phenomena. Considering that individuals who create and formulate these initiatives deliberately work towards ensuring that the system that perpetuates the disparities is preserved, it might not be considered "ironic" at all. It is critical that the debates over the current imbalances, especially those between the Global North and

[9] Climate Action Tracker, Global Update: Paris Agreement Turning Point (2022), available at https://climateactiontracker.org/publications/global-update-paris-agreement-turning-point/.

[10] OECD, Climate Finance Provided and Mobilised by Developed Countries in 2013-18 (2020), OECD Publishing: Paris, available at https://read.oecd.org/10.1787/f0773d55-en?format=pdf.

[11] World Meteorological Organization (WMO), "State of Climate in Africa Highlights Water Stress and Hazards" (September, 8 2022), available at https://public.wmo.int/en/media/press-release/state-of-climate-africa-highlights-water-stress-and-hazards.

the Global South, recognize that colonial legacies continue to entrench first-world hegemony at the expense of Third World populations.[12]

The unfairness and inequit in the international financial architecture, as maintained by developed nations in the Global North, has cascaded into international environmental processes. This has thereby led to exclusionist approaches that constrain the contributions which developing nations make to global environmental governance. Unquestionably, the Bridgetown Initiative (BI), in its initial stages, seemingly brought a reformist agenda to address the unequal, unfair, and unjust global financial system. It is against this backdrop that this chapter examines the feasibility of the proposed Bridgeton Initiative as a new climate finance mechanism.

Part 1 explores available climate financing options for climate-vulnerable countries in Africa and how these intersect with the current and ongoing debt crisis. This section highlights the inadequacies of the existing financing options and how these have necessitated new financing proposals. In Part 2, I highlight the Bridgetown Initiative, the thought process behind it, and how it has unraveled thus far. In Part 3, the feasibility of the BI for Africa is explored both in terms of the associated prospects and limitations. Particularly, this section poses a critical question on whether the BI is a missed opportunity to right the wrongs of the injustices of climate financing. More importantly, Part 3 discusses the proposed solutions that would enable the BI to address the concerns and interests of the African peoples. Finding basis in the Third World Approaches to International Law (TWAIL) and similar schools of thought, Part 4 shows the extent to which environmental inequalities and injustices are embedded in colonial history. This section illuminates the need to have the Bridgetown conversation in a way that does not negate this "history" which continues to be reenacted albeit in a different way. Lastly, Part 5 concludes this chapter making the argument that effective and sustainable climate financing for Africa is only possible in the context of a transformed global financial architecture.

[12] Kelvin Mbithi, "Supervising Sovereign Debt Restructuring Through the United Nations," in James Thuo Gathii (ed.) How to Reform the Global Debt and Financial Architecture (2023) at p. 198, available at https://www.afronomicslaw.org/category/repository/new-book-how-reform-global-debt-and-financial-architecture-edited-james-t.

I Climate Finance: Options For Climate-Vulnerable Developing and Emerging Economies in Debt Distress

One of the major controversies surrounding climate finance is the issue of climate vulnerability, debt stock and sustainability. Studies have shown that there is a negative correlation between the trio with respect to optimum climate change management.[13] It is critical to note that, the most climate vulnerable nations are the ones who are highly debt distressed and are locked in a vicious cycle of debt. The excessive use of loans and the provision of non-concessional finance in the name of climate assistance is an overlooked scandal that traps climate vulnerable nations into unsustainable debt.

According to the Climate Vulnerability Index Score and IMF Debt Risk Assessment:[14]

- 9 of the countries most vulnerable to climate change are already in debt distress/crisis;
- 20 climate-vulnerable countries are at high risk of debt distress;
- 20 countries at moderate risk of debt distress (debt campaigners consider most of these to be at high risk)
- Only 4 climate-vulnerable countries are at a low risk of debt distress;
- An average of 13% of the total budget of debt distressed countries is channeled towards debt servicing thereby undermining climate financing.

As the nerve-center of effective climate change, optimum climate finance is a principal and pivotal thematic concern in the negotiating processes of the United Nations Framework Convention on Climate Change (UNFCCC). This is largely because of the existing positive correlation between climate finance and climate change adaptation, capacity building, mitigation as well as technology transfer. The lack of robust and effective climate finance is not the only apprehension of developing countries. A system to monitor and ensure that financing obligations are met is also

[13] ActionAid, The Vicious Cycle: Connections Between The Debt Crisis And Climate Crisis (April 10, 2023), available at https://actionaid.org/sites/default/files/publications/The_vicious_cycle.pdf.
[14] *Ibid.*

lacking.[15] Grounded on common, but differentiated responsibilities and fair principles, the UNFCCC demands that developed countries provide new and additional financial resources to developing countries. This is to support full or incremental cost incurred through the implementation of developing countries' climate obligations.

During the Conference of the Parties 15 (COP15) of 2009 held in Copenhagen, developed nations proposed to quantify climate change financing goals for the first time. The promise culminated into the unveiling of the USD 30 billion fast-start climate financing for 2010–2012. This was to be followed by the mobilization of USD 100 billion long term financing for developing countries from 2020 to help adapt, cope, and mitigate climate change.[16] The Copenhagen pledge of USD 100 billion has been inadequate and has not been met over the years. Nevertheless, according to the reports of UNFCCC Secretariat and World Bank (WB), global annual financial demand dealing with climate change would have reached up to USD 170–600 billion in 2010–2030.[17] This shows that promised funding by developed countries cannot meet the actual need of developing countries.[18] Thus, the global actions to respond to climate change still face a huge financing gap and this underscores the need for an effective, inclusive, and sustainable climate financing mechanism. While several climate financing mechanisms have since been established, many have proved unequal to the task of tackling debt and climate change effectively. Such mechanisms as the Global Environment Facility (GEF), the Green Climate Fund (GCF), the Adaptation Fund, and the Africa Climate Change Fund have proved to be inadequate, as shall be highlighted in the following section, to meet the needs of the climate vulnerable nations at a time of debt crisis. This has therefore necessitated the need for the current proposed reforms which include the Bridgetown Initiative, the Paris Sumit for a New Financing

[15] X. Pan, L.-C. Zhu, and W. Zhang, "The evolution of financial mechanism of the 366-climate negotiation and new challenges for China in international environmental 367 governance," China Population Resources and Environment at pp. 67–71 (2013).

[16] Z. Wen and P. Xun, "Study on the demand of climate finance for developing countries based on submitted INDC," Advances in Climate Change Research (2016).

[17] UNFCCC (United Nations Framework Convention on Climate Change), Investment and Financial Flows to Address Climate Change (2007).

[18] UNEP (United Nations Environment Programme), Bridging the Emissions Gap (2011), Nairobi.

Pact,[19] and the World Bank Evolution Roadmap.[20] Of the three, this chapter primarily and extensively focuses on the Bridgetown Initiative to provide an analysis on the viability of the initiative for Africa's sustainable climate financing.

Mechanisms

A number of mechanisms have been established and proposals put forward to address the challenge of climate finance for developing and emerging economies. These mechanisms, their inadequacies and the proposals put forward to reform them are reviewed below.

Multilateral Development Banks (MDBs)

Multilateral Development Banks (MDBs) play a critical role in providing funding alternatives for climate finance. Notable MDBs include the Asian Development Bank (ADB), African Development Bank (AfDB), Asian Infrastructure Investment Bank (AIIB), European Bank for Reconstruction and Development (EBRD), European Investment Bank (EIB), Inter-American Development Bank Group composed of the (IDB and Investments Lab), World Bank Group (WBG) and Islamic Development Bank (IDB). In 2020, MDBs set aside a total of USD 66 million for climate finance with USD 38 billion earmarked for middle-income and low-income countries. Out of the USD 66 billion USD 63.1 billion was from the MDBs own account. The USD 2.9 billion variance was generated from external resources. Approximately 79% of the total funds, which is USD 49.9 billion, was for climate mitigation and the remaining 21% was for climate change adaptation. Worth noting is the World Bank's most recent "Evolution Roadmap," which is the Bank's attempt to reaffirm its legitimacy in the wake of climate change.

Below is an extract from the 2020 Joint Report on Multilateral Development Banks' Climate Finance which shows disaggregated climate change allocations by region.

[19] "Summit for a New Global Financial Pact: Towards More Commitments to Meet the 2030 Agenda?" focus2030.org.

[20] World Bank, Evolving the World Bank Group's Mission, Operations, and Resources: A Roadmap (2022), available at SECBOS0f51975e0e809b7605d7b690ebd20.pdf.

TABLE 1 MDBs Climate Financing by Region

Region	Climate Finance USD	Climate Finance %
Europe: EU	26,366,000,000	39.92%
Sub Saharan Africa	9,061,000,000	13.72%
South Asia	8,033,000,000	12.16%
Latin America and the Caribbean	6,708,000,000	10.16%
East Asia and the Pacific	6,455,000,000	9.77%
Europe: Non-EU	3,993,000,000	6.05%
Middle East and North Africa	2,880,000,000	4.36%
Central Asia	1,420,000,000	2.15%
Multi-regional	1,138,000,000	1.72%
Total	66,054,000,000	100.00%

SOURCE: 2020 Joint Report on Multilateral Banks' Climate Finance

While the contributions of MDBs are welcome and represents a positive stride towards climate change management, it is critical to note that, the allocations are too meager to address the scale and magnitude of climate change impacts in emerging economies. The distribution of funding above reflects the politics of climate finance as there is a negative correlation between climate financing and climate change effects. Interestingly, the allocation to low-income economies and middle-income economies is not disaggregated which makes it difficult to ascertain the specific amount that both categories got. At the same time, even if one is to divide the USD 38 billion according to the two income clusters (low and middle) it will still not surpass the USD 28 billion allocated to high-income economies.

Furthermore, it is worrying that, Sub-Saharan Africa was allocated USD 9 billion yet it is one of the regions with the most countries in the Climate Risk Index. Sub-Saharan Africa has 48 countries and if one were to share equally the funding earmarked for Sub-Sharan Africa among the member states, each country will get approximately USD 18 million. This amount is inadequate in bringing any meaning progress with respect to climate change. Comparing the allocated amount with the cost of Cyclone Idai of 2019 and Cyclone Freddy of 2023 (USD 481 million) which affected some of the countries in Sub-Saharan Africa, it is clear that, low-income

countries are relegated in climate financing. It is also worth noting that the financial allocations by the MDBs are given to countries as non-concessional loans. Thus, they have high interest rates which worsen the debt crisis.

The Global Environment Facility (GEF)

Established on the eve of the 1992 Rio Earth Summit, this facility is mandated to provide adequate and sustainable financial resources to eligible parties to assist in their implementation of the Stockholm Convention. Funds from the GEF are given to developing countries that aim to implement activities in line with international environmental treaties.[21] The Facility receives funds from various donors across the world. The Facility also operates the Least Developed Countries Fund (LDCF) and the Special Climate Change Fund.

The Green Climate Fund (GCF)

The GCF was established in 2010, during the 16th session of the Conference of Parties. It was however, signed in 2011 as an operating entity of the UNFCCC financial mechanism. The fund was established to support the efforts of developing economies in addressing climate change.[22] The facility provides support through various financing mechanisms such as loans, equity, guarantees and grants. However, the interest rates of the loans are unsustainable to developing nations who are already in debt-distress. Another shortcoming of the GCF is that the majority of developing nations do not have any financial capital to use as equity guarantees.[23] This lures nations into further borrowing loans with high interest.

[21]United Nations Environment Program, Global Environment Facility, available at https://www.unep.org/about-un-environment/funding-and-partnerships/global-environment-facility.

[22] Green Climate Fund, Eleventh report of the Green Climate Fund to the Conference of the Parties to the United Nations Framework Convention on Climate Change (2022), available at https://unfccc.int
/sites/default/files/resource/GCF_Eleventh%20report%20of%20the%20GCF%20to%20the%20COP%20of%20the%20UNFCCC.pdf.

[23] Louise Brown, "Why the Green Climate Fund Should Give Developing Countries Greater Direct Access to Finance," (2021), available at https://www.wri.org/insights/why-green-climate-fund-should-give-developing-countries-greater-direct-access-finance.

The Adaptation Fund

The Adaptation Fund was established under the Kyoto Protocol in 2001. It finances concrete adaptation projects and programs in developing country parties with the aim of reducing the adverse effects of climate change. The Fund is financed by various stakeholders including proceeds from Clean Development Mechanism (CDM)[24] project activities, voluntary pledges of individuals, governments, and nongovernment organizations.

Africa Climate Change Fund

This is a bilateral thematic trust fund established to support African building towards resilience against climate change. The fund, which is managed by the African Development Bank (AfDB), was designed to cover a broad range of activities related to climate resilient and low carbon growth. The fund is available to African states, NGOs, research institutions and regional organizations provided applicants meet the eligibility criteria. Nevertheless, the funding pool is minuscule given the magnitude of climate change impacts in African States. A good example is AfDB's USD 2 billion allocation for climate financing in 2020.[25]

Proposals

The Bridgetown Initiative (BI)

The Bridgetown Initiative has drawn international attention due to its bold confrontation with the existing global financial order. Proposed by Barbados Prime Minister Mia Mottley, in both capacities as Finance Minister and Prime Minister, the BI seeks to break the deadlock over climate finance.

One of the BI proposals is the establishment of a Global Climate Mitigation Trust backed by USD 500 billion in SDRs for climate development. The SDRs are expected to drive private investment in transition projects in Lower and Middle-Income

[24] Clean Development Mechanism, available at https://cdm.unfccc.int/index.html.

[25] United Nations Climate Change, *What is the United Nations Framework Convention on Climate Change?,* https://unfccc.int/process-and-meetings/what-is-the-united-nations-framework-convention-on-climate-change.

Countries (LMICs). The President of Barbados enunciated the need to reform the global climate finance architecture at COP27 (Egypt, November of 2022), thereby starting a major policy discussion on the feasibility of the BI in addressing the debt and climate crises. The Bridgetown agenda particularly calls for increasing Multilateral Development Bank's financing to middle-income countries. Whilst the BI is designed with the circumstances of SIDS in mind, several African countries' circumstances mimic those of SIDS as they are concurrently at risk of climate impacts and are facing external debt crisis. It is to this extent that the Bridgetown Initiative may be regarded as an inspirational model to African states.

The World Bank Evolution Roadmap

The Evolution Roadmap paper[26] outlines the strategy the World Bank Group will employ to clarify and broaden its vision and mission to achieve its "Twin Goals" (ending extreme poverty and promoting shared prosperity). It also emphasizes the importance of sustainability and resilience to reflect more clearly how the bank's mission includes global public goods (GPGs), such as climate change, pandemic preparedness, prevention, and response. The Roadmap defines "climate" as a Public Good but is not specific about the "climate action" that ought to be taken to protect this public good. Although the World Bank's Evolution Roadmap is still in its infancy, the proposed strategy has been questioned in as far as the World Bank's credibility is concerned. Considering that the Evolution Roadmap leverages on private sector financing, the privatization of public services is reminiscent of the Structural Adjustment Programs (SAPs) introduced by the World Bank and the International Monetary Fund in several African countries including Zimbabwe, Zambia, Angola, Sudan, and Nigeria. SAPs had many negative effects (most of which are still being experienced today) and "backfired," leaving Africa "crippled" by debts.[27]

[26] World Bank, Evolving the World Bank Group's Mission, Operations, and Resources: A Roadmap (2022), available at SECBOS0f51975e0e809b7605d7b690ebd20.pdf (worldbank.org).

[27] A. Thomson, An Introduction to African Politics, 3rd Edition (New York: Taylor & Francis, 2010).

The Paris Summit for a New Financing Pact

France's President Macron has identified an opportunity to reshape the architecture of development and climate finance for a stronger and more efficient international financial system. In June 2023, France hosted an international conference to initiate a "New Global Financial Pact" (Paris Summit). Aligned with the Bridgetown Initiative, the Pact has four main aims: restoring fiscal space to countries facing short-term difficulties, fostering private sector development in low-income countries, encouraging investment in "green" infrastructure for the energy transition in emerging and developing countries, and mobilizing innovative financing for countries vulnerable to climate change.[28] By extension, the Paris Summit can be referred to as "Bridgetown 2.0," as it has been built on Bridgetown 1.0 in conjunction with PM Mottley and Professor Avinash Persaud.

2 The Bridgetown Initiative: The Thinking Behind vs the "Action" Proposed

The Bridgetown Initiative, which was conceptualized by Barbados Prime Minister Mia Mottley and her climate finance envoy Professor Avinash Persaud, provides a clear and persuasive case for reforming the global financial infrastructure to meet the 21st century ecological challenges.[29] The Bridgetown Initiative is a proposal to completely restructure development funding, specifically how affluent countries assist poor countries in dealing with and adapting to climate change. The Bridgetown Initiative was developed as a follow-up to PM Mottley's viral speech at the UN COP26 climate change negotiations, in which she challenged the approach of the IFIs to climate finance, as well as the broader inadequacy of developed countries to meet their obligations of providing and mobilizing climate finance to support climate action by developing countries. PM Mottley put forward a bold strategy based on revamping the mandate and operations of the IFIs, drawing on the moral authority that SIDS

[28] "The Summit for a 'New Global Financial Pact,'" Climate Chance, available at climate-chance.org.

[29] Mia Mottley, "Barbados PM: Climate Change Requires a New Financial Architecture for Us All," Financial Times, Climate Change, 14 June 2022, available at https://www.ft.com/content/36fa2acc-9178-4f81-81a5-a1cc0a726989.

have earned in the UN climate regime as frontline governments facing the existential threat of climate change. The Bridgetown Initiative has received a lot of attention because of its political boldness in taking on such a daring endeavor.[30]

3.1 Bridgetown Initiative 1

Barbados' Bridgetown Initiative outlines three critical steps to change how development finance works. The first step is to alter some of the terms governing how funding is loaned and returned. The goal is to keep developing countries from contracting debt as a result of successive calamities such as floods, droughts, and storms. Second, Barbados has asked development banks to lend an additional USD 1 trillion to developing countries for climate resilience.[31] According to the Barbados Government, this should include subsidized lending aimed at "building climate resilience in climate-vulnerable countries."[32] The third phase in the Bridgetown Initiative is to create a new mechanism backed by the business sector to support climate mitigation and rehabilitation following a disaster. Barbados anticipates that the Global Climate Mitigation Trust will be able to leverage USD 3–4 trillion in private finance.[33]

The popularity of the BI since its maiden presentation in November 2022 has scaled global awareness of climate change thereby amplifying the unified call for mitigation and resilience building. This awareness is likely to benefit Africa as global action plans might be scaled for all vulnerable countries inclusive of Africa. In that realm, BI allows for knowledge sharing amongst SIDS and other climate-affected countries. African countries thus can capitalize on the knowledge-sharing and lessons from SIDS and adapt same to their circumstances. This requires African states

[30] Chloé Farand, "Mia Mottley Builds Global Coalition to Make Financial System Fit for Climate Action," Climate Home News (23 September 2022), available at https://www.climatechangenews.com/2022/09/23mia-mottley-builds-global-coalition-to-make-financial-system-fit-for-climate-action/.

[31] Fact-Sheet, The Bridgetown Initiative 2.0, Urgent and Decisive Action to Reform the International Financial Architecture (April 2023).

[32]See Barbados Ministry of Foreign Affairs and Foreign Trade, The 2022 Bridgetown Agenda for the Reform of the Global Financial Architecture: Urgent and Decisive Action Required for an Unprecedented Combination of Crises, available at https://www.foreign.gov.bb/the-2022-barbados-agenda/3.

[33] Bretton Woods Project, Bridgetown Initiative calls for new Global Climate Mitigation Trust financed via Special Drawing Rights (2022), available at brettonwoodsproject.org/2022/12/bridgetown-initiative-calls-for-new-global-climate-mitigation-trust-financed-via-sdrs/.

to while engaging with the BI, create their own initiative with a focus on trade and investment regulations. In addition, since the BI seeks to provide climate financing for SIDS, Africa can benefit from the same resources if their vulnerability to climate change can be ascertained. Given the quantum of resources likely to be availed by BI, climate resilience is likely to be enhanced globally same as the fast tracking of the transition to clean energy sources.

Given the escalating debt situation in Africa and the absence of an effective multilateral debt resolution mechanism, more non-concessional financing is not the solution. The calls for MDBs to play a greater role in providing climate finance, therefore, raises some concerns given that a large majority of the finance MDBs provide is loan-based; often coming with attached conditionalities and lacking in transparency.[34] Further, MDBs have largely been promoting market-based solutions at the expense of the public sector and public services.[35] The involvement of MDBs in delivering climate finance must, therefore, not permit Global North governments to avoid their obligations as climate finance providers.[36] It is imperative to highlight that climate finance cannot be packaged as part of ODA as proposed by the Bridgetown Initiative. This could result in significant reductions in ODA for other critical sectors such as education, health, and social protection. It is also premised on leveraging up to USD 5 trillion of private finance, thus reflecting how the BI amplifies private sector lending. This is highly problematic as private sector financing advances profit maximization at the expense of development and hinders loan transparency and accountability. In light of this private finance agenda, there is need for African governments to insist on stronger connection with risk insurance and multilateral and bilateral debt restructuring initiatives.

[34] Chris Humphrey, "The case for an external review of multilateral development bank capital adequacy" (2023), available at https://odi.org/en/insights/the-case-for-an-external-review-of-multilateral-development-bank-capital-adequacy/.

[35] The Rockefeller Foundation, "Reimagining the Role of Multilateral Development Banks" (2021), available at https://www.rockefellerfoundation.org/wp-content/uploads/2021/07/Reimagining-the-Role-of-Multilateral-Development-Banks-Full-Report-July-2021.pdf.

[36] United Nations Framework Convention on Climate Change (UNFCCC) (2016), available at https://unfccc.int/sites/default/files/resource/parisagreement_publication.pdf.

Be that as it may, the Bridgetown Initiative has evolved with time, almost moving away from its initial scope. Initially, the Initiative was developed with the primary goal of restructuring the global financial infrastructure to solve the specific concerns of emergency liquidity, expanding multilateral lending to governments, and mobilizing private sector finance.[37] However, what originally began as a daring three-point proposal has evolved into a ten-point toned-down deep privatization strategy for climate funding.[38] It is prudent to note that there have been attempts at swallowing up Barbados agenda by the World Banks Evolution Roadmap and French President Macron's Paris Summit for a New Financing Pact.[39] Regardless, the Bridgetown Initiative has remained relevant as the single proposal framed with the Global South in mind, particularly small island developing state (SIDS).

In seeking to reform the global development finance architecture especially in relation to climate finance, the BI has been likened to the Marshal Plan (1948)—a United States USD 13 billion aid initiative meant to finance Europe's recovery post World War II. Conceptually, the BI is the contemporary Marshal Plan seeking to reform the global financial system so as to meet both climate and developmental needs of SIDS as detailed in the five proposals hereunder.

i. Raise $5 trillion from private sector savings for climate mitigation.

The current Official Development Assistance (ODA) and Multilateral Development Bank (MDB) loans are inadequate to finance the transition from high-carbon to low-carbon economies in developing countries. Ideally, a Climate Mitigation Trust capable of borrowing from international capital markets whilst backed by USD 500 billion Special Drawing Rights (SDRs) and donor guarantees can raise USD 5 trillion for investing in climate-related projects. The loans are owned by the Trust, not

[37] GoB (Government of Barbados), "The 2022 Bridgetown Initiative" (2022), available at https://www.foreign.gov.bb/the-2022-barbados-agenda/.

[38] The Guardian, "Macron and world leaders call on private finance to help reduce global poverty," (2022), available at https://www.theguardian.com/world/2023/jun/21/macron-and-world-leaders-call-on-private-finance-to-help-reduce-global-poverty.

[39] Eurodad, "Reform or Regress? From the World Bank's Evolution Roadmap to the Bridgetown Agenda" (2022), available at https://www.youtube.com/watch?v=2drLcHyyg9E.

governments, and the projects are jointly owned by governments, communities, tech firms whilst ensuring environmental, social and governance (ESG) compliance.

ii. Widening the access to concessional climate financing for vulnerable countries

Private climate funds do not produce earnings/returns that private investors seek. Therefore, BI proposes a limited widening of the eligibility for concessional lending for climate-vulnerable countries investing in resilience.

iii. Expansion of Multilateral Development Banks (MDBs)' concessional lending capacity

This is expected to raise USD 1 trillion to finance wide attainment of the sustainable development goals (SDGs) and climate resilience. To expand lending legroom, MDBs must increase their risk appetite and include donor guarantees and SDRs.

iv. Funding loss and damages

As most debt is used for recovery from climate-related disasters, the BI proposes recovery grants to prevent the accumulation of overwhelming debt for vulnerable economies. Instruments should be available for adaptation and mitigation, and post-disaster reconstruction should be prioritized. A fund financed through international carbon border tax or USD 200 billion per year from fossil fuel production can provide pay-out once disaster strikes.

v. Making financial systems more shock resilient

BI proposes that debts should be suspended for two years (with a two-year loan maturity extension) to allow debtor countries to recover. Suspended loans are paid back at the same interest rate. This approach could have created USD 1 trillion of liquidity during COVID-19.

3.2. Bridgetown Initiative 2

The Bridgetown Initiative has evolved to include a much broader agenda to reshape the architecture of development and climate finance for a stronger and more efficient international financial system. Bridgetown 2.0 has been designed for the mobilization of concessional and public finance (through greater leverage and innovative sources),

merged with a clearer vision on how best it should be put to use, at the service of which objectives and according to which timeline. The need to reaffirm and enhance the role of private finance has been identified as indispensable to the scaling up. This necessitates effective identification of sources of risk and measures to mitigate these risks. Ultimately, the goal is to "build consensus for a more inclusive financial system" and improve the information architecture through which "green" investments and financial flows are defined and earmarked in order to achieve a more efficient allocation of capital, especially to the needs of developing countries.

In order to accomplish the SDGs, the Bridgetown Initiative 2.0 calls for an integrated development and resilience strategy that includes measures to address debt sustainability and liquidity, significantly scale up development financing, mobilise private capital, and create a matched trading system. Additionally, it demands just and inclusive global economic governance. The Bridgetown Initiative can speed up progress towards the SDGs and the Paris Agreement when combined with the SDG Stimulus. The discussions focused on six major action areas:

- Providing immediate liquidity support: Support for liquidity includes rerouting at least USD 100 billion in unused SDRs via the IMF and international development banks.
- Restore debt sustainability: This entails supporting countries in restructuring debt with long-term low interest rates.
- Mobilize private sector investment to over USD 1.5 trillion per year for green and just transformations.
- Increase official sector development lending for SDGs to USD 500 billion per year.
- Ensure that the multilateral trading system supports the green and just transformation.
- Reform the governance and operations of International Financial Institutions (IFIs).

One big win that has been recorded is the introduction of the pandemic/hurricane clauses. Also termed "natural disaster clauses," these clauses would pause interest payments on a debt if an eligible climate event occurred. While the Paris Summit has

been championed as a uniting factor for global continued effort to make financial system fairer and more effective, the reality is that it fell far short of the global essential policies that are required to address the global debt crisis, the climate emergency, poverty, and inequality. Bridgetown 2.0 illustrates how the Global North has subverted Mia Mottley's initial Bridgetown goal for the Global South. The unsurprising trend of Global North leaders taking the lead in discussing and addressing problems in the Global South is clearly demonstrated by Bridgetown. It also illustrates the degree to which current international norms and institutions still reflect long-standing forms of discrimination, exclusion, and inequity.

While the BI was designed to meet the peculiar circumstances of the SIDs, it is important to analyze the relevance of the BI to Africa, especially those with high climate vulnerability index score and concurrently are either in debt distress or are at high risk of falling into debt distress. The Bridgetown Initiative currently does not inspire hope for the continent's precarious debt situation and pays little attention to Africa's concerns, particularly those of countries that are climate-vulnerable and already in debt distress. To this end, the following section broadly examines the feasibility of the Bridgetown Initiative in the African context.

3 Feasibility of the Bridgetown Initiative for Africa: A (Missed) Chance at Weathering the Storm?

While the discussion hereunder acknowledges that Africa is increasingly at risk of climate vulnerability and debt crisis as explained in Part 2, it further recognizes the latitude available to African governments to create an African alternative to the Bridgetown Initiative that is homegrown and exudes an African identity.

i. Increasing climate funding opportunities

The BI is designed to leverage USD 500 billion SDRs and donor guarantees to create a climate war chest of USD 5 trillion. This quantum of resources surpasses the USD 160 billion annual climate adaptation costs which are projected to increase to USD 340 billion by 2030. The USD 5 trillion also exceeds the USD 580 billion (by 2030) annual climate finance needs for residual losses and damages (UNEP, 2022). More specifically, Africa will require USD 200 billion per year until 2025 and USD 400 billion by 2030 to finance energy transition and related infrastructure,

finance coping and building climate resilience and promoting restoration of natural biodiversity (Bhattacharya, 2022). The USD 5 trillion disbursed through a trust fund will most likely meet the climate financing needs for Africa even if residual distribution methods are adopted.

On another note, the setting up of a climate trust fund eases the debt burden of African governments as the debt will be in the books of the trust fund as compared to traditional borrowing whereby governments accrue incremental debt leading to more debt. Also, the joint ownership of projects financed by the climate trust reduces default risk and increases the attractiveness of such investments. More importantly, that projects are ESG compliant increases the possibility of recipient African countries to attain SDGs and climate resilience whilst maintaining the least debt exposure. This set up reduces the risk of debt distress of African countries.

Whilst the proposal to raise more climate financing options is critical given limited climate financing in Africa, the BI does not speak to the structure of the trust fund mandated to underwrite USD 5 trillion of private capital. This is an issue of concern in the African context. The introduction of a trust fund might imply that current multilateral institutions such as the World Bank and the IMF lose their influence in controlling the flow of international finance. The success of the trust fund might require concurrent reform of the World Bank and the IMF—an on-going debate in the international development arena. More importantly, that the trust is supposed to leverage USD 500 billion of IMF's SDRs implies that the IMF might require a controlling stake in the trust. The participation of donors and the private sector in the proposed trust fund introduces an assortment of variant interests that must be resolved to instill confidence.

The Paris Summit Roadmap, outlining the Bridgetown 2, acknowledges the need for significant financial resources to support climate action. However, it relies excessively on private investments and gives multilateral development banks an outsized role. As a result, it fails to recognize the essential function public finance must play in transforming policy, promoting research and development, and funding green infrastructure in order to raise trillions of dollars. Private investments frequently overlook adaptation initiatives in underdeveloped nations and are insufficient to deal with loss and damage brought on by climate change. Moreover, the unavailability of effective concessional loans and a robust inclusive climatic financing framework has led to the concept of *"the pursuit of dollars by any means."* The *"pursuit of dollars*

by any means" syndrome leads to more extraction of fossil fuels, more mining, more chemical-based industrial agriculture, more deforestation, and more environmental destruction that wreaks untold harm on human rights. There are clear alternatives, especially based on tax, but it is difficult to justify tax reforms if all the revenue that is raised is used to pay back crippling external debts. It is time for debt cancellation to become a central demand of climate justice advocates and for the establishment of a new global climate financing architecture that is inclusive, progressive, and just. In order to help vulnerable nations cope with the growing effects of climate change and increase their resilience, wealthier nations must promptly direct major public funding in their direction.

ii. Widening of access to concessional climate finance

The BI outrightly makes it almost a right for climate-vulnerable economies to have a close-guarded access to concessional climate funds. It is, however, importnt to explicitly define the modalities for widening access to concessional funds. Widening of access to concessional climate finance requires that conditionalities be either reduced or scrapped completely for climate change vulnerable countries. The widening of access might also require to be enforced concurrently with the proposal to raise concessional climate funding as widened access needs to be supported by resources.

If access to concessional financing is ascertained, the move is likely to ease Africa's debt distress—a development likely to edify the progression towards fulfilling SDGs. However, the success of concessional financing in reducing Africa's debt burden is a function of the terms of the funds. Relaxed terms on concessional climate finance for Africa increases investment in resilience building. The provision of concessional financing especially to qualified African countries alignss with civil society's call for the provision of climate finance whilst not increasing the debt stock of African countries.

Access to concessional climate finance especially for Africa also limits the huge interests on debt as most African countries borrow at high interests owing to perceived country risks. Concessional climate finance also does away with surcharges that are normally charged on most IMF debts thereby lessening the potential escalation of debt obligations. This frees resources/liquidity that can be used to further invest in coping and mitigation mechanisms as well as financing SDGs. Against these

positives, the availability of such funds at the magnitudes suggested by the BI is a likely limitation of the proposal.

iii. MDBs capacity to scale concessional climate finance.

The BI also hinges on the ability of MDBs to increase concessional climate finance to USD 1 trillion. This is welcome news to Africa as MDBs jointly provided USD 19 billion of climate change adaptation finance in 2021—an amount too meagre to meet the escalating climate finance needs. The USD 19 billion brings MDBs' total climate financing to low-income and middle-income economies to USD 50.666 billion. Of the total amount, USD 47.24 billion originated from the MDBs own resources whilst USD 3.426 billion was externally sourced. The total is also split into 65% mitigation finance and 35% adaptation finance (AfDB, 2022).[40]

To be more specific, in 2020 Africa received only 12% of the USD 200 billion annual climate finance required until 2025.[41] This comes after rich countries' failure to honor their USD 100 billion annual climate finance pledge to developing economies (Savage, 2022).[42] Ideally, the BI's call for expanding concessional climate finance to the tune of USD 1 trillion is likely to increase resources directed to Africa. Also, the fact that the climate finance is expected to be provided at concessional rates further reduces Africa's bulging debt burden especially where terms are favorable. However, the only missing link is how MBDs are to expand donor guarantees and scale lending to USD 1 trillion. Whilst it is not clear whether the USD 3.426 billion externally sourced MDB funding emanated from donors or not, magnifying concessional climate finance to USD 1 trillion outside MDBs' own resources might not be easy

[40] Joint Report on Multilateral Development Banks' Climate Finance: Climate finance to low-and middle-income countries hits $51 billion in 2021 (2022), available at https://www.afdb.org/en/news-and-events/press-releases/joint-report-multilateral-development-banks-climate-finance-climate-finance-low-and-middle-income-countries-hits-51-billion-2021-55539.

[41]Bank (AfDB), the Asian Development Bank (ADB), the Asian Infrastructure Investment Bank (AIIB), the European Bank for Reconstruction and Development (EBRD), the European Investment Bank (EIB), the Inter-American Development Bank Group (IDBG), the Islamic Development Bank (IsDB) and the World Bank Group (WBG).

[42] R. Savage, "Africa getting just12% of financing needed to adapt to climate change – report," Reuters (8 August, 2022), available at https://www.reuters.com/world/africa/africa-getting-just-12-financing-needed-adapt-climate-change-report-2022-08-11/.

unless SDR holders are enticed to use them as guarantees for climate finance. Essentially, in the African context, the BI would need to be framed in such a way that it provides for a win-win architecture if more funds are to be raised from the private sector.

iv. Feasibility of creating recovery grants

As noted earlier in this write up, countries borrow to finance recovery from climate crisis—a move most likely to increase the debt stock of climate vulnerable economies. By proposing to raise funds through international carbon border tax or from fossil production to the tune of USD 200 billion per year, the BI essentially proposes a cushion for African countries that are facing climatic catastrophes. Payments to be made after climate-related disasters will assist the recovery and rebuilding post-crisis. Being a non-debt grant, rebuilding is achieved at zero cost, a scenario most welcome to debt-distressed African economies.

However, the operationalization of the international carbon border tax requires that producers pay the full social cost of carbon pollution. Unfortunately, this tax if not uniformly applied globally might be perceived as an unfair trading practice meant to protect local industries from foreign producers. The carbon tax and funds from fossil production might however be a disadvantage to African countries as their products are mostly fossil based. This might reduce the revenue Africa is likely to get from the trade in oil, gas, coal, and other carbon-emitting products. This is even more crucial as Africa's economy is heavily based on the extractive sector.

v. The altering of traditional loan terms during a climate crisis- the Pandemic Clause

As climate change intensifies, most of African countries find themselves in a position where they must keep servicing foreign debt as much as they respond to major climate-related disasters. This has the effect of diverting resources meant to recover and rebuild to debt servicing. This uncanny practice is addressed by the BI by seeking to stop the servicing of debts for 2 years to allow the loan recipient country to recover and rebuild capacity to service debt. After the deferment period, the interest rate does not increase, and neither are any penalties levied. This is a major win for many African countries that constitute the majority of highly climate vulnerable economies. The restructuring of loan payment terms addresses the unfair power

relations between the lending countries (rich) and the borrowers (poor) who are normally charged high interest after factoring in climate vulnerability. This BI proposal considers a climate disaster to be one that affects both the lender and the borrower thus the borrower cannot be penalized for falling prey to a natural disaster.

It is not clear whether the BI will consider restructuring the terms of debt already incurred or it will only consider debts contracted post commencement of the Initiative. This is particularly important to African governments as it puts Africa at risk of losing out if the BI excludes aged debts. Impliedly, the BI would not relieve the current debt burden that Africa bears. Other reforms/arrangement such as debt forgiveness will therefore be required.

Further, a new commitment to offer "pause clauses" on debt service for countries facing natural disasters was made. This entails the inclusion of natural disaster provisions in sovereign bond agreements, which would automatically halt debt repayments in the event of significant disasters like hurricanes or pandemics. Nona Tamale's chapter in this book considers the feasibility of natural disaster clauses in Africa.[43] Barbados and Grenada have previously adopted natural disaster clauses in their bonds and the International Capital Markets Association has created a model clause.

vi. The political will required for the success of Bridgetown 2.0 as reflected by the Paris Summit.

Looking more inwardly, Africa suffers from limited institutional capacity to implement initiatives delineated in the BI. Regrettably, African economies lack the resources (financial and technical) to implement the BI. This might limit the possibility of capitalizing on the initiative. Also, the BI has the potential to operate well where financial markets are fully developed. Unfortunately, these markets barely exist in Africa owing to its backward infrastructure and structural limitations. On the other hand, the limited understanding of climate change and importance of adaptation and mitigation action in Africa might affect the justification for resource mobilization to support BI initiatives.

The proposals put forth at the Paris Summit are undeniably challenging from a political perspective. While President Macron and Prime Minister Mia Mottley

[43] Nona Tamle, "The Feasibility of Greening Debt Restructuring in Africa," Chapter 2.

have pushed for reform of the global financial system in an effort to support climate change and promote biodiversity without endangering development and draw attention to the injustices and inequities of the current system, the Summit may have been more show than substance given the lack of political support for the same from other world leaders. US President Joe Biden and Indian Prime Minister Narendra Modi missed the summit as they attended a different summit in Washington D.C., to craft a new North–South deal tagged the "New Washington Consensus." Of the G7 leaders, only German Chancellor Olaf Scholz and Macron himself were in attendance. Even the most modest initiatives, which would have little to no financial impact on wealthy nations, might be encountering tacit opposition from powerful world leaders.

Without doubt, the ambition displayed by the Paris Summit needs to be yoked with the question of political viability and effectiveness. Objectively, the summit ought to be judged on its outcome. It is important to highlight that concrete commitments failed to materialize. One "major" outcome which was floated at the Paris summit is the confirmation of the rechanneling of USD 100 billion worth of Special Drawing Rights, which had previously been promised by wealthy countries to poorer countries. However, the USD 100 billion includes a promise of USD 21 billion that cannot be delivered due to blockages in US Congress. With no viable legislative route to achieving this approval, the "real" amount (at the time of writing) stood at USD 81.14 billion.[44]

Be that as it may, the roadmap of commitments, which outlines the events to take place after the Summit and when, is one noteworthy outcome. Notably, the roadmap is an improvement from vague communique language that gives leaders room to back out of their commitments. However, it remains to be seen if the leaders will exhibit the required political will and discipline when it comes to following through on their vows.

4 A Third World Approach to the International Regime on Climate Change

Having discussed the Bridgetown Initiative extensively, with a focus on its promises for Africa, this section further explores the theoretical underpinnings that require recognition as conversations on the entry point for Africa emerge. Africa is one of

[44] Kerezhi Sabani, "Special Drawing Rights 2023," available at https://data.one.org/data-dives/sdr/.

the continents most affected by the effects of climate change, but is one of the least emitters of GHGs. A theoretical understanding of the concepts and theories underpinning the current international regime on climate change and how it intersects with the global debt and financial architecture is therefore imperative. Drawing insights particularly from the Third World Approaches to International Law (TWAIL) as the framework to stencil this argument, it becomes necessary to confront the Eurocentric foundations of the Bridgetown Initiative and argue for Africa's rightful place in the development and critique of climate financing, climate governance processes, and the potential reformation of the global finance architecture.

As defined by James Gathii, TWAIL, is an opposing and transformative set of commitments and ideas for rethinking the international legal order. It dismisses Eurocentric accounts of international law and processes that ignore the history of marginalized populations within it and its current repercussions, including climate change, poverty, and other forms of violence.[45] The application of a TWAIL lens to the current international regime on climate change and global debt architecture therefore exposes the entrenched systemic impediments that bolster the existing imbalances between the Global North and the Global South. For Carmen G. Gonzalez, despite Southern countries having demanded that the North take responsibility for its enormous contribution to major environmental problems (such as climate change), the North has only reluctantly accepted the principle of common but differentiated responsibility on the basis of its superior technical and financial resources while disavowing responsibility on the basis of its historical contributions to these crises.[46] Gonzalez explores how international environmental law, policies and processes can bridge the North-South divide, and comes to the conclusion that there is a great need for a fundamental reorientation of international environmental law in order to achieve this.[47] Such reinterpretation of international environmental law

[45] TJ. Gathii, "The Agenda of Third World Approaches to International Law (TWAIL)," In J. Dunoff & M. Pollack (Eds.), *International Legal Theory: Foundations and Frontiers,* (Cambridge: Cambridge University Press, 2022). 153–173, doi:10.1017/9781108551878.007.

[46] Carmen G. Gonzalez, "Environmental Justice and International Environmental Law", in Routledge Handbook of International Environmental Law, 77, 91–92.

[47] Carmen G. Gonzalez, "Bridging the North-South Divide: International Environmental Law in the Anthropocene", 32 Pace Envtl. L. Rev. 407 (2015), available at: http://digitalcommons.pace.edu/pelr/vol32/iss2/3.

would require the respect and promotion of the principles of equality and fairness, accompanied by genuine desire for environmental justice as a prerequisite for the continuation of humanity on this planet.

As argued by Sarah Riley Case, it is imperative to analyse these exploitative global relations in the context of slavery and colonialism.[48] The colonial beginning of this era, marked by human dominance and interference with processes vital to the planet's ability to self-regulate,[49] are essential as it is the very foundational understanding which necessitates the discussion around the need for reparations.[50] The North's industrial development was powered by its control over a significant portion of the world's resources from the colonial era to the present, which also allowed it to maintain levels of consumption well over the limits of its own natural resource base.[51] The Third World's people, according to historian Clive Ponting, "paid much of the price of that achievement in the form of exploitation, poverty, and human suffering."[52] Case therefore argues for reparatory justice under international law especially in dealing with climate change. Caribbean countries are an important source of inspiration for the reparation movement. Particularly, the Caribbean is identified as one example where race and ecology converge, with "race" representing a subjugated, oppressed and exploited people from the Global South. Perhaps, what makes the Caribbean case stand out more in this particular discussion around climate and debt is its history of climate and debt which dates back to the indemnity France imposed on Haiti to make up for "expropriated" property belonging to slaveowners and colonists after the Haitian Revolution.[53] After gaining independence, Caribbean countries were further indebted

[48] Sarah Riley Case, "Looking to the Horizon: The Meanings of Reparations for Unbearable Crises" (March 27, 2023), Symposium on Race, Racism and International Law, (2023) 117 AJIL Unbound 49, available at SSRN: https://ssrn.com/abstract=4406004.

[49] Carmen G. Gonzalez, "Global Justice in Anthropocene," Environmental Law and Governance for the Anthropocene, ed.Louis Kotzé, Hart Publishing, 2017, available at http://ssrn.com/abstract=1431985.

[50] Sarah Riley Case, "Looking to the Horizon: The Meanings of Reparations for Unbearable Crises" (March 27, 2023), Symposium on Race, Racism and International Law, (2023) 117 AJIL Unbound 49, available at SSRN: https://ssrn.com/abstract=4406004.

[51] Clive Ponting, A Green History of the World (Sinclair-Stevenson 1991) (n20) 223.

[52] *Ibid.*

[53] James Gathii, *"Sovereign Debt as a Mode of Colonial Governance: Past, Present and Future Possibilities,"* in JUST MONEY (2022).

to First World financial institutions due to the crippling storms and increasing waves intensified by climate change, which only made the debt situation in the region worse. The international law on climate change, which allows high emitters in the Global North and the Global South to delay action through voluntary standards, has been particularly harmful to the Caribbean.[54] In 2022, a Third World coalition including the Caribbean succeeded in establishing a fund for "loss and damage." At present, the Caribbean Community is, justifiably, advancing reparations claims for racial and ecological injustices.[55] It can be argued that African nations are not entirely different to Caribbean countries when it comes to these racial and ecological injustices. Africa would therefore be justified in claiming reparations for the same, especially in the face of "racial capitalism" that is presenting itself in the form of "private finance," today.

In addition to the discussion around the payment of reparations, one other "hot potato" of an issue has been debt cancellation, particularly cancellation of odious debt. Such discussion has gained momentum over the years, with many a scholar debating over whether such claim holds any legality or qualifies merely as a moral argument.[56] In the context of the Bridgetown Initiative, and drawing from the highlighted fact above that Africa contributes less GHG emission, one may make a compelling case for debt cancellation for the most climate vulnerable countries that are also Least Developed Countries (LDCs). In a 2023 publication, ActionAid International revealed that 93% of countries facing the climate disasters are drowning in debt, and boldly, and validly, called for the most climate vulnerable countries to have their debts cancelled.[57] Arguments for ecological debt ought not to be dismissed in totality as it unlocks the justice in "climate justice" being sought today.

In line with the ecological debt argument, it is the Global North which largely owes the Global South, but this debt is considered controversial and too sensitive a

[54] Paris Agreement to the UN Framework Convention on Climate Change, art. 4, Dec. 12, 2015, UNTS 3156.

[55] Sir Hilary Beckles, "The Case for Reparations in the Caribbean," (2023), available at https://www.thedial.world/issue-3/caribbean-reparations-payment-slavery-barbados.

[56] Robert Howse," The Concept of Odious Debt In Public International Law", UNCTAD, Discussion Paper No. 185, July 2007.

[57] ActionAid, The Vicious Cycle: Connections Between The Debt Crisis And Climate Crisis (April 10, 2023), available at https://actionaid.org/sites/default/files/publications/The_vicious_cycle.pdf.

discussion to have. It is time. Nciko wa Nciko admits that while there is no agreed definition of what is meant by the "ecological debt," the concept exists and should be recognized in legal terms.[58] However, the preferred action of choice, as reflected by the current proposed reforms, is to add on more debt for the Global South—at any and all cost. It is the application of the TWAIL lens that will allow Africa to reimagine her own climate financing agenda that addresses her legitimate concerns and interests.

5 Conclusion

This chapter has focused on and examined the extent to which the BI fends off sovereign risk and promotes fiscal sustainability for African countries faced with the conundrum of debt and climate crises. The Bridgetown Initiative initially sets a bold policy trajectory meant to reform the international climate finance architecture bent on scaling access to concessional climate finance for SIDS. At present, although the proposals set out by the BI are seemingly ambitious with respect to the quantum of resources that ought to be raised, there is need to reform the terms of climate finance to achieve climate resilience and sustainable development. While the BI was structured with the SIDS in mind, the same framework can benefit Africa by availing more concessional climate finance to climate vulnerable countries. Reasonable claims of reparations and debt cancellation for the Global South, especially Least Developed Countries (LDCs), have also been advanced. Indeed, there is room for Africa to reclaim her intellectual leadership by articulating an African version of the BI, to include Afrocentric concerns.

The proposition that debt servicing ought to be suspended once a country faces a climate crisis is important to Africa. The suspension of the interest payment on debt unlocks liquidity that can be used to rebuild and recover from a climate disaster before resuming debt serving after 2 years. This proposal is buttressed by creating a grant fund financed through international carbon taxes and proceeds from the sale of fossils to create a fund which makes a pay out once disaster strikes. Despite the exciting nature of the BI, the governance related issues equally require attention as extreme caution is required to ensure that African governments do not fall into

[58] Nciko wa Nciko, "Misery of others as a new site for capital accumulation: The problem with debt-for-climate swaps", Chapter 4 (2023).

climate-related debt traps. African governments ought to show commitment to instituting necessary reforms that are required in adopting the initiative. Institutional capacity and political will must be in place otherwise, political, and economic goals might supersede climate goals.

Finally, is imperative to note that effective and sustainable climate financing for Africa is only possible in a context in which the global financial architecture is reformed to enable a new comprehensive, fair, and effective sovereign debt restructuring mechanism under the United Nations (UN) auspices. The reform of the global financial architecture under a fairer and inclusive platform is therefore long overdue.

CHAPTER FOUR

Misery of Others as a New Site for Capital Accumulation: A Critical Assessment of the AfDB's Stance on Debt-for-Nature/Climate/Swaps

Nciko wa Nciko*

1 Introduction

Renzo Martens is a Dutch artist whose work proposes that capitalist tools such as selling art, buying land and establishing museums can actually be used for decolonization.[1] His flagship project that centers this dangerous illusion is the film *"Enjoy Poverty,"* which has earned him museum exhibitions, spots at prestigious film festivals, and art-world infamy.[2] In *Enjoy poverty,* we watch Martens trudging around the Democratic Republic of the Congo (DRC)—with a straw hat and a deadpan persona—trying his level best to persuade farmworkers, NGO staff, plantation owners, and development bankers that the DRC should commodify its most lucrative export product—poverty.[3] Telling local Congolese photographers how to make money the same way that international photojournalists do, Martens insisted:

> "[D]on't come to film parties—they come to film misery," … Having explained the visual vocabulary demanded by Western media and aid organizations—find corpses,

* LL.M, graduate, the Geneva Graduate Institute of International and Development Studies and Amnesty International Regional Researcher on Climate Justice in Southern Africa as well as Amnesty International Lead Adviser on Human Rights in Madagascar.".

[1] Alice Gregory, *Can an Artists' Collective in Africa Repair a Colonial Legacy? Its founders believe that they can use the tools of the Western art world to help heal the effects of more than a century of plunder,* The New Yorker (July 18, 2022), https://www.newyorker.com/magazine/2022/07/25/can-an-artists-collective-in-africa-repair-a-colonial-legacy.

[2] Renzo Martens, *Episode III: Enjoy Poverty,* https://renzomartens.com/enjoypoverty.

[3] Renzo Martens, Episode 3—"Enjoy Poverty," https://www.idfa.nl/en/film/0b0fb262-60f7-400c-989a-0adc0968ec2b/episode-3-enjoy-poverty.

> always include the UNICEF logo—Martens takes the [local] photographers to a dilapidated clinic. "Choose the worst cases," he reminds them. They settle on a baby with mouth sores and ribs that can be seen through the skin.[4]

Beyond the serious dignity questions involved, Martens told the photographers, without apology, that the film he is shooting will be screened only in Europe. Looking at them in the face, he thanked them, uttering the following words: "Experiencing your suffering makes me a better person."[5] In my view, Martens takes the evil of capitalism to a higher level—poverty is no longer simply a logical consequence of a global capitalistic order. It also becomes a new site for capital accumulation.

The point of narrating Martens' story is to introduce my core argument in this chapter. I critically assess the October 2022 African Development Bank (AfDB) report titled "Debt for Nature Swaps—Feasibility and Policy Significance in Africa's Natural Resources Sector." The report is part of the AfDB's efforts to implement its 2021–2023 Debt Action Plan.[6] This report showcases the AfDB's reliance on its normative power to guide African countries towards adopting debt-for-nature/climate swaps. It presents these swaps as a bold and creative solution to a triple continental crisis—unsustainable sovereign debt, climate change, and biodiversity degradation. My core argument is that this solution is ruthlessly capitalistic. The report boldly seeks to transform the triple continental crisis from a mere consequence of a global capitalistic order into a new site for capital accumulation, benefiting both the AfDB and the Paris Club creditors.

To substantiate this argument, I have four objectives. First, I discuss how the AfDB employs its normative power to promote debt-for-nature/climate swaps as a creative and bold solution to the triple continental crisis. Second, I demonstrate that debt-for-nature/climate swaps do not offer any long-lasting solution to the triple continental crisis. Instead, they transform this crisis into a new site for capital accumulation, benefiting both the AfDB and Paris Club creditors. Third, I argue the idea that the most efficient way to address the triple continental crisis is taking climate change as an entry point to addressing these crises. My claim is that Paris Club

[4] Gregory, *supra* note 1.

[5] *Id.*

[6] African Development Bank Group, *Debt-for-Nature-Swaps: Feasibility and Policy Significance in Africa's Natural Resources Sector,* Flagship Report (Oct. 2022).

creditors should undertake deep emissions reduction to address biodiversity degradation in developing countries and also as an avenue for these creditors to pay their ecological debt to developing countries. This step will enable developing countries to tackle their unsustainable sovereign debt burdens better than they are able to do so far. This chapter examines the concept of sustainable development, upon which the AfDB partly justifies debt-for-nature climate swaps. I highlight the significant problems with pegging debt-for-nature/climate swaps as a climate change solution on sustainable development in so far as it is predicated on economic growth. Instead, this chapter advocates for the degrowth agenda in the concluding section.

2 Creative and Bold Solution

A meticulous reading of the AfDB's report *"Debt for Nature Swaps—Feasibility and Policy Significance in Africa's Natural Resources Sector"* exposes the AfDB's presentation of debt-for-nature/climate swaps as a creative and bold solution that can address three issues—unsustainable sovereign debt, climate change, and biodiversity degradation—simultaneously. The term "debt-for-nature/climate swaps" in the context of the AfDB's report refers to:

> [A] debt relief technique that alters the original value or nature of loan instruments. In general, a debt-for-nature swap involves the cancellation of some amount of sovereign debt in exchange for environmental action on the part of the debtor country. This debt can be written off directly by the creditor, as would be the case with official bilateral swaps, or it can be purchased at a discount by a donor organization, often a large environmental NGO, with a similar debt write-off occurring thereafter.[7]

The AfDB cites the 2021 Belize debt-for-nature/climate swap as an effective model that can be replicated in African countries. Despite the general trend of debt-for-nature/climate swaps having little impact on debtor countries' actual balance sheets,[8] the AfDB report highlights the distinctive success of the 2021 Belize swap. By exchanging the sole Belizean sovereign bond, equivalent to almost a third of the

[7] *Id.* at 25.

[8] *Id.* at 26–27.

Belizean government's GDP, with a smaller and more manageable instrument, Belize significantly increased its fiscal space.[9]

Based on this, the AfDB concludes that moving forward, it can provide technical support to its member countries to maximize the benefits of debt-for-nature/climate swaps.[10] While the AfDB argues that debt-for-nature/climate swaps should be considered case-by-case,[11] a significant number of African countries possess the two main features proposed by the AfDB for optimal pursuit of these swaps.[12] The first feature relates to whether a country has sovereign debt, necessitating an examination of the country's capacities to explore potential transactions like debt-for-nature/climate swaps and the appropriate type of transaction to consider.[13] The second feature concerns the status of a country's natural environment, which is a broad qualifier with numerous ways to measure it.[14]

In addition to possessing the two main features, a substantial number of African countries are also likely to adopt debt-for-nature/climate swaps due to the AfDB's normative power. The AfDB's status as a continental development bank, with all 55 African countries as members, enables it to shape perceptions of appropriateness, ethics, and social acceptability among its member countries.[15] Multilateral banks like the AfDB indeed wield influence over the process and substantive policies of their member countries. This normative power is strengthened by their cooperation with the International Monetary Fund (IMF) and the World Bank, both of which also hold significant normative power in the global financial architecture.[16] The IMF and the World Bank have actively advocated for the adoption of debt-for-nature/climate

[9] *Id.*

[10] *Id.* at 26–27.

[11] *Id.*

[12] *Id.* at 26–27.

[13] *Id.*

[14] *Id.*

[15] Karen A. Mingst, *Politics and the African Development Bank* 1–2 (1990).

[16] African Development Bank Group, African Development Bank Group and World Bank set path for transformative collaboration in Africa (July 19, 2023), https://www.afdb.org/en/news-and-events/press-releases/african-development-bank-group-and-world-bank-set-path-transformative-collaboration-africa-63148.

swaps as a means to address the triple continental crisis.[17] The AfDB advocating for the same can reinforce the social acceptability of debt-for-nature/climate swaps for African countries.

The AfDB's utilization of its normative power to advocate for African countries to adopt debt-for-nature climate swaps is insincere because it is driven by its underlying material interests. These interests are leading the AfDB to turn the triple continental crisis into a new site for capital accumulation.

3 New site for capital accumulation

Debt-for-nature/climate swaps represent a dormant market, and the AfDB's efforts to revive it are welcomed by the Paris Club creditors. The Paris Club is an informal group of creditors established in 1956 in Paris. It is made of 22 creditor countries—all of which, with the exception of Brazil, are developed countries. One of its primary objectives is to devise and arrive at solutions for debt and payment issues faced by debtor countries.[18] African countries are heavily indebted to the governments of these creditors.[19] Historically, Paris Club creditors have been more receptive to swaps. In 1991, they introduced a clause in a forum for negotiating debt restructurings with indebted developing countries, allowing them to convert official public debt through debt-for-nature/climate swaps. This led to a notable increase in such swaps. Countries like Canada, Finland, France, Sweden, and Switzerland were among the first to implement this Paris Club clause for environmental and social objectives.[20] Since COP 26

[17] Kristalina Georgieva, Marcos Chamon, & Vimal Thakoor, *Swapping Debt for Climate or Nature Pledges Can Help Fund Resilience,* IMF Blog (Dec. 14, 2022), https://www.imf.org/en/Blogs/Articles/2022/12/14/swapping-debt-for-climate-or-nature-pledges-can-help-fund-resilience; *see generally* Michael Occhiolini, *Debt-for-Nature Swaps* (The World Bank, Int'l Econ. Dep't Working Paper, Paper No. WPS 393, 1990).

[18] Wallstreetmojo Team, *Paris Club Definition,* Wallstreetmojo, https://www.wallstreetmojo.com/paris-club/.

[19] Denis Samuei-Lajeunesse, *A View from the Paris Club,* in Policies for African Development: From the 1980s to the 1990s 92, 92-96, (I.G. Patel ed., 1992).

[20] Danny Cassimon, Martin Prowse & Dennis Essers, *The pitfalls and potential of debt-for-nature swaps: A US-Indonesian case study,* 21 Global Environmental Change 93, 95 (2011). *See also* African Development Bank Group, *supra* note 6, at 24.

in Glasgow, Paris Club creditors are more likely to oblige swaps to fulfill their commitment to mobilizing finance for climate and nature under the Paris Agreement.[21]

The Belize swap, narrated as a success story by the AfDB, reveals that either the AfDB or a Paris Club creditor can accumulate capital from the triple continental crisis through debt-for-nature/climate swaps in two main ways. This can be achieved directly by closing out a risky or distressed position for an immediate cash payment, or by acting as a donor institution that purchases an African country's debt at a discounted price and resells it to that country at a premium. Additionally, the AfDB or a Paris Club member can accumulate capital indirectly through debt-for-nature/climate swaps if it appears to have mobilized climate finance for developing countries under the Paris Agreement. After discussing how capital can be accumulated from debt-for-nature/climate swaps, I proceed to demonstrate that characterizing the Belize swap as a success story is misleading.

3.1 How Capital Can Be Accumulated

The AfDB or a Paris Club creditor can assume the role of a creditor aiming to close a risky or distressed position and receive immediate payment through a debt-for-nature/climate swap agreement. In such a swap, one party would be an African country in debt to the AfDB or a Paris Club creditor. This necessitates the willingness of the AfDB or the Paris Club creditor, as noted in the AfDB's report, to forgive a portion of the debt owed by the African country.[22] A donor institution would then step in to purchase the remaining portion of the debt at a discounted price. Consequently, the donor institution would acquire the debt at a reduced rate from the AfDB or a Paris Club creditor. Accordingly, the AfDB or the Paris Club creditor can accumulate capital from such a donor institution. The capital accumulated should not be regarded as capital accumulated at a loss because the AfDB or the Paris Club creditor might not have otherwise obtained it as quickly as desired. The donor institution allows them to close out a risky or distressed position for an immediate cash payment.[23]

Alternatively, the AfDB or a Paris Club creditor can act as the donor institution and accumulate capital by reselling the purchased debt at a discounted price to

[21] African Development Bank Group, *supra* note 6, at 28–29.

[22] *Id.* at 38.

[23] *Id.*

the concerned debtor country, charging interest. The AfDB's report indicates this possibility, citing an instance in May 2021 when the AfDB's President, Akinwumi Adesina, suggested

> [U]sing IMF facilities to buy out large swathes of privately held African debt. Although this could go a long way towards restoring debt sustainability, a similar concept could also be possible on a smaller scale and case-by-case basis. The AfDB could potentially use ADF funding to buy out commercial debt and reloan it on highly concessional terms in exchange for strategic climate and nature outcomes, thereby relieving heavy debt burdens in its RMCs [Regional Member Countries] and paving the way for a green recovery.[24]

The AfDB or a Paris Club creditor can also accumulate capital from the triple continental crisis by appearing to mobilize climate finance for developing countries under the Paris Agreement. The Belize swap demonstrates how the AfDB can gain not only financially but also in terms of being perceived as an environmentally conscious bank. In the Belize swap, The Nature Conservancy acted as a donor institution, a role that the AfDB could also assume. The penalties stipulated in the agreement required the Belizean government to pay a fine of USD $250,000 plus USD 50,000 multiplied by the number of completed conservation milestones if it fails to meet its obligations under the swap.[25]

Credit Suisse's involvement in the same Belize swap illustrates another way in which the AfDB could act as a donor institution. Credit Suisse mediated the transaction, receiving payment for its services and using the opportunity to promote itself as socially and environmentally conscious, which the AfDB might also choose to do.[26]

The Belize swap further demonstrates that a Paris Club creditor acting as a donor institution in debt-for-nature/climate swaps can also secure the advantage of touting business practices as socially and environmentally conscious. In the Belize swap, the United States (US) played the role of the donor institution that pledged USD 610

[24] *Id.*

[25] Sheil Desai, *Drowning in Debt: Understanding Debt-for-Climate Swaps Through a Case Study of the Belize Blue Bond,* at 40 (Apr. 12, 2023).

[26] *Id.* at 39–40.

million in political risk insurance to cater for investors involved in the swap. This pledge exceeds the principal amount of the Belize swap (USD 363 million) and was intended to assure investors that, in the event of the Belize government's default on its obligations, both the full loan principal and interest will be repaid. The US promotes this insurance as evidence of the climate finance it is mobilizing for developing countries under the Paris Agreement.[27]

However, it should be noted that even if the US were to release the USD 610 million as insurance, the Belizean government would still pay this amount back to The Nature Conservancy in the form of penalties for breaches of the swap agreement. If no breach occurs, the US will not have to spend its USD 610 million but can still claim under the Paris Agreement that it has mobilized finances for Belize. If a breach occurs, the US will start spending the USD 610 million, but it will recover the amount spent through The Nature Conservancy, a US-registered non-profit organization. In practical terms, in case of a breach no climate finance would be mobilized and provided to a developing country based on the pledged insurance amount. The pledged insurance amount therefore acts as a distraction.

3.2 The Limits of the Belize Success Story

Narrating the Belize swap as a success story is insincere since it fails to provide a proper guiding framework to solve the triple continental crisis. This becomes evident when we examine the historical context of debt-for-nature/climate swaps and recognize that the Belize swap is primarily a case of greenwashing.

Historical records reveal that debt-for-nature/climate swaps have had minimal fiscal impact in countries where they were implemented. Since their inception in 1987, the total face value of debt treated globally through these swaps has only amounted to approximately USD 3.7 billion, with only USD 318 million in Africa.[28] This means that in the 35 years of their existence, debt-for-nature/climate swaps could only raise USD 318 million for the entire continent. However, it is estimated that between 2021 and 2030, the continent will require USD 280 billion, primarily for its adaptation needs.[29]

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[27] *Id.,* at 27–28.

[28] African Development Bank Group, *supra* note 6, at 26–27.

[29] The African Sovereign Debt Justice Network, *African Sovereign Debt Justice Network's Statement on the 2023 Spring Meetings of the IMF and the World Bank,* Afronomics Law, Apr. 10, 2023

The AfDB acknowledges that debt-for-nature/climate swaps have historically had very little impact but maintains that the Belize swap is an exception, insisting that it has potential long-term benefits. The Belize swap, the AfDB argues:

> [W]as able to retire Belize's only sovereign bond (worth nearly a third of its GDP) in exchange for a smaller, more affordably structured instrument…[that] left Belize with substantially more fiscal space than before. This is a testament…to the scalability of the [debt-for-nature/climate swaps] model, [which] has now been shown to work, and could therefore be replicable in Africa.[30]

The Belize story fails to account for the significant lack of progress in raising funds over 35 years. The AfDB acknowledges that the popularity of debt-for-nature/climate swaps declined sharply from the 1990s due to the emergence of other debt relief techniques like the Heavily Indebted Poor Countries (HIPC) Initiative, which unsuccessfully sought to erase most of a country's external debt.[31] Even without considering relief techniques like HIPC, it is evident that debt-for-nature/climate swaps are an overambitious solution. The concept behind these swaps was to reduce extremely large debt burdens to smaller or negligible sizes. The smaller or negligeable sizes that these swaps produce do not usually amount to sufficient finances required to meet the goals of the Paris Agreement.

Greenwashing, defined as an organization spending more resources on marketing itself as environmentally friendly while, in reality, it is not minimizing its environmental impact,[32] is a concern with the Belize swap. The swap has shown negligible success, in terms of its environmental impact. The face value of the debt that was swapped was USD 553 million or about 30% of its GDP in 2021.[33] Out of the total USD 363 million loaned to Belize in this swap, USD 301 million was used for a debt buyback, and USD 38 million was allocated to legal fees, debt reserves, and offered as a discount for new investors. Only about 6% of the loaned amount, or USD 24 million, was directly

[30] African Development Bank Group, *supra* note 6, at 26–27.

[31] *Id.,* at 22.

[32] Carlyann Edwards, *What Is Greenwashing?,* Business News Daily (Feb. 21, 2023), https://www.businessnewsdaily.com/10946-greenwashing.html.

[33] Desai, *supra* note 25, at 25.

used for marine conservation.[34] Therefore, the Belize swap fell short of addressing the triple crisis of debt, biodiversity degradation, and climate change. It is not surprising, therefore, that the exact text of the Belize swap has remained confidential and has never been released to the public.[35]

To effectively tackle the triple continental crisis, I argue that an effective solution should consider taking climate change as an entry point.[36]

4 Climate Change as an Entry Point

Climate change should serve as an entry point to addressing the continental crisis for two main reasons. By Paris Club creditors implementing appropriate deep emissions reduction, biodiversity degradation can be addressed, and having Paris Club creditors pay their ecological debt to developing countries can tackle unsustainable sovereign debt.

4.1 Implementing Appropriate Deep Emissions Reductions

Addressing climate change is the most efficient way to tackle biodiversity degradation, as supported by the Intergovernmental Panel on Climate Change (IPCC). In 2019 Special Report, the IPCC warns of inevitable consequences, such as increased droughts, heavy precipitation, sea level rise, ocean de-oxygenation, and increased ocean acidity, all adversely impacting biodiversity and ecosystems.[37]

The Sustainable Development Goals (SDGs) allow Paris Club creditors to pursue economic growth of about 3% GDP per year to achieve human development objectives.

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[34] *Id.,* at 38–39.

[35] *Id.,* at 26.

[36] African Development Bank Group, supra note 6, at 26–27, 39–40, 66 (the AfDB overlooks this fact. Nowhere is this clear in the AfDB report than in the criterion that it proposes to identify African countries that can optimally pursue debt-for-nature/climate swaps. This criterion does not speak to climate change. It only speaks to unsustainable debt and biodiversity degradation. By implication we can say that it speaks to climate change, but this is only limited climate change mitigation. Yet African countries do not emit a lot for them to focus on climate change mitigation. Any climate action that they undertake on the continent should be geared towards adaptation and, loss and damage).

[37] Nerilie Abram *et al., Special Report on the Ocean and Cryosphere in a Changing Climate,* Intergovernmental Panel on Climate Change, 11 (2019), https://www.ipcc.ch/srocc/chapter/summary-for-policymakers/.

However, evidence shows that such growth makes it impossible to achieve appropriate deep emissions reductions to limit warming to below 2°C above pre-industrial levels.[38] As an IPCC author has noted "[e]missions should be decreasing by now and will need to be cut by almost half by 2030, if warming is to be limited to 1.5°C."[39]

Without deep emissions reduction on the part of Paris Club creditors, biodiversity degradation is likely to follow and forests could be turned into savannas or disappear because of excessive warming. The amount of energy that Paris Club creditors use demonstrates how they work against appropriate deep emissions reductions. I come back to this point in my concluding remarks.[40]

4.2 Ecological Debt

In 2021, global indebtedness reached USD 235 trillion, hindering developing countries from effectively addressing climate change.[41] The correlation between indebtedness and climate change has been a prominent topic in African policy discussions. An African Sovereign Debt and Justice Network (AfSDJN) study revealed that the most indebted African countries also happen to be among the most ecologically vulnerable

[38] *Id.* Further, a carbon budget refers to the cumulative amount of GHG emissions that are permitted to be concentrated in the atmosphere within a certain global temperature threshold. As of January 2018, scientists found, with a probability of 50–66% (which we should take seriously) that, to limit the global average temperature to no more than 1.5°C, the remaining carbon budget is 420–580 gigatons of GHG. To limit it to no more than 2°C, the remaining carbon budget is 1170–1500 gigatons. These carbon budgets make one fact clear: there is only a small threshold within which more emissions can be accommodated before multiple tipping points can be triggered. At 1.5°C, which, as noted, we can reach between 2030 and 2050 unless we take ambitious climate action; *see* Luke Sussams, *Carbon Budgets Explained,* Carbon Tracker Initiative (Feb. 6, 2018), https://carbontracker.org/carbon-budgets-explained/; see also Kate Cook & Jorge E. Viñuales, *Legal opinion: international obligations governing the activities of export credit agencies in connection with the continued financing of fossil fuel-related projects and activities* (Mar. 24, 2021).

[39] Press Release, Intergovernmental Panel on Climate Change, *Urgent climate action can secure a liveable future for all* (Mar. 20, 2023).

[40] Jason Hickel, *Reimaging the Human Environment Relationship: A New Political Economy for a Healthy Planet,* UNU Center for Policy Research & UNEP (May 2022).

[41] International Institute for Environment and Development, *Redesigning Debt Swaps for a More Sustainable Future,* Green Policy Platform, at 1 (Mar. 2023).

ones, experiencing the severe impacts of climate change.[42] This ecological vulnerability is caused, for the most part, by the Paris Club creditors. As the AfSDJN notes:

> Recent research finds that the rich countries of the Global North are responsible for the vast majority of emissions in excess of the planetary boundary of 350ppm concentration of CO_2 in the atmosphere—in other words, the emissions that are causing climate breakdown. The US alone is responsible for 40 per cent of excess emissions, and the European Union for another 29 per cent. The Global North as a group, which includes the US, Europe, Canada, Australia, New Zealand, Israel, and Japan, is responsible for 92 per cent of excess emissions.[43]

When we exclude the European Union (EU), the Paris Club creditors are collectively responsible for 63 percent of climate change. The EU, on its own, accounts for 29 percent of this responsibility. Notably, 11 out of the 27 EU countries, including Austria, Belgium, Netherlands, Norway, Spain, Sweden, Switzerland, France, Germany, Ireland, and Italy, are also Paris Club members. Although at this point it is not possible to calculate the exact responsibility of those 11 EU countries that are also Paris Club creditors, it would not be far-fetched to estimate that the Paris Club itself is roughly accountable for about 72 percent of the ecological vulnerability that the most indebted African countries are experiencing because of climate change.

Given this backdrop, a compelling argument can be made for another type of swap "sovereign debt for ecological debt" swap. Paris Club creditors' financial responsibility for climate-related damages owed to African countries could be utilized to cancel the sovereign debt these countries owe to the same creditors. Jason Hickel has spoken to this in the following terms:

> [The Paris Club creditors] should be held liable for the costs of climate-related damages, wherever they occur, in proportion to their responsibility for total excess emissions. This would mean that "undershoot" countries—those that still remain

[42] The African Sovereign Debt Justice Network, *supra* note 29.
[43] *Id.*

> within their fair share of the planetary boundary—would receive reparations for the suffering they endure. Climate negotiators from the Global South have long called for a system to deal with loss and damage, while the [Paris Club creditors] have repeatedly refused. The politics of this question are clearly fraught, but the good news is that there is no technical barrier to climate reparations because the governments of the main overshooting countries have the power to issue hard currencies, like the dollar and the euro. Transfers could be made at the stroke of a keyboard.[44]

The idea of ecological debt sets the tone for a counter-hegemonic discourse that situates developing countries such those of Africa as creditors and developed countries, mostly made of Paris club creditors as the highly indebted parties.[45] To advocate for a "sovereign debt for ecological debt" swap, we may consider looking at ecological debt from a sovereign debt cancellation perspective. However, this approach would be too narrow in scope. The main reason for this limitation is that solely focusing on sovereign debt cancellation does not address the need for a sustainable and equitable use of natural resources in the future.[46] The goal should therefore be to encompass not only repaying the ecological debt but also preventing its further growth.

Loss and damage, as a climate justice concept, can trace its roots back to the idea of "ecological debt." The idea of ecological debt germinated during campaigns advocating for sovereign debt cancellation in the years following the 1992 Earth Summit. Over time, it gained prominence through discussions at conferences and in various publications, calling for the cancellation of external debt owed by developing countries to developed nations.[47] It was in 2009, during COP 15 in Copenhagen, that the concept of ecological debt became an integral part of the negotiations led

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[44] Jason Hickel, *Who is responsible for the climate breakdown?,* Aljazeera (Apr. 4, 2022), https://www.aljazeera.com/opinions/2022/4/4/who-is-responsible-for-climate.

[45] James Rice, *North–South Relations and the Ecological Debt: Asserting a Counter-Hegemonic Discourse,* 35 Critical Sociology 225 (2009).

[46] Jordi Manzano, Antonio Cardesa-Salzmann, Antoni Pigrau & Susana Borras, *Measuring environmental injustice: how ecological debt defines a radical change in the international legal system,* 23 Journal of Political Ecology 381, 386 (2016).

[47] *Id.*

by developing countries. African countries, and in particular Lesotho, supported the concept, representing the interests of the world's 49 least developed nations.[48]

However, in the same year, the concept of ecological debt encountered some resistance during negotiations at the United Nations Framework Convention on Climate Change level. At the Cancun talks in 2010, small island states reframed the concept as "loss and damage,"[49] a term that has since gained popularity. Nonetheless, when the concept of loss and damage reached the Paris Agreement, it lacked any explicit component related to sovereign debt cancellation. Developed countries, predominantly led by the US, made it clear that they did not consider loss and damage as reparations (compensation or liability) for ecological debt.[50]

During the COP 27 held in Sharm el-Sheikh in 2022, a Loss and Damage Fund was adopted with the objective of providing support for climate-related damages.[51] While the Fund is anticipated to become fully operational by 2025,[52] it currently lacks an explicit sovereign debt cancellation component. This omission emphasizes the necessity for an accountability framework that facilitates the pursuit of claims for reparations, under which calls for sovereign debt cancellation because of the ecological debt can be sustained. Considering this, African countries, in solidarity with climate justice movements, should advocate for the operationalization of the Loss and Damage Fund to encompass all dimensions of ecological debt, including debt cancellation as a means of reparations.

Debt cancellation should be included in the operationalization of this Fund since it can enable African countries to allocate their resources towards fighting climate change and biodiversity degradation, rather than servicing sovereign debt. To justify the need for incorporating a debt cancellation dimension in the operationalization

[48] *Id.*

[49] *Id.*

[50] Preambular Paragraph 52 on Article 8 in "Adoption of The Paris Agreement, Proposal by the President, Draft decision -/CP.21, Conference of the Parties Twenty-first session Paris", 30 November to 11 December 2015 available at https://unfccc.int/resource/docs/2015/cop21/eng/l09.pdf.

[51] UNFCCC, *COP27 Reaches Breakthrough Agreement on New "Loss and Damage" Fund for Vulnerable Countries,* United Nations Climate Change (Nov. 20, 2022).

[52] Richard Munang, *Understanding Loss and Damage in Africa: Science, Policy Dimensions to Address Impacts,* YouTube (July 4, 2023), https://www.youtube.com/watch?v=wFBhi9bPNBg.

of the Loss and Damage Fund, we can briefly examine the examples of Mozambique, the Republic of Congo, and Ethiopia. Each of these countries is spending an amount disproportionately higher in debt servicing than on what it ought to be spending to address its climate finance needs. For example, in 2021, Mozambique allocated USD 855 million to debt repayment, surpassing its annual climate finance requirement of USD 759 million.[53] Similarly, the same year, the Republic of Congo allocated $609 million to debt servicing while planning to spend only USD 380 million on its annual climate change adaptation efforts.[54] Ethiopia projected its unconditional climate change adaptation finance to be USD 810 million, but it was expected to spend three times this amount on debt servicing between 2021 and 2022.[55] Quite clearly debt cancellation therefore only seems appropriate to enable these countries to invest more in addressing their climate finance needs.

5 Conclusion: Degrowth Agenda Instead of Sustainable Development

The AfDB justifies its proposed solution of debt-for-nature/climate swaps based on the doctrine of sustainable development.[56] The historical development of the doctrine of sustainable development, spanning over six phases, indicates that it may not be suitable as a framework to address the triple continental crisis, especially when climate change is considered as an entry point. The first phase is the 1972 United

[53] Nona Tamale & Adebayo Majekolagbe, *Debt, climate finance and vulnerability: A Brief on Debt and Climate Vulnerable Countries in Africa,* Afronomics Law, at 13 (Nov. 2022).

[54] *Id.*

[55] *Id.*

[56] African Development Bank Group, supra note 6, at 10, 19 (this justification is evident in various sections of the report, emphasizing the potential to achieve economic growth while also preserving biodiversity and addressing climate challenges. For instance, the report highlights how debt-for-nature/climate swaps can effectively mobilize finance for African countries, aligning with climate and nature goals. According to the report, this mobilization of finance aims to conserve critical ecosystems in Africa and support nations in adapting to and mitigating the impacts of climate change, which the AfDB sees as essential for advancing sustainable development. It is not surprising that the AfDB prioritizes sustainable development in its member countries, as this remains a central objective of the institution. It is also not This is perhaps not surprising because the overarching objective of the AfDB as a bank is to promote sustainable development in its member countries).

Nations Conference on the Human Environment in Stockholm, which laid the foundation for the concept by recommending prevention measures against environmental degradation resulting from economic exploitation and resource extraction. Second is the 1987 International Union for Conservation of Nature report, where the doctrine of sustainable development was first explicitly introduced. Third is the 1987 Bruntland report, which defined the doctrine of sustainable development as balancing two pillars: economic development and environmental protection. Fourth was the 1995 Copenhagen Declaration, which expanded sustainable development to include three pillars: economic development, environmental protection, and social development. Fifth is the Rio +20 Conference, which focused on poverty in developing countries as a leading cause of environmental degradation.[57] Sixth is the UN adoption of 17 sustainable development goals (SDGs), with SDG 8 calling for economic growth of about 3% GDP per year to achieve human development objectives. [58]

The historical development of the doctrine of sustainable development has a common thread: an overtly growth-centric "ruling rationality," which justifies an economic agenda that is accelerating climate change.[59] This approach renders the doctrine unsuitable for effectively addressing climate change as it clashes with the temperature goals of the Paris Agreement. Jason Hickel points out, "the contradiction of the sustainable development goals: Growth versus ecology on a finite planet," and presents evidence that global growth of 3% per year makes it practically impossible to achieve the necessary reductions in CO2 emissions to stay below 2°C of warming.[60] Thus, relying on international law doctrines like sustainable development may not adequately guide our efforts to tackle climate change and, by extension, the triple continental crisis.

Instead of sustainable development, Paris Club creditors must set aside any bad faith and embrace the implementation of the degrowth agenda. The degrowth

[57] James Thuo Gathii, *Without Centering Race, Identity, and Indigeneity, Climate Responses Miss the Mark*, in Climate Change, Equity and the Future of Democracy 11 (Wilson Center and Adelphi, eds., 2020).

[58] Jason Hickel, *The contradiction of the sustainable development goals: Growth versus ecology on a finite planet,* 27 Sustainable Development 873 (2019).

[59] Gathii, *supra* note 57.

[60] Hickel, *supra* note 58.

agenda offers a compelling framework to guide our thinking towards addressing the continental crisis. Its objective is to significantly reduce aggregate resource use, energy demand, and emissions, with a particular focus on rich, high-consuming countries such as the majority of the Paris Club. Simultaneously, it aims to improve the well-being of people(s) in other parts of the globe.[61]

How the degrowth agenda can be implemented is a question that has generated a growing public debate around the world in recent years. Encouraging Paris Club creditors to pursue appropriate deep emissions reductions targets and to pay for the ecological debt—which would entail sovereign debt cancellation—are two additional ways through which the degrowth agenda can be implemented.

The good news is that implementing the degrowth agenda would not cost much for rich, high-consuming countries, given their extremely high levels of energy use, around 150 gigajoules per capita per year. This is roughly 10 times more than what African countries use and several times more than what is required to meet human needs at a high standard in very expensive global capitals such as Geneva, Jerusalem, and New York.[62] Unfortunately Paris club creditors, just like the AfDB, which will also benefit from debt-for-nature/climate swaps, seem to have been captured by the interests of capital owners that demand that an economic agenda that is not overtly growth-centric should not be pursued.

[61] Jason Hickel, *Degrowth: A Response to Branko Milanovic,* (Oct. 27, 2020), https://www.jasonhickel.org/blog/tag/degrowth#:~:text=The%20objective%20of%20degrowth%20is,while%20improving%20people's%20well%2Dbeing).

[62] Hickel, *supra* note 40.

CHAPTER FIVE

Towards Closing Africa's Climate Financing Gap: Scaling African Governments' Access to the Sustainable Bond Market

Geoffrey Adonu*

1 Introduction

As the adverse impacts of climate change are being reinforced by the severe economic disruptions arising from the COVID-19 pandemic and rising debt sustainability concerns.[1] African governments are more than ever in need of innovative ways of meeting the continent's climate mitigation and adaptation financing requirement of around USD 3 trillion.[2] Given their capacity to unlock private capital and link the proceeds to climate and sustainability projects like clean energy, education, housing, healthcare etc.,[3] sustainable bonds can be used by African governments to raise funds needed to achieve their climate and sustainable development obligations under the Paris Agreement, the United Nations Sustainable Development Goals, and the Africa

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[1] Nona Tamale *et al, Debt, Climate Finance and Vulnerability: A Brief on Debt and Climate Vulnerable Countries in Africa,* 2 (Nov. 2022), https://www.afronomicslaw.org/sites/default/files/pdf/A%20Brief%20on%20Debt%20and%20Climate%20Vulnerable%20Countries%20in%20Africa.pdf.

[2] Chukwumerije Okereke, *Aligning Africa's Nationally Determined Contributions with their Long-Term National Development Plans,* (June 29, 2021), https://afripoli.org/aligning-africas-nationally-determined-contributions-with-their-long-term-national-development-plans.

[3] World Bank, *Sovereign Green, Social and Sustainability Bonds: Unlocking the Potential for Emerging Markets and Developing Economies,* 1, 2 (2022), https://thedocs.worldbank.org/en/doc/4de3839b85c57eb958dd207fad132f8e-0340012022/original/WB-GSS-Bonds-Survey-Report.pdf?utm_source=miragenews&utm_medium=miragenews&utm_campaign=news; Gong Cheng *et al, Sovereigns and Sustainable bonds: challenges and new options,* 47 BIS Quarterly Review 47 (2022).

Agenda 2063 respectively. Additionally, sustainable bond instruments are long-term financing instruments which make them well-suited for climate mitigation and adaptation investments.[4]

Currently, the sustainable bond market is concentrated in advanced markets and dominated by issuers from the Global North.[5] In other words, despite being the most climate-vulnerable and having the least financing resources to respond to climate change, developing countries have the least access to the sustainable bond market. In fact, the world's poorest countries, i.e., those that are eligible for official development aid (ODA), account for just 6% of total sustainable bond issuances[6] while only 4 out of the 54 African states have issued sustainable bonds as of May 2022.[7] In view of the above, this chapter explores the sustainable bond market as a source of climate finance for African governments. Specifically, the chapter looks at the various kinds of sustainable bonds that can be issued by African governments, the potential benefits of sustainable bonds in the African context and why these instruments are yet to scale in Africa. It highlights the lack of technical capacity to package these instruments, the high transaction costs involved, the absence of harmonized guidelines for issuing these bonds, lack of largescale and bankable underlying projects as well as the debt overhang plaguing many developing countries as some of the obstacles preventing African governments from tapping the sustainable bond market. The chapter also proposes measures such as the adoption of a common guideline for issuing specific sustainable bonds and provision of technical support and credit enhancements to African governments by multilateral development banks and other development agencies to assist African governments to overcome the identified barriers.

The chapter is structured as follows. Part II examines the market for sustainable bonds and provides an overview of labeled sustainable bonds. Part III considers the state of climate financing in Africa and why sustainable bond instruments can help

[4] OECD, Green, *Social, Sustainability and Sustainability-linked bonds in developing countries: How can donors support public sector Issuances?,* 8 (Oct. 2022) https://www.oecd.org/dac/green-social-sustainability-and-sustainability-linked-bonds.pdf.

[5] *Id.*

[6] *Id.*

[7] World Bank, Green, *Social, and Sustainable Bonds to Serve Africa's Sustainable Investment Needs,* (May 27, 2022), https://www.worldbank.org/en/news/press-release/2022/05/27/afw-green-social-and-sustainable-bonds-to-serve-africa-s-sustainable-investment-needs.

to meet the continent's climate finance need. Part IV looks at the barriers making it difficult for African governments to issue sustainable bonds while Part V discusses how to facilitate sustainable bond issuances by African States. Part VI provides concluding remarks.

2 AN OVERVIEW OF THE SUSTAINABLE BOND MARKET

2.1 The Sustainable Bond Market

Sustainable bonds, also known as thematic bonds, are fixed-income securities issued in domestic or international capital markets to mobilize capital for projects and activities relating to climate change and the environment, education, housing, marine and biodiversity conservation and, more generally, the sustainable development goals.[8] Comprising primarily of green, social, sustainability and sustainability-linked bonds, the sustainable bond market provides issuers with the opportunity to raise capital to support pre-defined projects and activities with positive climate, environmental or social impact outcomes or to meet pre-agreed sustainability goals in the case of sustainability-linked bonds (SLBs).[9] Also, being long-term financial instruments, sustainable bonds are well-suited for climate financing since most climate mitigation and adaptation projects are long-term projects.[10] Additionally, they enable issuers to raise funds exclusively for climate and sustainability projects like clean energy, education, housing, healthcare etc., and as such, have the potential to align private investments with climate and sustainable development outcomes especially in developing countries.[11]

The market for sustainable bonds emerged following the European Investment Bank's issuance of a Climate Awareness Bond in 2007 and the World Bank's issuance of the first-labelled green bond in 2008.[12] Although the sustainable bond market remains a small fraction of the total bond market, it has witnessed tremendous growth since its inception with an annual average growth of about 80% meaning that the outstanding assets almost doubled every year since 2014.[13] Until Poland issued a green bond in 2016, the sustainable bond market was dominated by multilateral

[8] World Bank, *supra* note 3, at 1, 2; Cheng *et al., supra* note 3, at 47.

[9] OECD, *supra* note 4, at 8.

[10] *Id.*

[11] *Id*

[12] World Bank, *supra* note 3, at xii.

[13] OECD, *supra* note 4, at 8.

financial institutions and corporations. Since Poland's issuance, however, the sustainable bond market has become an important source of climate financing for developed and developed countries seeking to implement their climate mitigation and adaptation goals under the Paris Agreement.[14]

2.2 Labeled Sustainable Bonds

Sustainable bonds are labelled green, social, sustainability, and sustainability-linked bonds depending on the kind of projects their proceeds can be used to fund.

2.2.1 GREEN BONDS The first of the labelled sustainable bonds and the most widely issued, green bonds are used to raise capital exclusively for projects with positive climate and environmental outcomes.[15] Under the International Capital Market Association (ICMA) Green Bond Principles (GBP),[16] the proceeds of green bonds can be used for projects that contribute to environmental objectives like climate change mitigation, climate change adaptation, natural resource conservation, biodiversity conservation, and pollution prevention and control.[17] Nigeria issued Africa's debut sovereign green bond in 2017,[18] raising NGN10.7 billion to support renewable energy and afforestation projects in the West African nation.[19]

2.2.2 SOCIAL BONDS Social bonds are designed to raise capital for social impact projects, i.e., projects that mitigate problems that threaten the well-being of the society as a whole or just a section of the population.[20] Social bonds are issued pursuant to the ICMA Social Bond Principles (SBP)[21] which defines eligible social projects to include affordable infrastructure like clean drinking water, sewers, and

[14] World Bank, *supra* note 3, at 1. *See also* Cheng *et al., supra* note 3, at 48.

[15] World Bank, *What are Green Bonds?* (2015), https://documents1.worldbank.org/curated/en/400251468187810398/pdf/99662-REVISED-WB-Green-Bond-Box393208B-PUBLIC.pdf.

[16] ICMA, *Green Bond Principles,* (Jun. 2021), https://www.icmagroup.org/assets/documents/Sustainable-finance/2022-updates/Green-Bond-Principles_June-2022-280622.pdf, hereinafter, ICMA Green Bond Principles.

[17] *Id.*, at 4.

[18] World Bank, *supra* note 3, at 7.

[19] Silke Colquhoun, *Turning the tide,* African Decisions, https://www.africandecisions.com/finance/green-bonds/.

[20] ICMA, Social Bond Principles, 3-4 (Jun. 2021), https://www.icmagroup.org/assets/documents/Sustainable-finance/2022-updates/Social-Bond-Principles_June-2022v3-020822.pdf.

[21] *Id.*

sanitation; access to essential services like health and healthcare, education, and vocation training; food security and affordable food systems; socio-economic advancement and empowerment programs; employment generation programs; and affordable housing.[22] Following the outbreak of the COVID-19 pandemic and the need for new funding sources to address the resulting economic and social disruptions, the appetite for social bonds increased significantly especially among sovereigns and government agencies as the pandemic increased government expenditures, particularly in the health care sector.[23] In 2020–21, public issuers accounted for about 80% of social bond offerings while social bonds represented 23.5% of the overall sustainable bond market and 12.8% of total sustainable bond issuances in 2021. Ghana issued a social bond in 2021, raising US$2 billion to support its free secondary school program among other social projects.[24]

2.2.3 SUSTAINABILITY BONDS Sustainability bonds combine the features of both green and social bonds i.e., their proceeds can be used to support a mixture of green and social projects.[25] As a result, the classification as a green, social or sustainability bond depends on the issuer's primary objectives regarding the underlying social or green projects.[26] In view of the wide range of projects its proceeds can be used for, sustainability bonds are very popular with low-income countries which points to the important link between climate change and the broader development challenges faced by developing countries.[27] In 2021, Benin Republic issued a €500 million 12.5-year sustainability bond to support green or social projects in furtherance of its SDG commitments[28] and more African countries are considering issuing

[22] *Id.*, at 4.

[23] Cheng *et al., supra* note 3, at 49.

[24] Ekow Dontoh, *Ghana plans to issue Africa's first social bonds with $2B sale,* Al Jazeera (Jul. 5, 2021), https://www.aljazeera.com/economy/2021/7/5/ghana-plans-to-issue-africas-first-social-bonds-with-2b-sale.

[25] ICMA, *The Sustainability Bond Guidelines,* 3 (June 2021) https://www.icmagroup.org/assets/documents/Sustainable-finance/2021-updates/Sustainability-Bond-Guidelines-June-2021-140621.pdf.

[26] *Id.*

[27] OECD, *supra* note 4, at 16.

[28] Arthur Cuames *et al., Republic of Benin's trailblazing €500m 12,5-Y inaugural issuance under its new SDG Bond Framework,* (Jul. 28, 2021), https://gsh.cib.natixis.com/our-center-of-expertise/articles/republic-of-benin-s-trailblazing-500m-12-5-y-inaugural-issuance-under-its-new-sdg-bond-framework; Cleary Gottlieb, *supra* note 23.

sustainability bonds (Cote d'Ivoire and Egypt have published their sustainable bonds framework which is a precursor to issuing a sustainable bond).[29]

2.2.4 SUSTAINABILITY-LINKED BONDS Sustainability-linked bonds (SLBs) provide capital to an issuer in exchange for commitment to achieve pre-defined sustainability performance targets (SPTs).[30] Typically, SPTs are broad sustainability goals such as a percentage reduction in carbon emissions to be achieved over a given period.[31] SPTs are further broken down into measurable key performance indicators (KPIs) used to assess the issuer's performance progress throughout the life of the bonds.[32] To incentivize performance by the issuer, the interest rate payable by the issuer is reduced if the SPTs are met and vice versa.[33] Chile issued the first sovereign SLB in March 2022, a 20-year USD 2 billion bond, which was well received by the market.[34] In October 2022, Uruguay issued the second sovereign SLB, which was also oversubscribed and attracted diverse investors from Europe, Asia, the United States and Latin America out of which 21% were first time investors in Uruguayan debt instruments.[35] Unlike conventional sustainable bonds (like green, social, and sustainable), SLBs are not project-based instruments, i.e., the proceeds of SLBs are not ring-fenced for specific projects which means that the sustainability targets can be tailored

[29] Cleary Gottlieb, *African Sovereign Financing: Accessing Capital in 2023,* https://content.clearygottlieb.com/regions/africa-outlook/african-sovereign-financing-accessing-capital-in-2023/index.html.

[30] Cheng *et al., supra* note 3, at 53.

[31] ICMA, *Sustainability-Linked Bond Principles,* 3 (June 2020), https://www.icmagroup.org/assets/documents/Regulatory/Green-Bonds/June-2020/Sustainability-Linked-Bond-Principles-June-2020-171120.pdf, hereinafter ICMA SLB Principles.

[32] *Id.,* at 3.

[33] *Id.,* at 5; Cleary Gottlieb, *Sustainability-Linked Bond Issuances by Sovereigns,* https://content.clearygottlieb.com/sovereigns/sovereign-debt-articles/sustainability-linked-bond-issuances-by-sovereigns/index.html.

[34] Djellil *et al., Sovereign Sustainability-Linked Bonds – Chile Sets a High Bar,* 1, 9 (Apr. 2022); Addleshaw Goddard, *Sovereign Sustainability-Linked Bonds: The Dawn of a New Revolution,* (Nov. 3, 2022), https://www.addleshawgoddard.com/en/insights/insights-briefings/2022/finance/sovereign-sustainability-linked-bonds-dawn-revolution/.

[35] Inter-American Development Bank, Uruguay Issues Global Sustainability-Linked Bond, with IDB Support, (Oct. 24, 2022), https://www.iadb.org/en/news/uruguay-issues-global-sustainability-linked-bond-idb-support#:~:text=Uruguay%20Issues%20Global%20Sustainability-Linked%20Bond%2C%20with%20IDB%20Support,bond%20with%20a%20price%20tied%20to%20sustainability%20indicators.

to align with a sovereign's NDC commitments.[36] Additionally, the proceeds of SLBs are tied to measurable climate and ESG outcomes such as a percentage reduction in carbon emissions.[37] However, the additional interest cost that may arise if the coupon step-up provision of an SLB crystalizes constitutes a debt sustainability risk for vulnerable developing countries and could even impact the issuing country's ability to fulfil its human rights obligations.[38]

2.2.5 BLUE BONDS Blue bond is a sub-category of green bonds issued (mostly) by sovereigns to raise capital for biodiversity and the marine environment conversation projects as well as to develop their ocean economy generally.[39] The first blue bond was issued by Seychelles in 2018 to fund ocean-based projects aimed at protecting its marine resources.[40] With 38 coastal and island states, over 47,000km of coastline and a fisheries and aquaculture sector that employs more than 12.3 million people and generates around US$24 billion annually, the blue bond market has the potential to support investments in Africa's blue economy and fund biodiversity and marine environment conservation across the continent.[41]

2.2.6 GREEN SUKUK Green sukuks are green-labelled bonds issued in accordance with Islamic sharia law which prohibits charging interest.[42] Typically, green sukuks are structured as interest free transactions in which the issuer sells certificates to investors and uses the proceeds to purchase assets that will be mutually owned by

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[36] Cleary Gottlieb, *Chile's Inaugural Sovereign Sustainability-Linked Bond Offering,* (Mar. 7, 2022), https://www.clearygottlieb.com/news-and-insights/news-listing/chiles-inaugural-sovereign-sustainability-linked-bond-offering.

[37] Cheng *et al., supra* note 3, at 53.

[38] *See* Akinyi J. Eurallyah, *Sovereign Sustainability-Linked Bonds for Sustainable Development: Embedding Human Rights and Impact Investing in Sustainability-Linked Bond Markets,* 18 (forthcoming 2023).

[39] Clifford Chance LLP, *Blue Bonds Expanding to the Oceans,* https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2019/11/blue-bonds-expanding-to-the-oceans.pdf.

[40] Cleary Gottlieb, *supra* note 33.

[41] Maram Ahmed, *Blue Bonds: What they are, and how they can help the Oceans,* (Jun. 6, 2019) https://www.weforum.org/agenda/2019/06/world-oceans-day-blue-bonds-can-help-guarantee-the-oceans-wealth/).

[42] World Bank, *Green Sukuk,* (Sept. 2017), https://www.worldbank.org/en/news/infographic/2017/09/19/malaysia-green-sukuk.

the issuer and the investors.[43] Thus, rather than interest payments, investors in green sukuks receive a share of the profits generated by the pool of underlying assets purchased with the proceeds of the sukuk.[44]

3 BRIDGING AFRICA'S CLIMATE FINANCING GAP THROUGH SOVEREIGN SUSTAINABLE BONDS

3.1 Climate Financing in Africa

With a view to facilitating climate action in developing countries, the Paris Agreement provides that developed countries "shall provide financial resources to assist developing [countries] with respect to both mitigation and adaptation" pursuant to their "existing obligations" under the United Nations Framework Convention on Climate Change (the Convention).[45] This provision reaffirms the principle of common but differentiated responsibility established by the Convention in recognition of the limited financing capacity of developing countries and the historic responsibility of developed countries for global warming.[46]

Pursuant to their existing obligations under the Convention, as referenced in Article 9 of the Paris Agreement, developed countries pledged USD 100 billion worth of climate financial assistance per annum to their developing counterparts by 2020—known as the Copenhagen Accord.[47] Although the amount pledged is far below the climate financing need of developing countries—African alone needs around USD 270 billion annually—the Copenhagen Accord was a step in the right direction. However, thirteen years after the USD 100 billion pledge, the Copenhagen Accord remains unfulfilled.[48] According to data from the OECD, the amount of climate

[43] *Id.*

[44] Dina Azhgaliyeva, *Green Islamic Bonds,* 1 Asian Development Bank Institute, https://www.adb.org/sites/default/files/institutional-document/691951/ado2021bn-green-islamic-bonds.pdf.

[45] Paris Climate Agreement, Art. 9, https://unfccc.int/sites/default/files/english_paris_agreement.pdf.

[46] Marie-Louise Aren, *Exploring the Regulatory Complexities of the Global Climate Finance Architecture and Disbursement Flows in Financing Africa's Mitigation and Adaptation Efforts,* (forthcoming 2023).

[47] OECD, *Climate Finance and the USD 100 Billion Goal,* https://www.oecd.org/climate-change/finance-usd-100-billion-goal/. The Copenhagen Accord was made at the 2009 Climate Conference of Parties (COP) of the United Nations Convention on Climate Change held in Copenhagen (COP 15).

[48] Jocelyn Timperley, *The broken $100-billion promise of climate finance — and how to fix it,* Nature (Oct. 20, 2021), https://www.nature.com/articles/d41586-021-02846-3.

financing from developed countries to developing countries never reached the pledged $100 billion.[49] A breakdown shows that while the amount moved from USD 52.4 billion in 2013 to USD 83.3 billion in 2020, there was still a gap of USD 16.7 billion by 2020, the target year.[50] Additionally, the actual amount of that ultimately reached developing countries is significantly less than the amounts reportedly provided.[51]

Oxfam analyzed the climate financing received by developing countries and found that the reported climate finance flows were actually exaggerated.[52] Based on Oxfam's calculations, only one third of the USD 83.3 billion (of which USD 13.1 billion is private sector financing) climate financing to developing countries in 2020, i.e., around USD 21–24.5 billion, actually reached developing countries.[53] Moreover, this amount was predominantly directed through loans at market rates—about 71% of public sector climate finance flows in 2020 (USD 48.6 billion) were loans while just 26% (USD 17.9 billion) were grants—and should not ordinarily count as financial assistance.[54] Furthermore, the available climate finance is not evenly distributed among developing countries. For instance, Asia countries have been the main target of climate finance flows, receiving (on average) 42% of climate finance between 2016-2020, while Africa and the Americas were distant second and third with 26% and 17% respectively.[55]

The failure of developed countries to fulfill their climate financing obligation to developing counterparts under the Paris Agreement is hampering climate action in developing countries and pushing more vulnerable countries towards commercial borrowing which could worsen their debt and climate vulnerabilities.[56] Take Africa

[49] OECD, *supra* note 47.

[50] *Id.;* Aysu Bicer, *Rich Nations still failing to honor $100B climate funding pledge: OECD,* Anadolu Agency (Jul. 30, 2022), https://www.aa.com.tr/en/economy/rich-nations-still-failing-to-honor-100b-climate-funding-pledge-oecd/2649115.

[51] Oxfam, *Climate Finance Short-changed,* 3 (Oct. 2022), https://policy-practice.oxfam.org/resources/climate-finance-short-changed-the-real-value-of-the-100-billion-commitment-in-2-621426/.

[52] *Id.*

[53] *Id.*

[54] *Id.* at 3,5,9.

[55] Bicer, *supra* note 50.

[56] Vanessa Nakate, *Debt suffocates African nations' ability to respond to climate change*, Financial Times (May 18, 2022), https://www.ft.com/content/51ecbfa3-c3c4-4a58-8372-980ff751f1fa.

for example, despite being the most climate-vulnerable continent in the world,[57] it received only USD 29.5 billion for climate investments in 2019–20[58] and just 26% of the available climate funding from developed countries between 2016 and 2020 as against its estimated financing need of USD 3 trillion by 2030 or around USD 270 billion annually. Overall, climate finance flows to Africa have been grossly inadequate leaving African countries with little capacity to respond to climate shocks.

3.2 Why Sustainable Bonds for African Governments?

The sustainable bond market has enormous benefits, including helping issuers to raise capital from a large pool of investors at lower costs. It has the potential to help African governments to bridge the severe climate funding shortage on the continent by providing them with an avenue to raise long-term capital from private investors exclusively for climate mitigation and adaptation purposes at cheaper rates relative to traditional financing alternatives.

3.2.1 ACCESS TO LONG-TERM FINANCING WITH CLIMATE INVESTMENTS Bond financing generally, and sovereign sustainable bonds in particular, tend to have very long maturities makes them suitable for funding climate mitigation and adaptation as well as the SDGs in developing countries since these projects are long-term in nature as well and require patient capital.[59] For example, two thirds of government sustainable bonds issued in 2021 had more than fifteen years tenor compared to less than seven years for private sector sustainable bond issuances.[60]

3.2.2 ACCESS TO NEW AND DIVERSE INVESTOR BASE The emergence of Environmental, Social and Governance (ESG) Investing, which created a new asset class and investors (the ESG-conscious, impact or socially responsible investors) as well as asset managers with green/ESG mandates and indices for ESG assets is fueling demand for assets like sustainable bonds. For example, upon issuing the first sovereign green bond in 2016, Poland saw a significant diversification of its investor base with

[57] Notre Dame Global Adaptation Initiative, *Rankings,* https://gain.nd.edu/our-work/country-index/rankings/ (Africa is home to thirty five of the fifty most climate-vulnerable countries in the climate vulnerability index).

[58] Bicer, *supra* note 50.

[59] Cheng *et al., supra* note 3, at 50.

[60] *Id.*

green investors comprising about 61% of the investors in the offering, none of whom had previously invested in Polish sovereign bonds.[61] Similarly, 21% of the purchasers of the Uruguay's 2022 SLB were international investors making their first ever investment in the country's debt instruments.[62] This benefit of sustainable bonds extends to low-and-middle income issuers as many international investors consider sustainable bonds as an opportunity to support climate action and sustainable development in developing countries.[63] Hence, the sustainable bond market is a great avenue for African governments attract new investors and diversify their investor base.

3.2.3 REPUTATIONAL BENEFITS Given their alignment with ESG, issuing sustainable bonds comes with reputational benefits. Essentially, they demonstrate an issuer's commitment to ESG and climate action which means that African governments can use it as a tool to promote investments in their sustainability projects including attracting foreign investors to the domestic economy. For example, Nigeria used its debut green bond to signal its commitment to diversifying its economy and moving towards low-carbon sectors.[64]

3.2.4 LOWER BORROWING COST Driven by a high demand for ESG assets, sustainable bonds especially green bonds, attract lower coupon premiums, known as greenium. Greenium refers to the "negative difference in spreads between green and nongreen bonds with the same financial characteristics (currency, tenor) issued by the same issuer."[65] Relying on secondary market data, Amundi Asset Management recently found that the average green premium for emerging market issuers was about 3.4 basis points.[66] Likewise, after comparing a sample of 89 matched green bonds and conventional bonds, Becchetti *et al.* found that institutional green bond issuers like sovereigns and supranational institutions receive a greenium.[67] Apart from greenium, issuers can receive additional interest reduction in the case of SLBs if they achieve the

[61] Climate Bond Initiative, *Sovereign Green Bonds Briefing,* 2–3, (Mar. 2018), https://www.climatebonds.net/files/files/Sovereign_Briefing2017.pdf.

[62] Inter-American Development Bank, *supra* note 40.

[63] World Bank, *supra* note 3, at 14.

[64] Climate Bond Initiative, *supra* note 61, at 3

[65] World Bank, *supra* note 3, at 11.

[66] *Id.*

[67] *Id.*

agreed sustainability outcomes.[68] For instance, Uruguay will receive an aggregate of 30bps of interest reduction if it achieves the SPTs under its SLB.[69] With most African governments facing heightened debt pressures and spending most of their revenues on debt service,[70] the pricing advantage of sustainable bonds over conventional bonds could reduce their debt service spending.

3.2.5 PROMOTION OF LOCAL DEBT MARKETS The domestic debt markets in Africa are generally underdeveloped more less the green debt markets. By issuing green bonds, African sovereigns can support the emergence of domestic green debt markets and the development of their domestic debt market in general. First, sovereign sustainable bond issuance raises the profile of sustainable bonds with other potential issuers in the country and serves as a model for the domestic market in terms of both issuance processes and standards.[71] This is the case because sovereigns typically establish sustainable bond frameworks that align with international standards as a prelude to their own issuance which then serves as the benchmark for their domestic markets afterwards. Second, apart from serving as a model for domestic issuances an inaugural sovereign green bond offerings tend to increase the number of annual private sector issuances in the country.[72] Third, sovereign issuances boost liquidity in the local debt market by opening the domestic sustainable bond market for investments by large institutional investors like pension funds which encourages broader trading and facilitates price discovery in the market.[73]

3.2.6 DOMESTIC POLICY COORDINATION The process of issuing sustainable bonds, including the formulation sustainable bond frameworks and auditing eligible assets, requires significant level of internal collaboration between different ministries and departments such as the environment, finance, infrastructure, and energy ministries which can result in effective implementation of the country's climate and related policies.[74] Relatedly, the issuance process requires identification of eligible green projects that will be incorporated into the government's sustainable bond programs

[68] Cheng *et al., supra* note 3, at 53.
[69] Addleshaw Goddard, *supra* note 38.
[70] Tamale *et al., supra* note 1 at 3.
[71] Climate Bonds Initiative, *supra* note 61, at 3.
[72] Cheng *et al., supra* note 3, at 53.
[73] Climate Bonds Initiative, *supra* note 61, at 3.
[74] Climate Bonds Initiative, *supra* note 61, at 2.

which helps in tracking climate and ESG related expenditure and implementation progress.[75] In Africa where most government policies and projects fail due to policy instability and lack of strategic coordination among the relevant ministries, departments, and agencies of government, issuing sustainable bonds can be useful way of addressing this problem especially as it concerns its national climate goals.

4 IMPEDIMENTS TO SUSTAINABLE BONDS ISSUANCE BY AFRICAN GOVERNMENTS

4.1 Lack of Technical Capacity for Packing Sustainable Bonds

Lack of adequate capacity and requisite technical skills to undertake the entire gamut of sustainable bond offerings constitutes a barrier to the growth of the market in Africa, and developing countries generally, as confirmed in a recent survey by the G20 Green Finance Study Group.[76] From establishing a sustainable finance framework (which is a necessary step before issuing a sustainable bond) to packaging underlying sustainable projects, monitoring use of proceeds, and complying with issuer's reporting obligations under specific sustainable bonds, raising capital from the sustainable bond market requires an issuer to have debt management officials that are familiar with the technical requirements of specific kinds of sustainable bonds. Most African governments, however, lack this level of technical expertise within their debt management apparatus. This barrier is more prevalent in developing countries where the knowledge gap is often exacerbated by the fact that the benefits of sustainable bonds have not yet caught the attention of many policy makers, regulators, issuers and investors.[77] While the absence of requisite technical skills within the debt management and ancillary departments of most developing countries can be attributed to the newness of sustainable bond products and the lack of commonly agreed market standards,[78] it is noteworthy that many developing countries have relatively small debt management teams (if any) and lack experience even with conventional bond offerings.

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[75] *Id.,* at 2.

[76] *See* G20 Green Finance Study Group, *G20 Green Finance Synthesis Report,* (2020), https://unepinquiry.org/wp-content/uploads/2016/09/Synthesis_Report_Full_EN.pdf.

[77] Josue Banga, *The Green Bond Market: A Potential Source of Climate Finance for Developing Countries,* 24 Journal of Sustainable Finance & Investment (2019).

[78] *Id.*

4.2 Lack of Bankable Projects and Minimum Issue Size Requirement

Although sustainable bond principles like the ICMA GBPs do not require a minimum issue size, large-scale impact investors like those in the Green Bond Underwriters League Table[79] (comprising of the world's largest institutional investors like Citi, HSBC, JP Morgan, Bank of America Merrill Lynch, and other large institutional investors with trillions of dollars under management)[80] consider the size, tenure, and liquidity of sustainable bonds in making investment decisions and typically invest in deals of at least USD 200 million.[81] Also, bond indices which play a critical role in international bond markets—many large institutional investors can only invest in bonds eligible for index inclusion—exclude bonds that do not have a minimum value of at least USD 250 million.[82] African governments—and developing countries generally—lack a robust pipeline of largescale and bankable sustainable projects for packaging sustainable bonds that are attractive to global investors making it difficult for them to issue project-based sustainable bonds, i.e., green, social and sustainability bonds especially. In general, largescale infrastructure projects require lengthy conceptualization and development periods coupled with complex feasibility studies and costly transaction advise from expert advisers like lawyers which many African countries cannot afford (project development costs alone represent around 5–10% of total project costs for large infrastructure projects). Overall, African government issuers, especially sub-sovereigns,[83] lack the resources as well as technical capacity to identify and package projects that are compatible with market standards and the investment requirements of large institutional investors including crafting strong eligibility criteria or ambitious sustainability targets that align with the ESG expectations of global investors while remaining a bankable project.

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[79] *Id.,* at 25.

[80] *Id.*

[81] *Id.*

[82] *Id.*

[83] UNCTAD, *Least Developed Countries Report: Transforming Energy Access,* United Nations Publications (2017), https://brill.com/display/book/edcoll/97890474445 41/Bej.9789004180048.i-962_124.xml (In many developing countries, relatively small standalone projects that barely exceed US$10 million are more cost-effective than large-scale projects especially in the rural areas).

4.3 High Transaction Costs

As noted above, African governments need largescale and bankable sustainable projects to issue sustainable bonds and packaging such projects is prohibitively expensive—project development costs alone constitute around 5–10% of total project costs for large infrastructure projects. Also, sustainable bond issuances involve significant transaction costs for issuers. From getting a sustainable bond certified and labeled as such by an independent reviewer to conducting the relevant assessments and generating the regular reports required throughout the bonds' lifecycle by the various sustainable bond principles, transaction costs could be significant.[84] This is especially when the issuer is required to provide a creditworthiness survey alongside the technical assessment of the potential ESG impact(s) of the relevant projects. For instance, according to Kaminker, et al, the cost of a second opinion or third-party assurance for a sustainable bond issuance could range from USD 10,000 to USD 100,000.[85] For smaller economies, the lack of largescale green, social or sustainability projects could make the cost of raising sustainable bonds totally unjustifiable.

4.4 Multiplicity of Issuing Guidelines and Market Standards

The ICMA sustainable bond principles are, perhaps, the most widely used for sovereign issuances and may somewhat be taken as market standards. However, the sustainable bonds market is still plagued by lack of commonly agreed standards on several issues ranging from what constitutes "green" projects to disclosure requirements. For instance, Banga observed with respect to green bonds that the lack of universally accepted standards has contributed to the knowledge gap which is impeding the growth of the market in developing countries. Similarly, Triaca,[86] noted that the ambiguity around what qualifies as "green" may hinder the growth of the Green

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[84] EY, *Green Bonds: A Fresh Look at Financing Green Projects,* (2018), http://www.ey.com/Publication/vwLUAssets/Green_bonds-a-fresh-look-at-financing-green-projects/$FILE/EYGreen%20bonds-a-fresh-look-at-financing-green-projects.pdf.

[85] C. Kaminker *et al., Green Bonds Country Experiences Barriers and Options, Input Paper In support of the G20 Green Finance Study Group* (2016) http://unepinquiry.org/wpcontent/uploads/2016/09/6_Green_Bonds_Country_Experiences_Barriers_and_Options.pdf.

[86] Hugo Triaca, *Green Bonds in Perspective,* Clifford Chance LLP (January 2020) https://www.cliffordchance.com/content/dam/cliffordchance/PDFDocuments/green-bonds-in-perspective.pdf.

Bond market considering the reputational risk concerns (e.g., greenwashing) for both issuers and investors.[87]

4.5 Debt Distress Concerns

Presently, almost half of the 54 African countries are in debt distress or at high risk of debt distress according to the IMF.[88] Overall, Africa's debt level has outstripped its GDP more than seven-fold[89] and, based on current estimates, another thirty percent increase in debt levels will leave the continent completely unable to combat climate change and nature loss.[90] In view of their worsening debt profile, African countries have little or no room to incur more debts even for climate mitigation and adaptation purposes. In fact, current estimates suggest that another thirty percent increase in debt levels will leave the continent completely unable to combat climate change and nature loss[91] which shows how dire nature of Africa's unsustainable debt problem and its dangerous intersection with the continent's worsening climate change vulnerability. Sustainable bonds, while cheaper than conventional bonds, are still commercial debts and come with very expensive interest rates and stringent terms which means that—like conventional bonds—they are equally capable of exacerbating the risk of debt crisis in Africa. This prospect is heightened by the fact that African states are charged twice more than their similarly rated peers to issue sustainable bonds.[92] This unfair charge—known as African risk premium—imposed on African governments simply because Africa is perceived to be risky not because of their macroeconomic fundamentals already costs African governments around USD 2 billion in additional

[87] *Id.,* at, 1.

[88] IMF, *List of LIC DSAs for PRGT-Eligible Countries as of February 28, 2023,* https://www.imf.org/external/Pubs/ft/dsa/DSAlist.pdf.

[89] Eurallyah, *supra* note 38, at 6.

[90] International Institute for Environment and Development, *Thirty Per Cent Increase in Debts Leaves African Countries Unable to Fight Climate Change and Nature Loss,* Press Release (Feb. 17, 2022), https://www.iied.org/thirty-cent-increase-debts-leaves-african-countries-unable-fight-climate-change-nature-loss.

[91] *Id.*

[92] World Bank, *supra* note 7.

interests annually[93] thereby worsening the risk of debt distress as well as climate vulnerability in the continent.[94]

5 FACILITATING SUSTAINABLE BOND ISSUANCES BY AFRICAN GOVERNMENTS

5.1 Structural and Product Innovation

Structural innovations in the design of sustainable bonds can be used to overcome obstacles like lack of largescale green projects and the minimum issue size requirement.[95] For instance, green stripping which enables an issuer to issue mixed-use bonds, i.e., bonds whose proceeds can be applied to both green and brown projects can help issuers with individual green projects that can sustain largescale bond issuances to still raise funding from the sustainable bond market.[96] In this case, a portion of the bond proceeds—the green stripe—will be used to finance eligible green projects while the rest will not. Green stripping may, however, not work for many low-income countries as they mostly suit sophisticated issuers familiar with the market and possess a good credit rating.[97] Apart from green stripping, sustainability-linked bonds can also boost sustainable bond issuance by African governments. As noted above, the use of proceeds flexibility of SLBs means that they can be issued even by issuers without largescale green projects since the focus is on meeting pre-defined sustainability targets as opposed to specific projects.

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[93] *Africa pays USD 2.5 billion yearly as risk premium from borrowing,* The Bft Online (September 5, 2022), https://thebftonline.com/2022/09/05/africa-pays-us2-5bn-yearly-as-risk-premium-from-borrowing/; *Africa pays USD 2.5 billion yearly as risk premium from borrowing,* https://www.ghanaweb.com/GhanaHomePage/africa/Africa-pays-US-2-5bn-yearly-as-risk-premium-from-borrowing-Prof-Bokpin-1616999.

[94] *See* Nakate, *supra* note 56 (arguing that climate finance flow to the global south are loans and piling more debt on these countries weakens their capacity to protect themselves from climate impacts).

[95] Banga, *supr*a note 77, at 27.

[96] *Id.*

[97] *Id.*

5.2 Capacity Building and Technical Support

African multilateral development banks especially the African Development Bank (AfDB) have extensive experience in issuing sustainable bonds and are well-placed to help African debt management officials to understand the market and technical requirements of specific sustainable bonds. Additionally, they can support African governments, especially first-time issuers, in establishing sustainable bond frameworks and preparation of underlying transactions documents.

5.3 Credit Enhancement Support

As noted above, the perceived riskiness of Africa is increasing the cost of raising sustainable bonds for African governments. Pending a wholistic reform of the sovereign credit rating architecture and elimination of the unfair practices like the African risk premium which make it difficult and more costly for African governments to raise from the international capital markets, multilateral financial institutions like the World Bank and AfDB as well as climate finance funds like the Adaptation Fund and the Green Climate Fund can facilitate sustainable bond issuance by African governments by providing them with credit enhancements like guarantees and risk insurance. These credit enhancement tools make issuances more attractive for investors while reducing the cost of borrowing for the issuer by improving the risk-return profile of their sustainable bonds.[98] For example, the Seychelles 2018 blue bond issuance benefited from a partial guarantee provided by the World Bank.

5.4 Anchor Investments in African Sovereign Bond Issuances

Apart from providing credit enhancement support to African governments, climate finance funds, multilateral development finance institutions and non-government organizations like The Nature Conservancy can support sustainable bond issuances by African governments through direct investment as anchor investors in their sustainable bond transactions.[99] In addition to being off-takers for such bonds, direct investment by these kinds of institutions will serve as a promotional tool for the issuances and attract other investors. This kind of direct investment aligns with the

[98] OECD, *supra* note 4, at 9.

[99] *Id.*

mandates of these organizations, and they are well-placed to provide this kind of support especially for smaller African economies seeking to gain initial market access.

5.5 Developing African Domestic and Regional Debt Markets

The growth and development of robust local currency debt markets across the continent will facilitate access to sustainable bonds at cheaper costs for African governments. For instance, a robust local currency market means that African governments could raise most of their sustainable finance needs in local currency thereby by eliminating foreign currency risks associated with raising debts in the international markets and improving debt sustainability. Likewise, a deep local currency market will enable African governments to issue local currency sustainable bonds with issue sizes that match their individual project needs without contending with the minimum size limitations associated with international sustainable markets. Overall, increasing sustainable bond issuances by local and sub-national governments in the domestic markets will increase Africa's chances of achieving its climate and ESG goals given the ample alignment between the functions of local and subnational governments and climate and ESG projects.[100] According to UN-DESA 2017, projected population growth trajectory suggests that most climate change adaptation and mitigation projects in developing countries will fall within the responsibility of cities which means that—like national governments—local governments in developing countries need access to reliable and affordable sustainable finance to fund projects that will yield positive climate and ESG outcomes.[101]

Apart from national capital markets, robust regional debt markets are crucial for scaling sustainable finance in Africa by giving African governments access to larger and more liquid local markets in the continent.[102] For instance, Egypt, Nigeria, and South Africa have the continent's most developed local debt markets which could be

[100] Emily Robare *et al., Expanding the U.S. Municipal Market for Sustainable Bonds,* PIMCO (Oct. 25, 2022), https://www.pimco.com/en-us/insights/viewpoints/expanding-the-us-municipal-market-for-sustainable-bonds.

[101] UNCTAD, *supra* note 83.

[102] Barthelemy Faye *et al, African Sovereign Financing: Accessing Capital in 2023,* https://content.clearygottlieb.com/regions/africa-outlook/african-sovereign-financing-accessing-capital-in-2023/index.html.

tapped for sustainable financing by nearby smaller countries. In this regard, the ongoing efforts to link various local debt markets in Africa is a welcome development. An example is the African Exchanges Linkage Project, a flagship project of the African Securities Exchanges Association and the African Development Bank aimed at facilitating cross-border securities trading and capital raising in Africa.[103] The initial phase of the project will link seven African capital markets representing more than 90% of the continent's market capitalization and will upon completion, give African governments access to a larger pool of Africa-based impact investors.[104] Similarly, Ghana and Nigeria are working on creating a regional debt market for the Economic Community of West African States (ECOWAS) region.[105]

The preconditions for developing local capital markets include: (a) a stable political and macroeconomic environment; (b) a certain level of complexity in the country's financial system; (c) a robust legal framework able to enforce financial contracts; and an independence regulator that ensures fairness and transparency.[106] While African countries have a critical role to play in catalyzing these preconditions, they need support in terms of capacity building and funding from multilateral development banks, African sovereign wealth funds, civil society organizations like African Sovereign Debt Justice Network, and other development partners. For example, the Ethiopia Stock Exchange, which will be launched in 2024, is a joint project of the country's new sovereign wealth fund—Ethiopia Investment Holdings—with USD 38 billion in AUM, the country's ministry of finance and a private sector player, the Nairobi-based FSD Africa.[107]

5.6 Improving Africa's Debt Sustainability

Africa's debt problem has multi-dimensional causes and, as such, not amendable to any single solution. However, there are existing market instruments can be used to

[103] African Exchange Linkage Project, *About AELP,* https://africanexchangeslink.com/about-aelp/.
[104] *Id.*
[105] Obas Esiedesa, *Why Nigeria is pushing for market integration in ECOWAS – SEC DG,* Vanguard (Oct. 20, 2022), https://www.vanguardngr.com/2022/10/why-nigeria-is-pushing-for-market-integration-in-ecowas-sec-dg/.
[106] UNCTAD, *supra* note 83.
[107] FSD Africa, *Progress towards Ethiopia's Stock Exchange,* https://fsdafrica.org/news/progress-towards-ethiopias-stock-exchange/.

incrementally resolve the debt conundrum in the continent. One of such instruments is debt-for-nature/climate swap. Debt for nature swaps have been around for decades and are increasing in popularity considering their applicability in the climate change context. Through a debt for climate swap, a debt-distressed country can have its debt burden reduced in exchange for commitment to use the savings for climate-related investments and have already been used in the African context. In 2016, Seychelles undertook a debt for nature swap as part of its debt restructuring. The deal which was sponsored by The Nature Conservancy (TNC), a non-profit organization, involved TNC purchasing USD 21 million worth of Seychelles' debt from Paris Club creditors in exchange for a commitment by Seychelles to invest the interest savings in marine conservation projects. Similarly, Gabon swapped USD 700 million of its Eurobonds for a low-interest debt from TNC with a commitment to use the interest savings for marine conservation projects.[108] Carbo Verde, Eswatini and Kenya are considering doing debt for nature swap deals to reduce their debt burdens following endorsement of such deals by the International Monetary Fund.[109] It is even possible to issue sustainable bonds as part of a debt for nature swaps as in the case of Belize's debt for nature swap transaction. Nciko, writing from a Third World Approach to International Law or TWAIL perspective, has argued that debt for nature swaps could become a new frontier for profiteering for creditors in the African context.[110] Natural disaster clause is instrument that can be used to reduce debt sustainability concerns in Africa. Unlike debt for nature swaps, natural disaster clauses reduce debt distress risks by providing climate vulnerable countries with debt reprieve by pausing interest payment when they suffer natural disasters like hurricane. Although a short-term measure, natural disaster clauses can help to avert liquidity problems resulting from climate shocks in climate-vulnerable countries.[111] In addition to debt for nature

[108] Bloomberg, *Gabon Plans $700 Million Debt Swap to Fund Marine Conservation,* https://www.bloomberg.com/news/articles/2022-10-21/gabon-is-in-talks-to-fund-marine-conservation-through-debt-swap?leadSource=uverify%20wall.

[109] Chloe Farand, *African nations eye debt-for-climate swaps as IMF takes an interest* (Feb. 9, 2022), https://www.climatechangenews.com/2022/09/02/african-nations-eye-debt-for-climate-swaps-as-imf-takes-an-interest/.

[110] Nciko wa Nciko, *The misery of others as a new site for capital accumulation: AfDB's position on debt-for-nature/climate swaps, 3* (forthcoming 2023).

[111] Nona Tamale, Feasibility of Greening Debt Restructuring in Africa, (forthcoming 2023).

swaps and natural disaster clauses, Bradlow proposed the creation of a fund to be seeded by donors and multilateral institutions and domiciled with an African institution like the AfDB with the mandate to purchase African sovereign debts from the secondary markets and work with African governments to ensure that their debt burden does not unduly affect the continent's economic recovery efforts.[112] While the foregoing proposals will help to reduce debt overhang in Africa, they are not deep enough to meaningfully address the problem. Developed countries continue to refute the idea of paying reparations to developing countries for the climate damages and ecological harms occasioned by their historic carbon emission. Getting them to acknowledge and pay the debt—also known as climate or ecological debt—by cancelling the financial debts owed to them by developing countries can potentially help to resolve the vicious cycle of unsustainable debt in developing countries, including African countries.[113]

5.7 Adoption of Common Guidelines

Harmonizing the guidelines for issuing different sustainable bonds and adopting a common standard in respect of each kind of sustainable bond will eliminate confusion in the market and prevent market fragmentation.[114] It woul make it easier for African governments to familiarize themselves with the technical requirements for issuing sustainable bonds.

6 CONCLUSION

Sustainable bonds have the potential to help African governments to bridge the continent's climate funding. However, the market is currently not viable for African States

[112] Daniel D. Bradlow, *Deterring the Debt Vultures in Africa,* Project Syndicate (May 20, 2020) (Bradlow's proposal was made in the context of the COVID-19 pandemic, and he would call the proposed fund Debt for Vulnerable Economies (DOVE) fund).

[113] *See* Nciko, *supra* note 1, at 5–6; Andrew L. Fanning & Jason Hickel, *Compensation for Atmospheric Appropriation,* Nat Sustain (2023), https://doi.org/10.1038/s41893-023-01130-8; Debt Justice, Cancel the Debt for Climate Justice, https://debtjustice.org.uk/campaigns/no-more-climate-debt. With China and India—both part of the Global South—now among the highest carbon emitters globally, the dichotomy between developed and developing countries based on carbon emissions is now more nuanced and makes the idea of climate debt certainly more complex to implement.

[114] Triaca, *supra* note 86, at 1.

and requires critical transformations to eliminate current obstacles like high transaction costs and the debt overhang that inhibit African governments from taking advantage of sustainable bonds. Addressing these barriers wholistically will require an overhaul of the climate financing architecture to actualize climate justice for developing countries. However, this will take considerable time as developing countries that need climate finance and the reforms the most lack the requisite power at international organizations like the United Nations and the Bretton Woods institutions to engender the necessary reforms. Consequently, this chapter recommends the use of incremental and achievable measures like credit enhancement mechanisms and debt related mechanisms like debt for nature/climate swaps to facilitate access to sustainable bonds for African governments. Again, while these measures will go a long way in helping African governments to issue sustainable bonds, they cannot take the place of wholistic reforms that will ensure easy access to climate financing for developed countries such as ensuring that developed countries, who are historically responsible for global warming, actually fulfil their obligation to fund climate mitigation and adaptation in poorer countries.

CHAPTER SIX

Are Sovereign Sustainability-Linked Bonds Double-Edged Swords? Assessing The Feasibility of Sovereign Sustainability-Linked Bonds for Sustainable Development in Africa

Akinyi J. Eurallyah*

I Introduction

The implications of the climate transition and the risk that companies will not reduce their emissions quickly enough have occupied investors for some time. Climate-related risks are now also beginning to influence sovereign debt markets.[1] This is evident in the greater interest investors pay to issuer disclosure, in the form of environmental, social and governance (ESG) metrics, and also in the greater political accountability for climate outcomes required for public-sector issuers.[2] Two principal types of instruments have emerged in bond markets to reflect issuer policies and investor mandates. The first set, including green bonds, restricts the use of proceeds to certain expenditures and rewards issuers for documenting this green spending.[3] The second and more recent type of bond—sustainability-linked bonds (SLBs)—links rewards for issuers to certain outcomes, giving the issuer much greater freedom in spending,

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[1] OECD, "ESG practices and challenges from a public debt management perspective," in OECD Sovereign Borrowing Outlook 2022, Organisation for Economic Co-operation and Development, (2022), https://www.oecd.org/publications/oecd-sovereign-borrowing-outlook-23060476.htm.

[2] Alexander Lehmann & Catarina Martins, *The potential of sovereign sustainability-linked bonds in the drive for net-zero,* Bruegel Policy Brief 7 of 2023, https://www.bruegel.org/policy-brief/potential-sovereign-sustainability-linked-bonds-drive-net-zero.

[3] OECD, *Green, social, sustainability and sustainability-linked bonds in developing countries: How can donors support public sector issuances?,* OECD Publishing (2022), https://www.oecd.org/dac/green-social-sustainability-and-sustainability-linked-bonds.pdf.

but imposing financial penalties if commitments are not met.[4] These bonds might also reward achievement of climate targets.[5]

Against this background, this chapter considers how private investment through the global financial markets can support sustainable development goal 13—take urgent action to combat climate change and its impact—in a manner that comports with human rights. Consistent with the United Nations Guiding Principles on Business and Human Rights (Guiding Principles),[6] Sustainable Development Goals (SDGs) embrace the positive role of private business activity to achieve sustainable development.[7] Arguably, most important among business actors is the financial sector. It is estimated that the financial resources required to meet SDG 13 amounts to USD 1.6 trillion to USD 3.8 trillion in each year through 2050 for the world to transition to a low-carbon future and avoid warming exceeding 1.5°.[8] This is particularly daunting for developing African countries, which face a funding gap of about USD 579 billion between 2021 and 2030.[9] Meaning, without a great leap in private sector finance, the "SDG investment gap" is insurmountable.[10] Therefore, new sustainable financing strategies and instruments are crucial to bridge this gap.[11]

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[4] *Id.*

[5] Faty Dembele, Rolf Schwarz & Paul Horrocks, *Scaling up Green, Social, Sustainability and Sustainability-linked Bond Issuances in Developing Countries,* OECD Publishing (2021), https://www.oecd.org/dac/financing-sustainable-development/blended-finance-principles/documents/scaling-up-green-social-sustainability-sustainability-linked-bond-issuances-developing-countries.pdf.

[6] Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (Guiding Principles),* A/HRC/17/31 (March 21, 2011).

[7] G.A. Res. 70/1, 2030 Agenda Transforming our World: The 2030 Agenda for Sustainable Development (2030 Agenda), para. 67 (Sept. 25, 2015).

[8] Sustainable Development Goals, Goal 13: Take urgent action to combat climate change and its impacts, https://www.un.org/sustainabledevelopment/climate-change/.

[9] Morgan Richmond et al., *Financial Innovation for Climate Adaptation in Africa,* Global Centre on Adaptation (2022), https://gca.org/wp-content/uploads/2022/08/GCA-Financial-Innovation-for-Climate-Adaptation-in-Africa-2022.pdf.

[10] Jessica Davis Pluess, Smruti Govan & Paula Pelaez, *Conditions for Scaling Investment in Social Finance,* Business for Social Responsibility (BSR), at 9 (Sept. 2015), https://www.bsr.org/reports/BSR_Conditions_for_Scaling_Social_Finance_2015.pdf.

[11] Press Release, Secretary-General, New United Nations–Private Sector Partnership Platform to Generate Financing Solutions for Sustainable Development Goals, U.N. Press Release SG/2233-ENV/DEV/1736 (Oct. 10, 2016) (announcing the launch of a financial innovation platform to drive

Building on these observations and arguments, this chapter extends and applies them to address the human rights challenges posed by the complex, heterogeneous and fragmented global capital markets. The SLB market, in its current form, reveals the problem of equating the achievement of positive social outcomes with the protection of universal human rights.[12] I argue that despite having the potential, the current regulatory standards and industry practices fail to adequately account for the human rights implications of SLB-financed projects. As a result, SLBs do not adequately ensure respect for human rights as set forth in the Guiding Principles and the SDGs.

This chapter proceeds as follows. Section 2 describes how climate change is a human rights issue as well as a sovereign debt problem. Section 3 critically analyses the link between climate vulnerability and debt sustainability in Africa, taking note of the human rights implications of this phenomenon. Section 4 analyses the emergence and growth of the SLB market. The section also critically analyses whether or not SLBs are a much-needed climate finance tool for African countries. Section 5 proposes a conceptual framework for evaluating human rights considerations and applies this framework to the sovereign SLB market. Section 6 proposes reforms for the incorporation of Sovereign SLBs in the current African and global sovereign debt standards and practices in order to address the deepening inequalities in the fight for an equitable climate finance governance. Section 7 concludes the chapter.

2 Climate Change as a Human Rights and Sovereign Debt Problem

2.1 Human Rights Obligations Relating to Climate Change

A safe, clean, healthy, and sustainable environment is essential to the full enjoyment of a wide range of human rights, including the rights to health, food, water and sanitation. Climate change threatens the enjoyment of these rights. As a result, States have an obligation to prevent the foreseeable adverse effects of climate change, and also ensure that those affected by it, particularly those in vulnerable situations, have access

investment from governments, development finance institutions, foundations, as well as institutional investors and other private actors).

[12] Stephen Liberatore, "Sustainability-linked bonds do not fit our impact framework" (2021) available at https://documents.nuveen.com/Documents/Nuveen/Default.aspx?uniqueid=0783278a-88cc-43a5-b5d3-a63fb6c97816 .

to remedies and means of adaptation to enjoy lives of human dignity.[13] In addition, in Article 4(f), the UN Framework Convention on Climate Change commits to adaptation and mitigation considerations and actions "with a view to minimizing adverse effects [of climate change] ... on the quality of the environment."

Two key events sparked a searching international dialogue on human rights and climate change. First, in December 2005, the Chair of the Inuit Circumpolar Conference (ICC) submitted a petition to the Inter-American Commission on Human Rights (IACHR) requesting relief for human rights violations resulting from the impacts of global warming and climate change.[14] The petition alleged that the United States—the largest cumulative emitter of greenhouse gas (GHG) emissions to date—had violated the Inuit's human rights by failing to adopt adequate GHG controls.[15] Although the IACHR never issued a decision, the petition did succeed in drawing public attention to the severe effects of global warming on the Inuit. It also sparked further dialogue about the human rights implications of climate change.[16]

The second key event occurred in November 2007 when the Small Island Developing States (SIDS) adopted the *Male' Declaration on the Human Dimension of Global Climate Change*.[17] The Male' Declaration was the first international agreement to explicitly recognize that "climate change has clear and immediate implications for the full enjoyment of human rights."[18] It also called upon the Conference of the Parties (COP) to the UNFCCC and the UN human rights bodies to launch a collaborative process for assessing the human rights implications of climate change. That same month, the UN High Commissioner for Human Rights (OHCHR) issued a public statement for the Bali Climate Change Conference (COP-13) acknowledging that

[13] UN Human Rights Office of the High Commissioner, *Climate Change and Environment,* https://www.ohchr.org/en/topic/climate-change-and-environment.

[14] UNEP, *Climate Change and Human Rights* (Dec. 2015), https://wedocs.unep.org/bitstream/handle/20.500.11822/9530/-Climate_Change_and_Human_Rightshuman-rights-climate-change.pdf.pdf?sequence=2&amp%3BisAllowed=.

[15] Sheila Watt-Cloutier, *Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States* (Dec. 7, 2005).

[16] Hari M. Osofsky, The Inuit Petition as a Bridge? Beyond Dialectics of Climate Change and Indigenous Peoples' Rights, 31 *Am. Indian L. Rev.* 675 (2007).

[17] UNEP, Climate Change and Human Rights 12 (Dec. 2015).

[18] *Male' Declaration on the Human Dimension of Global Climate Change* (Nov. 14, 2007).

"climate change can adversely affect the fundamental human rights of present and future generations" and reminding the COP that governments have both moral and legal obligations to protect and promote basic human rights when tackling climate change.[19] Furthermore, while acknowledging that climate change is a common concern of humankind, in 2015, the Paris Agreement mandated Parties, when taking action to address climate change, to respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.[20]

Indisputably, climate change impacts, directly and indirectly, an array of internationally guaranteed human rights such as the right to a safe, clean, healthy, and sustainable environment, right to life, right to self-determination, right to development, right to food, right to water and sanitation, right to health, right to housing, right to education, and the right to meaningful and informed participation.[21] To this end, States (duty-bearers) have an obligation to take effective measures to prevent and redress these climate impacts, and therefore, to mitigate climate change, and to ensure that all human beings (rights-holders) have the necessary capacity to adapt to the climate crisis.[22]

2.2 Climate Change as a Sovereign Debt Problem

Climate change can have a material impact on sovereign risk through direct and indirect effects on public finances. It raises the cost of capital of climate-vulnerable countries and threatens debt sustainability.[23] High levels of public debt service and insufficient fiscal and monetary space have already constrained the COVID-19

[19] Bali Climate Change Conference, *The Human Rights Impact of Climate Change* (Nov. 2007).

[20] Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.

[21] Understanding Human Rights and Climate Change, Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change, https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/COP21.pdf.

[22] *Id.*

[23] Ulrich Volz, *Climate Change and Sovereign Risk,* Center for Sustainable Finance (Oct. 2020), https://eprints.soas.ac.uk/33524/1/Climate%20Change%20and%20Sovereign%20Risk_final.pdf.

crisis responses of most low and middle-income economies.[24] While advanced countries were able to implement extremely expansionary fiscal and monetary policies in response to the pandemic crisis, few countries in the Global South had this option.

The precarious debt situation has not only been threatening post-pandemic recoveries, it has also impeded much-needed investments in climate resilience.[25] These investments are indispensable and urgent as Governments must climate-proof their economies and public finances or face an ever-worsening spiral of climate vulnerability and unsustainable debt burdens.[26] If anything, physical climate vulnerability is driving up the cost of capital of climate-vulnerable developing countries.[27] As financial markets increasingly price climate risks, and global warming accelerates, the risk premia of these countries, which are already high, are likely to increase further.[28] There is, therefore, a danger that vulnerable developing countries will enter a vicious circle in which greater climate vulnerability raises the cost of debt and diminishes the fiscal space for investment in climate resilience.[29]

In Africa, for example, the continent is severely impacted by the triple crisis of debt, climate change and nature loss.[30] The continent's debt now stands at more than 70% of GDP.[31] For many lower-middle income and low-income countries, especially those in Africa, climate risk has the potential to destabilize economies in the medium and long term. For example, conservative estimates put costs for a scenario holding global warming below two degrees at USD 50 billion per year in Africa, and up to USD 100 billion

[24] Ulrich Volz, *The debt and climate crises are escalating—it is time to tackle both,* Brookings (July 8, 2022), https://www.brookings.edu/blog/future-development/2022/07/08/the-debt-and-climate-crises-are-escalating-it-is-time-to-tackle-both/.

[25] *Id.*

[26] Volz, *supra* note 23.

[27] John Beirne, Nuobu Renzhi & Ulrich Volz, *Feeling the heat: Climate risks and the cost of sovereign borrowing,* 76 International Review of Economics & Finance 920, 936 (Nov. 2021).

[28] Serhan Cevik, & Joao Tovar Jalles, *This Changes Everything: Climate Shocks and Sovereign Bonds* (Int'l Monetary Fund, Working Paper No. 2020/079, 2020).

[29] Ulrich Volz, *Climate Change and the Cost of Capital in Developing Countries: Assessing the Impact of Climate Risks on Sovereign Borrowing Costs,* UNEP (2018), https://www.financialprotectionforum.org/sites/default/files/7%20Climate%20Change%20and%20the%20Cost%20of%20Capital.pdf.

[30] Sejal Patel, Paul Steele, Laura Kelly & Jean-Paul Adam, *Innovative financing for Africa: Harnessing debt for climate and nature,* International Institute for Environmental Development (Oct. 2021), https://www.iied.org/sites/default/files/pdfs/2021-10/20486IIED.pdf.

[31] IMF, *Countering the Cost-of-Living Crisis,* World Economic Outlook Report (Oct. 2022).

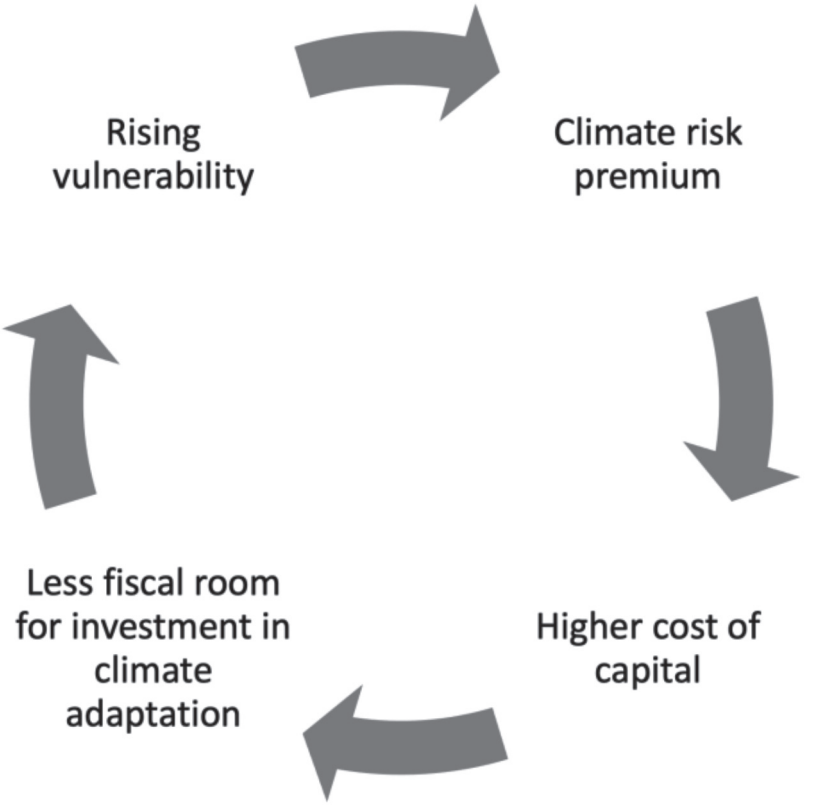

FIGURE 1 The vicious circle of climate vulnerability and the cost of capital. (*Source: Ulrich Volz, Climate Change and the Cost of Capital in Developing Countries: Assessing the Impact of Climate Risks on Sovereign Borrowing Costs, UNEP 2018*)

a year by 2050.[32] Continued finance for adaptation activities, therefore, has been touted as a priority to help mitigate some loss and damage costs in these countries.[33]

However, more resources mean increasing debt for the recipient countries as 70% of these resources are loans.[34] And loans have to be paid. Consequently, excessive debt repayments burdens undermine developing countries' development objectives,

[32] World Bank, *World Bank Country and Lending Groups,* https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups.
[33] *Ibid.*
[34] OECD (2022), *Aggregate Trends of Climate Finance Provided and Mobilised by Developed Countries in 2013–2020,* https://www.oecd.org/climate-change/finance-usd-100-billion-goal/aggregate-trends-of-climate-finance-provided-and-mobilised-by-developed-countries-in-2013-2020.pdf.

significantly diminishing their capacity to create necessary conditions for the full realization of human rights and environmental obligations.[35] To put things into perspective, African countries need funds to address the climate crisis now. However, many of them are trapped repaying huge sums to their creditors, hampering their ability to adequately respond to the mounting impacts and cost of environmental and climate crisis. At the same time, extreme climate events and insufficient grant-based climate finance are plunging indebted African countries deeper into debt, locking these countries in fossil fuel production as the main source of income to guarantee debt service repayment, consequently creating a vicious cycle—as above-illustrated—that can be impossible to escape.[36]

With the impacts of the climate crisis further damaging economically, there is a great urgency to address sovereign debt problems head-on and put countries in a position to not only respond to short term needs posed by the pandemic and the engulfing food price crisis,[37] but also to invest in much-needed climate resilience.[38]

3 Climate Vulnerability and the Challenge of Debt Sustainability in Africa

The global sustainable development agenda is creating both pressure and rhetoric to mobilize a lot of financial resources towards the long-term ambitious national development strategies aimed at moving low-income countries to middle-income status.[39] While linking debt to development, the Addis Ababa Action Agenda of the Third International Conference on Financing for Development notes that debt is an important tool for financing investment critical to achieving sustainable development.[40]

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[35] Gail Hurley, *Sovereign Debt and the Right to Development,* in SOVEREIGN DEBT AND HUMAN RIGHTS (Ilias Bantekas & Cephas Lumina, ed., 2018).

[36] Tess Woolfenden & Sindra Khushal, *The Debt and Climate Crisis: Why Climate Justice must Include Debt Justice,* Debt Justice (Oct. 2022).

[37] Brendan Vickers, Salamat Ali & Neil Balchin, *The expanding threat to food security in least developed countries,* OECD (July 5, 2022), https://oecd-development-matters.org/2022/07/05/the-expanding-threat-to-food-security-in-least-developed-countries/.

[38] Volz, *supra* note 29.

[39] Shakira Mustapha & Annalisa Prizzon, *Africa's rising debt: how to avoid a new crisis,* Overseas Development Institute (Oct. 2018), https://cdn.odi.org/media/documents/12491.pdf.

[40] U.N. Third International Conference on Financing for Development, *Addis Ababa Action* Agenda, para. 93 (July 13–16, 2015).

The African Union's Agenda 2063 requires African countries to work tirelessly to bridge resource gaps through collaborations with African Union's stakeholders in a bid to effectively implement climate change commitments.[41] According to the African Union, climate change, biodiversity loss, environmental degradation, disaster risks, ocean and related maritime challenges are some of the major challenges affecting sustainable development on the African Continent.[42] As COVID 19 raged, the resources required to combat the negative effects of climate change were even more compromised, making it challenging to transform the continents natural resources, climate strategies and policies into meaningful climate actions. In particular, Agenda 2063 aims to achieve a high standard of living, quality of life and well-being for all citizens, just like SDG 1 and SDG 11 aim to end poverty in all its forms everywhere in the world and to make cities and human settlements inclusive, safe, resilient and sustainable respectively. At the same time, Agenda 2063 aims to transform economies just as SDG 8 aspires to promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. Moreover, Goal 6 and 7 of Agenda 2063 aim to utilize blue economy for accelerated economic growth and achieve environmentally sustainable and climate resilient economies and communities respectively just as SDG 14 seeks to conserve and sustainably use the oceans, seas and marine resources for sustainable development. In relation to financing these goals, Agenda 2063 encourages Africa to take full responsibility for financing her development Goals.[43] This would be done through African capital markets, fiscal systems and public sector revenue, and development assistance.

Although Africa is the world's smallest contributor to global greenhouse gas emissions, it is the most vulnerable to climate-related shocks.[44] Addressing climate change will be costly, and few African countries have the resources or fiscal space to tackle this challenge without taking on more debt. However, many of them are trapped repaying huge sums to their creditors, hampering their ability to adequately

[41] Africa Agenda 2063, The Africa We Want, https://au.int/agenda2063/goals.

[42] African Union, Linking Agenda 2063 and the SDGs, https://au.int/en/agenda2063/sdgs.

[43] *Id.*

[44] Nona Tamale & Adebayo Majekolagbe, *Debt, Climate Finance and Vulnerability: A Brief on Debt and Climate Vulnerable Countries in Africa,* AfronomicsLaw, (Nov. 2022), https://www.afronomicslaw.org/sites/default/filespdf/A%20Brief%20on%20Debt%20and%20Climate%20Vulnerable%20Countries%20in%2Africa.pdf.

respond to the mounting impacts and cost of environmental and climate crisis. At the same time, extreme climate events and insufficient grant-based climate finance are plunging indebted African countries deeper into debt, locking these countries in fossil fuel production as the main source of income to guarantee debt service repayment, consequently creating a vicious cycle that can be impossible to escape.[45]

In terms of figures, in order to prepare for and adjust to the devastating climate impacts, African countries need about USD 579 billion between 2021 and 2030.[46] This cost quadruples when the projected mitigation finance—USD 1.6 trillion—is added.[47] An additional USD 242 billion is needed for interventions with dual mitigation and adaptation benefits. In addition to the USD 264 billion commitments of African countries, the total cost of climate action in Africa between 2021 and 2030 is about USD 2.8 trillion.[48] What's more, climate finance itself continues to push vulnerable countries into debt as 70% of the funds are loans.[49] Therefore, Africa, a continent responsible for less than 4% of the global greenhouse gas emissions,[50] is stuck paying the most. This channels the funds that could have been utilized by countries to realize human rights into repayment of climate finance loans, among other loans, also adversely impacting on sustainable development.

Consequently, the compounding nature of the debt and climate challenges has left African countries with deteriorated public finances, poor resilience to climate shocks, and limited capacity to finance adaptation.[51] Of the 38 sub-Saharan African countries covered in the debt sustainability analyses conducted through the joint World Bank-International Monetary Fund Debt Sustainability Framework

[45] Tess Woolfenden & Sindra Khushal, *supra* note 36.

[46] Morgan Richmond et al., *Financial Innovation for Climate Adaptation in Africa,* Global Center on Adaptation, (2022), https://gca.org/wp-content/uploads/2022/08/GCA-Financial-Innovation-for-Climate-Adaptation-in-Africa-2022.pdf.

[47] Climate Policy Initiative (CPI), *The State of Climate Finance in Africa: Climate Finance Needs of African Countries,* (June 2022), https://www.climatepolicyinitiative.org/wp-content/uploads/2022/06/Climate-Finance-Needs-of-African-Countries-1.pdf.

[48] Nona Tamale & Adebayo Majekolagbe, *supra* note 44.

[49] OECD, *supra* note 34.

[50] Nona Tamale & Adebayo Majekolagbe, *supra* note 44.

[51] For example, in 2019, Cyclones Idai and Kenneth drove Mozambique's public debt to almost 110 percent of GDP.

for Low-Income Countries (LIC-DSF), 7 are already in debt distress, 18 are at high risk, and 13 are at moderate risk.[52] In addition, evidence from the IMF shows that when controlling for conventional determinants of sovereign defaults, countries with higher climate vulnerability have an increased probability of defaulting, compared to more resilient countries.[53] Of the 20 sub-Saharan African countries with the highest levels of climate vulnerability in the Notre Dame-Gain Index, 30 percent are already in debt distress, and another 35 percent are at high risk.[54]

More worrying, recent activities show that exposure to climate shocks can lead to a repricing of sovereign assets, which reduces creditworthiness and drives up borrowing costs. For example, in 2020, Fitch Ratings—a credit rating agency—announced that water risks (such as water scarcity or extreme water events, such as droughts and floods) will likely become a more significant sovereign rating driver over the medium- to long-term, against the backdrop of severe climate change.[55] Fitch further noted that African countries are especially exposed to flood risks, particularly Benin, Rwanda, and Mozambique.[56] Countries where droughts or floods have been explicitly mentioned as hinderances to growth, external finances, and/or inflation in the context of a downgrade include Namibia (June 2020) and Zambia (April 2020).[57]

Despite these clear linkages between debt distress and climate vulnerability, one of the biggest challenges in terms of preventing debt situations from becoming detrimental to human rights is the debt sustainability concept itself. Climate risks are not typically taken into consideration in the assessments of the debt sustainability of African countries.[58] This narrow framing of sustainability fails to take into account

[52] The World Bank Group & IMF, *Debt Sustainability Analysis,* https://www.worldbank.org/en/programs/debt-toolkit/dsa.

[53] Serhan Cevik & João Tovar Jalles, *Feeling the Heat: Climate Shocks and Credit Ratings* (Int'l Monetary Fund, Working Paper No. 2020/286, 2020).

[54] University of Notre Dame Global Adaptation Initiative, *Country Index Technical Report,* (Jan. 30, 2023) (currently, the average Notre Dame-Gain score for 183 countries globally is 49 (out of 100). But when looking at the performance of 47 Sub-Saharan African countries, only three achieved scores at or above the global average–Cabo Verde, Mauritius, and Seychelles).

[55] *Water Risk Relevance for Sovereign Ratings to Increase,* FitchRatings, Sept. 3, 2020.

[56] *Id.*

[57] Gracelin Baskaran, *Managing the compounding debt and climate crises,* Brookings (Mar. 1, 2023).

[58] Nona Tamale, "Feasibility of Greening Debt Restructuring in Africa" (forthcoming).

climate risks and costs including emergency response and investment in climate resilience, a shortfall recently admitted by the World Bank.[59]

EURODAD observed that the "examination of debt burdens should go far beyond a country's capacity to repay debts. Instead, debt sustainability assessments (DSA), including the World Bank-IMF DSAs, should integrate development priorities and independent human rights impact assessments to assess countries' ability to cover the needs of their populations."[60] Simply, and as far as the IMF and World Bank Debt Sustainability Framework Review is concerned, whether debts are sustainable should be based on an assessment of whether the debt is preventing meeting of basic needs rather than being based on ability to pay.[61]

To this end, the UN Guiding Principles on Human Rights Impact Assessments of Economic Reforms, recognize that lenders should conduct due diligence to ensure that lending does not push the borrower's external debt stock to unsustainable levels, not only making debt repayment difficult but hindering the realization of human rights.[62] These Guiding Principles also oblige States to ensure that their debt strategies and debt sustainability analyses incorporate human rights impact assessments and the issues that arise therefrom.[63] In short there should be coherence between the economic, fiscal, monetary, social, environmental and financial sector aspects of the economic reforms and any other policies or governmental actions that are relevant to the efficacy of the reforms.[64]

Against this backdrop, the Debt Sustainability Framework, the guiding framework for DSAs for low-income countries, was reformed in 2017 to introduce customized stress tests for additional risks.[65] Yet surprisingly, for the most climate vulnerable

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[59] David Malpass, *Shaping tomorrow's debt restructuring system,* World Bank Blogs, May 10, 2023.

[60] Gino Brunswijck, *Delivering human rights and the SDGs: Does IMF Conditionality pass muster?,* Eurodad. May 29, 2019.

[61] VVAA (2016) *Civil Society position on the IMF and World Bank Debt Sustainability Framework Review,* (June 2016), https://jubileedebt.org.uk/wp-content/uploads/2016/06/IMF-and-World-Bank-Debt-Sustainability-Framework-Review_06.16.pdf.

[62] Human Rights Council Res. 40/8, U.N. Doc. A/HRC/40/57, at 9 (Mar. 21, 2019).

[63] *Id.* at 7.

[64] *Id.*

[65] Int'l Monetary Fund, *Guidance note on the Bank-Fund Debt Sustainability Framework for Low Income Countries,* (Feb. 14, 2018).

region, only four African countries qualify for natural disaster shock tests in their DSAs.[66] Therefore, the absurdity of narrow specifications of DSA indicators is that they fail to include climate vulnerability while assessing whether or not a country's debt is sustainable. This demonstrates that "the current parallel treatment of debt and climate problems during restructuring despite the evidence of their interconnectedness. For climate vulnerable countries, an analysis of debt sustainability which does not incorporate climate risks is far from accurate," as argued in Nona Tamale's chapter in this book.

4 Sovereign Sustainability-linked Bonds as a Sustainable Development Strategy for African Countries

4.1 Sustainability-linked Bonds

SLBs are any type of bond instrument for which the financial and/or structural characteristics can vary depending on whether the issuer achieves predefined Sustainability/Environment, Social, and Governance (ESG) objectives.[67] These objectives are measured through predefined Key Performance Indicators (KPIs) and assessed against predefined Sustainability Performance Targets (SPTs).[68] In essence, SLBs develop the key role that debt markets can play in funding and encouraging issuers that contribute to sustainability (from an ESG perspective).[69] Through SLBs, issuers commit explicitly (including in the bond documentation) to future improvements in sustainability outcome(s) within a predefined timeline. If the issuer does not meet those commitments, there's a penalty: higher interest paid to investors.[70] This performance-based instrument allows issuers to commit explicitly to future improvements in sustainability outcomes while benefiting from discounted interest rates on the bond.

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[66] *Id.* (These four countries are: Comoros, São Tomé and Príncipe, Mozambique, and Madagascar.)

[67] Int'l Capital Market Association, *Sustainability-Linked Bond Principles* (June 2020), https://www.icmagroup.org/assets/documents/Regulatory/Green-Bonds/June-2020/Sustainability-Linked-Bond-Principles-June-2020-171120.pdf.

[68] *Id.*

[69] Int'l Capital Market Association, *Sustainability-linked Bond Principles,* https://www.icmagroup.org/sustainable-finance/the-principles-guidelines-and-handbooks/sustainability-linked-bond-principles-slbp/.

[70] Daniel Murphy, *What are sustainability linked bonds and how can they support the net-zero transition?,* World Economic Forum (Nov. 11, 2022), https://www.weforum.org/agenda/2022/11/cop27-sustainability-linked-bonds-net-zero-transition/.

Linking borrowing costs to sustainability targets distinguishes these instruments from other securities focused on sustainability such as green and social bonds, which do not vary the interest rate but commit the borrower to spending the proceeds on projects that meet environmental, social or governance standards.[71] Sustainability-linked bonds purport to avoid the question of how to enforce standards since the interest rate penalty acts as the enforcer. Consequently, there is growing investor appetite for this type of bond as they offer several advantages that green or social bonds do not. First, unlike green bonds, SLBs are not "use-of-proceed" bonds, meaning the funds provided are not earmarked for specific purposes and can finance any corporate activities.[72] Furthermore, sustainability linked bonds allow a wider array of issuers that are unable to access green or social bonds. Green bonds require heavy capital expenditures in the green areas such as renewable energy, utilities, or green buildings and are therefore inaccessible for most issuers.[73]

4.2 Sustainability-linked Bonds and Sovereigns

Governments in many countries are looking for innovative financial instruments to address the triple crisis of unprecedented debt levels, climate change and nature loss. Many developing countries lack the fiscal space to mobilize the necessary financing to scale nature and climate investment to the level needed to avoid climate shocks and nature loss. Sovereign bonds—representing almost 40% of the USD 100 trillion global bond market—are the largest asset class in many institutional investors' portfolios.[74] They are one of the key instruments for channeling capital to emerging markets and developing economies (EMDEs).[75] Yet many developing countries are unable to deploy the capital needed to take action to avoid negative impacts of climate shocks and nature loss, particularly following the COVID-19 pandemic crisis.

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[71] Int'l Finance Corporation, *Making Sustainability-Linked Bonds More Impactful* (Feb. 2023).

[72] OECD, *Green, Social, Sustainability and Sustainability-Linked Bonds in Developing Countries: How Can Donors Support Public Sector Issuances?* (Oct. 2022), https://www.oecd.org/dac/green-social-sustainability-and-sustainability-linked-bonds.pdf.

[73] *Id.*

[74] Fiona Stewart & Rachel Mok, *Striking the right note: Key performance indicators for sovereign sustainability-linked bonds,* World Bank Blogs (Jan. 6, 2022), https://blogs.worldbank.org/psd/striking-right-note-key-performance-indicators-sovereign-sustainability-linked-bonds.

[75] Climate Bonds Initiative, *Guidance for sustainability-linked bonds as transition finance instruments,* https://www.climatebonds.net/market/slbs.

Against this backdrop, sovereign SLBs have been touted as one of the instruments with the potential to link sustainable sovereign financing with national climate and environmental commitments.[76] Although the International Capital Market Association (ICMA) Sustainability-linked Bond Principles (SLBPs)[77] were initially prescribed for corporate issuers, the World Bank in its November 2021 report supplemented the SLBPs by screening existing datasets to identify potential KPIs that could be used by sovereign SLBs to determine sustainability performance objectives (with a specific focus on climate- and nature-related objectives). These include: whether a country has Adaptation Communications; whether a country has a National Adaptation Plan; whether a country has Nationally Determined Contribution; whether a country has a net-zero emission target; whether a country intends to enhance ambition or action in their NDCs; a country's total greenhouse gas emissions per GDP; and a country's total greenhouse gas emissions per capita.[78] Following these developments, in June 2023, ICMA revised its Sustainability-Linked Bonds Principles. The 2023 version of the SLBP includes some adaptations of the five core components of the SLBP to accommodate all types of issuers, including sovereigns and sub-sovereigns.[79]

In practice, the recent developments in the SLB market show how these instruments are now being considered for sovereign issuers.[80] For instance, in March 2020, Chile became the world's first country to use sovereign debt to fund its long-term

[76] Stewart & Mok, *supra* note at 74.

[77] The Sustainability-Linked Bond Principles (SLBP) are voluntary process guidelines that outline best practices for financial instruments to incorporate forward-looking ESG outcomes and promote integrity in the development of the Sustainability-Linked Bond market by clarifying the approach for issuance of a SLB. The SLBP have five core components:

a) Selection of Key Performance Indicators (KPIs);
b) Calibration of Sustainability Performance Targets (SPTs);
c) Bond characteristics;
d) Reporting;
e) Verification.

Int'l Capital Market Association, *supra* note at 67.

[78] Stewart & Mok, *supra* note at 74.

[79] ICMA, *Sustainability-Linked Bonds Principles,* (2023), https://www.icmagroup.org/sustainable-finance/the-principles-guidelines-and-handbooks/sustainability-linked-bond-principles-slbp/.

[80] *Id.*

climate initiatives and accelerate its energy transition.[81] A first-of-its-kind, Chile's USD 2 billion SLB offering—carrying a 4.346% rate or 200 basis points above 20-year U.S. Treasury notes—was linked to two KPIs: a specific target for absolute greenhouse gas emissions and achieving half of electric power generation from Non-Conventional Renewable Energy sources (NCRE) over the next six years, increasing to 60% by 2032.[82] In the process, Chile became the first government to link its official Nationally Determined Contribution (NDC) commitment on climate change to a bond issuance, and one of only 11 countries to make unconditional commitments to the United Nations to reduce emissions over the next decade and beyond.

Unfortunately, despite their potential to finance development on the continent,[83] SLBs are a largely untapped market on the African continent. No African country has issued an SLB. In fact, globally, Chile and Uruguay are the only sovereigns to have issued SLBs.[84] With Chile and Uruguay having led other developing countries in the issuance of SLBs, it is imperative that African countries also consider issuing SLBs as a solution to their growing climate change challenges, and in so doing take into account their debt sustainability challenges. Notably in June 2023, the World Bank provided USD 100 to the Development Bank of Rwanda to issue an SLB.

4.3 Why Sovereign Sustainability-linked Bonds in Africa?

Financing challenges loom large and threaten progress against Africa's climate and development agendas. According to the Intergovernmental Panel on Climate Change Sixth Assessment Report, the increased frequency and intensity of climate and weather extremes have led to widespread and pervasive impacts on ecosystems,

[81] BNP Paribas, *Chile sets a trend with first sovereign sustainability-linked bond* (Mar. 21, 2020), https://cib.bnpparibas/chile-sets-a-trend-with-first-sovereign-sustainability-linked-bond/.

[82] Ryan Jeffrey Sy, *World's first sovereign sustainability linked bond issued by Chile,* S&P Global (Mar. 4, 2022), https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/world-s-1st-sovereign-sustainability-linked-bond-issued-by-chile-69226229.

[83] UNECA, *The Opportunity of Green, Social, and Sustainable (GSS) Bonds to Finance Development in Africa* (June 22, 2022), https://www.uneca.org/stories/the-opportunity-of-green%2C-social%2C-and-sustainable-%28gss%29-bonds-to-finance-development-in.

[84] Jeffrey Sy, *supra* note at 82 (explaining Chile's sovereign SLB); *cf* Inter-American Development Bank, *Uruguay Issues Global Sustainability-Linked Bond, with IDB Support* (Oct. 24, 2022) (explaining Uruguay's sovereign SLB).

people, settlements and infrastructure and reduced food and water security, hindering efforts to achieve the SDGs.[85] The COVID-19 pandemic dramatically set back progress against the SDGs, widening an already immense financing gap.

Due to the dire economic consequences of the global health crisis with drastic declines in international trade and capital market activity, external private inflows to developing countries (excluding to the People's Republic of China) fell by about USD 250 billion, or 21% compared to 2019. This drop is alarming because for many African countries, external private finance represents the largest source of financing for sustainable development. While proactive government policies helped to reverse the adverse impacts of the coronavirus, they put enormous pressures on public budgets, limiting the scope to finance action to meet long-term climate and development objectives.

Meanwhile, faced with their own debt and political problems, donors have become less keen to provide pure grants. As such, ODA is providing more loans than grants. That means countries are borrowing more, and the debt stock is increasing rapidly. This is a concern because many of the African countries are now heavily indebted. At the same time, concessional ODA from Organization for Economic Cooperation and Development donors have continuously fallen over the years.[89] Besides, most of the ODA coming to developing countries focuses on a limited number of countries. In addition, about 70% of ODA goes to the social sector, and about 20–25% goes to the productive sector.[90]

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[85] Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2022: Impacts, Adaptation and Vulnerability* (2022), https://www.ipcc.ch/report/ar6/wg2/.

[86] Dembele, F., R. Schwarz & P. Horrocks, *Scaling up Green, Social, Sustainability and Sustainability-linked Bond Issuances in Developing Countries,* OECD Publishing, Paris (2021).

[87] The World Bank, *Green, Social, and Sustainable Bonds to Serve Africa's Sustainable Investment Needs* (May 27, 2022), https://www.worldbank.org/en/news/press-release/2022/05/27/afw-green-social-and-sustainable-bonds-to-serve-africa-s-sustainable-investment-needs.

[88] Luisa Teixeira Felino & Brian Pinto, *Will less concessional development assistance for Africa cause another debt crisis?,* Brookings (Sept. 21, 2017), https://www.brookings.edu/blog/future-development/2017/09/21/will-less-concessional-development-assistance-for-africa-cause-another-debt-crisis/.

[89] *Id.*

[90] Kingsley Ighobor, *UNCTAD: Africa should use Official Development Assistance to diversify economies,* Africa Renewal Magazine (June 12, 2020), https://www.un.org/africarenewal/magazine/june-2020/coronavirus/unctad-african-countries-should-use-official-development-assistance-diversify-their.

In the meantime, Africa continues to face multiple challenges that include: high debt burdens and historically high cost of borrowing, post-Covid recovery, climate change related issues, and energy and food shortages due to the Ukraine war. These challenges make it even more necessary for African States to benefit from new ways to raise money from private investors in a transparent and efficient framework and at reasonable rates. It is an imperative that Africa looks for alternative sources of financing if they need to achieve their sustainable development objectives.

Therefore, with concessional finance on the wane in terms of both volumes and interest rates, SLBs have the potential to bridge the climate financing gap on the continent. While the issuance of SLBs could contribute to higher debt levels in these countries, they can offer opportunities to raise debt at relatively low cost and ensure that the spending financed by this debt is well-aligned with a country's sustainable development needs.[91] This can help the continent build a deeper, resilient, and sustainable financing. Moreover, there is improved reputation for countries that can issue this novel product which can enable these countries to have access to a global pool of fixed income capital, and attract investors who have niche interests in sustainability and responsible investment.[92] The rubrics of SLBs can also engender a greater level of transparency and institutional accountability in the delivery of development in Africa given the involvement of more responsibility-conscious investors and second opinion providers. However, given its nascent stages as far as sovereigns are concerned, it is too early to conclude on the comparative efficiency of SLBs and other traditional climate funds as mechanisms for raising finance. It is clear though that sovereign SLBs can be a parallel alternative financing mechanism that can contribute substantially to Africa's low-carbon and climate-resilient development.

The above notwithstanding, it is also important that African countries realize that SLBs are not without their limits. These instruments are often overpromoted for their yet to be realized promise to promote sustainability. They have therefore attracted criticism for, *inter alia,* their alleged intrusion over national sovereignty as they contractually require that the borrower implements policy changes to meet the

[91] OECD, *supra* note at 70.

[92] Uche Duru & Anthony Nyong, *Why Africa Needs Green Bonds,* African Development Bank (2016), https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/AEB_Vol_7_Issue_2_Why_Africa_Needs_Green_Bonds.pdf.

specific environmental, social, and governance (ESG) objectives. The following section critically analyses SLBs and presents the structural loopholes that African countries are likely to encounter should they opt to issue SLBs.

4.4 Structural Loopholes in Sovereign Sustainability-Linked Bonds

As already established, while the SLB structure allows flexibility in how incentives are determined, an overwhelming majority of SLBs issued so far tend to have a coupon step-up, i.e., a predetermined increase in the coupon rate that comes into effect if the issuer is unable to achieve the SPTs. Targets must be achieved by a certain date that is announced at time of issue and are typically verified externally. If targets are not met by the target date, the increased coupon rate is paid by the issuer over the remainder of the bond's life. These SLB structures, however, raise a number of potential issues around incentives for issuers. In particular, the structure allows for the possibility for issuers to take advantage of easier access to potentially lower cost of capital without undertaking the expected corresponding improvement in ESG performance towards pre-set targets.

At the same time, whereas the step-up provisions aim to deter non-compliance with the predetermined SPTs and KPIs, the challenge these step-up provisions present to sovereigns is that the higher returns going to investors for sovereign issuers' failure to meet sustainability targets—which by definition are failures that harm humans and nature, means the debt payable by the sovereign issuer will increase. This has an impact on the citizens. For example, a country's ability to fulfil its international human rights obligations, to a large extent, depends on the availability and allocation of sufficient resources for essential investments in human, social, and physical infrastructure that provide the foundation for sustainable and equitable development, as well as the realization of all human rights.[93] Therefore, States are required to utilize their "maximum available resources" to ensure the progressive realization of economic, social, and cultural rights.[94] Notably, the right to development is "a conglomeration of a collection of claims, varying from basic education, health care and

[93] Hurley, *supra* note 35, at 169.

[94] U.N. Human Rights Council, *Consolidation of Findings of the High-Level Task Force on the Implementation of the Right to Development,* U.N. Doc. A/HRC/15/WG.2/TF/2/Add.1, para. 53–54 (Mar. 25, 2010); *see also* Hurley, *supra* note 35 at 324.

nutrition to political liberties, religious freedoms and civil rights for all."[95] On the one hand, development financing through sovereign debt can foster economic growth, help countries achieve their sustainable development goals, as well as improve the capacity of the borrower state to establish the conditions necessary to fulfil their human rights obligations.[96] On the other hand, unsustainable debts that may result from, *inter alia,* increased debt servicing as a result of SLB step-up provisions have adverse impacts on the realization of human rights and development objectives of the sovereign issuer. The adverse implications may occur through diversion of resources from fundamental social services to servicing of SLB penalty. This has consequential impacts on the issuer's sustainable development objectives.

Another potential loophole is that once the issuer has hit its target it is free to invest in whatever manner it chooses.[97] This means that it could go back to its old ways or undo efforts to put in place to achieve the specific goals. This situation would be analogous to General Motors and the famed EV1 back in the 1990s, whereby GM produced a ground-breaking electric vehicle to meet Californian air quality regulations.[98] Once the thread of the regulations had passed, GM subsequently repossessed most of the cars before destroying them. Just like GM Motors, nothing can bar a sovereign SLB issuer from undoing its efforts. This situation could be avoided by sovereign issuers having a pipeline of SLBs, each of which have stricter and stricter targets strung out into the future and therefore incentivizing them to keep meeting environmental targets.[99] This would very much mimic the manner by which existing sovereigns use the bond market, and have a continuous stream of capital to service existing debt. Unfortunately, this would mean more debt to the sovereign issuer, with similar resulting consequences as those in the first example above.

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[95] Stephen Marks & Bard Andreassen, *Development as a Human Right: Legal, Political, and Economic Dimensions* (2007); *see also* Imme Scholz, *Sustainable Development Goals and Human Rights* 191 (Markus Kaltenborn *et al.,* eds., 5th vol. 2020).

[96] Hurley, *supra* note 40 at 177.

[97] Richard Howard, *Sustainability Linked Bonds Part 2: Challenges and Opportunities, Green Finance Guide,* https://www.greenfinanceguide.com/blog/sustainability-linked-bonds-part-2-challenges-and-opportunities.

[98] Manohla Dargis, *Who Killed the Electric Car? Some Big Reasons the Electric Car Can't Cross the Road,* N.Y. TIMES (June 28, 2006), https://www.nytimes.com/2006/06/28/movies/28kill.html.

[99] Howard, *supra* note 94.

There is also widespread skepticism about the actual ability of SLBs to achieve their environmental conservation goals. ESG frameworks might embed an inherent bias towards developed market sovereign issuers, leading to increased financing costs for emerging markets like those in Africa.[100] On a more structural level, from a development perspective, there is fear that the rise of sovereign SLBs will reduce the role of official lenders such as the International Monetary Fund (IMF) or the World Bank and increase the influence of private markets.[101] According to Daniela Gabor, there is a paradigmatic change in the development agenda posed by sustainable finance, which progressively transfers to private investors the sustainable development functions played by official lenders, otherwise defined as the "Wall Street Consensus."[102] Gabor argues that the shift from official finance to sovereign sustainable financing instruments such as SLBs might expose emerging and least-developed sovereign borrowers to undue pressure from private markets. This is due to a combination of factors which include the lack of accountability mechanisms and institutional back-ups in sovereign sustainable finance as those present in official sector finance.[103] This is especially important in the event of a sovereign debt restructuring. Indeed, in my view, the pressure on borrowers from the developing world to implement creditor-friendly structural reforms could give investors a disproportionate power but without the political checks that official lenders are subjected to. This sustainable investors' increased power to influence domestic policies could be seen as a new form of private conditionality which they could indeed use to force borrowers to implement ESG policies as a condition for their lending or during a restructuring.[104]

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[100] Soledad Lopez *et al., ESG in Sovereign Fixed Income Investing: Identifying Opportunities, Correcting Biases,* Morgan (2020), at 4.

[101] Joywin Mathew, *Shades of Green in Financing: A Discussion on Green Bonds and Green Loans,* 33 *Butterworths Journal of Int'l Bank and Financial Law* 311 (2018); *See also* UNCTAD, *Trade and Development Report 2019: Financing a Global Green New Deal* (Sept. 25, 2019).

[102] Daniela Gabor, *The Wall Street Consensus,* 52 Development and Change 429 (2021).

[103] Celine Tan, *Private Investments, Public Goods: Regulating Markets for Sustainable Development,* 23 European Business Organization L. Rev. 241, 263 (2022).

[104] *See* Patrick Bolton, Lee Buchheit, Mitu Gulati, Ugo Panizza, Beatrice Weder di Mauro & Jeromin Zettelmeyer, *Climate and Debt,* Geneva Reports on the World Economy (Oct. 3, 2022), at 81–82 (For example, during the 2021 Belize restructuring, there was a portion of the restructured bonds that was used to fund Belize's marine conservation projects).

There are a host more challenges which could affect sovereign SLBs, including, how would the step-up provisions be enacted? Could there be drawn out legal issues and court battles? Could this affect the price of sovereign SLBs? Could a sovereign issuer set overly ambitious goals or lax penalties, knowing full well it would not meet the goals, just to access the SLB capital market? Would predatory investors covert bonds of sovereign issuers they expect to miss their targets? Could this also open these countries to predatory investors interested in vulture funds? These "structural loopholes" weaken the effectiveness of incentivized sustainability targets in SLBs, a distinguishing feature and key reason for its growing popularity. Resulting concerns around the actual sustainability impact from SLBs may threaten the pace of future growth of the market. This is especially true in the wake of greenwashing concerns that have dogged green, social and sustainability bonds.

That said, sustainability-linked bonds will certainly grow and they have an obvious place in the larger market of green and social loans, bonds and funds. The two opposing views on the benefit and risks of sovereign SLBs are based on the shared notion that financial markets' increased focus on key domestic policy areas will trigger a positive regulatory change towards more sustainable policies. In other words, they both assume that markets can directly influence sovereign borrowers' policymaking towards their sustainability objectives. However, African countries opting for these instruments for purposes of sustainable climate financing ought to tread cautiously in order to first ensure that they indeed appreciate the consequences of these instruments. To do this, it is imperative that sovereign SLB standards, methodologies and professional integrity be strengthened as the size of the SLB market grows. Lenders and investors, as well as society at large, need to be reassured that sustainability-linked bonds are financing genuine and additional advances in environmental and social progress, especially in climate-vulnerable countries in Africa.

4.5 Sustainability-linked Bonds and Human Rights

4.5.1 HUMAN RIGHTS AQCCOUNTABILITY IN THE GLOBAL CAPITAL MARKETS Financial investments drive real-world outcomes on issues such as climate change, sustainable development and human rights—whether the impacts are intended or not. Investors increasingly recognize that financial returns depend on the

stability of social and environmental systems, especially in the long term.[105] This is driving investors to increasingly focus on what they can do to improve sustainability outcomes and contribute to global and national sustainability goals. The Global Impact Investing Network (GIIN), a global industry association, notes that impact investors such as SLB investors have been demonstrating the potential of the private sector to drive progress in areas such as access to financial services, climate change, and sustainable energy—impact areas that very clearly line up with SDGs and human rights.[106]

There are three factors that impact investors—especially SLB investors—should take into account to ensure that their investments align with human rights: investor assessment and external assurance.[107] With the United Nations Guiding Principles on Business and Human Rights (Guiding Principles) as its conceptual foundation, this two-part framework accounts for the unique conditions of impact investing and capacity of institutional investors. Below is a brief highlight of the two factors on impact investing.

4.5.1.1 *Investor Assessment* The first consideration for impact investors is to identify and assess how human rights issues are implicated by the projects in the sovereigns in which they invest.[108] This requires that investors conduct human rights due diligence, a core component of the Guiding Principles.[109] The first step in human rights due diligence is identification and assessment of actual or potential human rights and climate change impacts.[110] Investor assessment should also incorporate human rights in procedural terms. Particularly, in impact investing, investor assessment should seek

[105] United Nations Principles for Responsible Investment, *Legal framework for impact: Briefing for policy makers* (Apr. 25, 2023), https://www.unpri.org/a-legal-framework-for-impact/legal-framework-for-impact-briefing-for-policy-makers/11378.article.

[106] Global Impact Investing Network, *Achieving the Sustainable Development Goals: The Role of Impact Investing* (Sept. 2016), https://thegiin.org/assets/GIIN_Impact%20InvestingSDGs_Finalprofiles_webfile.pdf. at 2.

[107] Park, *supra* note 14.

[108] *Id.*

[109] United Nations Guiding Principles on Business and Human Rights, 17 (2011), https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf, HR/PUB/12/06, September 2012, UN OHCHR, available at https://www.refworld.org/docid/5065a43f2.html (accessed on 3rd June 2022).

[110] *Id.*

and incorporate input from stakeholders, especially individuals affected by a financed project.[111] Moreover, sovereigns that receive financing should be required to continuously engage with investors and stakeholders on their human rights policies, practices and impacts.[112] Investors should also disclose the policies and practices that guide their assessments of human rights impacts, as well as the results of their assessments.[113]

There are, additionally, home state due diligence laws which have shaped how sovereigns relate with financial investors as far as climate change and other environmental issues are concerned. In Kenya, for example, the Environmental Management and Coordination Act, 1999 (EMCA) revised in 2015 and the Climate Change Act, 2016 are among the key legal frameworks concerning the protection of the environment. Under the EMCA, Kenya has adopted the use of the Environmental Impact Assessments (EIA) as a decision-making tool to help improve the environmental outcomes of management decisions. It is mandatory that certain activities that are likely to have significant impacts on the environment are evaluated and measures spelt out to mitigate identified negative impacts prior to their being approved to commence operations. Moreover, the Central Bank of Kenya (CBK) has acknowledged that climate-related financial risks can significantly increase banking sector credit risk as a result of severe floods, drought, landslides and wild fires that destroy borrowers' assets or impair supply chains.[114] As a result, the CBK and the Kenyan banking sector players commenced some steps that evidence their recognition of the potential impact of climate risk. These include:

a. In 2013, the CBK introduced the Internal Capital Adequacy Assessment Process (ICAAP) for the banking sector. Through ICAAP, banks are required to

[111] James Muraguri et al., *Public Participation in Fiscal Decisions on Foreign Debt* (2022), African Debt and Human Rights Research Paper 04/06 ADHR, https://cfs.uonbi.ac.ke/system/files/2023-02/James%20Muraguri%20et%20al_%20Public%20Participation%20in%20Fiscal%20Decisions%20on%20Foreign%20Debt.pdf.

[112] Park, *supra* note 14.

[113] United Nations Guiding Principles on Business and Human Rights, *supra* note 116 at 23.

[114] Central Bank of Kenya, *Guidance on Climate-related Risk Management* (Oct. 2021), https://www.centralbank.go.ke/wp-content/uploads/2021/10/Guidance-on-Climate-Related-Risk-Management.pdf.

maintain sufficient capital that is commensurate to all material risks they are exposed to. Banks are therefore expected to include climate risk among the risks they are exposed to and if assessed material, capital should be set aside.

b. In 2015, the Kenya Bankers Association (KBA) issued the KBA Sustainable Finance (SFI) Guiding Principles[115] that guided banks to create long-term value for their clients, firm, economy and the environment. In order to entrench the SFI principles, KBA introduced an e-learning platform for banking sector staff and an SFI Catalyst Awards to challenge banks to embrace sustainable banking practices.
c. In 2019, CBK issued the Kenya Banking Sector Charter whose objective is to promote a sector that works for and with the Kenyans. The Charter has four pillars—customer centricity, risk-based credit pricing, transparency and ethical banking. Ethical banking pillar requires banks to entrench a culture of doing the right thing as they offer their products and services. This includes embracing sustainable finance principles as their intermediation processes.

Though climate change management has traditionally been approached from a corporate social responsibility perspective, some corporates in Kenya, including banks, have made reasonable effort towards entrenching sustainability in their businesses. These corporates have issued sustainability reports disclosing among others their progress in climate risk management. For some of the foreign banks based in Kenya, their parent companies have also made progress in entrenching climate risk management.

4.5.1.2 *Investor Duties of Vigilance and Reporting* Additionally, France's Corporate Duty of Vigilance Law, which only applies to the largest French companies,[116] mandates the latter to assess and address the adverse impacts of their activities on

[115] Kenya Bankers Association Sustainable Finance Initiative.

[116] The Law defines largest French companies as any company that at the end of two consecutive financial years, employs at least five thousand employees within the company and its direct and indirect subsidiaries, whose head office is located on French territory, or that has at least ten thousand employees in its service and in its direct or indirect subsidiaries, whose head office is located on French territory or abroad.

people and the planet, by having them publish annual, public vigilance plans.[117] This includes impacts linked to their own activities, those of companies under their control, and those of suppliers and subcontractors, with whom they have an established commercial relationship. When companies default on these obligations, the law empowers victims and other concerned parties to bring the issue before a competent court which can apply fines of up to €10 million when companies fail to publish plans.[118] Fines can go up to €30 million if this failure resulted in damages that would otherwise have been preventable.[119] Interestingly, notwithstanding its positive contents, the Parliamentary discussions which surrounded this law justified the unilateral enactment of due diligence laws for the benefit of the Global South as an opportunity for France to "once again be at the forefront for the protection of human rights and that of the environment."[120] This statement, however, presupposes France as the generous liberator of people beyond its national boundaries."[121] This "politics of saving" upon which this law was premised simultaneously empowers and disempowers rightsholders on the receiving end of corporate abuses by casting France in the role of a savior, and such Global South rightsholders as poor, often powerless victims to be protected, without giving due regard to their agency.[122] This condemns global south rightsholders to continue being disenfranchised from decisions that affect their lived realities. Importantly, "the essence of rights is that they are considered entitlements, not granted by the grace or at the discretion of others."[123]

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[117] LAW No. 2017-399 of March 27, 2017 (relating to the duty of vigilance of parent companies and ordering companies), https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290626/.

[118] *Id.* at section 2.

[119] *Id.*

[120] French National Assembly, *supra* note 117.

[121] Debadatta Bose, *Decentring Narratives Around Business and Human Rights Instruments: An Example of the French Devoir de Vigilance Law,* 8 Business & Human Rights Journal, 1 (2021).

[122] Caroline Lichuma, *Centering Europe and Othering the Rest: Corporate Due Diligence Laws and Their Impacts on the Global South,* Völkerrechtsblog, Jan. 16, 2023; *see also* Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights,* 42 HARV. INT'L L.J. 201 (2001).

[123] John Ruggie, *Just Business: Multinational Corporations and Human Rights,* 99 (Kwame Anthony Appiah ed., 2013) at 18.

Investor assessment in the global capital markets faces unique informational barriers due to the attenuated nature of institutional investors' relationships with the companies and projects in their portfolios.[124] Many institutional investors are unable to effectively assess human rights risk and measure and verify positive human rights outcomes.[125] The inconsistency, incompatibility and incompleteness of indicators impede rights-based accountability.[126] Furthermore, many human rights impacts are often only evident in the long term, which hampers the ability of investors to determine when and how to balance short-term financial considerations and long-term human rights factors.[127]

These informational deficits can be addressed in part through mandatory disclosure of impacts.[128] Consistent with this paradigm, the Guiding Principles incorporate reporting as an element of the corporate responsibility to protect.[129] Under the Guiding Principles, human rights reporting must become institutionalized within the firm.[130] Impact investors should seek any available means to encourage, incentivize, or require the countries, projects or funds in which they invest to collect and report on their human rights impacts.[131] Consequently, consistent with the Guiding Principles, external assurance should be integrated, to the extent possible, in the investor's ongoing tracking of human rights impacts.[132]

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[124] Park, *supra* note 14.

[125] Benjamin Meier & Yuna Kim, *Human Rights Accountability through Treaty Bodies: Examining Human Rights Treaty Monitoring for Water and Sanitation,* 26 Duke J. of Comp. & Int'l Law 139, 142 (2015).

[126] Jessica Evans, *The Record of International Financial Institutions on Business and Human Rights,* 1 Business & Human Rights Journal 327, 327–28 (2016).

[127] UN System Task Team on the Post-2015 UN Development Agenda, Working Group on "Financing for Sustainable Development," at 6, https://sustainabledevelopment.un.org/content/documents/2091Executive%20Summary-UNTT%20WG%20on%20SDF.pdf.

[128] Park, *supra* note 14.

[129] United Nations Guiding Principles on Business and Human Rights, *supra* note 116 at 23.

[130] *Id.; see also* John Gerard Ruggie, *supra* note 123.

[131] OECD, *Responsible Business Conduct for Institutional Investors: Key Considerations for Due Diligence under the OECD Guidelines for Multinational Enterprises* at 29, (Mar. 28, 2017).

[132] "United Nations Guiding Principles on Business and Human Rights," *supra* note 116 at 22.

4.5.2 ASSESSING THE ADEQUACY OF SLB GUIDELINES ON HUMAN RIGHTS The emergence of new debt financing and borrowing tools, notably sustainability-linked bonds, represents an enormous opportunity to mobilize institutional and privately held capital towards human rights fulfilment, especially in climate investment.[133] The two factors to consider in impact investing—investor assessment and external assurance—can be applied to the SLB market to identify and evaluate its standards and practices from a human rights and environment and climate change perspective.

4.5.2.1 *Sovereign SLBs and Investor Assessment* According to the ICMA SLBPs issuers are encouraged to engage in due diligence on risks associated with projects. Specifically, issuers must publicly communicate to investors their rationale for the selection of their KPI(s) (i.e., relevance, materiality), the motivation for the SPT(s) (i.e., ambition level, consistency with overall strategic planning and benchmarking approach), the potential change of bond financial and/or structural characteristics and the trigger events leading to such a change, intended post issuance reporting and independent verification, as well as an overall representation of the issuer's alignment with the SLBP.[134]

Under the SLBPs, transparency is the primary means by which investors and other stakeholders hold issuers to account. However, the SLBPs' lack of rules or guidance on transparency perpetuates the struggle of investors, regulators and other stakeholders to assess the climate impact of SLBs, let alone consider human rights impacts. In addition, the SLBPs' lack of clear guidelines on due diligence puts sovereign issuers—especially those from the Global South—at risk. The SLBPs fail to make any special provisions to assist global south rightsholders to overcome the numerous barriers that they must inevitably face before being able to access civil remedies in the event of violation of local due diligence requirements. There is no mention of legal aid or reduced evidentiary burdens or any other such provisions that could help lessen the inevitable hurdles that will be faced by Global South rightsholders as they seek redress.

It is, therefore, imperative that the SLB market expressly draw on human rights assessment frameworks. For example, the Sustainable Development Solutions

[133] Murphy, *supra* note 68.

[134] *Id.* at 2.

Network (SDSN) serves as the foundation for integrated global, national, regional and thematic monitoring of progress towards the SDGs.[135] In order to align the SDGs with investor-oriented metrics in the SLB market, the SLBPs could coordinate with initiatives under the SDSN in order to ensure that climate-related human rights impacts are incorporated into investor assessment.[136]

4.5.2.2 *Sovereign SLBs and External Assurance* To aid investors, the SLBPs recommend that issuers appoint (an) external review provider(s) in the form of Second Party Opinion to confirm the alignment of their SLB with the five core components of the SLBP.[137] Second opinions are the predominant form of external assurance in the SLB market. A Second Party Opinion does not seek to measure social outcomes, rather, it focuses on the process by which an issuer selects projects and investments to determine whether the selection criteria contribute to the bond's stated objectives.[138] They are typically provided prior to the issuance of an SLB, and sovereigns may obtain annual reviews during the term of the SLB.[139] While immensely beneficial to market participants in the SLB market, second party opinions are limited in their capacity to inform investors and stakeholders of human rights outcomes due to their static and voluntary nature.

Relying on the foregoing, in their pre-issuance Second Party Opinion, external reviewers are encouraged to assess the relevance, robustness and reliability of selected KPIs, the rationale and level of ambition of the proposed SPTs, the relevance and reliability of selected benchmarks and baselines, and the credibility of the strategy outlined to achieve them, based on scenario analyses, where relevant.[140] Post issuance,

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[135] Sustainable Development Solutions Network, *Indicators and a Monitoring Framework for the Sustainable Development Goals* (May 15, 2015), https://sustainabledevelopment.un.org/content/documents/2013150612-FINAL-SDSN-Indicator-Report1.pdf.

[136] *Id.* at 16 (these initiatives could include the joint initiative between the Global Reporting Initiative (GRI), the UN Global Compact (UNGC), and the World Business Council for Sustainable Development (WBCSD)).

[137] *Id.* at 4.

[138] Cicero, *Framework for CICERO's "Second Opinions" on Green Bond Investments* (2016), https://www.cicero.uio.no/file/2/CICERO%20Second%20Opinion%20Framework%20280416.pdf/download.

[139] ICMA, *supra* note 67 at 5.

[140] *Id.* at 4.

in case of any material change to perimeter/KPI methodology/SPT(s) calibration, issuers are encouraged to ask external reviewers to assess any of these changes.

Additionally, the SLBP requires issuers to ensure that their sustainability performance targets are set in good faith and must disclose strategic information that may decisively impact the achievement of the SPTs.[141] Such disclosures on target setting should make clear reference to:

- The timelines for the target achievement, including the target observation date(s)/ period(s), the trigger event(s) and the frequency of SPTs;
- Where relevant, the verified baseline or reference point selected for improvement of KPIs as well as the rationale for that baseline or reference point to be used (including date/ period);
- Where relevant, in what situations recalculations or pro-forma adjustments of baselines will take place;
- Where possible and taking competition and confidentiality considerations into account, how the issuers intend to reach such SPTs, e.g., by describing its ESG strategy, supporting ESG governance and investments, and its operating strategy, i.e., through highlighting the key levers / type of actions that are expected to drive the performance towards the SPTs as well as their expected respective contribution, in quantitative terms wherever possible; and
- Any other key factors beyond the issuer's direct control that may affect the achievement of the SPT(s).[142]

In general, whereas the regulations governing SLBs make an attempt at promoting sustainable development, on the other hand, the SLB framework's attempt at incorporating human rights and environment issues is still wanting. While it is quite easy to argue that the global debt and financial architecture in general, and the SLB framework in particular, is "trailblazing", I counter that this is not entirely correct. It

[141] *Id.* at 3.
[142] *Id.* at 4.

is disingenuous given the proclivities of such regulations to set the stage for an interpretive hegemony in SLBs that does not do enough to center the unique cultural, historical, and political experiences as well as lived realities of rightsholders from the Global South, who are quite simply left out of the conversation, at least for the most part. These regulations run the very real risk of perpetuating narratives entrenched in Eurocentric enlightenment ideas and (mis)representing them as global.

4.6 Africa's Climate Finance Needs, Sovereign SLBs and Deepening Inequality: Towards a Common African Approach to Reform of the Global Financial Architecture

A multidimensional crisis is turbocharging inequalities and producing a devastating impact on the poorest and most vulnerable. The 2030 Agenda for Sustainable Development is turning into a mirage of what might have been, as communities and Governments struggle to meet immediate needs. Countries are facing the scars of the COVID-19 pandemic, the war in Ukraine is contributing to a global cost-of-living crisis, and climate disasters are becoming more frequent, deadly and expensive. Amid a backdrop of these multidimensional crises exacerbating inequalities and pushing the world's poorest, most vulnerable countries deeper into debt, reform of the international financial architecture is an imperative in order to effectively close the rich-poor gap and achieve the Sustainable Development Goals. Without swift action, climate financing divides will become sustainable development divides. There is, therefore, need for immediate steps to foster debt sustainability, scale up investment and boost climate finance for adaptation.

Underscoring the importance of laying the groundwork for a reformed international financial architecture with the developing countries at its core, African leaders endorsed the Sustainable Debt Coalition initiative.[143] The Coalition aims to increase access to affordable green and SDG finance while supporting debt refinancing or issuance aligned with debtor-defined sustainability objectives. It fosters consultations at the intersection of debt, climate, and development, with its focus areas including debt-for-climate investment swaps, green and blue bonds, blended finance, the sustainable

[143] UNECA, *Sustainable Debt Coalition Initiative* (2022), https://cop27.eg/assets/files/initiatives/SUSTAINABLE%20DEBT%20COALITION%20INITIATIVE%20-BR-01-EGY-10-22-EN.pdf.

budgeting approach, automatic debt suspension for climate events (so called "hurricane clauses") discussed in Nona Tamale and Geoffrey Adonu's respective chapters in this book, prioritizing grant finance, and debtor-defined key performance indicators.

Given that no African country has issued a Sovereign SLB, it is imperative that even as African leaders call for the urgent reform of the global financial architecture, opportunities presented by sovereign SLBs that are not present in other bonds such as green and social bonds are not wasted. This is because sovereign sustainability-linked bonds are a promising pillar of sustainable finance that can help deepen the capital markets of developing economies, which urgently need funding to underpin successful green transitions. In so doing, however, they should also be cognizant of the fact that the only motivation common to both parties in an SLB transaction is to market the debt instrument as "sustainable" to please the demand from retail investors eager to buy into this asset class. Ultimately, the sovereign sustainable debt market seems to be built on dangerous connivance between institutional investors, sovereign borrowers, and certifiers to artificially create a market with very little reason to exist. Without adequate regulation addressing the incentive problems in the certification and monitoring phase of the debt and the legal structure of SLB commitments, sovereign SLBs will lack credibility and usefulness for African countries.

4.7 Conclusion

This chapter highlighted the integral role of the global debt markets in enabling the fulfilment of sustainable development and the realization of human rights embedded therein. Due to the size of their assets and their sheer number, institutional investors wield considerable influence over sovereigns in various contexts. By analyzing the nascent yet rapidly growing SLB market, this chapter has shown how impact investing can further sustainable development in a manner that maximizes the realization of human rights and climate resilience.

At the same time, this chapter also argued that sovereign SLBs largely fail to live up to their expectations as tools for policy change for sustainability. Among others, it argued that sovereign SLBs are currently designed to maximize the influence of international SLB investors on the formulation of domestic policies, thereby engendering private conditionality in Africa. The current ecosystem supporting sovereign SLBs is built primarily to increase the cosmetic appeal of those instruments to bondholders

but with the minimal prospect of promoting any real human rights, climate mitigation and adaptation, and sustainability change.

Therefore, should African countries opt to issue SLBs, regardless of the inherent gaps, aligning their SLB transactions with human rights, climate mitigation and adaptation, and sustainability goals will be critical for moving the financial services sector towards net-zero. Only subject to the reforms proposed in this research, would sustainability-linked bonds have the potential to move the needle in the transition to net-zero in Africa.

CHAPTER SEVEN

Africa and the (New) Green Finance Rush

Godwin Eli Kwadzo Dzah*

1 Introduction

Green finance heralds a new bold move for climate justice and environmental sustainability.[1] There are different green finance instruments. These include sustainability bonds, social bonds, green bonds, climate bonds, transition bonds, and green loans or green credit. The primary objective of these different kinds of debt and equity instruments is the promotion of environment-connected goals or a transition to a low carbon economy. They function like typical financial instruments, but in the case of green finance, these instruments are ostensibly designed to fund activities that are considered environmentally-friendly or advance climate and sustainability-related projects. Thus, these instruments incentivise activities that correspond positively to the environment. However, green finance raises some concerns. Like all things, the ecological crisis has become a window of opportunity to reinject and embed capitalist and neoliberal paradigms into global governance; this time through the ecological crisis.[2]

This issue is important to Africa since it continues to be a site for extracting natural resources, a process that implicitly endorses ecological despoliation. Even still, global governance and policy institutions continue to advocate that green finance will make improvements to the ecological crisis. They argue green finance is a catalyst for the global transition to low-carbon economies. It will support the development

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[1] I will refer to one or more of these instruments in my analysis for illustrative purposes. While I refer to green bonds more frequently, it does not suggest a preference for this instrument in this study.

[2] Joshua Long, *Crisis Capitalism and Climate Finance: The Framing, Monetizing, and Orchestration of Resilience-Amidst-Crisis,* 9 Politics and Governance 51 (2021).

and production of derivate products like lithium-ion batteries, grid-scale batteries for electric power storage, microchips for computer and other technological devices. As a result, there has been a corresponding rise in demand for critical minerals including cobalt, coltan and lithium which are highly sought after, especially by China and countries in the Global North. Regarding solar projects, countries in North Africa are using green debt instruments and similar funding mechanisms to drive up solar power projects.[3]

The prospects and promises of green technologies and their funding schemes raise concerns for natural resource-rich countries, especially in Africa. For instance, financial investments in critical minerals mining support renewable energy infrastructure; thus, it can be classified as satisfying the requirements of green finance. However, the "newness" of green finance obscures the inherent destruction of the environment and related climate risks in Africa. It conceals the fundamental character of the logic of extractivism which is masked by the *green* label.[4] Relatedly, the global diffusion of this new financing framework robs Africa of the chance and agency to utilize its own natural resources to propel its own development since the extracted mineral resources are destined for industrialized economies.[5] This shift in agenda, for which Africa has little or no comparative advantage, perpetuates the continent as an alimentation for industrialized countries.

This challenge is further complicated now that there is a critical mineral resources race between countries like China and the United States. The need for critical minerals is deeply embedded in a resource race across industrialised countries. To this extent, these countries have adopted national security positions and strategies on how to secure such resources in Africa. The result is that critical minerals access has now become a new frontier of techno-nationalism creatively styled as a quest to reduce

[3] Farhad Taghizadeh-Hesary *et al., The Green Bond Market and Its Use for Energy Efficiency Finance in Africa,* 12 China Finance Rev. Int'l 241, 242 (2022).

[4] Christpoher W. Chagnon *et al., From Extractivism to Global Extractivism: The Evolution of an Organizing Concept,* 49 J. of Peasant Studies 760, 768 (2022).

[5] Jean-Marc Kilolo, *Zambia and DRC Sign Cooperation Agreement to Produce Electric Batteries,* ECA (Apr. 29, 2022), https://www.uneca.org/stories/zambia-and-drc-sign-cooperation-agreement-to-manufacture-electric-batteries.

climate precarity through green initiatives.[6] This techno-nationalism is seen in how the United States and China are enacting laws and policies to protect their assets, and are willing to commit funds to Africa under the guise of green finance. All of these maneuvers are deployed to ensure unfettered access to Africa's natural resources.[7]

Thus, the Global South, be it Latin American countries including Chile, Bolivia and Argentina, or African countries like Ghana, Zimbabwe, Namibia, Zambia and the Democratic Republic of the Congo (DRC), have become entwined in this *novel* geopolitical tussle.[8] To understand the changes underway, it is vital we examine how this new green finance rush fosters and embraces new laws, policies and strategies motivated by external influences. It is also important to understand whether green finance instruments are prescriptions designed, mandated, or foisted on natural resource-rich African countries through creative channels of geopolitical norm diffusion. These issues must be further investigated to avoid the charge of greenwashing that is quite often concealed or embedded in these interventions.

2 The Advance of Green Finance

The rise of green finance is largely attributable to a corresponding turn to green sources of energy.[9] Green finance involves funding projects or making financial investments directed at contributing to the overall goal of environmental sustainability.[10] Bhatnagar and Sharma argue that green finance "is the intersection of the financial industry, environmental protection and economic growth."[11] Other scholars

[6] Xiaoyu Pu, *Interdependence vs. Geopolitics: Securitization and Partial Recoupling of Sino-American Relations,* in Critical Minerals, the Climate Crisis and the Tech Imperium 27 (Sophia Kalantzakos ed., 2023).

[7] Liza Tobin, *China's Brute Force Economics: Waking Up from the Dream of a Level Playing Field,* 6 Texas Nat'l Security Rev. 81, 82 (2022–2023).

[8] Gabriela Quijano, *Lithium Might Hold the Key to Our Clean Energy Future, but Will this Star Metal Fully Deliver on its Green Potential?,* 5 Business & Human Rights J. 276, 278 (2020).

[9] Samar S. Alharbi *et al., Green Finance and Renewable Energy: A Worldwide Evidence,* 118 Energy Economics (forthcoming 2023).

[10] Hugh Devas, Green Finance, 3 European Energy & Envtl. L. Rev. 220 (1994).

[11] S. Bhatnagar & D. Sharma, *Evolution of Green Finance and its Enablers: A Bibliometric Analysis,* 162 Renewable & Sustainable Energy Reviews 112405, 112405 (2022).

have also argued that green finance is the solution to the problem of cleaner sources of energy, and a necessary and welcome technology to shift investments away from fossil fuels, including coal, natural gas, and petroleum.[12] The urgency of the case for green finance as a panacea to some of the most complex human challenges has been a central focus of studies on how financial instruments designed and implemented under its jurisdiction advance the case for environmental and climate sustainability. It also recasts related geopolitical arguments on resource access by challenging pre-existing frameworks of engagement between resource-rich countries, particularly in the Global South, including African countries, and the industrialized Global North alongside China. There are concerns even in the Global North over the impact of green finance on traditional financial practices.[13] International law scholars have also expressed concerns over whether green finance can truly improve the environment. Their concerns stem from the fact that climate or green finance comes largely from the same sources as development assistance that is responsible for the ecological crisis in the first place.[14] Accordingly, the frenzied discussions on these *new* financial tools have spurred the interest of legal scholars about the meaning and implications of green finance on pressing subjects such as socio-ecological justice considerations.[15]

More importantly, the question of meaning and consequence of green finance is ever more urgent for resource-rich countries, especially those in Africa caught in the web of the global push towards green energy. Demonstrably, the political dimensions of climate and sustainability finance impact the flow and direction of funding.[16] The emergence of climate finance resurrects the anxieties over the failure of similar past interventions that sought to improve upon environment and development challenges

[12] Liafeng Xia *et al., The Response of Green Finance Toward the Sustainable Environment: The Role of Renewable Energy Development and Institutional Quality'* 30 Envtl. Science & Pollution Research 1 (2023).

[13] Michael B. Gerrard *et al., Green Finance: Leveraging Investment for Environmental Protection,* 48 Envtl. L. Rep. 10367 (2018).

[14] Alexander Zahar, *Climate Change Finance and International Law,* 125–27 (1st ed. 2017).

[15] Iris H-Y Chiu, Lin Lin & David Rouch, *Law and Regulation for Sustainable Finance,* 23 European Business Organization L. Rev. 1 (2022).

[16] Laura Kuhl *et al., The Liberal Limits to Transformation in the Green Climate Fund,* Climate and Development (July 19, 2023), https://doi.org/10.1080/17565529.2023.2235318.

in places like Africa.[17] The refusal of the Global North to make good its ecological debt to the Global South, including Africa, raises suspicions over whether the turn to green finance will not simply disguise the North's continuing extractivist ambitions. For example, several countries in the North have refused to pay compensation to the South for loss and damage arising from the climate crisis, and rather "resorting to addressing loss and damage as part of adaptation measures, essentially exclusive of any financial liability."[18] Therefore, the anxieties over green finance raise further concerns since green finance is not reparations or compensation.

Yet still, green finance is growing in popularity and intensity as the preferred method of investing in projects focusing on socio-environmental considerations. However, green finance instruments have a relatively recent history. The European Investment Bank issued its green bond (the first of several green finance instruments) in 2007 "to finance renewable energy and energy efficiency projects."[19] This momentum signaled the "green bond boom" and launched a new phase in energy finance.[20] The World Bank followed this example and issued its first green bond in 2008 to provide financial support to climate-focused projects.[21] Soon after, other development finance institutions like the African Development Bank (AfDB) followed, and launched their own instruments to fund investments that promote climate and environmental sustainability.[22]

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[17] Nicolas Kreibich *et al., An Update on the Clean Development Mechanism in Africa in Times of Market Crisis,* 9 Climate and Development 178 (2017); see also Malavika Rao, *A TWAIL Perspective on Loss and Damage from Climate Change: Reflections from Indira Gandhi's Speech at Stockholm,* 12 Asian J. of Int'l Law 63, 69 (2022).

[18] Karin Mickelson, *Beyond a Politics of the Possible? South-North Relations and Climate Justice,* 10 Melbourne J. of Int'l L. 411 (2009).

[19] Caroline Flammer, Green Bonds: Effectiveness and Implications for Public Policy, 1 Envtl. & Energy Policy & the Economy 95 (2020).

[20] Monika Chopra & Chhavi Mehta, *Going Green: Do Green Bonds Act as Hedge and a Safe Haven for Stock Sector Risk?,* 51 Finance Research Letters 103357 (2023).

[21] Aneil Tripathy, *How Should We Deal with Climate Change?,* in People Before Markets: An Alternative Casebook 184, 185-86 (Daniel Scott Souleles *et al.,* eds., 2022).

[22] African Development Bank *et al., Potential for Green Banks & National Climate Change Funds in Africa: Scoping Report* (2021).

Since then, green finance instruments have seen a steady increase.[23] In response, the International Capital Markets Association and large banking corporations joined together to establish the Green Bond Principles as a framework for regulating the issuance of green bonds.[24] These principles have four central philosophies. Firstly, green bonds are for funding projects that serve an environmental purpose. Secondly, the issuer must inform investors on the environmental sustainability objectives of the instrument. This requires an issuer to disclose to investors how the issuer intends to manage the social and environmental aspects of the proposed project. Thirdly, the net proceeds of the green bond must be applied to the project, which involves depositing the said funds in a sub-account or sub-portfolio. Finally, an issuer must keep proper records on the issuance and relevant information in line with the key principle of transparency.

While the adoption of these principles is a necessary step, the principles admittedly acknowledge the limits with identifying what activities *truly* qualify as having an environmental benefit.[25] For instance, the recognition that some activities do not have an environmental benefit can indirectly undercut commitment to these principles.[26] The adoption of green finance in funding projects, including natural resources extraction, ultimately expands the scope of mining activities along with its environmental consequences.[27] For example, even though these principles require the issuer

[23] Ursule Yvanna Otek Ntsama *et al., Green Bond Issuance: Insights in Low- and Middle-Income Countries,* 6 Int'l J. of Corporate Social Responsibility 1 (2021) (surpassing USD 250 billion in 2019).

[24] Kevin M. Talbot, *What Does "Green" Really Mean? How Increased Transparency and Standardization Can Grow the Green Bond Market,* 28 Vill. Envtl. L.J. 127, 137 (2017) (the International Capital Markets Association has also developed the Social Bond Principles and guidance on Sustainability Bonds. The content of these principles and guidance are not very different from those contained in the Green Bond Principles).

[25] Paul Rose, *Certifying the 'Climate' in Climate Bonds,* 14 Capital Markets L.J. 59, 63 (2019).

[26] Heidi Tuhkanen & Gregor Vulturius, *Are Green Bonds Funding the Transition? Investigating the Link Between Companies' Targets and Green Debt Financing,* 12 J. of Sustainable Finance & Investment 1194, 1211–12 (2022).

[27] Raphael Heffron, The Role of Justice in Developing Critical Minerals, 7 Extractive Industries and Society 855, 855 (2020).

to separate bonds and proceeds arising therefrom, it is possible the funds may "indirectly also finance other, potentially 'dirty' activities."[28] This problem occurs where there are weak laws on financial disclosure. Hence, green finance present problems for environmentally-beneficial activities as it may be setting up the Global South for new technologies of control over its natural resources where green investments are deployed to accelerate natural resource extraction.[29]

3 Making the Case (or Not) for Green Finance in Africa

What shines through the foregoing analysis is that the corporatization of climate and environmental sustainability through green finance poses challenges to presumed environmental objectives.[30] The North–South natural resource literature is replete with examples on the Global North's unlicensed natural resources extraction from the Global South, including through mining.[31] Today, it is settled that the Global South is owed an ecological debt by the Global North. But, the North has failed or refused to pay reparations to the South for this debt.[32] The North's refusal to accept responsibility for the ecological debt arising from its unbridled resource extraction in the South is a lingering concern for climate justice since even minimal efforts at compensation by the North have been "subject to conditionality," often styled as

[28] Sebastian Steuer & Tobia H. Tröger, *The Role of Disclosure in Green Finance,* 8 J. of Financial Regulation 1, 15 (2022).

[29] Long, *supra* note 2, at 58.

[30] Peter Howson, *Climate Crises and Crypto-Colonialism: Conjuring Value on the Blockchain Frontiers of the Global South,* 3 Frontiers in Blockchain 1, 3–4 (2020) (new frontiers of neocolonial control are emerging with cryptocurrencies offering new technologies of control over the green finance space in places like Africa).

[31] Grégoire Mallard, *We Owe You Nothing: Decolonization and Sovereign Debt Obligations in International Public Law,* in Sovereign Debt Diplomacies: Rethinking Sovereign Debt from Colonial Empires to Hegemony 189, 190 (Pierre Penet & Juan Flores Zendejas eds., 2021).

[32] J. Timmons Roberts & Bradley C. Parks, *Ecologically Unequal Exchange, Ecological Debt and Climate Finance: The History and Implications of Three Related Ideas for Social Movement*, 50 Int'l Journal of Comp. Sociology 385 (2009); Patrick Bond, *Climate Debt Owed to Africa: What to Demand and How to Collect?,* in Innovation for Sustainability: African and European Perspectives 20 (Mammo Muchie & Angathevar Baskaran eds., 2013).

development assistance.[33] Therefore, I find such a quick turn to green finance only changes direction on that topic and shifts critical attention and reflection, thereby leaving unanswered or outstanding the matter of the ecological debt.[34]

The present corporatist appeal for green finance thus raises some significant questions for Africa. For African countries, one question that must be answered is how they (African governments and their peoples) can benefit from the current global movement towards sustainable development and industrialization *via* green finance.[35] My argument for a critical review of green finance in Africa to address this concern is threefold. First, an enhanced legal framework must anticipate this new frontier in resource extraction where finance is instrumentalized to maintain control over Africa's resources. Second, it is important to reinforce institutional (and political) capacities that adequately contemplate the emerging realities underpinning the frameworks of engagement between resource-rich countries and industrialised countries. It requires an analysis of how this new relationship is fostering the green industrial revolution through the supply of critical natural resources. The third is the need for a continental (Africa-focused) approach to strengthening monitoring and evaluation to oversee how financing mechanisms for climate and related sustainability objectives are designed and implemented in Africa.[36]

While the above-mentioned objectives are well-intentioned, the subject of socio-ecological justice does not play a significant role in these developments as it is somewhat consigned to a footnote.[37] The integration of society and ecology into

[33] Julia Dehm, *Carbon Colonialism or Climate Justice? Interrogating the International Climate Regime from a TWAIL Perspective,* 33 Windsor Yearbook of Access to Justice 129, 148 (2016).

[34] Olabisi D. Akinkugbe & Adebayo Majekolagbe, *International Investment law and Climate Justice: The Search for a Just Green Order,* 46 Fordham Int'l L.J. 169, 186–90 (2023) (while the Global North is responsible for massive environmental problems in the Global South, the North has refused to acknowledge in explicit terms lest they face the issue of reparations).

[35] Bart Sweerts *et al., Financial De-risking to Unlock Africa's Renewable Energy Potential,* 102 Renewable & Sustainable Energy Reviews 75 (2019).

[36] Nomhle Ngwenya & Mulala Danny Simatele, *Unbundling the Green Bond Market in the Economic Hubs od Africa: Case Study of Kenya, Nigeria, and South Africa,* 37 Development Southern Africa 888, 898 (2020).

[37] For example, most of the studies leading to the adoption of green finance instruments were either conceived or funded by external parties including the World Bank or industrialized countries.

a framework known as socio-ecological justice has brought about a paradigm shift in the thinking and practice of environmentalism.[38] While classical views treated the environment and society as distinct aspects of environmental consciousness, the contemporary view is that both aspects are intimately connected.[39] What affects the environment affects society, hence a socio-ecological outlook is necessary in addressing environmental and climate issues.[40] Here, Africa's vulnerability in terms of the environmental sustainability and the climate crisis evokes socio-ecological justice concerns within the broader climate justice context.[41] Yet, the coloniality of natural resource extraction and related colonial influences over the response to the climate crisis adversely pose a challenge to the realisation of climate justice in Africa.[42]

The challenge with socio-ecological justice is quite apparent in the way green finance interventions are being developed or implemented across Africa.[43] For example, the turn to resource exploitation to propel the green industrial revolution is not exactly the transformation that has been envisaged for the environment. While there is a growing interest in funding new (green) sources of energy, this new logic of extractivism has neither been helpful to the environment nor improved the social circumstances of the communities most impacted by resource exploitation. In this regard, scholars, and practitioners alike in the Global North "have failed to recognise

[38] Kamila Pope, Michelle Bonatti & Stefan Sieber, *The What, Who and How of Socio-Ecological Justice: Tailoring a New Justice Model for Earth System Law,* 10 Earth System Governance 100124 (2021).

[39] Katrin Grossman *et al., From Sustainable Development to Social-Ecological Justice: Addressing Taboos and Naturalizations in Order to Shift Perspective,* 5 EPE: Nature and Space 1405, 1410 (2022).

[40] Farhana Sultana, *Critical Climate Justice,* 188 Geographical J. 118, 119 (2022).

[41] Shingirai Stanley Mugambiwa, *What Justice? Whose Justice?: Rethinking Climate Justice through Climate Change Impacts and Options for Adaptation in Africa,* 26 Technium Social Sciences J. 761, 763–64 (2021).

[42] Jan Wilkens & Alvine Datchoua-Tirvaudey, *Researching Climate Justice: A Decolonial Approach to Global Climate Governance,* 98 Int'l Affairs 125 (2022).

[43] Green fiscal reforms have been undertaken in Kenya under the Capital Markets Act (Cap 485A). The Green Bond Programme led to the 2019 Policy Guidance Note on Green Bonds, and ultimately to Kenya's first green bonds issue in 2021. The Securities Exchange Commission of Nigeria also instituted the Green Bond Rules and the Social Bond Rules to incentivise investments with environmental and social benefit components respectively. Similar developments have taken place in South Africa since its first green bonds were issued in 20172.

that extractivism from Global South countries for renewable energy industries and 'green' solutions geared towards so-called 'just transitions' replicate a colonialist and racialised global division of labour."[44]

The push towards socio-ecological justice is accordingly impeded by these developments. Whether through law or policy, these developments continue to reproduce the existing patterns of legal and policy governance on natural resource extraction, as seen, for example, in the intensified mining of critical minerals.[45] For instance, increased cobalt mining in the DRC has led to the formalization of artisanal mining.[46] These processes in the DRC's cobalt mining are being financed through funding from private entities. For example, the Singapore-based commodity trading corporation, Trafigura, recently secured a credit facility of USD 600 million to develop new mines and establish cobalt processing plants in the DRC.[47] This funding arrangement complements Trafigura's broader efforts to incorporate artisanal miners into its DRC mining operations.[48] In this respect, the DRC recently updated its mining code in 2022 to regulate artisanal mining, register artisanal miners and create special artisanal mining zones.[49] Furthermore, the DRC will implement these changes with

[44] Keston K. Perry & Leon Sealey-Huggins, *Racial Capitalism and Climate Justice: White Redemptive Power and the Uneven Geographies of Eco-Imperial Crisis,* Geoforum (2023), https://doi.org/10.1016/j.geoforum.2023.103772.

[45] Steffen Haag, *Old Colonial Power in Green Financing Instruments: Approaching Financial Subordination from the Perspective of Racial Capitalism in Renewable Energy Finance in Senegal,* Geoforum (2022), https://www-sciencedirect-com.ezproxy.library.yorku.ca/science/article/pii/S001671852200210X?via%3Dihub.

[46] Gabriel Kamundala Byemba, *Formalization of Artisanal and Small-Scale Mining in Eastern Democratic Republic of Congo: An Opportunity for Women in the New Tin, Tantalum, Tungsten and Gold (3TG) Supply Chain?,* 7 Extractive Industries & Society 420 (2020).

[47] Mariam Ahmad, *US$600 Million Financing Facility Closed Between TDB and Trafigura,* Mining (Nov. 24, 2022), https://miningdigital.com/articles/us-600m-financing-facility-closed-between-tdb-and-trafigurra.

[48] Press Release, *EGC Press Office, Entreprise Générale du Cobalt Enters into a Trading Agreement with Trafigura with the Aim to Transform the Artisanal and Small-Scale Cobalt Mining Sector in the Democratic Republic of the Congo* (Nov. 23, 2020); Cecilia Jamasmie, Trafigura Inks Cobalt Deal With DRC Artisanal Miners, Mining (Nov. 23, 2020), https://www.mining.com/trafigura-inks-cobalt-deal-with-drc-artisanal-miners/.

[49] Aimery de Schoutheete *et al., Spotlight: Mining Law in the Democratic Republic of the Congo,* Lexology (Oct. 12, 2022, https://www.lexology.com/library/detail.aspx?g=11d3b5dc-9361-4490-8440-55de51cc8cde.

funding support from the Reliance and Sustainability Trust of the International Monetary Fund (IMF).[50]

These developments are reminiscent of past financing mechanisms for cobalt mining between the DRC and Chinese corporations. Between 2007 and 2008, the DRC assigned significant copper and cobalt mines to Chinese corporations in exchange for funding for critical infrastructure.[51] These "minerals-for-infrastructure" arrangements gave China a foothold in the DRC's critical minerals industry quite earlier on, a position China continues to advance in that country.[52] The dominance of China and its corporations in the cobalt (and copper) industry in the DRC have raised concerns over whether this is a new form of colonialism.[53] Whether the charge of neo-colonial exploitation is true or not, it is evident that China exploits the power asymmetries between the two countries.[54] This exploitation is advanced by the supply of cobalt for lithium-ion batteries for electric vehicles. Interestingly, the market for critical minerals has brought Chinese and American interests, like Tesla, together in an unusual collaboration to exploit the DRC's resources under the guise of green transitions.[55]

Additionally, the formalization of artisanal mining in the DRC's law has ushered in a new form of extractivism. This process involves "outsourcing of corporate responsibility" to artisanal miners by large foreign corporations like Trafigura.[56] In

[50] Karin Strohecker & Jorgelina dos Rosario, *Congo Sees Deal on 6bln China Mining Contract Overhaul This Year,* Reuters (Jan. 19, 2023), https://www.reuters.com/markets/commodities/congo-sees-deal-6-bln-china-mining-contract-overhaul-this-year-finmin-2023-01-18/; *see also* Sonia Rolley, *World Bank Suspends $1 Billion Worth of Project Funding in Congo,* Reuters (May 16, 2023) (however, it seems this funding support was part of the recently suspended funding package based on changes the DRC made in its internal arrangements without recourse to the International Monetary Fund).

[51] Andrew L. Gulley, *One Hundred Years of Cobalt Production in the Democratic Republic of Congo,* 79 Resources Policy 103007 (2022).

[52] Patrick Anderson, Cobalt and Corruption: The Influence of Multinational Firms and Foreign States on the Democratic Republic of the Congo, 14 J. for Global Business & Community 1, 7 (2023).

[53] Makhura B. Rapanyane, *Neocolonialism and New Imperialism: Unpacking the Real Story of Chian's Engagement Angola, Kenya, and Zambia,* 8 J. of African Foreign Affairs 89 (2021).

[54] Claude Kabemba, *China-Democratic of Congo Relations: From a Beneficial to a Developmental Cooperation,* 16 African Studies Quarterly 73, 78-79 (2016).

[55] Nicolas Niarchos, *The Dark Side of Congo's Cobalt Rush,* The New Yorker (May 24, 2021), https://www.newyorker.com/magazine/2021/05/31/the-dark-side-of-congos-cobalt-rush.

[56] Filipe Calvão *et al., Cobalt Mining and the Outsourcing of Corporate Responsibility in the Democratic Republic of Congo,* 8 Extractive Industries & Society 100884 (2021).

this sense, foreign corporations have reinvented themselves as new *partners* of artisanal miners, when in fact it is a double-barreled exploitation of both cobalt resources and the labor responsible for its extraction. By operating *through* artisanal miners, these giant corporations avoid functional responsibility for operational problems including ecological remediation. The regulation of artisanal miners by the state also obscures the liability of these mining corporations since they are not directly responsible for recruitment. In most cases, this allows them free rein in violating human rights during mining operations.[57] Thus, these foreign corporations have ingeniously escaped the label of corporate authoritarianism, a sticky label that they have often loathed, while they reap the benefits of the cobalt mining process.[58]

Nigeria presents another example of this complication. It issued Africa's first green bonds in 2017 to help its domestic efforts to transition to a low-carbon economy.[59] This pioneering moment was followed by institutional reorganization including the establishment of a Green Bonds Secretariat under the Department of Climate Change at the Federal Ministry of Environment.[60] This green bond issued by Nigeria is commendable as it spurred subsequent green bonds issuance by private banks. However, it is important to scrutinize whether these *new* initiatives are not informed by or designed along the lines of externally-driven ideation from non-African sites of global norm diffusion. For instance, the World Bank, AfDB and IMF partnered with Nigeria in its bond development and subsequent issue. Particularly, even where the AfDB was described as a partner to Nigeria, it is important to analyze its participation since the shareholder composition of these international development finance institutions including the AfDB remain patently Western, and their neoliberal

[57] Sara Geenen, *A Dangerous Bet: The Challenges of Formalising Artisanal Mining in the Democratic Republic of Congo,* 37 Resources Policy 322 (2012).

[58] Brett Zeuner, *An Obsolescing Bargain in a Rentier State: Multinationals, Artisanal Miners, and Cobalt in the Democratic Republic of Congo,* 6 Frontiers in Energy Research 1, 5–6 (2018) (the forced regulation of the citizens by the DRC robs the people of their subsistence and agency to independently mine cobalt); Marlies Glasius, *Authoritarian Practices in a Global Age* 145–46 (2023).

[59] Taghizadeh-Hesary *et al., supra* note 3, at 247–49.

[60] Department of Climate Change, Green Bonds, https://climatechange.gov.ng/2020/09/21/brief-on-green-bonds/#:~:text=The%20Nigeria%20Sovereign%20Green%20Bond,Recovery%20Growth%20Plan%20(ERGP).

interests often dominate their policy prescriptions.[61] The concern with Nigeria is also observed in Kenya's situation. The World Bank's financing of renewable energy projects in Kenya is defined by neoliberal policies and a "market-orientated governance of a sector dependent on international expertise and technologies."[62]

The World Bank, together with partner institutions like the AfDB, is also promoting debt-for-nature swaps to African countries. It involves debt cancellation in return for environmental conservation. While it appears debt swaps are a noble endeavor, these debt re-finance schemes are not exactly environmentally progressive as they simply disguise financial transactions that commodify nature. Additionally, they sidestep the lingering question of the Global North's historical responsibility for ecological debt already owed to the Global South where most of the debt swaps are taking place.[63] The establishment of conservation sites or the setting aside of land for nature-related projects under these schemes dislodge local communities and in some cases disrupt the existing ecosystem.[64] The problem is that these swaps only echo romanticised Eurocentric philosophies of environmentalism which separate nature from society.[65] In this respect, there is nothing green about these swaps since reference to nature, the climate or environment in these transactions only cleverly shifts attention from the capitalistic and neoliberal outlook of these interventions.[66]

These developments raise suspicion over the potential of green finance in Africa. The coloniality of green finance and policy misalignment in environmental

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[61] Felix Malte Dorn, *Green Colonialism in Latin America? Towards a New Research Agenda for the Global Energy Transition,* 114 European Rev. of Latin American & Caribbean Studies 137, 142 (2022).

[62] Peter Newell & Jon Phillips, *Neoliberal Energy Transitions in the South: Kenyan Experiences,* 74 Geoforum 39, 43 (2016).

[63] Hildegard Bedarff, Bernd Holznagel & Cord Jakobeit, *Debt-for-Nature Swaps: Environmental Colonialism or a Way Out of from the Debt Crisis that Makes Sense?,* 22 Law & Politics in Africa, Asia, & Latin America 445 (1989).

[64] Maano Ramutsindela, *National Parks and (Neo) Colonialisms,* in The Cambridge Handbook of Environmental Sociology 206, 216 (Katharine Legun *et al.,* eds., 2020).

[65] Stephen Macekura, Crisis and Opportunity: Environmental NGOs, Debt-for-Nature, and the Rise of 'People -Centred' Conservation, 22 Environment & History 49, 54 (2016).

[66] Nciko wa Nciko, *Misery of Others as a Site for Accumulation: AfDB's Position on Debt-for-Nature/Climate Swaps* (*see* Nciko's chapter in this edited for a detailed discussion of the debt swaps for nature deals and its implication for Africa).

sustainability objectives challenge the effectiveness of such funding activities.[67] As Kishan Khoday argues, the reliance on "financial and technical solutions to combat the [climate] crisis" masks the underlying causes of this crisis which is rooted in inequality.[68] In this context, green finance is an avenue for the Global North to continue dominating the Global South through "the distribution of finance and technical know-how" on climate issues and environmental sustainability.[69] So, as long as Africa remains a natural resource hub, the question is, will these funding initiatives reorient the fundamental structure of extractivism while promoting climate and sustainability objectives in Africa?

4 Old Technologies as New Modes of Governance

The importance of green finance in the changing scenes of extractivism and the ensuing ecological impacts invites a critical evaluation. The uniqueness of green finance and its array of interventions carries forward a supposed sustainability agenda. Yet, it renews and repeats the law and politics of resource extraction. Green finance ensures natural resource extraction has kept pace with political rhetoric on investing in alternative and renewable sources of energy while reinventing extractivism as a new logic for sustainability.[70] In this sense, resource extraction at once becomes both desirable and even helpful to the sustainability agenda when in fact it continues to do the opposite.

The clear (and unseen) challenges with green finance are further obscured by how it is embraced in the Global North and Global South as a socio-technical solution to one of the difficult challenges of our time, climate change. To draw upon Obiora Okafor's work on the concept of newness, the idea is that something labelled as *'new'*; in this case green finance, might not be novel when the phenomenon is

[67] Heidi Tuhkanen & Grefgor Vulturius, *supra* note 26.

[68] Kishan Khoday, *Decolonizing the Environment: Third World Approaches to the Planetary Crisis,* 19 Indonesian Journal of Int'l L. 189, 190 (2022).

[69] Usha Natarajan, *Climate Justice,* in The Routledge Handbook of Law and Society 102, 104 (Mariana Valverde *et al.,* eds., 2021).

[70] Sarah Bracking & Benjamin Leffel, *Climate Finance Governance: Fit for Purpose?,* 12 WIREs Climate Change 709 (2021).

examined closely.[71] This nuanced way of thinking about new concepts, buzzwords, and ideas, pushes back on their supposed novelty and exposes their internal contradictions. This framework advanced by Okafor is helpful in challenging the supposed novelty of green finance.

This is the case of critical minerals mining which is now being promoted through green finance as an environmentally-beneficial investment.[72] For instance, the strategy of the European Union (EU) on critical minerals supply is being studied and described as an opportunity for the EU "to reinvent itself, amidst competition from global actors, and to deploy an "eco-friendly" narrative."[73] What emerges here is that the seemingly ecology-conscious orientation adopted by the Global North and allied institutions like the EU in regard to critical minerals mining masks the extractivist logic that has attended Africa–Europe relations since the colonial encounter. Regrettably, the EU Green Deal, for example, fosters Europe's enduring domination of Africa, this time *via* the interaction between the two sides in the context of greening initiatives.[74] Thus, these new funding mechanisms are only making attractive financing schemes for mineral resource extraction that were previously labelled as exploitation as they, in fact, do little to *radically* transform the organizing ambition of economic growth at the expense of the environment.

The pace of global critical minerals policy adoption and strategies is reminiscent of the scramble for Africa's natural resources. For example, the United States has also demonstrated that access to critical minerals is a national security concern. On the advice of its National Security Adviser, Jake Sullivan, in what is known as the Sullivan doctrine, the United States government is in the process of passing new laws to

[71] Obiora C. Okafor, *Newness, Imperialism, and International Legal Reform in Our Time: A TWAIL Perspective,* 43 Osgoode Hall L.J. 171, 180 (2005).

[72] Cobus van Staden, *Green Energy's Dirty Little Secret: Its Hunger for African Resources,* Foreign Policy (June 30, 2022), https://foreignpolicy.com/2022/06/30/africa-congo-drc-ev-electric-vehicles-batteries-green-energy-minerals-metals-mining-resources-colonialism-human-rights-development-china/.

[73] Diana Vela Almeida *et al., The "Greening" of Empire: The EU Green Deal as the EU First Agenda,* 105 Political Geography 1, 2 (2023).

[74] Simone Claar, *Green Colonialism in the European Green Deal: Continuities of Dependency and the Relationship of Forces in Europe and Africa,* 7 Culture, Practices, & Europeanisation 262, 266 (2022).[71]

fend off China's interests in the critical minerals sector across the world. An example is its proposed legislation to restrict China's access to cobalt resources by foreclosing Chinese financial and technological assistance to the DRC, while it simultaneously increases its funding support to the DRC's critical minerals industry.[75] The prospects of funding from the United States in this respect is not driven by altruism. As the United States demonstrated in its preparatory steps to the proposed law, "mineral inputs for green energy transition will come principally from foreign sources, regardless of cost, security, or environmental justice."[76] This approach threatens socio-ecological justice considerations, especially in Africa.

While global interest in new green technologies for addressing the climate crisis and environmental sustainability goals increases, this interest correspondingly raises concerns over how industrialized countries are using the climate crisis as an opportunity to securitize access to critical minerals. By structuring critical minerals supply and value chain as a national security concern, some countries have successfully reorganized the politics of the climate crisis to advance their national objectives. This allows an ecological thread to be woven into the prevailing politics on climate interventions while these countries maintain control over the technification of climate solutions. These powers, including the EU, the United States and China are actively constructing narratives that seemingly advance an ecological consciousness around the transition to alternative energy sources, one driven by transition-related minerals.[77] Yet still, a deeper assessment demonstrates this is another exercise of geopolitical power dynamics over the business case for green alternatives. In this sense,

[75] H.R. Res. 4548, 118th Cong. (2023) (enacted); Guillaume Ragonnaud, *Critical Raw Minerals Act [EU Legislation in Progress],* European Parliamentary Research Service (May 19, 2023), https://epthinktank.eu/2023/05/19/critical-raw-materials-act-eu-legislation-in-progress/. The EU is in the process of passing a new law, the Critical Raw Materials Act. When this law enters into force, it will provide a new framework for the EU to deal with China's dominance in supplying the EU with critical minerals. The EU proposes to find alternatives to China's dominant supply, including trading directly with African and Latin American countries.

[76] David R. Hammond & Thomas F. Brady, *Critical Minerals for Green Energy Transition: A United States Perspective,* 36 Int'l J. of Mining, Reclamation & Environment 624, 625 (2022).

[77] Stacy Van DeVeer *et al., Extractive Industries and Mineral Resources: Turbulence All Around,* in Global Environmental Politics in a Turbulent Era 75, 82 (Peter Dauvergne & Leah Shipton eds., 2023).

green finance is a vehicle to articulate and advance strategic state (and other) national security interests. Whether it is the EU, the United States or China, the relationship between Africa and industrialised countries on the question of critical minerals remains an asymmetrical interaction of power deeply characterised by structural constraints with green finance currently not offering a helpful solution.

While China's relationship with Africa might be seen as a South–South engagement, the complex nature of its dealings in Africa must be examined from a nuanced perspective. As a major player in the mineral extraction industry, this *new* development does not exculpate countries like China. Its interests in access to critical minerals to drive its own socio-technological acceleration means its actions and engagements with Africa are no different from those of the Global North. They remain deeply exploitative.

The fundamental point is that approaches may differ when it comes to how industrialized countries in both the Global North and Global South engage with Africa. For example, funding from China to African countries for the critical minerals industry do not come with stringent conditionalities as is the case with the Global North. Yet still, its minerals value chain requires processing in China, making it "the world's largest producer of refined products with high sourcing risk, accounting for a 93% market share."[78] In this sense, the extractivist principles and exploitative objectives of the industrialized countries in the Global North and in China are demonstrably the same.

The concerns noted in Africa–China relations are similar in its engagement with Latin America. There too, China's policy "threatens to reinforce Latin America's economically disadvantageous and ecologically unsustainable specialization in the production of primary commodities (such as minerals and agricultural products)."[79] It adopts similar practices of extraction and applies equally similar value chain logic in mineral processing. Therefore, if industrialized countries presumably are supporting African countries or promoting green finance in the context of global responses to

[78] Melanie Müller, *The "New Geopolitics" of Minerals Supply Chains: A Window of Opportunity for African Countries,* South African J. of Int'l Affairs 1, 9 (2023).

[79] Carmen G. Gonzalez, *China in Latin America: Law, Economic, and Sustainable Development,* 40 Envtl. L. Rep. News & Analysis 10171, 10172 (2010).

the climate crisis and environmental sustainability, it is necessary to examine what Africa stands to lose or gain from accepting those interventions.

Again, new technologies are emerging to aid this prevailing extractivist logic. An example is what is described as climate-smart mining. Nonetheless, this only further illustrates the concerns with green finance. Climate-smart mining is intended to inspire minerals mining in aid of clean energy processes while improving the socio-ecological conditions related to mineral extraction.[80] The idea is that the growing interest in critical minerals supply to develop climate-responsive technologies like lithium-ion batteries and grid-scale batteries for power storage require financial investments and a corresponding intensity to produce these minerals for technology industries. The World Bank endorsed this new frontier in extractivism with the launch of its Climate-Smart Mining Facility in 2019. This facility is to support climate-smart mining which is described as a "method of low-carbon extraction that develops sustainable and green value chains while respecting communities, ecosystems and the environment."[81] Climate-smart mining thus proposes to be a better, greener, and more efficient way to mine critical mineral resources.

This new logic of extractivism that is being led by the Global North including the World Bank and the EU through its Green New Deal advances the charge of "green colonialism."[82] For instance, mining corporations were condemned by environmental activists for their role in establishing the World Bank facility. These big mining corporations are only interested in protecting their mining interests. The World Bank was equally criticized for failing to privilege "non-mining efforts as the primary solution to the climate crisis."[83] Essentially, the facility will be the vehicle for promoting more mining, with a corresponding increase in carbon emissions. Despite these foreseeable issues, the facility, like other green finance instruments like climate and transition bonds and green credit, still seeks to attain an unlikely balance by attempting a win-win situation for financial investments and environmental objectives.[84]

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[80] Izhar Mithal Jiskani *et al., Green and Climate-Smart Mining: A Framework to Analyze Open-Pit Mines for Cleaner Mineral Production,* 71 Resources Policy 102007 (2021).

[81] Roopali Phadke, *Climate-Smart Mining: A Conference Report on the World Bank's Facility Launch,* 6 Extractive Industries & Society 1373, 1374 (2019).

[82] Claar, *supra* note 74.

[83] Phadke, *supra* note 81, at 1374.

[84] Rose*, supra* note 25.

In this sense, interventions like climate-smart mining are not exactly *novel*. They are prescriptions that re-characterize the neocoloniality of natural resource control and extraction in Africa and Latin America by re-legimitizing the extractivist logic. For example, the high levels of chemical contamination in the "lithium triangle" comprising Peru, Chile and Argentina and the effects of the brine fields in these countries is a forewarning for Africa. Pollution from lithium mining is linked with climate change-induced water variability in the "lithium triangle" with corresponding negative effects for birds like the flamingo.[85] Despite these telltale signs, climate-smart mining financing will still be directed at the extraction of critical minerals. Irrespective of the kinds of investments in the critical minerals industry styled even as climate-smart or green mining, we cannot gloss over their long-term socio-ecological impacts. The Latin American experience is only a preview of the pollution to expect once critical minerals mining become an established frontier in Africa's mining space. Accordingly, such funding under the presumed ambit of sustainable mining is misleading since these climate finance programs are premised on a profit motive and not driven by climate justice imperatives.

Green finance initiatives also impact land use in ways that are not readily perceived as harmful for Africa. For example, Europe's energy policies have shifted the EU's gaze to Africa for its energy supply. The Dersertec project was aimed at supplying Europe with electric power generated from solar-powered facilities from across North Africa. This ambitious project required vast tracts of land to concentrate solar power. The power generated in North Africa was then to be exported to Europe. This was considered integral to the EU's plan to reduce its own carbon emissions produced from power generation.[87] But, in what is described as infrastructural technologies of colonialism, the failed Desertec solar project in North Africa, especially in Morocco, demonstrates the colonial continuities of Europe's engagements with Africa; now in the context of the energy transition.

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[85] Jorge S. Gutiérrez *et al., Climate Change and Lithium Mining Influence Flamingo Abundance in Lithium Triangle,* 289 Proceedings of the Royal Society 2388 (2022).

[86] María L. Vera *et al., Environmental Impact of Direct Lithium Extraction from Brines,* 4 Nature Reviews Earth & Environment 149 (2023).

[87] Johann Lilliestam & Saskia Ellenbeck, *Energy Security and Renewable Electricity Trade: Will Desertec Make Europe Vulnerable to the "Energy Weapon"?,* 39 Energy Policy 3380 (2011).

The prospects of solar power supply from North Africa evoke questions over whether large tracts of land that are converted to solar farms raises the spectre of neo-colonialism.[88] While the Desertec project is considered a failure, its conceptualisation lends itself to significant questions for other similar projects. For example, the Noor Ouarzazate Solar Power Plant in Morocco is the world's largest solar power facility. It was built through debt finance syndicated by AfDB, the World Bank, the European Investment Bank and other development agencies from across Europe.[89] This project is central to the EU's energy transition plans, and financially important to Morocco. It is no surprise then that the Moroccan Government dislodged farmers and native inhabitants from their lands to make way for the project. The land acquisition process was patterned along the lines of colonial dispossession with forced removals and payment of inadequate compensation.[90] The loss of land, livelihood disruption (including its particular impact on women), water loss (diverted for cooling the solar power plant) have introduced new technologies of governance that are alien to the native peoples and are evocative of the European colonial rule in North Africa.[91] With more EU-destined solar power plants planned for North Africa, a delegated scheme of European colonialism through land grabbing is on the horizon and North African countries will become willing allies.[92]

A necropolitical consideration of the plan to provide electric power supply to Europe from North African solar-powered plants, through the funding processes of the EU's Green Deal, is reminiscent of the extractivist outlook of colonialism.[93] A necropolitical analysis provides a helpful lens for examining this development and its broader (yet subtle) implications in the context of financing green projects. In Achille

[88] Hamza Hamouchene, *Dismantling Green Colonialism,* Luxemburg Gesellschaftsanalyse Und Linke Praxis (Oct. 2022, https://zeitschrift-luxemburg.de/artikel/dismantling-green-colonialism-towards-a-just-transition-in-north-africa/.

[89] Hamza Hamouchene, *Green Energy Grabs,* Ecologist (July 21, 2023), https://theecologist.org/2021/sep/06/green-energy-grabs.

[90] Karen Eugenie Rignall, *Solar Power, State Power, and the Politics of Energy Transition in Pre-Saharan Morocco,* 48 Environment & Planning A: Economy & Space 540, 543–552 (2016).

[91] Sarah Ryser, *The Anti-Politics Machine of Green Energy Development: The Moroccan Solar Project in Ouarzazate and Its Impact on Gendered Local Communities,* 8 Land 1 (2019).

[92] Franziska Müller, Johanna Tunn & Tobias Kalt, *Hydrogen Justice,* 17 Envtl. Research Letters 115006 (2022).

[93] Achille Mbembe, *Necropolitics* (2019).

Mbembe's necropolitics, he contends that the "ultimate expression of sovereignty resides, to a large degree, in the power and the capacity to dictate who may live and who must die."[94] The ability of the state to arrange social and political life around death seems morbid. Yet, a necropolitical analysis reveals how the state chooses who deserves protection and who is expendable. Steeped inside the politics of (neo-)colonialism and imperialism, necropolitics explains how even the postcolonial state adopted the same colonial logic of dominance and applies it to life in the postcolonial state.

This necropolitical framework of state organization can be applied across different phenomena including green investments. By examining how a state decides, accepts, or even rejects external funding, we can understand the choices that the state makes, and who the state chooses to suffer for the goals it pursues. In this context, the state rationalizes its policy choice to accept funding and build a large solar project for the EU's benefit by choosing who suffers, either through land dispossession or other forms of "death" as the price to pay for the state.[95] By unpacking how projects like Desertec and Noor Ouarzazate impoverish Africa, by denying its people direct use of its natural resources, it becomes much clearer that the supposed global push towards renewable energy is yet another site of natural resource extraction for Europe's progress, while impoverishing Africa.[96] Mbembe's argument, which foregrounds the oxymoronic idea of death as basis for renewing the state, is made more patent in the making of green energy. By incentivizing African countries to invest in and build alternative energy sources, Europe is not offering generous assistance, but rather pursuing EU interests. Through this necropolitical examination, the Noor Ouarzazate solar project becomes the ultimate sacrifice and death of the most affected Moroccan peoples sanctioned by the Moroccan state as an inevitable choice in ensuring Morocco (but more like Africa) guarantees the EU and its people's continued existence.

As large swathes of land are being grabbed for solar projects like Desertec and Noor Ouarzazate which presumably evidences technological advance, Africa and its

[94] Achille Mbembe, *Necropolitics,* 15 Public Culture 11, 11 (2003).

[95] Sarah Ryser, *Are Green Energy Investments Levelled By the 'New Commons'? Compensations, CSR measures and Gendered Impacts of a Solar Energy Project in Morocco*, in The Commons in a Glocal World: Global Connections and Local Responses 352 (Tobias Haller *et al.,* eds., 2019).

[96] Laura El-Katiri, *Sunny Side Up: Maximizing the European Green Deal's Potential for North African and Europe,* European Council on Foreign Relations (Jan. 9, 2023), https://ecfr.eu/publication/sunny-side-up-maximising-the-european-green-deals-potential-for-north-africa-and-europe/.

peoples simultaneously lose lands and territory to further European endeavors in less obvious ways. These green projects have now become the avenue for land-grabbing by proxy. This process helps Europe to acquire, through the agency of the respective states, like Morocco, land for its solar power plants that are idealized as green investments in Africa.[97] Ultimately, green finance is instrumental in recolonizing Africa. Here, the environmental allure of these large solar projects significantly underplays the impacts of green finance in the continuous (neo-)colonial exploitation of Africa through the financialization of these projects. Thus, wherever green finance goes in Africa, it is important that its ambitions are critically assessed to understand the consequences.

A most troubling aspect of this issue is the argument that the export of solar power from these projects does not result in loss of Africa's natural resources, comparable to the case of petroleum resources and solid minerals. Notably, Franz Trieb argues that projects like Desertec (and Noor Ouarzazate), as financed by Europe, help African countries to attract needed financial assistance and technical know-how, develop domestic capacity to generate green energy, and earn revenue.[98] In a perfect world, this Trieb's point would be true. However, Africa's relationship with natural resource extraction since colonialism has been a difficult process. Ultimately, mineral extraction has hardly translated into a beneficial arrangement for the continent and its peoples. How exactly then will Europe now commit to a different, and truly mutual exchange on this occasion?

Also, the distinction Trieb draws between solid minerals and petroleum resources on the one hand and solar power on the other hand—the former as finite and the latter being non-finite—is mere contrivance. It is a false (and artificial) separation of natural resources by overlooking the structural constraints that impede the ability of African countries to harness the sun's energy. Europe's energy transition is predicated on projects like Desertec and Noor Ouarzazate. It means the EU's priority

[97] Mathilde Fautras & Giulio Iocco, *Land, Politics and Dynamics of Agrarian Change and Resistance in North Africa,* 46 Review of African Political Economy 535, 537 (2019).

[98] Franz Trieb, *DESERTEC: Europe–Middle East–Africa Cooperation for Sustainable Energy,* in Middle East and North Africa: Climate, Culture, and Conflicts 233, 252–53 (Eckart Ehlers & Katajun Amirpur eds., 2021).

remains how to ensure it extracts the most value from these projects. It also means the EU's funding through debt instruments does not exactly advance Morocco (or Africa's) own energy transition. Viewed this way, the sun's power is immediately conceptualised as a resource that can be embodied in material form, extracted, and carted away from Africa to Europe. Then, extractivism, is not just the physical removal of material resources but also can be an accumulation through processes like solar-powered projects. Appropriately, the EU's engagement with Africa in this respect leads to a functional conversion of a non-finite resource into a finite, extractable resource based on capitalist constructions of resource extraction. Therefore, such financial assistance from the Global North is simply another route to commodify Africa's solar resources for the EU's greater benefit.[99]

5 (Re-)Solving the Green Finance Conundrum

A critical question that remains is how new socio-technical solutions like green finance respond to Africa's particular climate and environmental sustainability needs. In this respect, how does green finance advance the objectives of socio-ecological justice? This concern is not exclusive to Africa since everywhere there is critical mineral extraction ongoing, be it Africa, Latin America or even Europe (as in the case of Portugal). Funding for critical minerals mining must be scrutinized to avoid a situation where green finance becomes "mining pacification"; that is, simply papering over significant attendant socio-ecological destruction.[100] This question is also important in respect of climate considerations since Africa is not a significant net emitter of greenhouse gas emissions compared to others like China, the EU, or the United States.[101] Therefore, this sanguine turn to green finance in support of energy transition and

[99] Almeida et al., supra note 73, at 7–8.

[100] Alexander Dunlap & Mariana Riquito, *Social Warfare for Lithium Extraction? Open-Pit Lithium Mining, Counterinsurgency Tactics and Enforcing Green Extractivism in Northern Portugal,* 95 Energy Research & Social Science 102912 (2023).

[101] This point is more nuanced than as appears in this article. For example, Nigeria is responsible for a significant share of gas flaring-relate emissions globally. But, when all the sources of greenhouse gas emissions are aggregated, Africa still ranks low as a net emitter. *See* Urenmisan Afinotan, *How Serious Is Nigeria About Climate Change Mitigation Through Gas Flaring Regulation in Niger Delta?,* 24 Envtl. L. Rev. 288 (2022).

climate-based initiatives must be re-assessed and well-designed to meet the twin objectives of social responsiveness and ecological sustainability.

Historically, every opportunity to extract natural resources from Africa since the colonial encounter has been a well-calibrated process driven by structural exploitation and unequal exchange. It is also important to understand that green technologies are not driven by altruism. This concern raises further questions regarding the contested topic of energy poverty in Africa. If anything at all, green finance in Africa must first support Africa's own long-term energy competence.[102] In this respect, I revisit Trieb's assessment that financing green energy projects like solar projects to supply power to Europe does not pose challenges for Africa's own progress. Trieb's position is not supportable when analyzed through the national security dimensions of green finance.[103] For instance, the EU's financing is ring-fenced for Europe's energy needs, China's investments are to protect its access to Africa's critical mineral resources, and the United States is passing new laws to dislodge China's dominance in the industry. It is clear these countries and geopolitical regions are treating the green transition as a national security concern. While the sun's energy itself is not finite, the structural impediments embedded in the laws and policies that undergird the financing regimes for such projects limit the provision of adequate energy supply in the country (especially those in the Global South) hosting such projects. For example, the cost of technology transfer to Africa is prohibitive, and the Global North is unwilling to provide that support since that ultimately helps Africa to close the technology gap and become energy self-reliant. Several attempts by the Global South to make technology transfer a consequence of climate change-induced loss and damage has been resisted by the Global North since the subject is linked to the lingering issue of reparations.[104] Accordingly, despite the characterization of projects like Desertec and Noor Ouarzazate as green investments in Africa's energy transition, these are designed to address a European problem—not an African one.

[102] Maxine Burkett, Root and Branch: Climate Catastrophe, Racial Crises, and the History and Future of Climate Justice, 134 Harv. L. Rev. 326 (2021).

[103] Antonio M.A. Pedro, *Critical Materials and Sustainable Development in Africa: Antonio M. A., Pedro,* 4 One Earth 346 (2021).

[104] Rao, *supra* note 17, at 79.

Similarly, there can be no effective funding of critical minerals mining without a corresponding effort to produce lithium-derived products in Africa. The unequal character of the critical mineral global value chain, including in the lithium industry, has been challenged as being reflective of old paradigms of colonial extraction.[105] With recent calls for supply chain justice, Africa must resist green finance that does not promote value addition in Africa. In this respect, recent initiatives to ban export of unprocessed minerals by some African countries, and the decision to refine and even produce lithium-derived products in Africa is welcome news.[106] Whether countries like China and the United States would embrace these Africa-first initiatives will be fully known in the course of time. Nonetheless, Africa cannot continue to present itself as a hub for natural resources extraction without more. Eventually, continental policies like the African Mining Vision under the auspices of the African Union must rise to the occasion by consolidating and harmonizing individual state-based laws, policies, and regulatory approaches in Africa into a unified position to address the colonial continuities of natural resource extraction rooted in green finance. What then is needed is a radical commitment to Africa-centred legal and policy prescriptions.

Green finance instruments will only deliver solutions for Africa's peoples and ecological interests when these instruments provide deliberate and well-crafted solutions.[107] Green finance must not become another technology of governance for micromanaging the policy responses to climate and environmental sustainability issues being implemented in Africa. Likewise, they cannot become a disguised mode for reinventing the extraction of critical minerals in Africa. The mainstreaming of green finance instruments in Africa must be informed by African interests. The security dimensions of access to critical mineral resources require constant evaluation by Africa and its peoples to learn what interests underlie such assistance, especially implications for

[105] Oliver Hailes, *Lithium in International Law: Trade, Investment and the Pursuit of Supply Chain Justice,* 25 J. of Int'l Economic Law 148 (2022).

[106] Clapperton Chakanetsa Mavhunga, *Africa's move from Raw Materials Export Towards Mineral Value Addition: Historical Background and Implications,* 48 MRS Bulletin 395 (2023).

[107] Monkgogi Othogile & Rebekah Shirley, *The Evolving Just Transition: Definitions, Context, and Practical Insights for Africa,* 3 Envtl. Research 013001, 013010 (2023).

state sovereignty and economic development. While engagements with international development finance institutions and other countries including China and those in the Global North are needed, this process must be informed by a conscious effort to represent and protect Africa's interests as it is still a continent that is at the receiving end of the global ecological crisis.

6 Conclusion

The promise and prospects of green finance invites a critical review to understand its implications for socio-ecological justice. It potentially increases negative consequences for the environment while presenting itself as a credible route for channeling funding and investments to ecologically-conscious projects.[108] The issue with green finance is that market (and neoliberal) considerations "play a determining role in what counts as effective environmental policy."[109] It leads to the charge of green capitalism where nature is commodified and interventions in promoting environmentally-friendly projects are motivated by capitalist interests.

Financial investments in alternative energy sources or green initiatives require scrutiny to know what interests are embedded in the processes and outcomes. Yet still, these concerns are not limited to Africa. The socio-ecological implications of funding critical minerals mining, for example, will aggravate existing, and intractable challenges with natural resource extraction across the world.[110] Whether it is in Africa or Latin America, this problem invites a fundamental change in the funding requirements for green finance. This needs to be done if these projects will deliver on their promise of making improvements in climate and environmental objectives.

Financing green transitions through critical minerals mining creates "green sacrifice zones."[111] In a necropolitical way, green sacrifice zones have become the price Indigenous peoples and other marginalized classes must pay with their lands and lives

[108] John D. Graham, John A. Rupp & Eva Brungard, *Lithium in the Green Energy Transition: The Quest for Both Sustainability and Security, 13 Sustainability,* 11274, 11284 (2021).

[109] Kellan Anfinson, *Capture or Empowerment: Governing Citizens and the Environment in the European Renewable Energy Transition,* 117 American Political Science Rev. 927, 927 (2023).

[110] Hailes, *supra* note 105, at 149.

[111] Christos Zografos & Paul Robbins, *Green Sacrifice Zones, or Why a Green New Deal Cannot Ignore the Cost Shifts of Just Transitions,* 3 One Earth 543 (2020).

to pave way for new green technologies. The socio-ecological implications of mining these critical minerals to accelerate the transition to low-carbon economies thus cannot proceed based on environmental destruction or massive human rights violations.[112] At this time, Africa must assert itself in this debate. For instance, the present environmental despoliation in the DRC suggests a familiar pattern of extraction like we have seen in the destruction wrought by copper mining since the Belgian colonial project. This situation has left many communities in a vulnerable place and the ecology in a far worse state considering the history of political manipulation of the DRC by industrialized countries.[113]

Thus, funding the extraction of critical minerals does not readily translate into a positive outcome for communities and the environment in Africa as is being forcefully advanced in the prevailing green narrative. Neither can investments in projects designed to produce and export green energy including solar power without a corresponding benefit or positive impact at home help the African experience.[114] Even as we think through these questions and search earnestly for solutions, it is important that we are guided by the admonition that the political managerialism of financing climate and environment-related projects by powerful states requires a careful effort not to rush to embrace wrong or unhelpful solutions. The urgency to find answers to the present ecological crisis must equally be accompanied with a desire to appreciate the implications of proposed solutions.[115] Admittedly, there are no easy answers to this question but it is necessary to confront them if green finance (at least in Africa) is not to go down the slippery slope of neoliberal environmentalism.[116]

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[112] Benyoh Emmanuel Kigha Nsafon *et al., The Justice and Policy Implications of Clean Energy Transitions,* 11 Frontiers in Envtl. Science 1 (2023).

[113] Kelsey Galantich, *Lithium-Ion Batteries: How to Improve Due Diligence Guidelines to Ensure the Environmental Health of Artisanal Mining Communities in the Democratic Republic of Congo,* 15 Law Environment & Development J. 32, 35–37 (2019).

[114] Maryam K. Abdelrazik *et al., Climate Action: Prospects of Solar Energy in Africa,* 8 Energy Reports 11363, 11364, 11366 (2022).

[115] Long, *supra* note 2, at 57–59.

[116] David Clippet & J. Timmons Roberts, *Climate Change and the Transition to Neoliberal Environmental Governance,* 46 Gloval Envtl. Change 148 (2017).

CHAPTER EIGHT

A Tale of Tax, Debt, and Climate: Environmental Taxation as a Potential Solution to the Debt and Climate Crises in Africa

Afshin Nazir*

The environment and the economy are really both two sides of the same coin. If we cannot sustain the environment, we cannot sustain ourselves.

~Wangari Maathai

I Introduction

It is an unfortunate reality that while Africa contributes less than 5% to global greenhouse gas emissions, it is especially vulnerable to the impacts of climate change.[1] The continent is battling climate-related disasters with increasing frequency and severity. Africa has faced exponential collateral damage with devastating impacts on the continent's development and achievement of the Sustainable Development Goals (SDGs). Ninety-five percent of global rain-fed agriculture is found in Sub-Saharan Africa. This means a large portion of the Gross Domestic Product (GDP) and employment of many African counties is highly dependent on the agricultural sector. This makes African economies particularly sensitive to extreme weather activities, including droughts and flooding. This has resulted in the loss of revenues and food insecurity on the continent, threatening the continent's ability to finance itself.[2]

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[1] IMF, *Africa Cannot Confront Climate Change Alone,* IMF Blog (Dec. 17, 2021).

[2] African Development Bank Group, *Climate Change in Africa,* African Development Bank (2019).

To make an already precarious situation worse, African countries are also battling a debt crisis. As of June 2023, 11 African countries were in debt distress while 25 countries were at high risk of debt distress.[3] This indebtedness is in part attributable to low tax revenues and high-interest loans.[4] Climate change is also a contributory factor to rising debt levels. For African countries, the focal point is building economies resilient to climate change.[5] From this perspective, accessing climate finance could be an integral part of achieving this objective. Over 70% of public climate finance is obtained through debt and is largely used for climate mitigation.[6] Annual adaptation needs for developing countries have been estimated at USD 340 billion by 2030 and USD 565 billion by 2050 yet donors lean towards financing mitigation over adaptation with approximately only a fifth of climate finance flows directed towards adaptation.[7] The effect of this is that adaptation measures in developing countries tend to be financed through domestic sources. National budget surveys have also shown that developing countries prioritise adaptation over mitigation and can commit significant parts of their budget to the same.[8]

Against this background, this chapter seeks to explore the use of environmental taxes as a potential solution to both the climate and debt crises. I argue that environmental taxes can play a role in addressing both crises. This is particularly so if such environmental taxes are properly designed and implemented to fit an African continent in general, and in particular, to each country's specific circumstances. This chapter is divided into six sections. Section 2 sets out the nexus between the climate and debt crises. Section 3 introduces environmental taxes, highlighting the meaning of, basis for and types of environmental taxes. It also discusses environmental taxes

[3] Eurodad, *Which Countries Are the Most Affected by Climate Change and Debt Distress?,* European Network on Debt and Development (2021), https://www.eurodad.org/countries_climate_debt_distress.

[4] IMF, *List of LIC DSAs for PRGT-Eligible Countries as of June 30, 2023,* https://www.imf.org/external/pubs/ft/dsa/dsalist.pdf; Nosmot Gbadamosi, *What's Causing Africa's Debt Crisis?: Low Tax Revenues, High-Interest Loans, and Superpower Squabbling over Debt Relief Have Made Matters Worse for African Governments,* Foreign Policy (Feb. 1, 2023).

[5] IMF, *supra* note 1.

[6] UNCTAD, *Global Debt and Climate Crises Are Intertwined: Here's How to Tackle Both,* UNTCAD (Mar. 1, 2023).

[7] *Id.*

[8] Asha Amirali, *Financing for Climate Adaptation—An Overview of Current Regimes* 4 (2020).

in the context of carbon pricing. Section 4 delves into studies connecting climate change, debt and tax. It highlights evidence from previous studies on the use of environmental taxes to address the debt and climate crises. The second part of this section provides an overview of the African environmental taxation experience. Section 5 seeks to analyse the findings from Section 4 in the African context. It discusses issues to consider, challenges that may arise, as well as possible solutions. The analysis covers tax design, revenue use, public acceptance, impact on investment, possibilities of regressivity, among other factors. Finally, Section 6 concludes.

2 Nexus Between the Debt and Climate Crises

There is a nexus between the debt and climate crises in Africa. The climate crisis exacerbates the debt crisis and vice versa, leading to a vicious circle.[9] Rising debt levels are worsening countries' financial ability to respond to climate crises, while addressing climate disasters necessitates borrowing thus increasing public debt levels. Developing countries often need to borrow to aid their recovery efforts after climate disasters and to meet their climate finance obligations. Climate finance is largely being provided through debt-creating instruments, fuelling the debt crisis by reducing fiscal space and threatening debt sustainability.[10] Where a developing country is hit by a climate emergency, this can affect its public debt for years after the occurrence of the climate emergency. The IMF's analysis of 11 climate emergencies revealed an average increase of the percentage of debt in relation to GDP from 68% in the year of the natural disaster to 75% three years after the climate emergency.[11] Other analyses have similarly demonstrated that climate-induced loss drives debt, even years after the occurrence of the climate emergency.[12]

[9] Iolanda Fresnillo, *A Tale of Two Emergencies: The Interplay of Sovereign Debt and Climate Crises in the Global South* 2 (Eurodad, Briefing Paper, 2020). (Dec. 17, 2020); *see also* Akinyi J. Eurallyah, *Sovereign Sustainability-Linked Bonds for Sustainable Development: Embedding Human Rights and Impact Investing in the Sustainability-Linked Bond Markets,* chapter 1 in this book; *see also* Geoffrey Adonu, *Closing Africa's Climate Funding Gap: Viability of Sustainable Bond Instruments for African States* (discussing further the debt and climate change nexus).

[10] Fresnillo, *supra* note 9. *See also* Kelvin Mbithi, *Supervising Sovereign Debt Restructuring through the United Nations* (2023) and Adonu, *supra* note 9, at chapter 5.

[11] Eurodad, *supra* note 3.

[12] *Id.*

Consequently, countries are unable to meet other national needs. As countries respond to more pressing needs including responding to climate emergencies and debt servicing, meeting other priorities like basic needs for their people are adversely impacted. Continuous borrowing creates the need for revenues to repay not only debts, but also the interest accruing on that debt. This results in limited resources for climate adaptation and mitigation due to debt servicing, creating an obstacle towards building climate resilience. As a result, countries may resort to the use of natural resources, despite the harmful impact of such activities on the environment, contributing further to climate change. Generally, this cycle results in a gap in global finance to address climate change issues, including mitigation and adaptation, while increasing debt levels.[13]

African countries have been trying to break out of this vicious circle of worsening debt and climate crises through various means. Debt-for-nature swaps, for instance, have recently been discussed for a number of developing countries, including Kenya and eSwatini on the African continent.[14] While these have been of assistance in addressing the issue, their reliance as a long-term solution has been questioned as discussed extensively in Nciko wa Nciko's chapter in this book.[15] According to the African Sovereign Debt Justice Network (AfSDJN), debt for nature swaps pose challenges including *"high transaction costs, the need to monitor conservation or climate projects, and the requirement that a debtor country makes a long-term financial commitment."*[16] The need for other alternatives to address the problem has therefore arisen.

3 Environmental Taxation

3.1 Meaning of and Basis for Environmental Taxation

An environmental tax is defined as *"a tax whose tax base is a physical unit (or a proxy of it) that has a proven specific negative impact on the environment."* [17] The basis for these

[13] *Id.*

[14] *Id.*

[15] *Id.; see* Nciko Wa Nciko, *Misery of Others as a New Site for Capital Accumulation: The Problem With Debt for Climate Swaps,"* chapter 4 in this book.

[16] *Id.*

[17] *Environmental Taxes,* OECD.org, https://data.oecd.org/envpolicy/environmental-tax.htm.

taxes is the *"Polluter Pays Principle"* according to which the polluter should pay for pollution prevention measures for the damage caused by pollution.[18] The polluter pays principle has become increasingly important in light of the increasing levels of pollution and environmental degradation. English economist Arthur Pigou advocated for the imposition of tax on polluters on the basis that the social cost of pollution exceeds the private cost to the polluter—hence green taxes are also called Pigouvian taxes. Based on this logic, such taxes are the most efficient means for correction of negative externalities in a market.[19] However, the situation can be complex as the principle is usually only partially applied which limits its efficacy. This is the case where aids such as subsidies accompany such taxes. This is remedied through transitional periods.[20] However, Pigouvian taxes alone cannot correct externalities in the long run, hence the need for supplementary policies.[21]

The continued uptake and implementation of environmental taxes, not only in Africa but also globally, is an acknowledgement of the role that fiscal policies can play in the achievement of environmental objectives, and the connection between the fiscal and environmental fields. Depending on the criterion employed to group them, there is a myriad of categories of environmental taxes. The most commonly used criterion is the field of operation, subject to which environmental taxes may be grouped into four categories—taxes on energy, transport, pollution and resources.[22] Energy taxes are those levied on the production of energy and energy products and include, for instance, taxes on fuels. Pollution taxes are those levied on air emissions, water emissions, solid waste and noise. Examples include Algeria's air pollution emission

[18] OECD GUIDING PRINCIPLES CONCERNING THE INTERNATIONAL ECONOMIC ASPECTS OF ENVIRONMENTAL POLICIES", in: International Law & World Order: Weston's & Carlson's Basic Documents, Weston & Carlson. Consulted online on 02 August 2023 <http://dx.doi.org/10.1163/2211-4394_rwilwo_SIM_032700>

[19] Charles H. Eccleston & Frederic March, Global Environmental Policy: Concepts, Principles, and Practice 263 (1st ed. 2011).

[20] OECD, *The Polluter Pays Principle,* at 95 (2008).

[21] Dennis W. Carlton & Glenn C. Loury, *The Limitations of Pigouvian Taxes as a Long-Run Remedy for Externalities,* 95 Q. J. Econ. 559, 566 (1980).

[22] Jacqueline Cottrell *et al., Environmental Tax Reform in Asia and the Pacific,* United Nations Econ. & Social Comm. For Asia & the Pacific (2017).

tax introduced by the Finance Code of 2004 and a solid waste tax of 24000 Algerian Dinars (USD 178) for every ton of medical waste stored.[23] Resource taxes relate to the extraction and use of depletable natural resources including forests, plants, water and wild animals. An example is Congo's deforestation tax of CFA 5000 (USD 84) per hectare.[24] Transport taxes are levied on the ownership and use of any means of transport. An example is Uganda's environmental levy on the importation of motor vehicles which are older than fifteen years.[25]

It is fundamental at this juncture to pose this question—what is Africa's priority when it comes to environmental taxation? Does Africa need lower greenhouse gas emissions or a means to provide for adaptation to deal with the impacts of high global greenhouse gas emissions, or both? For the purpose of reducing greenhouse gas emissions, carbon taxes and other taxes tackling emission levels are most relevant. For the purpose of generating revenue for debt reduction and climate action, every environmental tax is relevant.

3.2 Environmental Taxation in the Carbon Pricing Context

As the focus of this chapter is environmental taxation in the climate context, this sub-section considers the carbon pricing aspect of environmental taxation. Carbon pricing is the use of *"an instrument to capture the external costs of greenhouse gas emissions and tying them to their sources through a price on the carbon dioxide emitted."*[26] The United Nations Tax Committee (UNTC) states that carbon pricing is more cost-efficient than any other policy instruments to deal with climate change and has other benefits that can support additional development objectives, such as resource mobilization.[27] Carbon pricing can take different forms including emissions

[23] Lemtaouch Latifa, *The Economic Growth & Environmental Degradation Nexus in Algeria Using the Fuzzy Logic* (2018) (Ph.D. thesis, University of Abou-Bekr Belkadi-Tlemcen); *see also* Youb Okkacha *et al., Quantitative and environmental analysis of hospital waste management in southern Algeria,* 29 Technium Soc. Sci. J. 663, 669 (2022).

[24] Emery Mukendi Wafwana *et al., Forest Legislation in the Republic of Congo, Lexology* (Oct. 14, 2013).

[25] Traffic and Road Safety (Amendment) Act 2018 (Uganda), §2.

[26] The World Bank, *What is Carbon Pricing?,* Carbon Pricing Dashboard, https://carbonpricingdashboard.worldbank.org/what-carbon-pricing.

[27] United Nations, *United Nations Handbook on Carbon Taxation for Developing Countries* (2021).

trading system (ETS), carbon tax, carbon crediting mechanism, Results-Based Climate Finance (RBCF) and internal carbon pricing.[28]

The ETS and carbon tax are the most popular carbon pricing options. An ETS is a system where emitters can trade emission units to meet emission targets. Emitters can either choose to adopt abatement measures to reduce their emissions or purchase emission units in the carbon market to comply with emission targets.[29] A carbon tax can be defined as a *"compulsory, unrequited payment to general government, levied on carbon emissions or its proxy that can confer a reduction in corresponding carbon-based (equivalent) emissions in the atmosphere."*[30] Both options have their advantages and disadvantages. A carbon tax, for instance, generates revenues, provides certainty in costs for economic actors, can be designed to require less administration and is cost-effective, but provides uncertainty in quantity of emissions reductions.[31] An ETS, depending on the set-up, provides certainty in emission reduction goals, but does not necessarily incentivise investment in low-carbon technology and can be more complicated to administer than a carbon tax.[32] In light of these, the UNTC has expressed preference for a carbon tax for developing countries as it is simpler, does not require a complex monitoring, reporting and verification (MRV) system, and can be implemented through the existing tax instruments. Nevertheless, the UNTC takes cognizance of the role that both instruments can play in emissions reductions, while generating revenues.[33] As the scope of this chapter is limited to environmental taxation, carbon taxes are the main focus, although this does not discredit the usefulness of the ETS system in addressing the problem.

It is critical to note that environmental taxation in general and carbon pricing in particular are not devoid of challenges. Carbon pricing, for instance, has to be complemented with other policies to combat climate change.[34] A carbon tax can have

[28] The World Bank, *supra* note 26.

[29] The World Bank, *supra* note 26.

[30] United Nations, *supra* note 27.

[31] *Id.,* at 22.

[32] *Id.*

[33] *Id.,* at 22–23.

[34] Daniel Rosebloom *et al., Why Carbon Pricing Is Not Sufficient to Mitgate Climate Change—and How "Sustainability Transition Policy" Can Help,* 117 Proceedings of the Nat'l Acad. Sci. 8664 (2020).

adverse effects on energy-intensive industries which may lead to negative economic and environmental outcomes.[35] I have discussed further the challenges associated in Sections 4 and 5 of this chapter.

4 Environmental Taxes for Resolution of the Debt and Climate Crises

The first part of this section discusses findings of previous studies on the subject, while the second part analyses the impact of environmental taxes on revenues and environmental goals in African countries.

4.1 Evidence from Previous Studies

There is little to no literature connecting environmental taxes with the interrelated debt and climate crises in Africa. Studies on environmental taxation generally leave debt out of the equation. However, there are some European studies which connect environmental taxes with both environmental goals and debt. It must be pointed out that these are ex-ante studies operating in a theoretical context. This sub-section briefly sets out the findings of these studies to advocate for the use of environmental taxes in reducing debt and climate problems. These findings are discussed in Africa's context later in this chapter.

The first study by Fodha et al. discusses environmental tax reform under debt constraints.[36] One of the research questions was whether environmental tax revenues had the ability to reduce public debt while protecting the environment. The authors posit that environmental tax revenues assist in reducing the public debt-output ratio. They make the case for environmental taxes to be viewed as a potential solution to the public debt crisis, instead of seeing them as compounding the public debt distress. They argue that an increase of the environmental tax can be balanced by decreasing the income tax rate or decreasing the debt-output ratio. The resultant impact is

[35] Joseph E. Aldy & Robert N. Stavins, *The Promise and Problems of Pricing Carbon: Theory and Experience,* 21 J. Env't & Dev. 152, 156 (2012).

[36] Mouez Fodha *et al., Environmental Tax Reform Under Debt Constraint,* 129 Annals of Econ. & Stats. 33, 33-52 (2018).

increase in net income and savings, hence a rise in capital stock and wages, leading to increase in aggregate consumption. They argue that a higher capital stock would also cause a decrease in the interest rate, reducing the debt repayment burden.[37]

The second study by the European Commission demonstrated that higher environmental taxes, with revenues recycled to reduce labor taxes, were a means to attain a positive impact on employment and income. Where the impact was regressive, with real incomes of lower income groups rising to a lesser extent than those with higher incomes, the study proposed that this could be corrected through specific policies such as *"targeted labour tax cuts for lower income earners."*[38] Three possible uses of the environmental tax revenues were considered.[39] First, revenues could be used directly towards payment of debt. Second, revenues could be recycled through labour tax reductions. Third, revenues could be recycled according to the particular needs of each state. The manner in which environmental tax revenues would be deployed was a determinant of the macroeconomic outcome attained. Where the second and third options were adopted, GDP and real incomes generally improved.[40] This resulted in improved debt-to-GDP ratio. However, where revenues were used to offset debt directly, this led to a negative impact on GDP and real incomes.[41] The study did not clearly set out why this was the case.

The third study was conducted by Tibulca amidst concerns over rising levels of government debt and budget deficits.[42] Tibulca concluded that all the four types of environmental taxes were important in rebuilding fiscal space and improving debt

[37] *Id.,* at 34.

[38] David Mottershead *et al., Green taxation and other economic instruments: Internalising environmental costs to make the polluter pay,* European Commission—Inst. For European Env't Pol'y, at 80 (Sept. 2021).

[39] *Id.,* at 73.

[40] *Id.* (it is worth noting, however, that where the third option was used, this was not necessarily the case. For example, investment of environmental tax revenues in the agriculture sector through investment in technology which eventually reduced employment in the sector).

[41] *Id.*

[42] Ioana-Laura Tibulca, *Debt Sustainability: Can EU Member States Use Environmental Taxes to Regain Fiscal Space?,* 13 Sustainability 5952 (2021).

sustainability while achieving some environmental goals. Further, the study found that energy and transport taxes had the best impact in enabling the achievement of this objective, although pollution and resource taxes also showed a positive impact.[43]

Fourth, an analysis by Ligthart for the IMF found that an environmentally motivated fiscal reform has the potential to yield a cleaner environment and a higher rate of economic growth.[44] Where environmental taxes are used to reduce labour taxes, this may yield employment and environmental dividends. The double dividend hypothesis theorizes that environmental taxes shift the burden of taxation *"from socially desirable activities such as employment toward 'public bad' such as pollution"* which yields two dividends: reduced pollution and higher employment.[45] Higher employment leads to improved GDP and subsequently, improved debt-to-GDP ratio.[46]

More recently, Dafermos *et al.* noted the growing acknowledgement that "macrofinancial stability cannot be restored without addressing the climate crisis."[47] They consider carbon pricing in the context of what Gabor terms the "Wall Street Consensus" (WSC)[48] and point out that carbon pricing is a tool that can be used to address climate change. They consider it "the central climate fiscal policy tool in the WSC agenda."[49] For them, carbon pricing is an appealing option as it does not undermine fiscal discipline or climate mitigation. Further, they argue that carbon pricing provides an incentive for the use of low-carbon investments. They also note the ambition of international organizations for increased uptake of carbon policy in the future. However, Dafermos *et al.* caution that carbon pricing can have disproportionate impacts. These distributional issues can be resolved through broader environmental tax reform. However, in the aftermath of COVID-19, they believe that the revenues

[43] *Id.,* at 12.

[44] Jenny E Ligthart, *The Macroeconomic Effects of Environmental Taxes: A Closer Look at the Feasibility of "Win-Win" Outcomes,* (IMF, Working Paper No. 1998/075, 1998).

[45] *Id.,* at 5.

[46] *Id.*

[47] Yannis Dafermos *et al., The Wall Street Consensus in Pandemic Times: What Does it Mean for Climate-Aligned Development?,* 42 Canadian J. Dev. Studies 238, 241 (2021).

[48] *Id.,* at 238. (Gabor considers the WSC as "a new policy paradigm ... which posits that development goals can be achieved by placing global finance at the centre of development processes"); *see also* Daniela Gabor, *The Wall Street Consensus,* SocArXiv (July 2, 2020).

[49] *Id.,* at 245.

from carbon pricing will be used to reduce public debt. Second, they postulate that reliance on carbon pricing draws attention away from more transformational policies aimed at achieving a low-carbon economy.[50] Undesired distributional effects may be countered through public consultation and compensatory measures.[51]

The main highlight of the above studies is that environmental taxes, including carbon pricing, have potential to reduce public debt while attaining environmental objectives. Overall, they highlight the potential positive impact that environmental taxes can have on the resolution of the debt and climate crises however, Dafermos' analysis also raises potential adverse distributional effects. As stated earlier, most of the studies summarised above are ex-ante studies operating in a theoretical context. Their application to the African context therefore has to be examined in light of Africa's unique circumstances, which I do later in this chapter.

4.2 The African Environmental Taxation Experience

The adoption and implementation of environmental taxation across the African continent has been on the rise in recent years. Although African countries have largely been slow to incorporate environmental taxes into their fiscal policies, the examples mentioned in this chapter are evidence of the increasing uptake of environmental taxes across Africa. The limited role of finance ministries in climate action has been cited as the main obstacle to the implementation of environmental tax reform measures in Africa. Traditionally, climate action has been the ambit of environmental ministries and left finance ministries out. This bifurcation of roles is now changing as cognisance is being taken of the role that environmental taxes can play in the achievement of both environmental and economic objectives.[52] Countries on the continent have adopted various types of environmental taxes to address a wide range of issues. For example, Malawi,[53] South Africa,[54] and Zambia[55] have introduced some form of carbon taxation. In 2019, Kenya introduced a VAT exemption for sealed tanks used

[50] *Id.,* at 245–46.

[51] United Nations, *supra* note 27.

[52] Amirali, *supra* note 8.

[53] Funsani Scander, *Carbon Tax Collection Now Underway,* Malawi Revenue Authority (Nov. 27, 2019).

[54] Carbon Tax Act No 15 of 2019 (S. Afr.).

[55] Customs and Excise Act No. 9 of 2006 § 77 (Zam.).

to produce biogas to promote the use of green energy.[56] There also exist other taxes aimed at addressing a wide range of environmental problems on the continent.

The impacts of most environmental taxes in Africa, especially on debt, remain largely undocumented. The result of few of these taxes have been set out in literature. One example is that of Tunisia. The country, through Law 82/2005 on Energy Efficiency Fund, introduced a tax on registration of motor vehicles.[57] The revenue was used to fund the PROSOL project which led to the installation of solar water heating equipment in 119000 households. This move reduced the use of fossil fuel imports for water heating equipment, which reduced the use of fossil fuels and focused on use of solar energy instead, saving the Government USD 100 million.[58]

In terms of both environmental and economic impacts, Morocco's plastic tax serves as a good example. Although this tax is not climate-based considering that its goal was not reduction of emissions, it raised revenues that can be used to fund climate response measures or other environmental or debt needs. The country introduced a plastics tax through its National Waste Management Programme (PNDM). This tax came into force in January 2014 and collected higher revenues than expected. Tax revenues are directed to the National Environmental Fund and are used to fund activities promoting recycling, recovery of plastic waste and creation of a formal waste separation sector. The tax has served as an incentive for efficient use of plastics by manufacturers and has made positive contributions to the economy.[59]

Although there are success stories on the use of environmental taxes, in reality, there are also instances where environmental taxes have failed to yield the expected results. Parry attributes this to tax design and suggests that fiscal systems should be reformed to better address externalities.[60] For example, in Mauritius, water tariffs introduced in the country to combat water shortages failed to reduce water

[56] Prisca Musibi, *Environment Tax a Step in the Right Direction,* Business Daily (May 2, 2018), https://www.businessdailyafrica.com/bd/opinion-analysis/ideas-debate/environment-tax-a-step-in-the-right-direction-2200588.

[57] Jacqueline Cottrell & Tatiana Falcao, *A Climate of Fairness: Environmental Taxation and Tax Justice in Developing Countries,* Vienna Inst. Int'l Dialogue & Coop (Nov.).

[58] *Id.,* at 56.

[59] *Id.*; Ministry of Energy, Mining, Water, and the Environment, *National Household Waste Program,* Republic of Morocco.

[60] Ian W.H. Parry, Reforming the Tax System to Promote Environmental Objectives: An Application to Mauritius, 28 (IMF, Working Paper No. 11/124, 2011).

consumption due to low rates.[61] In South Africa, it has also been pointed out that the carbon tax rate needs to be increased to yield results.[62] Does this discredit the use of environmental taxes to address the debt and climate crises? I argue that it does not—rather, these failed experiences serve as lessons to design the environmental taxes with careful consideration and modify them as needed.

5 Analysis in the African Context

Mickelson has discussed in depth the need for an inclusive Global North-South perspective when it comes to international environmental law issues.[63] International environmental law was largely defined in the Global North for the benefit of the Global North. African countries and much of the global South were designated as disinterested in the environment, because development was their priority. As Mickelson persuasively shows, international environmental law inaccurately characterizes the Global South as being against environmental protection, or that these countries have to be cajoled by the Global North to take environmental measures seriously through incentives or disincentives.[64] From this perspective, Mickelson argues international environmental law should adopt a more inclusive perspective to accommodate the interest and perspectives of the Global South.[65] Further, Mickelson shows the impacts of the climate crisis in the Global North and the Global South are not the same.[66] The Global North bears the most responsibility for the climate crisis,[67] but the Global South is at a more disadvantaged position as it bears the brunt of climate change. For instance, South Asia is affected by floods, sub-Saharan Africa by drought

[61] Aleksandra Peeroo & Riad Sultan, *Governance and Economic Accounting Issues in the Mauritian Water Sector: Toward Sustainable Management of a Natural Resource,* Global Dev. Network (Nov. 2016).

[62] Haonan Qu *et al., South Africa Carbon Pricing and Climate Mitigation Policy* (IMF, Paper No. 2023/040, 2023).

[63] Karin Mickelson, *South, North, International Environmental Law, And International Environmental Lawyers,* 11 Yearbook of Int'l Envt'l L. 52, 68–72 (2011).

[64] *Id.,* at 66.

[65] *Id.,* at 68.

[66] Karin Mickelson, *Leading Towards a Level Playing Field, Repaying Ecological Debt, or Making Environmental Space: Three Stories about International Environmental Cooperation,* 43 Osgoode Hall L.J. 137, 138 (2005).

[67] *Id.,* at 149.

and the Caribbean by hurricanes.[68] At the same time, the Global North has largely disclaimed any responsibility for the climate crisis in the Global South. These facts are critical to considering the types of environmental taxation that fit the needs and circumstances of African countries.

African states generally have lower levels of taxation compared to Global North countries which have higher GDP per capita levels. Some analysts argue African states are reliant on natural resources and foreign aid, hence lack strong incentives to raise domestic revenues.[69] I argue that this is only true to a certain extent. Let us take the example of the Republic of Guinea. Waris reports that the country has a tax revenue of USD 12,201,000 while non-tax revenue, external revenue and loans amount to USD 4,646,000 cumulatively.[70] Mpofu claims along these lines that African states are highly dependent on tax revenues and natural resources to fund public expenditure.[71] There are also large informal sectors largely uncaptured by the tax net.[72] There is a narrow tax base, and low tax morale is prevalent due to lack of public trust in the government.[73]

Tax-related illicit financial flows (IFFs), due to practices of multinational corporations (MNCs), are widespread.[74] Gathii argues that Investor State Dispute Settlement (ISDS) reform processes have overlooked market failures and allowed *"investors to externalize massive environmental, human rights and other costs."*[75] Private individuals in power have also redirected public resources for self-enrichment, highlighting the connection between business and political power.[76] Domestic laws have further restricted the rights of the State with regard to the activities of MNCs,[77] which have

[68] *Id.,* at 169.

[69] James A Robinson, *Tax Aversion and the Social Contract in Africa,* 32 J. Afr. Econ. i33, i34, i52–i53 (2023).

[70] Attiya Waris, *Financing Africa* 98 (2019).

[71] Favourate Y. Mpofu, *Green Taxes in Africa: Opportunities and Challenges for Environmental Protection, Sustainability, and the Attainment of Sustainable Development Goals,* 14 Sustainability 1 (2022).

[72] *Id.,* at 18.

[73] *Id.,* at 12.

[74] Attiya Waris, *Measures Undertaken by African Countries to Counter Illicit Financial Flows: Unpacking the African Report of the High-Level Panel on Illicit Financial Flows,* in INTER-AGENCY COOPERATION AND GOOD TAX GOVERNANCE AND AFRICA 15, 23 (Owens et al., eds., 2018).

[75] James Thuo Gathii, *Reform and Retrenchment in International Investment Law,* at 7 (2021).

[76] *Id.,* at 11–12.

an impact on the environment, human rights and local communities. Waris states that MNCs shift profits to countries with low tax rates or tax havens regardless of the existence of a physical presence, which deprives Africa of much-needed revenue.[78] Even as we consider collecting more revenues through environmental taxes, care ought to be taken that MNCs are captured by the environmental tax net to curb IFFs, especially in cognizance of the harmful impacts of their activities.

On the environmental front, Africa's primary need is climate mitigation, adaptation and development. As Mickelson postulates above, Africa is mainly concerned about development and addressing the problems it is already facing due to climate change.[79] Development and climate action are complementary—stronger climate action including policies, regulations and carbon pricing can in fact promise growth. Stronger climate action can reduce unproductive expenditure to address destruction and promotes changes and innovation for a green economy.[80]

Turning our attention to debt, let us examine the extent to which returns from environmental tax can help to address the debt crisis. This analysis is based on South Africa's carbon tax. Approximately ZAR 1.6 billion was collected in carbon tax revenue in 2022, which accounts for 0.2% of the total national revenue.[81] This is attributable to the low tax rate of R144 per tonne of carbon dioxide equivalent (tCO_2e) for the year. The predicted tax rate for 2030 is R462 per tCO_2e, over three times the rate used in 2022.[82] This, therefore, implies that the projected carbon tax revenue for 2030 should be around ZAR 5.1 billion. The country is also losing significant revenue due to carbon tax exemptions. An estimated ZAR 45 billion was lost in tax revenues in 2020 due to these exemptions.[83] Assuming that South Africa gradually

[77] *Id.,* at 13.

[78] Attiya Waris, *Towards a Global Fiscal Architecture Using a Human Rights Lens,* at 6, U.N. Doc. A/77/169 (Sept. 12, 2022).

[78] Mickelson, *supra* note 66, at 149–69.

[80] Nicholas Stern & Joseph E. Stiglitz, *Climate Change and Growth,* 32 Industrial & Corp. Change 277, 277–300 (2023).

[81] Lucie Borgogno & Teegan Govindasamy, South Africa's Carbon Tax: Changes and Implications for Taxpayers, Deloitte (Feb. 1, 2023).

[82] *Id.*

[83] IISD, *South Africa's Energy Subsidies Tripled Since 2017, Hitting ZAR 172 Billion in 2022* (J.an. 31, 2022); *see also* IMF, *supra* note 62 (the IMF calls for phasing out of the tax exemptions).

phases out these exemptions and increases the tax rate, the carbon tax should generate roughly ZAR 50 billion per year. This figure only takes into account carbon tax, but if we include other environmental taxes, the revenues are higher.[84] Based on the 2022 Budget, a sum of ZAR 268 billion was allocated towards debt servicing.[85] In a situation where carbon tax revenues are used for debt servicing while revenues from other environmental taxes are recycled for other uses, a sum of ZAR 50 billion constitutes approximately a fifth of the ZAR 268 billion required for debt servicing. This is based solely on the carbon tax, while excluding revenues from other environmental taxes.

From the foregoing, a pertinent question that arises is what climate-based taxation should Africa adopt. My argument is that climate-based taxation for Africa does not necessarily have to be limited to a carbon tax. It should also include other types of environmental taxes to address emissions levels, such as a deforestation tax. These two categories are aimed at emissions reduction. Additionally, African countries ought to include other environmental taxes which do not directly address emissions levels but can raise revenues for debt servicing and meeting climate finance needs. To determine whether or not an environmental tax can respond to the climate and debt crises we have to examine their usefulness in two aspects: raising revenues and responding to environmental concerns. Environmental taxes have shown positive environmental changes and can be a source of significant revenue in Africa, based on the Tunisian and Moroccan examples above,[86] making them an untapped tool to simultaneously address the debt crisis. It is arguable that environmental taxes can have positive changes not only in terms of environmental impact, but also revenue collection and even savings, which can reduce the debt burden and increase fiscal space. As African countries undertake environmental tax reform with the debt and climate crises in mind, there are a number of issues to consider and challenges that may arise. These are discussed below.

5.1 Tax Design and Revenue Use

My argument, based on the African environmental taxation experience, is that an environmental tax's design and revenue use are determinants of the impact of the tax

[84] Organization for Economic Co-operation and Development, *Environmentally Related Taxes: Taxes on Energy Use.*

[85] Enoch Godongwana, Minister of Finance, *2022/23 Budget Speech* (Feb. 23, 2022).

[86] Cottrell & Falcao, *supra* note 57.

on the debt and climate crises. In order to address both crises, environmental taxes have to be designed with clear objectives along these lines in mind. Governments must identify the institutions involved in designing and administering the tax such as environmental agencies and tax authorities,[87] the roles of these institutions, the sectors to be targeted, the revenues to be collected and the types of taxes to be levied. This design considerations are essential to avoid burdening low-income groups. What works for each country will differ, hence the taxes must be contextualised to the achievement of debt sustainability and climate resilience depending on the needs of the country. Where low revenues are generated to see any impact on the debt and climate crises, necessary reforms can be taken, such as increase in tax rate. To ensure that environmental taxes yield results, they must be prohibitive enough to push polluters to adopt environmentally sustainable measures. For example, when the South African carbon tax was introduced, concerns were raised over the tax design, particularly the low tax rates and their ability to combat emission levels.[88] Care must be taken to capture MNCs into the tax net to curb IFFs and ensure internalization of the costs of their activities. For example, in case of a carbon tax, all MNC facilities with emissions above a certain threshold should be required to register as carbon taxpayers.

When designing a carbon tax, there are generally two approaches that can be adopted, including the fossil fuel approach, which is essentially a product-based approach, and the direct emissions approach. The former involves the taxing of *"fossil fuels ... and their derivative products, and setting the tax rate based on the carbon content of [the] fuel."*[89] The direct emissions approach involves *"targeting CO_2 emissions at source regardless of fuel or processes,"* by levying the tax on measured emissions.[90] South Africa has adopted a direct emissions approach for administration of the carbon tax. The tax base is the emissions of a taxpayer in respect of a tax period expressed as the CO_2e of those emissions resulting from fuel combustion, industrial processes and fugitive emissions.[91] The tax is levied in accordance with a reporting methodology approved by the Department of Environmental Affairs. Where the reporting

[87] United Nations, *supra* note 27.

[88] Mfuneko Toyana, *South African Carbon Tax Finally Becomes Law,* Reuters, May 26, 2019, https://www.reuters.com/article/uk-safrica-carbontax-idUKKCN1SW0K2.

[89] United Nations, *supra* note 27, at 79.

[90] United Nations, supra note 27, at 91.

[91] Carbon Tax Act No 15 of 2019 § 4(1) (S. Afr.).

methodology is not set out, the South African law provides different formulae to calculate emissions.[92] The Customs and Excise Act provides that the amount of environmental levy should be calculated per licensed warehouse or emission generation facility.[93] This approach is suitable as it targets emitters directly and applies upstream in the industries targeted.

Further, when designing the tax, there is need to consider revenue which is instrumental in determining the overall impact of the tax. Even where an environmental tax is not directly addressed to tackle greenhouse gas emissions, it can still prove useful to reduce debt levels and finance climate needs through the revenues raised. As stated above, environmental tax revenues can be used in a variety of ways: recycling the revenues through labour tax reductions; recycling the revenues according to the needs of the particular country; or debt servicing.[94] However, when determining how to recycle revenues, we must note that the African context is different in terms of labor taxation. This is due to the existence of large informal sectors which remain mostly uncaptured by the net of structured labor taxes as well as tax evasion by MNCs.[95] In addition, the burden of labour taxation falls on a narrow tax base which is overstretched. As a result, accompanying environmental taxes with decreased labor taxes is unlikely to result in as high an increase in net income and savings as in the European context, but it will prove useful in demonstrating the initiative of the government in avoiding overtaxing of the citizenry. Further, decreases in labour taxes will affect only a fraction of the population and are likely to result in a lesser drop in revenue compared to European countries. African governments are making efforts to widen the tax base by capturing the informal sector hence there is a possibility that this situation could change in the future.

Environmental tax revenues have traditionally been either earmarked for specific objectives or formed part of the general national budget. It is my assertion that directing revenues to the national budget is the wrong approach for Africa. The right approach involves earmarking the revenues for a particular use or for debt servicing.

[92] *Id.,* at § 4(2).

[93] *Id.,* at § 15(1).

[94] Mottershead *et al., supra* note 38, at 73.

[95] Mpofu, *supra* note 71.

For instance, in the Tunisian example above, revenues were used for solar water heating which reduced use of more expensive fossil fuels and resulted in savings for the government. It is unlikely that the same outcome would have been achieved had the revenues been directed towards the national budget. In South Africa, revenues form part of the National Revenue Fund,[96] but these can be used to benefit poor communities, for example, by paying for programs that provide clean energy for lower-income households.[97] Further, directing revenues towards the national budget can raise concerns that an environmental tax is similar to other taxes used by governments to raise revenue. In my view, environmental taxes are different from other taxes because they are formulated with environmental goals in mind. While an income tax, for instance, targets individual and corporate incomes, it lacks any sort of environmental objective such as reducing emission levels, deforestation or biodiversity loss. Environmental taxes further involve co-operation between environmental and finance ministries to incorporate environmental goals into the taxation system. Nevertheless, directing environmental tax revenues towards the national budget should be avoided due to such concerns and to control the impact of the tax.

A clear revenue spending plan is imperative. Notably, the European studies I discussed earlier in this chapter found that recycling tax revenues is a better approach to build debt sustainability as opposed to using the revenues directly for debt servicing. For developing countries, paying off debt is one of the ways environmental tax revenues can be used. The UNTC recommends this approach for developing countries.[98] Nevertheless, debt cancellation remains a viable option. In Nona Tamale's chapter in this book, she argues that is debt relief and debt cancellation for climate vulnerable countries in Africa is low-hanging fruit that can address both debt and climate crises. She argues that climate-tied debt relief would simultaneously alleviate debt burden and address climate needs.[99] This would in turn increase fiscal space and allow greater flexibility in formulating revenue spending plans.

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[96] Carbon Tax Act No 15 of 2019 § 2 (S. Afr.).

[97] Haru Mutasa, *South Africa introduces new carbon tax to fight climate change,* Al Jazeera (July 27, 2019), https://www.aljazeera.com/videos/2019/7/27/south-africa-introduces-new-carbon-tax-to-fight-climate-change.

[98] United Nations, *supra* note 27, at 161.

[99] Nona Tamale, *The Feasibility of Greening Debt Restructuring in Africa,* chapter 2 in this book.

5.2 Public Acceptance

The public is rarely accepting of the introduction of taxes, especially in countries where the overall trust in the government is low.[100] Waris phrases this as follows: *"Paying tax hurts taxpayers when it is perceived as the compulsory removal of money that taxpayers feel they have worked hard to earn and is being collected excessively ... or is being misspent."*[101]

This is a reality in both developed and developing countries. In the United States of America, a ballot initiative for a carbon tax was rejected in 2016 and 2018. A more hostile approach was seen in France when the public took to the streets through the *gilet jaunes* (yellow vests) protests in 2018 to express disapproval over a proposal to escalate the existing carbon tax.[102] The taxpayers in African countries are also expressing disapproval over rising taxes. History is witness to public resistance to introduction of new taxes and escalation of existing taxes in Africa. For example, South Africa's carbon tax was delayed several times over a span of almost a decade partly due to opposition to the tax before subsequent public acceptance.[103] Resistance to taxes has not been limited to environmental taxes only. Uganda recently witnessed protests over the introduction of mobile money tax and an "over the top" tax.[104] There was also resistance to introduction of VAT at a relatively high rate of 17.5% in Ghana in 1995 and protests over the same resulted in revocation of the tax.[105] How then should governments secure public acceptance to support environmental tax reform?

One way is to raise public awareness of the reasons for the tax, and clearly identify how the revenues will be deployed to improve the country's debt sustainability and resilience to climate change. This can be done through public communication and information campaigns.[106] In South Africa, the Government's involvement of the public proved instrumental to gaining subsequent social acceptance of a carbon tax

[100] United Nations, *supra* note 27, at 161.

[101] Waris, *supra* note 70, at 8.

[102] United Nations, *supra* note 27, at 37.

[103] Jon Duncan, *Carbon tax in South Africa – No longer just hot air,* Mail & Guardian (Aug. 23, 2019), https://mg.co.za/article/2019-08-23-00-carbon-tax-in-south-africa-no-longer-just-hot-air/.

[104] International Budget Partnership, *Uganda: Working Through Coalitions to Oppose Unfair Taxes,* (Dec. 14, 2020).

[105] Khadija Sharife *et al., Tax Us If You Can: Why Africa Should Stand Up for Tax* 54 (2011).

[106] United Nations, *supra* note 27, at 41.

after several years of debate.[107] The Government made draft proposals available for public consultation, revised them and sent them out for a second review by stakeholders. The South Africa Revenue Service (SARS) also published the draft amendments to the rules and schedules, as well as forms relating to registration requirements, collection and administration of carbon tax before the tax came into effect.[108]

Another way is to ensure transparency and accountability. There is lack of access to financial information in many African countries, which leads to a decline of public trust in government and promotes IFFs.[109] Governments can make public the information on revenue collection and use, and the resultant impact of the same on debt reduction and climate action. These measures can be of assistance in enhancing tax morale by creating trust between the taxpayer and the government. Governments can also ensure transparency in the decision-making process and engage in dialogue with the stakeholders.[110]

Tax design can play a pivotal role in securing public acceptance. In South Africa, the government put in place allowances of 60% to 95% hence the effective tax range dropped from R120 per ton of CO_2e to between R6 and R42 per ton of CO_2e. Further, the rate was set to be increased annually. This gradual implementation, accompanied by allowances, proved useful in garnering public acceptance.[111] However, care must be taken to gradually phase out allowances and increase tax rates as failure to do so will inhibit the achievement of debt reduction and climate action objectives. Ensuring that the tax is not regressive will also prevent public backlash.

5.3 Impact on Investments

Another challenge that may arise from the implementation of environmental taxes is the risk of discouraging investment. The impact of environmental taxes on investment

[107] *Id.* at 134.

[108] PwC, *Get Ready for Carbon Tax* (May 20, 2019).

[109] Afshin Nazir & Vallarie Yiega, *Debt, Access to Information and Illicit Financial Flows: An Analysis Based on the Mozambique Hidden Loans Case,* 1 J. Financing for Dev. 237, 238 (2020).

[110] United Nations, *supra* note 27, at 41.

[111] Patrick Curran, *As South Africa's Carbon Tax Is Delayed Again What Is the Story so Far?,* The London School of Economics and Political Science (Oct. 24, 2018), https://www.lse.ac.uk/granthaminstitute/news/as-south-africas-carbon-tax-is-delayed-again-what-is-the-story-so-far/; *see* Carbon Tax Act No 15 of 2019 (S. Afr.) (provide for various allowances and their limitations under Parts II and III of the Act).

is multifaceted and dependent on various factors, and will differ across countries and sectors. It is therefore difficult, and perhaps undesirable, to give a blanket overview on how environmental taxation will affect investment and how the same can be combated. This issue was raised in South Africa where experts warned that a carbon tax could be have an adverse impact on growth, development and investment in a country with high unemployment rates.[112] Concerns were also raised about industrial competitiveness and the financial impact on the local industry.[113] The tax faced opposition from steel manufacturer Arcelor Mittal, gold producer Sibanye-Stillwater, Eskom,[114] and mining companies.[115]

In instances where a country is highly dependent on resource-intensive industries such as oil, gas or minerals, environmental taxes indeed risk inhibiting investment. Countries such as Nigeria, Angola and Libya are highly dependent on oil and gas, while Zimbabwe, Botswana and Namibia are dependent on minerals.[116] However, it is crucial for us to consider that investments, especially in extractive industries, are a tax on the environment. Turning to the example of Nigeria, MNCs have brought more harm than benefit to the economy in terms of *"profit repatriation, environmental degradation, human rights violations, non-technology transfer, bribery and corruption."*[117] The country is one of the largest producers of oil globally, which provides over 80% of its income. However, this sector is largely controlled by MNCs making massive profits which have failed to translate into Nigeria's development.[118] Are such investments then a blessing or a burden to African states? Environmental taxes that seek to limit such activities and recover revenues therefrom are a step towards a better environment and economy, and a means to reduce the debt burden.

In order to protect investment in other industries, different tax rates can be used for different industries. For instance, Sweden transitioned to a two-level carbon tax

[112] *Coal-Hungry South Africa Introduces Carbon Tax,* Al Jazeera (May 27, 2019).
[113] Duncan, *supra* note 103.
[114] Jenny Gathright, *South Africa's Carbon Tax Set To Go Into Effect Next Week,* National Public Radio (May 26, 2019).
[115] Toyana, *supra* note 88.
[116] Mpofu, *supra* note 71.
[117] J Eluka, Ndubuisi-Okolo Purity Uzomaka & Anekwe Rita Ifeoma, *Multinational Corporations and Their Effects on Nigerian Economy,* 8 Eur. J. Bus. & Mgmt. 59 (2016).
[118] *Id.*

system in 1993 with a low tax rate for industry and a high rate for the motor vehicles, households and service sectors. This was done to protect the industrial sector as Sweden is an export-oriented country and needed to maintain competitiveness in the international market.[119] Additionally, supportive policies can be introduced such as policies that promote clean technologies, renewable energy and sustainable infrastructure. Careful consideration on the design of the tax and supplementary policies would go a long way in controlling the impact on investment. Gradual implementation can also assist in determining how to best address undesirable impacts with time as the tax is rolled out. Some investors are increasingly taking into account environmental, social and governance (ESG) considerations in making investment decisions. Transition towards green taxes may in these cases prove useful to encourage investment. Generally, the impact of environmental taxes on investment will have to be considered based on the circumstances of each country and sector, and the tax design modified in a manner suitable to such context.

In addition to the above, low trade barriers can lead to substitution of higher priced domestic products, due to an incorporated carbon price, with lower priced imports not subject to the same carbon price. In this regard, carbon border adjustment mechanisms can be implemented to ensure that imported products also incorporate the carbon price, therefore ensuring similar prices for both domestic and imported products.[120] A two-level tax system can eliminate the need for border tax adjustments.[121] A lower rate of tax for certain sectors will prevent domestic product prices in selected sectors from increasing to a point that it decreases their competitiveness compared to imported products which do not incorporate the carbon price.

5.4 Possibility of Regressivity

It is vital to ensure that the tax is not regressive in nature and the burden thereof does not fall on low-income groups which are already disadvantaged. Even where good

[119] Henrik Hammar & Susanne Åkerfeldt, *CO_2 Taxation in Sweden: Experiences of the Past and Future Challenges,* J. Rev. Project (2015); Susanne Åkerfeldt, *Taxes and Climate Policy in Sweden,* Florence School of Regulation (Jan. 21, 2015).

[120] Timothy Meyer, *Taxing, Regulating, and Trading Carbon: An Introduction to the Symposium,* 116 AJIL Unbound 191, 192 (2022).

[121] Henrik Hammar & Susanne Åkerfeldt, *CO_2 Taxation in Sweden: 20 Years of Experience and Looking Ahead* (2010).

reasons are given for the implementation or escalation of the environmental tax, public acceptance may not be obtained where the tax is regressive in nature and where it disproportionately affects low-income earners.[122] There is a possibility that environmental taxes can increase inequality, especially with regard to energy access, particularly for low-income earners. One way of addressing this is through recycling part of the revenues to low-income earners, while using the remainder for debt obligations. Benefitting low-income groups can be done through policies and programs targeted to benefit them, such as making renewable energy accessible to low-income groups, or reduction of tax rates for low-income tax brackets. The former is preferable as most low-income earners are largely left out of the tax net due to their engagement in the informal sector. Second, the incomes directed to debt reduction will subsequently lead to the realization of economic gains across the board. Further, as discussed in more detail above, the tax can be designed in a manner that the burden thereof falls directly on emitters, including industrial emitters and MNCs. In cases where emitters pass these costs down to the consumers, the measures discussed above can limit the burden on consumers. Where environmental tax rates are accompanied by measures to address regressivity possibilities, public opposition to the same can be avoided.

5.5 Room for Regional Solutions?

Arena highlights the need for more common positions in Africa after the setting of the SDGs. There are several rewards to be realized from adoption of common positions including strengthening the African continent's voice, providing reference points for future discourses and concretizing pan African solidarity.[123]

Africa is home to multiple shared natural resources which must be preserved. For example, Africa has 80 transboundary water basins, which also contain forests.[124] On the climate crisis, regions are recognizing the need to act together in environmental protection and reduction of the impacts of climate change. In West Africa,

[122] International Budget Partnership, *supra* note 104.

[123] Marie-Louise F. Arena, *Designing an African Common Position and Strategy on Vulture Fund Litigation,* in How to Reform the Global Debt and Financial Architecture 49, 74 (James Thuo Gathii ed. 2023).

[124] African Development Bank*, Transboundary Natural Resources Management in a Changing Climate — The Case of Shared Watersheds in Africa* (Dec. 5, 2022).

for instance, the Economic Community of West African States (ECOWAS) has developed the "Regional Climate Strategy (RCS)" as a step towards collective climate action which also takes into account sustainable development.[125] On the other side of the continent, Partner States in the East African Community have agreed to *"take concerted efforts to foster co-operation in the joint and efficient management and sustainable utilization of natural resources within the Community."*[126] On the debt crisis, there are calls for the development of African regional solutions to sovereign debt restructuring (SoDR). Masamba proposes the creation of an "African Sovereign Debt Forum (ASDF)," a platform to discuss matters related to sovereign debt restructuring and debt sustainability.[127]

The case for regional solutions is compelling in the context of the debt and climate crises. There are lessons that environmental taxation can learn from these regional approaches. Indeed, there is value in collaboration at a regional level to share lessons on both debt reduction and climate action. In this regard, committees can be established within Africa's Regional Economic Communities to deliberate on environmental taxation at a regional level. It is imperative to include revenue authorities, as well as key environmental agencies and ministries in these committees to ensure deliberation from both fiscal and environmental angles. Fora to discuss both climate and debt issues and formulate collective solutions will benefit countries experiencing similar problems to determine approaches best suited to them to achieve their development, debt reduction and climate action targets. This would be vital in formulating regional responses such as environmental taxes administered at a regional level. Aspects such as the tax design, the institutions involved in designing and administering the tax, revenue collection and use can be determined at a regional level. Countries would also benefit from collaboration and shared expertise on the implementation and administration of these taxes, as well as revenue use, to establish best practices for debt reduction and climate action.

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[125] Economic Community of West African States, *EWOWAS Regional Climate Strategy and Action Plan (2022–2030),* (2022).

[126] The Treaty for the Establishment of the East African Community art. 111, Nov. 30, 1999.

[127] Magalie Masamba, *The Pressing Call for an International Debt Restructuring Framework and The Potential Gains Its Creation Will Have for African Countries,* in How to Reform the Global Debt and Financial Architecture 25, 45 (James Thuo Gathii ed., 2023).

Another proposal is the establishment of a solidarity tax and investment of revenues received in a solidarity fund. Solidarity taxes are *"time-bound progressive fiscal policies, implemented to tackle a specific challenge."*[128] They are generally levied during emergencies, but can also be used to address non-urgent problems.[129] Solidarity taxes can take different forms including taxes on income or wealth, surcharges on existing levies or voluntary solidarity fund contributions.[130] Solidarity funds can be created to hold these revenues at a domestic, regional or continental level. These could be geared towards funding domestic climate needs and emergency responses. In order to avoid public unrest due to overtaxing, a voluntary solidarity fund to collect voluntary contributions would be the most appropriate form to implement.

6 Conclusion

Environmental tax reform in Africa ought to take into account both the debt and climate crises. Factors such as the tax design, revenue use, public acceptance, impact on investment and possibility of regressivity are determinants of the outcomes that will be attained. Environmental tax revenues can be earmarked for a particular purpose such as recycling to reduce debt levels through debt servicing, meeting climate finance needs to reduce borrowing, targeting low-income and vulnerable groups through policies that benefit them, among others. Regional solutions are a possible route to develop common positions and promote collaboration in this space.

Overall, proper design and implementation of environmental taxes has the potential to assist African countries in attaining both climate resilience and debt sustainability. Environmental taxes should be viewed as a potential solution to the public debt crisis, instead of compromising environmental tax reform due to the debt crisis. As Wangari Maathai rightly puts it, *"The environment and the economy are really both two sides of the same coin. If we cannot sustain the environment, we cannot sustain ourselves."*

[128] Attiya Waris, Solidarity Taxes in the Context of Economic Recovery Following the COVID-19 Pandemic, 10 Pathfinders (2021).
[129] *Id.,* at 4.
[130] *Id.*

CHAPTER NINE

Green Energy Purchasing and the Evolving Sovereign Debt Crisis in Africa

Harrison O. Mbori*

1 Introduction

African countries are currently facing a continually evolving triple-faceted ecological and socio-economic quandary. The first facet of this predicament is the impending ecological crisis manifested through global warming and climate change which is caused by rising greenhouse gas emissions. The planet is additionally facing rising sea levels and acidification, deforestation, loss of biodiversity, and mass species extinctions. Scientists now credibly believe that the planet has entered a new geological epoch or anthropogenic event known as the Anthropocene.[1] This epoch is one in which our unmitigated economic and environmentally extractive activities now threaten to reach a stage of irreversible ecological harm.[2] This ecological crisis has many implications, especially for impoverished communities and peoples facing many other socio-economic challenges. Many of these communities are domiciled in Africa. The second predicament is the economic challenge of a souring debt crisis for many African countries in the post-COVID-19 pandemic years. Over 12 African countries were already in sovereign debt distress or at a high risk of debt distress even before the COVID-19 pandemic.[3]

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[1] *See* Subcommission on Quaternary Stratigraphy, *Working Group on the 'Anthropocene'* (2019) http://quaternary.stratigraphy.org/working-groups/anthropocene/.

[2] *See* Jan Zalasiewicz *et al., The Working Group on the Anthropocene: Summary of Evidence and Interim Recommendations,* 19 Anthropocene 55 (2017).

[3] IMF, *Debt Sustainability Analysis (DSA) as of April 30, 2020* http://web.archive.org/web/20200524070300/https://www.imf.org/external/pubs/ft/dsa/dsalist.pdf (last visited May 26, 2023).

The third predicament is that of continuing socio-economic underdevelopment. Despite over 5 five decades of concerted development efforts, many Africans remain socio-economically underdeveloped and impoverished. This impoverishment is manifested by the higher levels of infant mortality, adult illiteracy, and lower levels of access to clean portable water, electricity, and clean cooking energy, than in other regions of the world.[4]

These three crises get to a head at the intersection of three significant African pursuits. The first pursuit is for a cleaner green energy transition to address the challenges of climate change. The second is the African developmental State's continuous pursuit to attract foreign direct investment (FDI) since mass independence in the 1960s. The third is the developmental-need-inspired financial borrowing of African states, creating a continuing sovereign debt unsustainability crisis. These three pursuits operate at the intersection of domestic international law institutionalism and governance. Despite this complex mosaic, this paper has a narrow focus on the issue of African governments' green energy purchasing, especially electricity, and the impact these processes have on sovereign debt.

Green energy purchasing through Public Private Partnerships (PPPs) arrangements are now in vogue as one of the many solutions to address climate change. Yet for developing countries, especially in Africa, purchasing and financing green energy projects involves heavy public financial costs. Sovereign borrowing and guaranteeing through green bonds and PPPs agreements can arguably fill these financial gaps. This chapter, however, argues that with the continuing sovereign debt institutional deficiencies—especially a lack of a well-coordinated international sovereign debt insolvency regime for the renegotiation of sovereign debt—the current processes of green transitions in Africa will, instead of dealing with the effects of climate change on the most vulnerable, entrench the socio-economic and ecological vulnerabilities of developing countries. The core of the chapter specifically argues that there are three specific avenues through which sovereign debt is continuously accumulating within the green energy purchasing sector: the first is the hidden debt accumulation through PPPs; the second is the direct over-indebtedness of African state corporations involved in

[4] Samuel Weniga & Nduta Njenga, *Why Does an African Interpretation of Energy Poverty Matter? A Note for Sub-Saharan (SSA) Energy Policy Actors,* (European University Institute School of Transnational Governance Policy Papers 2022).

the generation, transmission, and distribution of electricity; the third is the contingent liability of sovereign guarantees that African states make in electricity generation projects such as mega-dam projects. All stakeholders involved within the green energy, public finance, and development sectors should adequately focus on these three areas and address the challenges of transparency, accountability, and maladministration that continue to place African governments in debt distress.

This chapter is divided into four sections; the first section introduces the issue of energy poverty as the conceptual locus that the current processes of addressing climate change development challenges should address. The following section analyzes the issues and the challenges of financing green energy projects in Africa, especially hydropower projects. The third section then argues that three specific avenues are at the core of the correlation between high public debt and electrification projects: the first is the hidden debt accumulation through PPPs; the second is the direct over-indebtedness of African state corporations involved in the generation, transmission, and distribution of electricity; the third is the contingent liability of sovereign guarantees that African states make in electricity generation projects such as mega-dam projects. The final section argues that abolishing PPPs would be a possible anti-reformist reform move that could address the avenues increasingly placing African countries under further debt distress.

2 Energy Poverty in Africa

The term energy poverty embodies several forms of lacking energy access. There is no universally accepted definition of the term. This haziness is mainly due to the lack of definitive quantitative indicators on energy consumption since energy needs vary according to country contexts.[5] Generally, energy poverty refers to the calamitous aspect of the global energy system where impoverished individuals and communities lack access to affordable and reliable modern energy services and products, including renewable sources of energy such as hydro power, wind, biogas, LPG gas, and solar.[6] The most common metric for presenting this phenomenon is the "lack of access to electricity and dependence on solid biomass fuels for cooking and heating

[5] Habitat for Humanity, *Energy Poverty: Effects on Development, Society and Environment,* (2023) https://www.habitat.org/emea/about/what-we-do/residential-energy-efficiency-households/energy-poverty last visited May 28, 2023).

[6] Saidou Abdoulaye Sy & Lamia Mokaddem, *Energy Poverty in Developing Countries: A Review of the Concept and its Measurements,* 89 ENERGY RES. & SOC. SCI. 1 (2022).

(clean cooking)."[7] The burden arising from energy poverty—especially clean cooking in the global South—falls predominately on women and children.[8] Poverty in parts of Africa, especially in Sub-Saharan Africa (SSA), goes hand in hand with energy deprivation. In 2020 at the height of the COVID-19 pandemic, a staggering 77% of the global population without access to electricity was in Sub-Saharan Africa.[9] These are the same communities (the energy poor) who also face the most vulnerabilities to climate change in form of floods, droughts, rising sea levels, and more frequent severe storms.[10] These manifestations of climate change exacerbate food and water insecurity, inflicting disease, death, and dislocations disproportionately to the impoverished in the global South.[11] Yet the direct cause of climate change is the overwhelming over-consumption of people in the most affluent countries of the global North.[12]

Energy poverty in the global South presents a divergent viewpoint from what is obtainable in the global North.[13] In global South contexts, energy poverty concerns a lack of access attributable to poor infrastructure, well-functioning energy services markets, and insufficient income to afford modern energy services.[14] In the global North, energy access is more concerned with affordability. As we will see below, this boundary is not necessarily accurate in the global South, as both concerns are currently present in many African countries. This situation is in addition to recent issues on widespread load-shedding or power rationing, i.e., the widespread reduction and cuts of electricity for many hours, even for individuals and industries that have fully paid for it, in African countries such as Nigeria, Ghana, Kenya, Zambia, Uganda,

[7] Benjamin K. Sovacoo & Michael H. Dworkin, Global Energy JusticeE 225 (2014).

[8] Lakshman Guruswamy, *Energy Poverty,* 36 Ann. Rev. Envtl & Resources, 140–57 (2011).

[9] International Energy Agency, Access to Electricity https://www.iea.org/reports/sdg7-data-and-projections/access-to-electricity (last visited May 28, 2023).

[10] Carmen G. Gonzalez, *Energy Poverty and the Environment* in International Energy and Poverty: The Emerging Contours 113 (Lakshman Guruswamy ed., 2016).

[11] Carmen G. Gonzalez, *Food Justice: An Environmental Justice Critique of the Global South Food System* in International Environmental Law and the Global South 401–34 (Shawkat Alam et al., eds., 2015).

[12] Carmen G. Gonzalez, *Environmental Justice and International Environmental Law* in Routledge Handbook of International Environmental Law 78–84 (Shawkat Alam et al eds., 2013).

[13] Chukwuka Monyei et al., *Regional Cooperation for Mitigating Energy Poverty in sub-Saharan Africa: A Context-Based Approach through the Tripartite Lenses of Access, Sufficiency, and Mobility,* 159 Renewable & Sustainable Energy Rev. 2 (2022).

[14] Sy & Mokaddem *supra* note 6 at 2.

and South Africa. Some of these countries are in certain developmental discourses, considered economic powerhouses, yet the periodic "darkness" specter has not spared them. The accounts of power rationing, accessibility, and affordability issues in Africa present an uncanny imagery of Africa as a "dark continent" into laser focus. Noting the differences in context, energy poverty in global South contexts should be viewed through the tripartite lenses of access, sufficiency, and mobility.[15] Access refers to physical connection to an electricity grid, sufficiency to the consumption per capita, and mobility to the installed generation capacity growth rate.[16]

3 Financing of Hydroelectric Projects in Africa

The big hydropower dam presented a developmental "mystique" that was huge, stylish, and complex enough as a poster child for the visualization of the late colonial and early post-colonial government's deep façade of modernity.[17] The debate over the Nile Delta's public vs. private hydropower generation has been rife since 1954 when the British colonial government officially opened the Owen Falls dam in Uganda.[18] The stiff competition over riverine resources in the Nile is a constant issue plaguing the precarious peace and security landscape of East and North Africa with the development of the Grand Renaissance dam by Ethiopia in 2011. The preference for hydropower electricity generation is historically linked to colonial and post-colonial economic expansionism and only recently to environmental preservation aims.[19] Additionally, large hydropower projects are attractive for private investors because of their large return on investment, estimated at 7–25%.[20]

African hydroelectric dams constructed in the late 1990s and early 2000's were mainly financed through grants and loans from multilateral development institutions. Ghana's first two hydroelectric dams, Akosombo Dam (1963) and Kpong Dam

[15] Monyei *et al. supra* note 13 at 2.

[16] *Id.*

[17] Judith D. Tendler, *Technology and Economic Development: The Case of Hydro vs. Thermal Power,* 80(2) Psq 236 (1965).

[18] Heather J. Hoag, Developing the Rivers of East and West Africa: An Environmental History 135 (2013).

[19] Jonas van der Straeten, *Measuring Progress in Megawatt: Colonialism, Development, and the "Unseeing" Electricity Grid in East Africa,* 63(4) Centaurus 651–74 (2021).

[20] Rhodante Ahlers, *Where Walls of Power Meet the Wall of Money: Hydropower in the Age of Financialization* Sustainable Dev. 406 (2019).

(1982), were financed through large concessional grants and loans from Western bilateral partners and multilateral development institutions.[21] Zambia's Itezhi-Tezhi hydropower plant was financed with a combination of a concessional loan from the World Bank, and financing from the government of Zambia.[22] Since then, the financial landscape has changed, and hydroelectric projects since 2010 have been financed under a different financial landscape. This change in the financial landscape for hydroelectric projects has decreased concessional financing from multilateral development banks while new forms of bilateral finance arrangements have become more common.[23]

This change in the financial landscape correlates with the debt distress in several African countries, such as Ghana and Zambia, as it overwhelmingly favours international creditors vis-à-vis developing country borrowers. Specifically, the changes include (a) a shift from the availability of concessional grants and loans from Organization for Economic Co-operation and Development (OECD)—Paris Club creditors and non-OCED creditors towards commercial terms of lending; (b) Multilateral development banks and Western donors have shifted from traditional concessional lending with non-concessional financialized sovereign debt in the form of long-term sovereign bond sales to private institutional investors; and (c) the array of external creditors has expanded beyond the Bretton Woods institutions to bilateral and regional lenders from emerging markets, e.g., China and regional development banks.[24] African countries are now coopted in attracting global private finance by transforming climate protection into a bankable or investible project to unleash the potential of private finance.[25]

China, which generally operates outside the Paris Club (though there have been recent attempts by the G20 to include China in the Paris Club),[26] utilizes a

[21] Emmanuel Yamoah Tenkorang *et al., Evolving Lending Regimes and the Political Economy of Dam Financing in Ghana* 4–5 (FutureDAMS Working Paper No.18 2022).

[22] Sanna Markkanen, Judith Plummer Braeckman & Pon Souvannaseng, *Mapping the Evolving Complexity of Large Hydropower Project Finance in Low and Lower-Middle Income Countries,* 2(2) Green Fin. 151 (2020).

[23] *Id.*

[24] Tenkorang *et al., supra* note 21 at 11–12; De-Graft Owusu-Manu et al., *A Cognizance of Green Bond Features Preferential to Renewable Energy Project Financing in Ghana,* 70 (3) IEEE Transactions on Engineering Mgmt 979 (2023).

[25] Steffen Haag, *Old Colonial Power in New Green Financing Instruments. Approaching Financial Subordination from the Perspective of Racial Capitalism in Renewable Energy Finance in Senegal,* Geoforum 3 (2022).

Loan description (from China)	Loan date	Debt/ Equity	Repayment start date	Expected repayment date	Amount (USD)
Buyer's credit —2007 (commercial)	25 Sep 2007	Debt	21 May 2014	21 Nov 2025	293,506,601
Buyer's credit —2012 (commercial)	21 Nov 2012	Debt	21 May 2014	21 Nov 2025	76,206,939
Concessional —2007	3 Sep 2008	Debt	21 May 2014	21 Nov 2025	268,500,000
Buyer's credit —2012	30 Apr 2012	Debt	21 May 2014	21 Nov 2025	75,353,060
Total					**713,566,601**

resource-for-loan financing model that collateralizes domestic resources for access to finance.[27] Chinese lending policy also employs a resource-for-loan policy. This arrangement was seen in the Ghana Bui Dam construction, pegged on a conditional 20-year cocoa export agreement.[28] The agreement entailed the sale of 30,000 tons of cocoa per year, with the proceeds paid into an escrow account, which served as collateral.[29] Ghana's Bui Dam, which is the second largest dam in Ghana, was commissioned in 2013. While there have been inconsistencies on the total cost of the construction, the costs are estimated at between USD 622 million and USD 790 million, comprising funding from the Ghanaian government, the Chinese Exim Bank, and a concessional loan.[30] Some commentators estimate the breakdown of the Bui loan financing from government financial records as per the table above.

[26] Andrea Shalal, *China Agrees to Formation of Global Sovereign Debt 'Roundtable'—IMF Chief,* Reuters, Dec. 16, 2022, https://www.reuters.com/world/china/china-agreed-form-global-sovereign-debt-roundtable-imf-chief-2022-12-16/ (last visited on Jul. 23, 2023).

[27] Kevin Gallagher, *China's Global Energy Finance* (Global Development Policy Center, Boston University, 2018) https://www.bu.edu/cgef/#/all/Country (last visited on May 23, 2023).

[28] Victor Nechifor *et al., Financing National Scale Energy Projects in Developing Countries—An Economy-Wide Evaluation of Ghana's Bui Dam,* 111 Energy Econ. 2 (2022).

[29] Tenkorang *et al., supra* note 21 at 17.

[30] *Id.,* at 16.

Similarly, the Isimba hydropower project in Uganda employed a bilateral financing arrangement with China, with China covering 85% of the costs of the project.[31]

This is the international financial landscape that African countries engaged in hydropower projects now navigate. There is less concessional lending but an increase in the availability of external private lending, particularly for hydroelectric projects. Commercial loans have stricter and more expensive terms, such as Eurobond issues, which are becoming more common. Ghana's Pwalugu Dam, which is under construction, is expected to provide 60 MW of energy. The dam's construction is estimated at USD 894.5 million, comprising USD 366 million for the hydro component, USD 55.38 million for the solar component, and USD 473.2 million for the irrigation component.[32] This project will be funded by the sale of the government's Eurobonds in the Eurobond market at commercial rates.[33]

While these projects are being pursued to meet the UN Sustainable Development Goals (SDGs), the financing models for these hydropower projects are a cause for concern as it leaves countries at a high risk of debt distress. This outcome is particularly dire, where several projects are being developed simultaneously. Importantly, in addition to the huge financial burden mega-dams place on host countries, they are consistently associated with dire environmental and social costs including the human rights of displaced communities (mainly ethnic or racial minorities and indigenous peoples, low caste groups, the rural poor).[34] Balakrishnan Rajagopal has called this destructive phenomenon where development projects displace minority communities "the violence of development or development cleansing."[35]

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[31] Markkanen *et al., supra* note 22 at 151.

[32] Tenkorang *et al., supra* note 21 at 17.

[33] *Id.,* at 12.

[34] Displacement Research & Action Network, *The State of Hydropower Projects Today: Lessons from the Past for the Course Ahead* (2017) <https://static1.squarespace.com/static/56340b91e4b017e2546998c0/t/58c9b6c4f5e23111fb56b76a/1489615402885/May+6th+2016+Workshop+Proceedings+and+Notes.pdf > (last visited Jul. 15, 2023).

[35] Balakrishnan Rajagopal, *The Violence of Development in Green Planet Blues:* Critical Perspectives on Global Environmental Politics, 5th ed., 191–92 (Ken Conca & Geoffrey D. Dabalko eds., 2015).

4 Correlation Between High Public Debt and Renewable Energy Electrification Projects

The push to close the electricity access gap has seen governments in the African continent undertaking infrastructural projects for electricity generation, such as the construction of large hydroelectric dams and the modernization of existing projects. Hydropower is renewable energy that provides low-carbon electricity. It is an essential renewable energy source, providing 71% of renewable energy worldwide and being relied upon by half of the Least Developing Countries (LDCs) for the majority of between one-third to all of their electricity.[36] Sub-Saharan Africa has the largest untapped potential for hydropower development in the world.[37] This potential is being explored as new projects on hydropower are steadily increasing. Between 2010 and now, various hydroelectric projects have been undertaken in various countries. These include the Grand Inga Dam in the Democratic Republic of Congo, the Blue Nile Mega-Dam and the Grand Renaissance Dam in Ethiopia, the Kariba Dam Rehabilitation Project (Zimbabwe and Zambia), the Bui Dam and Pwalugu Dam in Ghana, and the Kikagati hydropower plant in Uganda and Tanzania.

While key for countering energy poverty in Africa, financing hydropower projects can create a vicious cycle of poverty. This vicious circle of poverty involves commercial borrowing to finance hydropower projects intended to eradicate energy poverty, which creates high debt distress due to the stringent borrowing terms. The financing of the construction and rehabilitation of these hydroelectric plants correlates with high public debt in several African countries. This situation can be attributed to the decrease in available concessional funding. Since 2018, the share of financial flows to developing countries for clean energy projects has decreased by approximately 23%.[38] However, sub-Saharan Africa has primarily sustained the interest of public donors, witnessing a less significant decrease in international public

[36] Sejal Patel, Clare Shakya, & Neha Rai, *Climate Finance for Hydropower: Incentivising the Low-Carbon Transition* 11 (IIED Issue Paper, 2020) https://www.iied.org/sites/default/files/pdfs/migrate/10203IIED.pdf.

[37] International Hydropower Association, *Region Profile: Africa* https://www.hydropower.org/region-profiles/africa (last visited May 30, 2023).

[38] IEA *et al., Tracking SDG 7: The Energy Progress Report,* 139 (World Bank, 2022).

flows compared to developing countries in other regions.[39] Since 2018, the region has attracted the largest share of public financial flows for clean energy. The mix of financial instruments through which international public financial flows have decreased from debt instruments has led to an increase in grants, equity, and guarantees on a percentage basis.[40] However, loans maintain the largest share of financial instruments through which international public financial flows are channeled at approximately 73% as of 2019.[41] Additionally, it is expected that the share of funding from the private sector is expected to increase in the coming years.

Several African countries have recently or are undertaking major energy–hydroelectric projects that imply special financing arrangements between African governments and lenders. In 2013, China provided credit worth USD 500 million to Uganda for the construction of a large Nile River hydropower dam at Karuma.[42] This credit injection revived the project which had been estimated to cost USD 2 billion but stalled due to lack of funds. The Karuma dam was Uganda's biggest hydroelectric dam, generating 600MW. Another example of a special financing arrangement is the construction of the Bui Dam in Ghana, whose investment requirements were partly secured through a conditional loan from the Chinese government (conditioned 20-year cocoa export agreement).[43] In sub-section 3.2.1 below, I will zoom in on the Ghanaian example to show the links between dam construction projects, their financing, and sovereign debt. In the following sub-sections, I analyze the three specific avenues through which sovereign debt continuously accumulates within the green energy purchasing sector.

4.1 Hidden Debt Accumulation through Public-Private Partnerships (PPPs)

A Public-Private Partnership (PPP) is an agreement between a public entity or State and a private entity to "use the specific assets and skills of each to deliver a service to

[39] *Id.,* at 139.

[40] *Id.*

[41] *Id.*

[42] Reuters, *China Revives Uganda's Biggest Power Dam with $500 million Credit,* Reuters Jun. 14, 2013 https://www.reuters.com/article/us-uganda-electricity-idINBRE95D0EP20130614 (last visited on May 30, 2023).

[43] Nechifor *et al., supra* note 27 at 2.

the general public that protects the public interests and generates a private return on investment."[44] PPPs are normally long-term cooperative arrangements for financing, building, operating, and maintaining a public infrastructure project.[45] International financial institutions and Multilateral Development Banks (MDBs) led by the World Bank Group and IMF (including the African Development Bank), the G20, and BRICS' New Development Bank have led the charge for PPPs to finance mega development projects.[46] The World Bank, through the International Development Association (IDA), has in recent years set up a "scale-up facility" that would make available up to USD 5 billion in non-concessional lending to IDA countries—i.e., countries whose Gross Net Income per capita is below USD 1,215.[47] One of the indicative projects formerly included in the plan was the controversial Inga 3 hydropower project in the Democratic Republic of Congo (DRC) that has never gotten off the ground.[48]

As a form of procurement, the PPP differs from the traditional form of infrastructural and services procurement undertaken by States or State-Owned Enterprises (SOEs). In the traditional procurement process, for example, in construction, the State or State entity normally calls for a bid for a design-build (DB) contract from the private sector.[49] In this arrangement, the government provides the financing while the private entity designs and builds the infrastructural project according to the

[44] Joyce Coffee, *Financing Resilient Infrastructure* in Optimizing Community Infrastructure: Resilience in the Face ofShocks and Stresses 110 (Ryan M. Colker, eds., 2020).

[45] Eduardo Engel, Ronald D. Fischer & Alexander Galetovic, The Economics of Public-Private Partnerships: A Basic Guide 2 (2014).

[46] James Leigland, *Public-Private Partnerships in Developing Countries: The Emerging Evidence-based Critique,* 33(1) The World Bank Res. Observer 104 (2018); *see also* Fida Rana & Chidi Izuwah, *Infrastructure & Africa's Development—the PPP Imperative,* World Bank Blogs (2018), https://blogs.worldbank.org/ppps/infrastructure-africa-s-development-ppp-imperative (last visited on Jul. 8, 2023).

[47] *See* Bretton Woods Project, *World Bank rolls out the Carpet for "Troubled Megaprojects" and PPPs* (Apr. 5, 2016) https://www.brettonwoodsproject.org/2016/04/world-bank-rolls-out-the-carpet-for-troubled-megaprojects/ (last visited on Jul. 4, 2023).

[48] International Rivers, *The Inga 3 Hydropower Project* https://archive.internationalrivers.org/campaigns/the-inga-3-hydropower-project (last visited Jul. 4, 2023).

[49] Darrin Grimsey & Mervyn Lewis, *Public Private Partnerships and Public Procurement,* 14(2) Agenda 171–188 (2007).

specifications of the procuring entity.[50] After the building is complete and payments made, the government then takes over the project and can normally decide to enter another contract for operations and maintenance.[51] In the PPP arrangement, however, these separate contracts are normally bundled in a single contract as a Design-Build-Finance-Operate-Maintain (DBFOM).[52] The private entity—normally through a Special Purpose Vehicle (SPV) company created for the project—designs, builds, finances, operates, and maintains the project under a long-term lease, typically 20–30 years or more. The project is transferred back to the government at the end of this concessional period.[53]

Under such an arrangement, states use PPPs to hide public debt easily.[54] The government is able to avoid immediate capital expenditure and related borrowing at the onset of such a project. Still, it easily faces many hidden financial costs during the life cycle and in the project's later phases.[55] The most prevalent out-of-balance sheet accounting scenario for a government is a user-funded project where the ultimate infrastructure user is to pay fees, such as toll roads.[56] The problem here is that while the government enjoys relief at the start of the project, it faces constraints in the future that are still borne fully or partly by the public exchequer. Thus for governments facing debt distress, the use of PPPs is not necessarily encouraged by its efficiency gains but simply by the accounting rules that allow project costs to be excluded from governments' books in order to offer an appearance of lower debt levels.[57] It is a clandestine reorienting of public resources for private capitalistic gains while maintaining a political illusion of "fiscal responsibility."[58] Thus, while PPPs easily appear attractive in inviting the private sector to take over the financing of projects, the funding still

[50] *Id.*

[51] *Id.*

[52] Engel *et al., supra* note 45 at 1.

[53] *Id.,* 2.

[54] Holger Mühlenkamp, *Public-Private Partnerships and Government Debt,* 12(3) CESifo DICE REPORT, 24–30 (2014).

[55] *Id.*

[56] *See* Alexei Filippovitch Panyushkin, Hidden Public Debt Across European Countries (2015) 26 (Master Thesis Catolica Lisbon School of Business and Economics).

[57] Engel *et al., supra* note 44 at 12–13.

[58] Daniela Garbor, *The Wall Street Consensus,* 52(3) Dev. & Change 439 (2021).

comes from the government and/or end users.[59] The only reprieve is that the payment schedule is stretched over a longer time.[60] One critical report describes it vividly as akin to paying for your infrastructure with a credit card.[61]

The mainstream view is that governments should use PPPs as a special form of public procurement to realize efficiency gains in public goods and services.[62] The evidence of such efficiency compared to direct public procurement is, at best, mixed with some commentators arguing that such efficiency gains do not easily accrue in low-income economies.[63] The outcome is a recalibration of Africa's political economy to support institutional private investors such as wealth funds, pension funds, and sovereign wealth funds mainly stationed in the Global North. Daniela Garbor has called this the Wall Street Consensus, i.e., the project through which direct public investments in the public delivery of services are reduced and redirected to the private sector.[64] This process has made African states de-risking developmental states.[65] The de-risking model here includes policy reforms geared towards facilitating risk assessments, guarantees, and insurances that ease the entry of private finance into the renewable energy sector, thus enabling a steady flow of revenue.[66]

The core of the Washington Consensus within the energy sector of unbundling vertically integrated national utility companies, de-regulating the energy sector, and liberalizing energy production to increase private sector participation[67] forms the basis and foundation of the Wall Street Consensus. The scaffolding of the Washington

[59] European Public Service Union (EPSU) & European Network on Debt and Development (EURODAD), *Why Public-Private Partnerships (PPPs) are Still not Delivering,* 9 (December 2020), https://assets.nationbuilder.com/eurodad/pages/1912/attachments/original/1607952619/PPPs_EN.pdf?1607952619.

[60] *Id.*

[61] *Id.*

[62] Mühlenkamp *supra* note 54 at 24.

[63] Leigland *supra* note 45 at 107–08.

[64] Garbor *supra* note 57 at 439–59.

[65] Daniela Gabor & Ndongo Samba Sylla, *Derisking Developmentalism: A Tale of Green Hydrogen,* Development and Change (2023).

[66] Daniela Gabor, *The (European) Derisking State,* SocArXiv (2023).

[67] Peter Newell & Jon Phillips, Neoliberal Energy Transitions in the South: Kenyan Experiences, 74 GEOFORUM 39–48 (2016).

Consensus privatisation agenda has changed, but the substance remains the same: citizens pay user fees for public services, now built and delivered via PPPs.[68] In the global North, France specifically, PPPs have widely been denounced, with the French senate describing them as a "budgetary time bomb."[69] How they are sold as a viable avenue for Africa's development in the renewable energy sector can only be a form of renewable energy imperialism directly intent at protecting the interest of racialized capital from the global North.[70]

4.2 Direct Over-indebtedness of Electricity Generation, Transmission, and Distribution of African State-Owned Electricity Corporations

Since the mass independence of African States in the 1960s, electricity generation, transmission, and production have been and largely continue to be conducted by state-owned entities as power utilities. The provision of electricity generally required enormous initial sunk costs for equipment, technology, and labour that only governments were willing and partially able to provide in Africa after independence. By the 1970s, however, state-owned companies' performance in Africa was rapidly declining. This decline was arguably caused by the external shocks of the 1970s spike in world oil prices and internal policies on energy pricing, infrastructural investments, institutional development, management accountability, and corruption.[71] As part of the now widely discredited World Banks' Structural Adjustment Programmes (SAPs) of the 1980s and 1990s, many African governments that had maintained monopoly state corporations in generating, transmitting, and distributing electricity were forced

[68] Daniela Gabor & Ndongo Samba Sylla, *Planting Budgetary Timebombs in Africa: The Macron Doctrine En Marche (2020) Le Grand Continent* (December 23, 2023) Groupe Détudes Géopolitiques https://geopolitique.eu/en/2020/12/23/planting-budgetary-time-bombs-in-africa-the-macron-doctrine-en-marche/ (last visited Jul. 7, 2023).

[69] La Galaxie Sénat, *Les Contrats de Partenariats: Des Bombes à Retardement* Rapport d'information (Juil. 16, 2014) https://www.senat.fr/notice-rapport/2013/r13-733-notice.html (last visited Jul. 8, 2023).

[70] *See* Carmen G. Gonzalez & Athena D. Mutua, *Mapping Racial: Implications for Law,* 2 J.L & Pol.Econ 127–200 (2022); David A Mcdonald, Electric Capitalism: Recolonising Africa on the Power Grid (2009).

[71] Joseph Kapika & Anton Eberhard, Power-Sector Reform and Regulation in Africa: Lessons from Kenya, Tanzania, Uganda, Namibia, and Ghana 3 (2013).

into sector unbundling.[72] This process required the state-owned corporations to vertically and/or horizontally unbundle into separate generation, transmission, and distribution companies in readiness for privatization.[73] The push was for what some scholars have referred to as the "standard model" of reform that included: corporatization, commercialization, requisite legislation, independent regulation, sector restructuring (including unbundling), expansion of independent power producers (IPPs), divestiture of state-owned generation and distribution assets, and market competition.[74] Thus the era of Independent Power Production and Producers (IPPs) arrived in Africa mainly due to the neoliberal policies of the World Bank and IMF.

The state-owned power companies would now purchase electricity from these IPPs and act as utility off-takers. They are referred to as off-takers because the contractual process is run through an off-take agreement which in power projects are often in the form of Power Purchase Agreements (PPAs).[75] The PPA is a long-term (typically 15 to 30 years) agreement between a utility off-taker and an IPP in which the IPP commits to deliver specific volumes of electricity to the off-taker.[76] The PPA was first developed in the 1980s in the United States and provided the initial templates for PPP contracts.[77] The IPP would use the PPA as its security to acquire loans to set up its electricity generation facility since the utility company commits in a PPA to purchase the electricity for a long-term period.[78] The PPA for a dispatchable power

[72] Chris Trimble, *et al., Financial Viability of Electricity Sectors in Sub-Saharan Africa: Quasi-Fiscal Deficits and Hidden Costs* (World Bank Pol. Res. Working Paper No. 7788, 2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2836535.

[73] Anton Eberhard & Catreina Godinho, *A Review and Exploration of the Status, Context and Political Economy of Power Sector Reforms in Sub-Saharan Africa, South Asia, and Latin America* (MIR Working Paper, 2017).

[74] Christopher D. Gore *et al., Political Autonomy and Resistance in Electricity Sector Liberalization in Africa,* World Dev. 2 (2018).

[75] Santosh Raikar & Seabron Adamson, Renewable Energy Finance: Theory and Practice 56 (2020).

[76] Stefano Gatti, Project Finance in Theory and Practice: Designing, Structuring, and Financing Private and Public Projects 81 (2023).

[77] E.R Yescombe & Edward Farquharson, Public-Private Partnerships for Infrastructure: Principles of Policy and Finance 13 (2018).

[78] *Id.*

generator, i.e., one that supply power on demand (like biomass, diesel, gas, geothermal, and hydro) typically contains two "tariff" payments to the investor: capacity charges and energy charges. The capacity charge ($/kw installed) for power generation capacity is made whether the power is dispatched or not. It enables the IPP to meet its debt obligations, tax obligations, and fixed costs. In contrast, the energy charge ($/kWh) covers the cost of each unit of electricity dispatched and is calculated to ensure that the IPP covers the cost of fuel used to generate the electricity, the variable operation costs, maintenance, and to ensure a commercial return to investors.[79]

In Tanzania, the cost of energy PPAs had added USD 200 million to Tanzania's government debt by 2015, in addition to rising electricity prices.[80] Like many other African countries, Tanzania liberalized its electricity sector in the early 1990s due to direct instigation from the World Bank and IMF structural adjustment programs (SAPs). The SAPs encouraged the complete privatization of many public sectors, including electricity. Tanzania resisted fully privatizing its wholly state-owned electricity generation, transmission, and distribution company, Tanzania Electric Supply Co. Ltd (TANESCO). TANESCO allowed the liberalization of the sector by allowing independent power producers (IPPs) to sell electricity to it directly. It signed a PPA with Independent Power Tanzania Limited (IPTL) for 20 years in 1995 and with Songas owned by Globeleq, which was at the time fully owned by the British government through its CDC Group plc in 2004.[81] In 2010, TANESCO was ordered to pay over USD 65 million after an arbitration dispute under the International Chamber of Commerce (ICC) rules involving another of TANESCO's PPAs.[82] The effect was that TANESCO was forced to borrow substantial loans underwritten

[79] US Commercial Law Development Program, *Understanding Power Purchase Agreements* 52 (2014), https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/documents/Africa_Understanding_Power_Purchase_Agreements.pdf.

[80] Jubilee Debt Campaign, *Public-Private Partnerships and the Financial Cost to Governments: Case Study on the Power Sector in Tanzania* (2015) https://debtjustice.org.uk/wp-content/uploads/2015/09/Tanzania-case-study_06.15.pdf (last visited Jul. 6, 2023).

[81] Katharine Gratwick, Rebecca Ghanadan & Anton Eberhard, *Generating Power and Controversy: Understanding Tanzania's Independent Power Projects,* 17:4 J. Energy in Southern Afr. 39–56 (2006); *see also* Standard Chartered Bank (Honk Kong) Limited v Tanzania Electric Supply Company Limited (TANESCO), ICSID Case No. ARB/10/20, Award, (Sept. 12, 2016).

[82] *See* Dowans Holdings SA v Tanzania Electricity Supply Co Ltd [2011] EWHC 1957 (for enforcement proceedings in the United Kingdom); *see also* Geoffrey Adonu, *The Case Against International*

by the Tanzanian government, which led to very high electricity costs for ordinary Tanzanians. By 2022, TANESCO is Tanzania's highest indebted state corporation, with a debt totaling USD 1.24 billion.[83]

In Zambia, when reformist, long-time opposition leader and businessman Hakinde Hichilema finally won Zambia's presidency in 2021, his biggest in-tray issue was the country's massive sovereign debt burden. At this point, Zambia had an external debt of approximately USD 16 billion.[84] One large chunk of this debt was the approximately USD 1 billion of debt form undisclosed electricity contracts and unpaid arrears owed to power companies.[85] ZESCO, Zambia state-owned electricity utility, owed loans worth USD 3.6 billion to different lenders.[86] Outstanding loans to ZESCO contribute up to 5.5% of Zambia's total debt to foreign banks.[87] By 2020 20% of Zambia's electricity was supplied by IPPs which sold the electricity to ZESCO at above the levels it sold it to consumers. Thus, ZESCO was directly selling its electricity at a loss, and additionally, these IPPs received their payment in US dollars, not the local Zambian Kwacha.[88] The sad part about Zambia's debt to IPPs is that its biggest IPP, Maamba Collieries, runs a 300 MW coal-fired power plant.[89] Thus, Zambia is sinking further into energy debt not for green energy but from a source with deleterious environmental effects.

Arbitration in Sovereign Debt Contexts in How to Reform the Global Debt and Financial Architecture 128 (James T. Gathii ed., 2023) (arguing that arbitral awards are contingent liabilities not captured in the debt data of affected countries).

[83] Bob Karashani, *"TANESCO, Ports Agency lead State Firms with Huge Debts"* The East African, April. 18, 2022 https://www.theeastafrican.co.ke/tea/business/tanesco-ports-agency-lead-state-firms-with-huge-debts-3783966 (last visited Jul. 6, 2023).

[84] Todd Moss & Rushaiya Ibrahim Tanko, *"The Other Hidden-Debt—How Power Contract Transparency Can Help Prevent Future Debt Risk"* IMF PFM Blog, Jun. 21, 2022 https://blog-pfm.imf.org/en/pfmblog/2022/06/the-other-hidden-debt-how-power-contract-transparency-can-help-prevent-future-de (last visited Jul. 6, 2023).

[85] *Id.*

[86] Charles Mafa & Nick Mathiason, *"Zambia's Sovereign Debt Crisis: How Foreign Creditors have all the Power over Country's Economic Recovery"* (2020) Finance Uncovered https://www.financeuncovered.org/stories/zambia-sovereign-debt-crisis-zesco-economic-recovery (last visited Jul. 6, 2023).

[87] *Id.*

[88] *Id.*

[89] African Energy, *ZESCO's Debt Balloons to $3.5 bn,* African Energy, 24 October 2021, <https://www.africa-energy.com/news-centre/article/zescos-debt-balloons-35bn> (last visited Jul. 6, 2023).

In Kenya, the issue of affordability of electricity has come to a head since 2013, coinciding with the rise of Kenya's external debt unsustainability. The high cost of electricity is continuously and directly linked to expensive PPAs. Former President Uhuru Kenyatta appointed a Presidential Taskforce (Ngumi Taskforce) to investigate the terms of all PPAs entered between Kenya's state-controlled corporation, Kenya Power and Lightening Company Limited (KPLC) in 2021.[90] From 3 November 1998 to June 2021, KPLC signed 61 PPAs for 2,854 MW capacity.[91] The Ngumi Taskforce found that IPPs accounted for 47% of power procurement cost for the financial year 2020 but only provided 25% of power volumes.[92] Additionally, the Kenyan government provided credit support to the IPPs plants. That credit support exposed the Kenyan government to IPP payments that exceeded USD 400 million annually.[93] This exposure meant that PPAs represent a significant financial burden for KPLC, negatively impacting its cash flow and threatening its going concern status.[94]

The Ngumi Taskforce report also raised the significant issue of about 30 PPAs executed in Kenya being denominated in foreign currency (USD and euros).[95] The forex adjustment costs of these PPAs were passed directly to the consumer as pass-through costs in electricity bills.[96] KPLC accountably displayed some of these costs in customers' bills until early 2023, when it stopped offering a detailed breakdown of costs in customers' electricity bills.[97] The Ngumi Taskforce had strongly recommended that all future PPAs be denominated in Kenyan shillings.[98] Moreover, at the formation of the Ngumi Taskforce, the Kenyan cabinet under former President Uhuru Kenyatta had placed a moratorium on the renewal of expiring PPAs and all

[90] Republic of Kenya, Report of the Presidential Taskforce on the Review of Power Purchase Agreements (PPAS) (2021) https://kplc.co.ke/img/full/28102021_210-The-Report-of-the-Presidential-Taskforce-on-PPAs.pdf.

[91] *Id.*, 121.

[92] *Id.*

[93] *Id.*, 122.

[94] *Id.*, 131.

[95] *Id.*, 42.

[96] *Id.*, 43.

[97] Brian Ambani, *Kenya Power Conceals Breakdown of Power Bills as prices surge 10pc,* Mar. 14, 2023, Nation https://nation.africa/kenya/business/kenya-power-conceals-breakdown-of-power-bills-as-prices-surge-10pc-4157122 (last visited on Jul. 21, 2023).

[98] Republic of Kenya Taskforce Report on PPAs, supra note 89 at 45.

PPAs not concluded as of 29 March 2021.[99] In March 2023, 2 years after the moratorium was set to expire, and without many of the taskforce's recommendations in implemented, the new regime under President William Ruto lifted the moratorium.[100] Importantly, KPLC has now officially backed down from the Ngumi Taskforce recommendation of changing PPAs from foreign currency denomination to local currency.[101] The implication for Kenya's future PPAs is clearly to return to the status quo pre-the Ngumi taskforce recommendations.

Finally, the example of Ghana further emphasizes how sovereign debt distress situations in African countries are continuously linked to energy purchasing by African governments. The following subsection further analyzes the Ghanaian example and additionally illustrates the argument.

4.2.1 GHANA'S DEBT DISTRESS Ghana issued its first Eurobond in 2007. In 2010, Ghana revised its GDP series, reclassifying itself into a low-middle-income country. This effect was that Ghana gradually lost access to concessional financing, which led to a shift from using concessional financing to taking outsized commercial loans from the international capital markets. It also sought financing from bilateral lending, mainly with China. The high and twin deficits from bilateral lending from China and commercial Eurobonds from the Paris Club countries resulted in a debt-to-GDP ratio increase to 31% in 2017 from 72% by 2015. By the end of 2015, Ghana had entered into an IMF bailout with austerity measures imposed by the IMF Extended Credit Facility stretching into 2018. In 2016, Ghana rearranged its power sector debts into a special purpose vehicle (Energy Sector Levy Act) which was to be sold as a bond, but its demand fell short. The government of Ghana continued to take up financing in the form of long-term Eurobonds to the tune of USD 8 billion as of 2020. The Covid-19 pandemic only worsened the debt distress situation that Ghana was in, with demand for commodities decreasing. This situation resulted in yet another Extended Credit Facility with the IMF for USD 1 billion.

[99] Edwin Baru & Aleem Tharani, *Kenya: Energy Sector Update—Cabinet Lifts the PPA Moratorium* Mar. 20, 2023, BOWMANS https://bowmanslaw.com/insights/energy/kenya-energy-sector-update-cabinet-lifts-the-ppa-moratorium/ (last visited on Jul. 21, 2023).

[100] *Id.*

[101] Julians Amboko, *Kenya drops Push for Shilling based Power Purchase Deals,* Jul. 14, 2023, BUSINESS DAILY https://www.businessdailyafrica.com/bd/economy/kenya-drops-push-for-shilling-based-power-purchase-deals--4302508 (last visited Jul. 21, 2023).

#	Bonds	Amount (USD) millions	Coupon	Maturity
1	2007	750	8.5%	2017
2	2013	1,000	7.88%	2023
3	2014	1,000	8.13%	2026
4	2015	1,000	10.75%	2030
5	2016	750	9.25%	2022
6	2017	2,200	N/A	N/A
7	2018	1,000	7.625%	2029
8	2018	1,000	8.627%	2049
9	2019	1,000	8.95%	2050
10	2019	750	7.87%	2027
11	2019	1,250	8.125%	2031
12	2020	1,250	6.375%	2026
13	2020	1,000	7.875%	2034
14	2020	750	8.75%	2061

Ghana effectively defaulted on most of its external debt payments on 19 December 2022. The country announced a debt service suspension of its Eurobonds, commercial term loans, and most of its bilateral debt.[102] This default occurred in what has been described as Ghana's worst economic crisis in a generation.[103] In October 2022, the inflation in rate in Ghana had peaked 40.4% and by January 2023 it had reached a high of 54.1%.[104] Ghana's public debt as of September 2023 had reached

[102] Republic of Ghana Ministry of Finance, *Suspension of Payments on Selected External Debts of the Government of Ghana,* Dec. 19, 2022, https://mofep.gov.gh/press-release/2022-12-19/suspension-of-payments-on-selected-external-debts-of-the-government-of-ghana (last visited on Jun. 1, 2023).

[103] *See* Kent Mensah, *How Ghana, Africa's Rising Star, Ended Up in Economic Turmoil,* Aljazeera, Dec. 31, 2022, https://www.aljazeera.com/features/2022/12/31/how-ghana-africas-rising-star-ended-up-in-economic-turmoil (last visited on Jun. 1, 2023).

[104] Ekow Dontoh, *Ghana Inflation hits Record 54.1% as Food Costs Surge,* Bloomberg, Jan. 11, 2023, https://www.bloomberg.com/news/articles/2023-01-11/ghana-inflation-hits-record-54-1-as-food-costs-surge#xj4y7vzkg (last visited Jun. 1, 2023).

USD 37.4 billion, with 42% of this as domestic debt.[105] The debt to GDP ratio in 2022 was reported at a staggering 88.8%, with the IMF setting it higher at 91% and World Economics at a lower 57.7%.[106] As part of yet another IMF-mandated condition for a USD 3 billion bailout, Ghana had already started restructuring its domestic debt in mid-2022 through a bond exchange program.[107] Domestic borrowers were invited to voluntarily exchange their bonds for new ones, with 85% of the eligible bondholders registering for the exchange.[108] This rate effectively met the 80% conditional rate set by the IMF for Ghana to receive the bailout.[109] This IMF condition is a new conditionality that can potentially exacerbate Ghana's debt trap even further. It pushes the losses to domestic creditors and risks annihilating local banks, pension funds, and insurance companies.[110] Economists have shown that debt composition, i.e., the demarcation between domestic and external debt, has a causal effect on economic outcomes.[111] Changing the debt structure to include an increased percentage of domestic debt portfolio in developing countries is another outcome of the IMF and World Bank's set of conditionalities.[112]

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[105] Rachel Savage & Marc Jones, *"Who hold Ghana's Debt and What Restructuring is Planned?"* Reuters, 9 Dec. 9, 2022, https://www.reuters.com/world/africa/who-holds-ghanas-debt-what-restructuring-is-planned-2022-12-09/ (last visited on Jun. 1, 2023).

[106] Focuseconomics, *Ghana's Public Debt (% of GDP),* Jun. 20, 2023 https://www.focus-economics.com/country-indicator/ghana/public-debt/ (Jul. 23, 2023); World Economics, *Ghana's Debt-to-GDP Ratio,* Jun. 1, 2023, https://www.worldeconomics.com/Debt/Ghana.aspx (Jul. 23, 2023).

[107] Cooper Inveen & Christian Akorlie, *Ghana Expects $3 bln IMF Loan Approval Early in 2023,* Reuters, 13 Dec. 13, 2022, https://www.reuters.com/world/africa/ghana-sees-imf-board-approval-3-bln-3-year-loan-early-2023-2022-12-13/ (last visited Jun. 1, 2023).

[108] Christian Akorlie, *Ghana says Domestic Debt Swap closed with 85% Participation,* Reuters, Feb. 15, 2023, https://www.reuters.com/world/africa/ghana-says-domestic-debt-swap-closed-with-over-80-participation-2023-02-14/ (last visited on June 1, 2023).

[109] *Id.*

[110] Jonathan Wheatley, *Ghana Defaults puts Domestic Debt "Can of Worms" in the Spotlight,* Financial Times, April 14, 2023, https://www.ft.com/content/7e008f0d-1ae9-4b8a-8caf-4e014fdf2f41 (last visited on Jun. 1, 2023).

[111] *See* Barry Eichengreen, Ricardo Hausmann, & Ugo Panizza, *The Pain of Original Sin* in Other People's Money, (Barry Eichengreen & Ricardo Hausmann, eds., 2005).

[112] Adrian Perala-Alva & Prachi Mishra, How to Tackle Soaring Public Debt, IMF BLOG, April 10, 2023, https://www.imf.org/en/Blogs/Articles/2023/04/10/how-to-tackle-soaring-public-debt (last visited Jun. 1, 2023).

Between 2011 and 2016, Ghana faced its latest iteration of the consistent series of emergency and extended power cuts popularly called "dumsor" Akan/Twi for "off-on."[113] This situation was and partly continues to be a significant political and socio-economic problem in Ghana.[114] At one point in this period, it was not unusual to experience power outages lasting up to 12 hours per day in Accra, the capital city of Ghana.[115] The leading cause for this situation was the overreliance on the Akosombo dam, the single and largest source of electric power in Ghana, established by the British colonial government in the 1920s. Since 2012, independent power producers (IPPs) have gradually increased electricity production through energy sector reforms, alleviating the situation.[116] The Ghanaian IPPs mainly produce power from thermal plants running on crude oil or natural gas.[117] While the situation has markedly improved, another crisis that is directly linked to Ghana's public debt issue has emerged. The increase in public debt, rising tariffs, and a dearth of investment are three markers of the crisis. This is the underbelly of green energy purchasing, especially by developing countries that want to ramp up their levels of electricity access.

Ghana's 8 state-owned enterprises in the energy sector—Volta River Authority (VRA), Electricity Company of Ghana (ECG), Northern Electricity Distribution Company (NEDCo), Ghana Grid Company Limited (GRIDCo), Tema Oil Refinery (TOR), Bulk Oil Storage and Transportation Company Limited (BOST), Bui Power Authority, and the Ghana National Petroleum Corporation (GNPC)—jointly owed more than USD 1.73 billion in May 2023 to IPPs.[118] The IPPs have

[113] Ebenezer Nyarko Kumi, *Is Ghana's Dumsor Over?,* Energy for Growth Hub, Oct. 14, 2020, https://www.energyforgrowth.org/wp-content/uploads/2020/10/Is-Ghanas-Dumsor-Over_.docx.pdf (last visited on Jun. 1, 2023).

[114] Vanessa Awanyo, *Dumsor in Ghana: Staying Connected,* The Borgen Project Blog, Mar. 18, 2016, https://borgenproject.org/dumsor-in-ghana/ (last visited Jun. 1, 2023).

[115] *Id.*

[116] Kumi, supra note at 112.

[117] *Id.*

[118] Ebenezer Mensah, *Ghana's Energy Sector in Crisis: SOEs Face Mounting Debt Burden, Threatening Power Supply,* BNN, Jun. 1, 2023, https://bnn.network/breaking-news/ghanas-energy-sector-in-crisis-soes-face-mounting-debt-burden-threatening-power-supply/ (last visited on June 2023).

rejected a proposal by the Ghanaian government to restructure this debt since some of them would face as much as a 50% haircut under the proposal.[119]

Another tragedy of PPPs in the mega hydropower projects supported by the World Bank in Africa is their links to the mining industry as the primary consumer—the so-called anchor customer—and the general public only as secondary consumers.[120] The shining example of PPPs' power in delivering power for the mining industry and delivering electricity to the poor is the Lom Pangar Dam in the Sanaga River in Cameroon.[121] The hidden burden on the public is the heavily subsidized access that Rio Pinto aluminum smelting receives which has made power so cheap for the mining company that it can transport bauxite from Guinea to Cameroon without hurting its bottom line.[122] In the meantime, the aluminum mining industry has contributed close to nothing in Cameroon, providing fewer than 600 jobs and limited tax revenues.[123] The public in Cameroon now has to bare a heavy burden to sustain Rio Tinto's fortunes since the government has borrowed heavily to finance the project.[124] This grim outlook is in addition to the severe environmental impact of damming on the Sanaga River.[125]

3.3 The Contingent Liability of Sovereign Guarantees that African states make in Electricity Generation projects such as Mega-Dam Projects

African governments are forced to encourage private financiers and experts to commit their financial resources to attract investment in the energy and public infrastructure

[119] Moses Mozart Dzawu, *Ghana Power Firms Reject Move to Restructure $1.4 Billion Debt,* BNN, Mar.23,2023https://www.bnnbloomberg.ca/ghana-power-firms-reject-move-to-restructure-1-4-billion-debt-1.1899564 (last visited on Jun. 1, 2023).

[120] Sudeshna Ghosh Banerjee et al., The Power of the Mine: A Transformative Opportunity for Sub-Saharan Africa (2015).

[121] *Id.,* 75.

[122] Josh Klemm, *World Bank Pitches Mining to Drive Energy Investment in Africa,* Mar. 31, 2015, https://www.brettonwoodsproject.org/2015/03/world-bank-pitches-mining-to-drive-energy-investment-in-africa/ (last visited Jul. 4, 2023).

[123] *Id.*

[124] *Id.*

[125] *Id.*

sectors.[126] This process contributes to creating what Daniela Gabor called the "development as de-risking paradigm" within her Wall Street Consensus (WSC) theory.[127] Such developmental de-risking involves a range of public subsidies and guarantees such as preferential credit, loan guarantees, first-loss equity tranches in private equity funds, and green bonds.[128] This incentivization towards private financiers—mainly institutional investors such as pension funds, hedge funds, insurance companies, and sovereign wealth funds—has led to the use of sovereign guarantees as a tool to attract private finance.[129] Instead of leveraging PPPs to improve public procurement, many African governments will easily see them as a measure to circumvent budget restrictions.[130] South Africa, for example, has a sovereign guarantee portfolio that increased to more than 700% in the past 15 years to 2020.[131]

Sovereign guarantees issued under PPPs normally expose governments to a wide range of contingent liabilities. Contingent liabilities are financial obligations whose timing and magnitude depend on the occurrence of some future event outside the control of the government.[132] They can further be divided into explicit and implicit contingent liabilities. Explicit liabilities are normally provided under contractual agreements like in PPAs. Implicit contingent liabilities are political and moral obligations created through legitimate expectations that a government will intervene in a crisis, disaster, or *force majeure*.[133] African governments increasingly provide guarantees

[126] *See* Alaa Soliman, Mohammad Aliu Momoh, & Ibrahim L. Awad, *"Infrastructure Guarantees: Making It Simple"* XXVI (1) Econ. Stud. J. 1 (2017).

[127] Garbor *supra* note 57 at 439.

[128] *Id.*

[129] Mohammed Aliu Momoh & Maurice Aghedo, *Public Private Partnership, Infrastructure Guarantee and Sovereign Debt Default,* 13(1) Romanian Econ. Bus. Rev. 25–34 (2018).

[130] Mühlenkamp *supra* note 54 at 24–30.

[131] CABRI, *Management Explicit Contingent Liabilities: Credit Guarantees for State-Owned Entities' Debt*, (2021) https://www.cabri-sbo.org/uploads/files/Documents/CABRI-Position-Paper-Contingent-liabilities-ENG-WEB.pdf (last visited on Jul. 7, 2023).

[132] Aliona Cebotari, *Contingent Liabilities: Issues and Practice,* (IMF Working Paper WP/08/245, 2008).

[133] Rita Madeira, *Symposium on Electricity/Energy Markets in Africa and their Intersections with International Economic Law: From Electricity Market Reform to Contingent Liabilities* Afronomicslaw, (2020) https://www.afronomicslaw.org/category/analysis/symposium-electricityenergy-markets-africa-and-their-intersections-international (last visited on Jul. 7, 2023).

to state-owned electricity utilities to assist in shoring up financing for Power Purchase Agreements (PPAs). The need for such guarantees emerges from the poor credit risk profile of state-owned utilities in Africa.[134] There is already ample evidence from Europe and Latin America that link severe financial crises to the materialization of contingent liabilities arising from PPPs and other instruments.[135] The materialization of contingent liabilities coupled with exchange rate depreciations have been a major source of these countries' exponential increases of debt-to-GDP ratios.[136]

In the African power sector, the prevalence of state-owned utilities exacerbates the danger. In cases where these utilities cannot meet their obligations towards IPPs, the State is forced to intervene to cover these obligations, thus creating a classic case of implicit contingent liability.[137] In case the sovereign guarantee is triggered, the investment risk is suddenly ocialized to all citizens while the commercial benefits remain firmly protected for private investors.[138] Therefore, for African governments, "the development of IPP projects where the buyer of electricity is a public utility creates (even in the absence of a sovereign guarantee) implicit contingent liabilities."[139] Additionally, the country's risks of instability, e.g., a change of regime and the legal and political environment, present another possible source of implicit contingent liabilities.[140]

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[134] Chris Trimble *et al., supra* note 72.

[135] *See* Elva Bova Marta Ruiz-Arranz, Frederik Giancarlo Toscani & Hatice Elif Ture, *The Impact of Contingent Liability Realizations on Public Finances,* 26(2) Int'l Tax & Public Fin. 381–417 (2019); Patrick Honohan & Daniela Klingebiel, *Controlling the Fiscal Costs of Banking Crises,* (World Bank Pol. Res. Working Paper No. 2441 2000) (showing how during the Asian crises of the late 1990s and Latin American crises of the early 1980s, for example, gross pay-outs amounted to as high as 50% of GDP).

[136] Laura Jaramillo, Carlos Mulas-Granados & Elijah Kimani, *The Blind Side of Public Debt Spikes,* (IMF Working Paper No. 202, 2016) https://www.imf.org/en/Publications/WP/Issues/2016/12/31/The-Blind-Side-of-Public-Debt-Spikes-44336.

[137] Madeira *supra* note 133.

[138] *See* Kate Bayliss *el al., The Use of Development Funds for De-Risking Private Investment: How Effective is it in Delivering Development Results?,* (Eur. Parliament Committee on Dev. Paper, (2020) https://www.europarl.europa.eu/RegData/etudes/STUD/2020/603486/EXPO_STU(2020)603486_EN.pdf.

[139] *Id.*

[140] International Renewable Energy Agency (IRENA), Renewable Energy Finance: Sovereign Guarantees 6 (2020) https://www.irena.org/-/media/Files/IRENA/Agency/Publication/2020/Jan/IRENA_RE_Sovereign_guarantees_2020.pdf.

The classic and scary example here is Nigeria's Azura-Edo power plant which was once seen as the PPP template for "lighting up Africa."[141] The plant is the largest IPP power plant in Nigeria, which was set to generate 458 MW initially and 1,500 MW at full gas-fired power capacity.[142] Nigeria was comparatively a late entrant into the IPP projects as the project was initiated in 2014 under President Goodluck Jonathan. It would be the first fully privately financed power plant in Nigeria. In 2015, now backed by the Muhammadu Buhari government, the World Bank provided a partial risk guarantee of up to USD 237 million.[143] In 2018, Azura Power was unable to settle invoices on foreign loans. When the World Bank threatened to trigger its partial risk guarantee to reassure international investors, Nigeria's central bank intervened with an emergency bank loan to assuage the crisis.[144] The PPA contract between the Nigerian Bulk Electricity Trading Company and Azura had the usual pay-or-take clause. Nigeria's hands were tied here since the trigger of the World Bank guarantee would immediately become a loan to it. The World Bank then later used this situation to condition a USD 1 billion loan to Nigeria on structural reforms in the energy sector that would make the country easier prey for this destructive potential of further PPAs that are designed to primarily satisfy private institutional investors.[145] Ultimately, African states are easily groomed to become de-risking, vulnerable developmental states that easily shore up profits for private investors in the guise of greening the energy sector through renewable energy PPPs/PPAs.

4 Non-Reformist Reforms to Address the Sovereign Debt Crisis for Green Energy Purchasing

Non-reformist reforms are processes that act to directly "undermine the prevailing political, economic, social order, and construct a different one, that is built on

[141] Matt Mossman, *Is New Nigerian Power Plant a Template for Lighting up Africa?,* Institutional Investor May 25, 2016, https://www.institutionalinvestor.com/article/2bsy0ge6hjkopzp7gfncw/portfolio/is-new-nigerian-power-plant-a-template-for-lighting-up-africa (last visited on Jul. 7, 2023).
[142] Power Technology, *Power Plant Profile: Azura-Edo IPP Power Plant, Nigeria,* April 23, 2023, https://www.power-technology.com/marketdata/power-plant-profile-azura-edo-ipp-power-plant-nigeria/ (last visited Jul. 8, 2023).
[143] Nicholas Ibekwe, *How Nigeria's Largest Independent Power Plant is set up to Funnel Billion to Tax Haven,* Premium Times, Nov. 9, 2017), https://saharareporters.com/2017/11/09/how-nigerias-largest-independent-power-plant-set-funnel-billions-tax-haven (last visited Jul. 8, 2023).
[144] Gabor & Sylla, *supra* note 67.
[145] Garbor, *supra,* note 57 at 442.

democratic power toward emancipatory horizons."[146] The term "non-reformist reforms" was coined in the 1960s by French economist-philosopher André Gorz.[147] These radical reforms completely rethink the current status quo aiming at transformation, not just reforms for the sake of reforms.[148] The move is a socialist-inspired worldview that seeks to transform capitalistic modes of political economy fundamentally.[149] Such an effort requires (1) the shrinking of the system doing harm; (2) reliance on a mode of political, economic, and social organization that contradicts prevailing arrangements and gestures at new possibilities; (3) building and shifting power into the hands of those directly impacted, [local and indigenous communities, impoverished workers, working-class women, and vulnerable children]; (4) acknowledgment and repairs past harm; and (5) improvement or non-impairment of material conditions of directly affected people.[150]

For purposes of the issues addressed in this chapter so far, I see three specific avenues for countering the continued role of private financing in renewable energy purchasing in Africa: First is a move to directly reject the prescription of PPPs/PPAs as the solution to energy poverty in Africa; second a debt cancellation scheme targeted at addressing climate change; and finally, a reparations scheme for global climate justice.

4.1 PPPs/PPAs Abolition in the African Renewable Energy Sector

As we have seen above, the current model of PPPs/PPAs in the African renewable energy sector is designed to promote a de-risking developmental state that promotes the interest of private institutional investors. This promotion occurs at the expense of the many African citizens who face systemic challenges in accessing electricity at an affordable price while some are entirely unable to access electricity. Private institutional investors design this model only to promote their interests as part of what

[146] Amna A. Akbar, *Non-Reformist Reforms and Struggles over Life, Death, and Democracy,* 132 (8) Yale L.J 2507 (2023).

[147] André Gorz, Strategy for Labor: A Radical Proposal (Martin A. Nicolaus & Victoria Ortiz Translators, 1967).

[148] Amna A. Akbar, *Demands for a Democratic Political Economy,* 134 Harv. L. Rev 103–106 (2020).

[149] *Id.*

[150] Marbre Stahley-Butts & Amna A. Akbar, *Reforms for Radicals?: An Abolitionist Framework* 68 Ucla L.R. 1544 (2022).

B. S. Chimni has called the Transnational Capitalist Class (TCC).[151] The TCC is a group of individuals, corporate entities, and institutions—in this case, private institutional investors—that own and manage capital in leading means of production entities in more than one nation-state.[152] Transnational corporations (TNCs) and private institutional investors in this case, embody the leading means of production entities at the core of the TCC.[153] The TCC is one of the primary benefactors and instigators of the unfair methods, practices, and understandings of designing PPPs/PPAs. African states have been easily coopted in this scheme through a system that helps them hide public debt in the guise of addressing the existential challenge of climate change but ultimately leads to serious sovereign debt distress. Importantly, fractions of the TCC as dominant elites are also ascendant in many parts of the global South primarily through infiltration in the political class.

Therefore, the writing is already on the wall regarding PPPs for African states within the renewable energy sector. The question raised when the issue of abolishing PPPs is raised has always been what is the alternative? For African governments, the only viable option continues to be to insist on providing energy needs through the public sector and working towards making public debt processes more accountable and transparent. Additionally, African states must address the micro-level challenges related to the wide mismanagement and corruption in state-owned power utilities. The challenges of low credit ratings of African governments and, thus, the incessant challenge of the high cost of credit will remain and must be addressed through other

[151] Bhupinder S. Chimni, *The International Law of Jurisdiction: A TWAIL Perspective* 35 LJIL, 29 (2022); *see also* Bhupinder S. Chimni, An Outline of a Marxist Course on Public International Law in International Law on the Left: Re-examining Marxist Legacies 53–91 (Susan Marks, ed., 2008).

[152] William I. Robinson & Jerry Harris, *Towards A Global Ruling Class? Globalization and the Transnational Capitalist Class,* 64 Sci & Soc 11–54 (2000) (arguing that the TCC is composed of transnational corporations and financial institutions, the elites that manage the supranational economic planning agencies, major forces in the dominant political parties, media conglomerates, and technical elites and state managers).

[153] *Id: see also* Bhupinder S. Chimni, *Capitalism, Imperialism, and International Law in the Twenty-First Century,* 14 Or. Rev. Int'l L. 17 (2012) (TCC consists of four fractions: Transnational Corporation (TNC) executives and their local affiliates (corporate fraction); globalizing state and inter-state bureaucrats and politicians (state fraction); globalizing professionals (technical fraction); and merchants and media (consumerist fraction).

interventions. Therefore, abolishing PPPs/PPAs is not in itself a significant paradigmatic shift without other interventions. But that does not make it a low-level intervention since the current MDBs and IFIs promotion and ubiquity for African governments make the claims for their abolishing a non-reformist reforms move. Their rejection undermines a favorite and easy vehicle that the TCC uses to continue capitalistic accumulation in the guise of sustainable development. And since abolishing of PPPs, if implemented appropriately, would also mean more accountability and transparency in public debt management and processes by African states, there is a possibility of democratic transformation as a way that would emancipate the African poor and directly deal with or provide avenues for dealing with energy poverty.

4.2 Is the Independent Off-Taker Model a Viable Alternative?

A proposed alternative to address the sovereign guarantee risks associated with high sovereign debt risk is replacing the state-owned electricity utility with an independent off-taker. The independent off-taker acts as a creditworthy alternative of the state and state-owned utility. The independent off-taker must therefore create an accurate perception that they are credit-worthy to attract private investment. The current experiment in the Southern African Power Pool (SAPP) consisting of Angola, Botswana, Democratic Republic of Congo, Eswatini, Lesotho, Mozambique, Malawi, Namibia, South Africa, Tanzania, Zambia, and Zimbabwe, Africa GreenCo is an example.[154] SAPP is one of the 5 five electricity pools developed in Africa under the Southern Africa Development Community (SADC) as part of Africa's Regional Economic Communities (RECs). The others are (i) the Central Africa Power Pool (CAPP) for the Economic Commission for Central Africa States (ECCAS), (ii) the Comité Maghrébin de l'Electricité (COMELEC) for the Union of Maghreb Arab (UMA), (iii) the Eastern Africa Power Pool (EAPP) for COMESA, and (iv) the West Africa Power Pool (WAPP) for ECOWAS.

GreenCo aims to attract cheaper credit that would lower the cost of capital for IPPs and thus promises to deliver lower wholesale electricity tariffs for power sale agreement off-takers.[155] The idea is to attract more private sector investment to renewable energy generation in sub-Saharan Africa at lower cost with less reliance

[154] Joel Sam, Africa GreenCo and the Independent Off-Taker Model: Beyond 'Singe-Buyer' Power Markets and Uncreditworthy Utilities, ENV. SCI. PROC. (2022).
[155] *Id.*

on government support by introducing an independently-managed but government-co-owned creditworthy intermediary off-taker.[156] GreenCo's idea is to primarily demonstrate its "creditworthiness to financiers of the IPP to ensure that its capital structure includes a guarantee base sufficient to cover commercial debt lent to IPPs in its PPA portfolio and an equity base to act as a liquidity buffer. This liquidity buffer will enable GreenCo to exercise its risk mitigation strategies (if the Power Sale Agreement (PSA) counterparty defaults) and even incur some losses in the process without utilising the capital allocated to cover the commercial debt."[157]

Without sounding too pessimistic about this model, it is a small tweak on the current government-supported PPP/PPA structure. Maintaining this model aims at another form of de-risking for private financiers. It has little potential of introducing a transformative change to the current strategy that perpetuates the Wall Street Consensus' ideal of creating investible and bankable development asset classes that maintain them outside the current balance sheet but with the possibility of reemerging in the future.[158] Having a domestic company with the potential of going into insolvency, however, insulated from liquidity and solvency shocks, will still have many private financiers hedging their risks towards higher costs of capital. Thus, while this alternative looks better, especially since it insulates the State from guaranteeing the PPAs, it still falls squarely within the dangers of PPPs of hiding current debt that will eventually materialize in the future. It still seems fair to argue for a strong publicly-funded green energy projects in Africa with appropriate interventions in other areas that have made Africa literally the "dark continent."

5 Conclusion

African countries find themselves in a catch-twenty-two situation when it comes to addressing the developmental needs of addressing energy poverty and dealing with the existential global concern of climate change. The paradox of being the least electrified continent in the world while having the highest potential to produce renewable

[156] Africa GreenCo, *Africa GreenCo-An Overview* https://africagreenco.com/wp-content/uploads/2019/08/AGC-Overview.pdf (last visited on Jul. 7, 2023).

[157] Sam, *supra* note 153 at 4.

[158] *See* Garbor, *supra* note 57, 64, 65.

energy persists in Africa. The main focus of this chapter has been the continuing challenges facing African states in purchasing renewable energy to serve energy needs without sinking deeper into sovereign debt distress. The option presented to harness private financing for developing renewable energy sources of Public-Private Partnership (PPP) continues to place African governments at high risks of sovereign debt distress. Implementing the Washington Consensus policies of the World Bank Group and IMF have resulted in a continued liberalization and push for privatization of the power sector in Africa with mainly poor results. The recent move that seeks to leverage private investment to provide renewable energy needs fuses the neo-liberal developmental state model with the de-risking developmental state model that socializes renewable energy production costs while ring-fencing private institutional investors' profits. This approach leads to high risks of sovereign distress in many African countries. The suggested anti-reformist reform move is for African states to reject the developmental prescription of PPPs/PPAs and instead work on delivering renewable energy through a reformed public sector.

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