

The Limits of  
Carbon Markets as  
**a Solution to  
the Climate  
Crisis**



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# Abstract

In this quarterly report, I argue that the climate crisis has provided the global finance industry an opportunity to make exorbitant profits from majority Black and Brown countries in the Global South. I show how the global finance industry is leveraging its muscle over climate-vulnerable and heavily indebted countries in the Global South through complex financial transactions. These transactions commodify nature and the biodiversity resources of these Global South nations. In return, these countries borrow capital to address the climate crisis and pay off their debts. This borrowing that invariably comes at high interest rates, especially through bond instruments, gives the global finance industry power to price biodiversity resources, such as forests, as investible assets. These instruments include climate bonds; green, blue, and sustainability-linked bonds; and debt-for-nature swaps (DNSs). Further, through transactions such as carbon credits, the global finance industry in conjunction with Global South governments has created a new terra nullius narrative under which the Global South's 'abundant' and 'valuable ecosystems' are being paraded as open for foreign investors without any barriers. I claim that these profit-making and extractive initiatives are threatening to displace the historical ecological responsibility of the Global North countries most responsible for the climate crisis. As a result, the populations of the countries least responsible for the climate crisis are bearing not only the brunt of the climate crisis but the increasing and unsustainable levels of sovereign debt as well. The ever-rising costs of sovereign debt servicing now constitute a very large percentage of these governments' revenues. In addition, these loans offload the global finance industry's costs and risks model to indebted and climate-vulnerable governments and particularly to their citizens who are almost always invariably Black or Brown.

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# Table of Contents

\* Abstract

\* Introduction

01 Africa's Forests and Other Biodiversity Assets  
and the Making of the Carbon Offset Market

The Forest Carbon Partnership

The Bridgetown Initiative

Critically Appraising Carbon Offset Projects

02 The Climate Crisis is Layered on  
Top of the Sovereign Debt Crisis

03 Conclusion



# Introduction

In November 2023, the Kenyan government evicted the Ogiek, an Indigenous community, from their ancestral land in the Mau Forest—the largest closed-canopy forest ecosystem in the country.<sup>1</sup> Forest rangers used axes, hammers, and fire to bring and burn down over four hundred houses belonging to the Ogiek people.<sup>2</sup> The Ogiek are now living in “absolute fear” that the government is set to destroy their community.<sup>3</sup> The government did this even though the African Court on Human and Peoples’ Rights, in a 2017 landmark decision, ordered the Kenyan government not to evict the Ogiek people.<sup>4</sup> The Court held they had a right to live on their land and to be consulted if the government decided to undertake any projects in the forest.<sup>5</sup> The Kenyan government has justified the evictions as necessary to prevent illegal logging and unlawful encroachment on the forest.<sup>6</sup>

1. Kenyan Government Continues to Forcibly Evict Hundreds of Ogiek, Int’l Work Grp. Indigenous Affs. (Nov. 8, 2023), <https://www.iwgia.org/en/news/5300-kenyan-government-continues-forcibly-evict-hundreds-ogiek.html> [<https://perma.cc/LVQ7-QR8H>]; Deforestation in the Mau Forest, Kenya, is Impacting Wildlife and People, BirdLife Int’l (2013), [https://datazone.birdlife.org/deforestation-in-the-mau-forest-kenya-is-impacting-wildlife-and-people#:~:text=The%20Mau%20Forests%20Complex%20\(MFC,area%20of%20about%20417%2C000%20hectare](https://datazone.birdlife.org/deforestation-in-the-mau-forest-kenya-is-impacting-wildlife-and-people#:~:text=The%20Mau%20Forests%20Complex%20(MFC,area%20of%20about%20417%2C000%20hectare) [<https://perma.cc/7BFA-M5KD>].
2. Int’l Work Grp. Indigenous Affs., supra note 1 (“Kenyan authorities forcibly evicted more than 700 Ogiek children, women and men, including the elderly, from their homes . . .”).
3. Caroline Kimeu, ‘We are Living in Absolute Fear’: Call to Stop Indigenous Evictions in Rift Valley, Guardian (Nov. 8, 2023, 06:48 PM), <https://www.theguardian.com/global-development/2023/nov/08/we-are-living-in-absolute-fear-call-to-stop-indigenous-evictions-in-rift-valley> [<https://perma.cc/SV5Y-4UK4>].
4. Decision Regarding Communication 006/2012 (Afr. Comm’n on Hum. and Peoples’ Rts v. Rep. of Kenya) (Afr. Comm’n Hum. & Peoples’ Rts. May 26, 2017).
5. According to the Court, “by expelling the Ogieks from their ancestral lands against their will, without prior consultation and without respecting the conditions of expulsion in the interest of public need, the Respondent violated their rights to land as defined above and as guaranteed by Article 14 of the Charter read in light of the United Nations Declaration on the Rights of Indigenous Peoples of 2007.” Id. 131. Subsequently, in Afr. Comm’n on Hum. and Peoples’ Rts v. Rep. of Kenya, Application No. 006/2012, Judgment (Reparations), June 23, 2022, the Commission held that the Ogiek people were entitled to reparations. Decision Regarding Reparations for Communication 006/2012 (Afr. Comm’n on Hum. and Peoples’ Rts. v. Rep. of Kenya) (Afr. Comm’n Hum. & Peoples’ Rts. June 23, 2022).
6. Claire Marshall, Kenya’s Ogiek People Being Evicted for Carbon Credits – Lawyers, BBC (Nov. 9, 2023), <https://www.bbc.com/news/world-africa-67352067> [<https://perma.cc/ERW8-KTY3>].



Environmental groups revealed that one of the primary reasons for the ongoing evictions is that the Kenyan government signed an agreement with a foreign investor to use the Mau Forest to buy carbon credits.<sup>7</sup> For government officials, then, the Mau Forest where Indigenous peoples live became an investment—Middle Eastern investors will pay the Kenyan government in exchange for opportunities to offset carbon emissions from their petroleum extraction activities.<sup>8</sup> The forced eviction of the Ogiek community is just one example of the dispossession of African communities' lands to make way for carbon credit investors.<sup>9</sup> These evictions are also further evidence of the commodification and commercialization of nature on the false premise that these actions will resolve the climate crisis.

In the meantime, by accelerating the growth of carbon markets, African governments are effectively legitimizing continued emissions, especially by oil-producing states in the Middle East. Kenya's aggressive entry into the carbon market industry is reflected by the coming into force in September 2023 of the Climate Change (Amendment) Act, 2023.<sup>10</sup> The law, already being lauded as a "bold step towards carbon markets" by industry players,<sup>11</sup> puts in place a framework for creating, participating, and regulating carbon markets in Kenya.<sup>12</sup> The race to monetize forests in the carbon offset market is therefore fueling land dispossession from those least responsible for the climate crisis. My major claim in this quarterly report is that the carbon credit market illustrates how the management of the climate crisis has been handed over to private capital with its profit-oriented goals by offering possibilities to turn public assets like forests and renewable energy into asset classes that can be traded without benefiting the communities that have long depended on them.<sup>13</sup>

In this case, the asset classes are valuable ecosystems, such as forests. These ecosystem resources are being used to procure new sovereign loans or as collateral against sovereign debt restructurings for unrepayable loans made prior to sovereign debt obligations. The backdrop against which Africa's valuable ecosystems are being used in private markets—and in the sovereign debt market in particular—is important. Private creditors, who are being urged to increase investments in climate action, already hold a high portion of Africa's unsustainable debt<sup>14</sup> and are typically unwilling to participate in debt-restructuring efforts or offer debt relief.<sup>15</sup>

7. *Id.*

8. See *id.*

9. Rosebell Kagumire, Carbon Credits are Dispossessing African Communities, *New internationalist* (Nov. 20, 2023), <https://newint.org/story/sustainability/2023/11/23/carbon-credits-are-dispossessing-african-communities> [<https://perma.cc/839R-7VVM>].

10. The Climate Change (Amendment) Act, 2023, no. 9 (2023), Kenya Gazette Supplement no. 147.

11. Mati Munuve et al., Kenya's Bold Step Towards Carbon Market Regulations, *Clyde & Co* (Oct. 24, 2023), <https://www.clydeco.com/en/insights/2023/10/kenyas-step-towards-carbon-market-regulations> [<https://perma.cc/HF6W-DYLC>].

12. Yvonne Maingey, Inside Kenya's Regulatory Environment for Carbon Markets, *Kenyan Wall St.* (Feb. 20, 2024), <https://kenyanwallstreet.com/inside-kenyas-regulatory-environment-for-carbon-markets/> [<https://perma.cc/LJ4V-SJ4H>]; What You Need to Know About Article 6 of the Paris Agreement, *World Bank* (May 17, 2022), <https://www.worldbank.org/en/news/feature/2022/05/17/what-you-need-to-know-about-article-6-of-the-paris-agreement> [<https://perma.cc/27GX-NLFJ>] ("[U]nder Article 6, a country (or countries) will be able to transfer carbon credits earned from the reduction of GHG [Greenhouse Gas] emissions to help one or more countries meet climate targets.").

13. An asset class is "a group of similar investment vehicles. Different classes, or types, of investment assets—such as fixed-income investments—are grouped together based on having a similar financial structure." *Fixed Income Bond Terms*, *Corp. Fin. Inst.* [CFI], <https://corporatefinanceinstitute.com/resources/asset-class/> [<https://perma.cc/3RZK-YKXJ>]; see also Meeyon Park, Asset Class, CFI, <https://corporatefinanceinstitute.com/resources/wealth-management/asset-class/#:~:text=An%20asset%20class%20is%20a,the%20same%20rules%20and%20regulations> [<https://perma.cc/273A-S4PM>] ("they are typically traded in the same financial markets and subject to the same rules and regulations.").

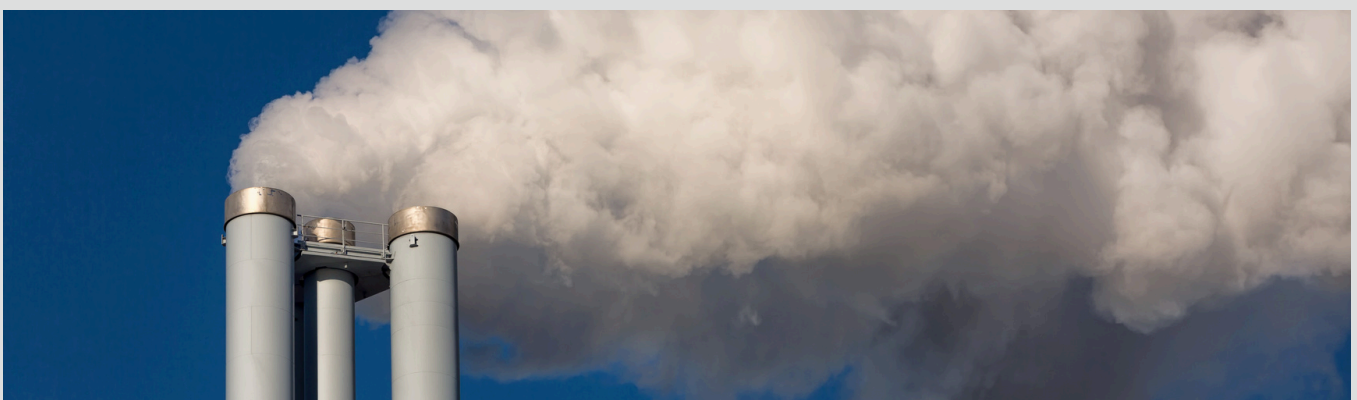
14. *A World of Debt Series*, *Regional Stories: Africa*, U.N. Conf. Trade & Dev. (2022), <https://unctad.org/publication/world-of-debt/regional-stories> [<https://perma.cc/D6LV-Y3AA>].

15. Rakan Aboneaaj et al., The ABCs of Sovereign Debt Relief, *Ctr. Glob. Dev.* [CDG] (Oct. 11, 2022), <https://www.cgdev.org/publication/abcs-sovereign-debt-relief> [<https://perma.cc/8M27-QRFR>] (noting how almost no private creditors engaged with the Debt Service Suspension Initiative (DSSI) during the pandemic, and that private creditors often need an incentive to take any part in sovereign debt restructurings); Nancy Lee, Restructuring Sovereign Debt to Private Creditors in Poor Countries: What's Broken?, *CDG* (Aug. 5, 2020), <https://www.cgdev.org/publication/restructuring-sovereign-debt-private-creditors-poor-countries-whats-broken> [<https://perma.cc/KK7S-KEF7>].

It is in this context that African countries are being harangued into issuing climate-related sovereign bonds, such as green, blue, sustainable, and sustainability-linked bonds.<sup>16</sup> The resurgence of carbon markets is related to developments in the United Nations Framework Convention on Climate Change (UNFCCC) also referred to as the Paris Agreement.<sup>17</sup> Article 6(2) of the Paris Agreement allows countries to engage in cooperative approaches towards meeting their nationally determined contributions to achieve their nationally determined contributions to the global response to climate change.

Under Article 6(2), a country can achieve its emission reduction targets by transferring carbon credits earned from the reduction of greenhouse gas emissions to help one or more countries to meet their climate targets. At the Paris Agreement's Conference of Parties in 2024, (COP29), rules for trading in greenhouse emission reductions under Article 6(4) of the Paris Agreement were hurriedly adopted amidst protests<sup>18</sup> from many climate-vulnerable countries and civil society groups.<sup>19</sup> These rules were adopted notwithstanding the well-known limitations and related increasing abandonment of purchases of carbon offsets by some of their biggest purchasers.<sup>20</sup> The adoption of these rules promoted by the countries most responsible for the climate crisis has given further impetus to carbon market trading. In the meantime, these countries continue to resist any accountability for the climate crisis even though it is now widely recognized that carbon trading on its own is an illusory solution to the climate crisis.

To elaborate on these themes, this quarterly report proceeds as follows. Part I focuses on how African forests and other biodiversity assets have become the springboard for a new global financial industry—the climate finance industry. Part II links this new profit avenue to the global financial and debt architecture. In doing so, I show how the commodification of nature further disenfranchises the lives and livelihoods of those living within or near these biodiversity assets. This part of the quarterly report also shows the current moment's historical continuities with other prior moments of racialized extraction.



16. Aby Toure & Sophia Denekew, Green, Social, and Sustainable Bonds to Serve Africa's Sustainable Investment Needs, World Bank (May 27, 2022), <https://www.worldbank.org/en/news/press-release/2022/05/27/afw-green-social-and-sustainable-bonds-to-serve-africa-sustainable-investment-needs> [https://perma.cc/N4LM-QHCD].

17. 3156 U.N.T.S. 54113.

18. Hannah Alcoseba Fernandez, COP29 Opens with Approval of Global Carbon Credit Trade Rules, Eco-Business (Nov. 12, 2024), <https://www.eco-business.com/news/cop29-opens-with-approval-of-global-carbon-credit-trade-rules/> [https://perma.cc/ZG52-DWBZ].

19. African Sovereign Debt Justice Network, Statement of Solidarity with the Global South on the Inequitable Outcomes of COP29, Afronomicslaw.org, Nov. 26, 2024, <https://www.afronomicslaw.org/category/african-sovereign-debt-justice-network-afsdjn/african-sovereign-debt-justice-network-1> [https://perma.cc/YZB9-KS6B].

20. Ashkat Rathi, Natasha White & Demetrios Pogkas, "More Companies Ditch Junk Carbon Offsets but New Buyers Loom," Bloomberg News, Oct. 24, 2024, <https://www.bloomberg.com/news/features/2024-10-24/carbon-offsets-see-falling-demand-but-cop29-may-open-new-market> [https://perma.cc/H5HM-BF2Z].





## 01 Africa's Forests and Other Biodiversity Assets and the Making of the Carbon Offset Market

My introduction started with an Indigenous community's eviction from its ancestral land in the Mau Forest in Kenya.<sup>21</sup> Kenyans widely view the use of the Mau Forest in the carbon credit market as an avenue for corrupt politicians to enrich themselves while causing irreparable harm not only to the environment but also to Indigenous peoples like the Ogiek and other forest communities.<sup>22</sup> Kenyans have a right to be skeptical of the official justifications offered by the Kenyan government to evict the Ogiek. After all, there is now overwhelming research showing that carbon offset projects are not accompanied by emission reductions in the countries or entities seeking them.<sup>23</sup>

Further, they are not a solution to the climate crisis or reaching net-zero emissions. Instead, carbon markets simply pay off developing countries without requiring the buyers of those credits in high carbon-emitting countries to make any corresponding emissions reductions.<sup>24</sup> This is because carbon markets work by transferring a carbon emitter's obligation to reduce carbon emissions in exchange for carbon credits.<sup>25</sup> In effect, a carbon emitter that has the financial wherewithal effectively commodifies its emissions.<sup>26</sup> Beyond this moral stigma of commodifying emissions, carbon markets don't have credible, independent, third-party verification of emissions reductions.<sup>27</sup>

21. See Letter from Isaac Tobiko, CLAN! Executive Chair, to Hon. Justin B.N. Muturi EGH, Office of the Attorney General in Nairobi (Nov. 10, 2023), <https://www.forestpeoples.org/sites/default/files/documents/CLAN%21%20Support%20Letter%20-%20Ogiek%20of%20Mau%20Forest%20Complex.pdf> [<https://perma.cc/9X2L-DM2J>] (providing an example of the protests from Indigenous communities against the Kenyan government to stop the evictions of the Mau Forest Complex's Ogiek community).
22. Caroline Chebet, Kenyan Government Again Evicts Ogiek Communities from Mau Forest, Mongabay (Nov. 8, 2023), <https://news.mongabay.com/2023/11/kenyan-government-again-evicts-ogiek-communities-from-mau-forest/> [<https://perma.cc/998Z-QU27>] (“[P]oor enforcement of laws and corrupt officials have allowed other people to enter the forest to damage it. It is not a secret that other communities are moving into the forests and constructing homes in the name of shamba system because of corruption.”).
23. Matteo Civillini, Junk Offset Sellers Push to Enter New UN Carbon Market, Climate Home News (Jan. 18, 2024, 1:36 PM), <https://www.climatechangenews.com/2024/01/18/junk-offset-sellers-push-to-enter-new-un-carbon-market/> [<https://perma.cc/2DDW-V2KH>]; Alexandria Sahner, Blood Carbon: Kenyans are Being Erased So that the UAE Can Greenwash, Counterpunch (Dec. 18, 2023), <https://www.counterpunch.org/2023/12/18/blood-carbon-kenyans-are-being-erased-so-the-uae-can-greenwash/> [<https://perma.cc/2HYV-2SNL>].
24. Joseph Romm, Are carbon offsets unscalable, unjust, and unfixable—and a threat to the Paris Climate Agreement? 1 (Penn. Ctr. for Sci., Sustainability, and the Media, 2023).
25. What Are Carbon Markets and Why are They Important?, U.N. Dev. Programme (May 18, 2022), <https://climatepromise.undp.org/news-and-stories/what-are-carbon-markets-and-why-are-they-important#:~:text=In%20a%20nutshell%2C%20carbon%20markets,or%20reduce%20greenhouse%20gas%20emissions> [<https://perma.cc/GR8J-ARF3>].
26. [Emissions Trading, U.N. Framework Convention on Climate Change, <https://unfccc.int/process/the-kyoto-protocol/mechanisms/emissions-trading> [<https://perma.cc/6GKV-BXWT>] (“Thus, a new commodity was created in the form of emission reductions or removals.”).
27. Jane E. Obbagy et al., An Overview of Greenhouse Gas Emissions Verification Issues, Ctr. Climate & Energy Sols. [C2ES] 34 (Oct. 2001) (“[B]road national (or international) standards that form the basis for building company policies and procedures for inventory-ing and reporting GHG emissions are lacking. [A] single, uniform reporting standard may never exist.”).

In effect, carbon offset markets merely appear to do something, whereas, in reality, they don't.<sup>28</sup> Some people have called carbon offset markets greenwashing.<sup>29</sup> Even more, carbon offset markets are often regarded as a buyer's license to pollute.<sup>30</sup> Notably, there is evidence that renewable energy projects such as wind, hydro, or fossil fuel in the United Nations Clean Development Mechanism (UNCDM) would have proceeded without the revenues from the offset sales.<sup>31</sup> So, it is not entirely clear that carbon offset projects are driven by the desire to promote renewable energy projects.<sup>32</sup>

Yet, many governments continue to sign carbon offset agreements.<sup>33</sup> For example, in September 2023, the Zimbabwean government signed an agreement that gave Blue Carbon, a Dubai-based investor, control over forested land that constitutes almost 20% of the country's surface area.<sup>34</sup> Blue Carbon will likely use that forest cover to create and then sell carbon credits.<sup>35</sup> Those credits could be sold to the United Arab Emirates (UAE), which has a huge carbon footprint because of its fossil fuel production.<sup>36</sup> Blue Carbon was founded in 2022 and has no track record in forest management, carbon trading, or management.<sup>37</sup> The company is owned by a prominent UAE sheikh who is also a senior member of Dubai's royal family.<sup>38</sup>

Zimbabwe is not the only country that has signed off a substantial portion of its forested land to Blue Carbon. In 2023, Liberia signed control of 10% of its territory to Blue Carbon for a period of thirty years.<sup>39</sup> This deal was shrouded in secrecy and, under its terms, Liberia conceded 6.7 million hectares of its forests.

28. See generally Quinn Curtis et al., *Green Bonds, Empty Promises*, 102*N. Cal. L. Rev.* 132 (2023).

29. Andre Standing, *Sovereign ESG Bonds in the Global South: 10 Questions for Those Concerned About Debt and Climate Justice*, Eurodad 18–20 (Nov. 2023), [https://assets.nationbuilder.com/eurodad/pages/3227/attachments/original/1701795920/ESG\\_Brief\\_V3.pdf?1701795920](https://assets.nationbuilder.com/eurodad/pages/3227/attachments/original/1701795920/ESG_Brief_V3.pdf?1701795920) [<https://perma.cc/PU5H-A8HX>]. According to the Natural Resources Defense Council, greenwashing “is the act of making false or misleading statements about the environmental benefits of a product or practice.” What is Greenwashing, Nat'l Res. Def. Council (Feb. 9, 2023), <https://www.nrdc.org/stories/what-greenwashing> [<https://perma.cc/YYM8-T2EV>].

30. For a critique along these lines, see Michael J. Sandel, *What Money Can't Buy: The Moral Limits of Markets* 76–78 (Farrar et al. eds., 2012); Douglas McCauley, *Selling Out on Nature*, 443 *Nature* 27, 27–28 (2006); Ian Morse, *Carbon Offsets: A Key Tool for Climate Action, or a License to Emit?*, Mongabay (Nov. 4, 2022), <https://news.mongabay.com/2022/11/carbon-offsets-a-key-tool-for-climate-action-or-a-license-to-emit/> [<https://perma.cc/X5PN-VZH6>] (explaining how carbon offset projects use credits for removal of emissions but are largely theoretical and do not always actually reduce emissions). In this article, Peter Riggs asks, “[B]ut what did the atmosphere see? It saw an increase in emissions.” *Id.*

31. Josh Gabbatiss et al., *In-Depth Q&A: Can 'Carbon Offsets' Help to Tackle Climate Change?*, CarbonBrief (Sept. 24, 2023), <https://interactive.carbonbrief.org/carbon-offsets-2023/> [<https://perma.cc/2TAG-23L8>].

32. See generally Friends of the Earth Int'l, *the Great Gamble* (2014). In addition, carbon offset projects are beset with many other problems. For example, SOMO and the Kenya Human Rights Commission (KHRC) have found sexual abuse of women at the Kasigau carbon offset project. See Maria Hengeveld, *Systemic Sexual Abuse at Celebrated Carbon Offset Project in Kenya*, SOMO (Nov. 6, 2023), <https://www.somo.nl/systemic-sexual-abuse-at-celebrated-carbon-offset-project-in-kenya/> [<https://perma.cc/P6TX-S49H>].

33. Angela Dewan, *A UAE Company has Secured African Land the Size of the UK for Controversial Carbon Offset Projects*, CNN (Nov. 23, 2023, 5:51 AM), <https://www.cnn.com/2023/11/22/climate/uae-cop28-adnoc-fossil-fuels-expansion-climate-intl/index.html> [<https://perma.cc/N292-2NDT>].

34. *Id.*

35. Patrick Greenfield, *The New 'Scramble for Africa': How a UAE Sheikh Quietly Made Carbon Deals for Forests Bigger than UK*, Guardian (Nov. 30, 2023, 04:00 PM), <https://www.theguardian.com/environment/2023/nov/30/the-new-scramble-for-africa-how-a-uae-sheikh-quietly-made-carbon-deals-for-forests-bigger-than-uk> [<https://perma.cc/NLV8-5TAK>].

36. Ian Tiseo, *CO2 Emissions from Fossil Fuel and Industrial Purposes in UAE 1970–2022*, Statista (Sept. 19, 2023), [https://www.statista.com/statistics/486080/co2-emissions-united-arab-emirates-fossil-fuel-and-industrial-purposes/#:~:text=Fossil%20fuel%20combustion%20and%20industrial,\(MtCO2\)%20emissions%20in%202022](https://www.statista.com/statistics/486080/co2-emissions-united-arab-emirates-fossil-fuel-and-industrial-purposes/#:~:text=Fossil%20fuel%20combustion%20and%20industrial,(MtCO2)%20emissions%20in%202022) [<https://perma.cc/4M3B-D9MP>] (“The UAE releases some of the highest CO2 emissions per capita worldwide, at more than 20 metric tons per person.”).

37. John Benny, *UAE Holding Company Launches New Entity to Boost Green Investments*, Nat'l: Road to Net Zero (Oct. 12, 2022), <https://www.thenationalnews.com/business/road-to-net-zero/2022/10/12/uae-holding-company-launches-new-entity-to-boost-green-investments/> [<https://perma.cc/4K3E-WTP2>]; see also Greenfield, *supra* note 35.

38. Benny, *supra* note 37; see also Greenfield, *supra* note 35.

39. Katherine Hearst, *Liberia to Concede Territory to UAE Firm in Carbon Offset Deal*, Middle East Eye (Aug. 28, 2023, 4:14 PM), <https://www.middleeasteye.net/news/liberia-uae-concede-territory-firm-carbon-offset-deal> [<https://perma.cc/V66C-UM3R>].



Even more, the deal was widely considered to have been rushed to enable government officials to “pocket the initial upfront payment of [US]\$50 million.”<sup>40</sup> Observers have noted that this deal is inconsistent with a 2019 Liberian law that protects Indigenous and forest communities’ customary land rights.<sup>41</sup> In a similar transaction, Blue Carbon signed deals with Tanzania, which ceded 8% of its land,<sup>42</sup> and Zambia, which ceded 10% of its land.<sup>43</sup> Prior comparable or reforestation deals have been accompanied by the violent removal of forest communities from their homes.<sup>44</sup> Certification bodies set up to verify compliance with environmental and other standards, such as the Forest Stewardship Council, are ineffective safeguards against the harms that accompany carbon offset markets.<sup>45</sup> As noted above, these certification and audit bodies have been demonstrated to lack credibility. The foregoing examples are evidence of the very fast-growing carbon offset market over African forest ecosystems.

The carbon credits industry is aggressively promoting this market as I will show below. The primary role of this market—facilitating “reductions of greenhouse gas emissions from an activity in one place to compensate for emissions elsewhere”<sup>46</sup> — is very attractive to fossil fuel-producing states and entities that are high in carbon emissions.<sup>47</sup> African states’ forest covers underwrite these offsets, often at the expense of Indigenous and forest communities’ rights.<sup>48</sup> For fossil fuel and other high carbon-emitting states, the carbon credit market is considered necessary to limit global mean temperature rises to 1.5 °C, which requires carbon dioxide emissions to become net zero.<sup>49</sup> As indicated above, the carbon credit market is a fast-growing, multibillion-dollar industry. For example, the UNCDM, launched in the mid-2000s, exploded to US\$2 billion in 2021.<sup>50</sup> Thus, in the absence of limiting climate-warming emissions in affluent countries, carbon offsets have become a big business and are increasingly sidelining emissions reductions as a key goal. According to one analysis, “They form what is known as the voluntary carbon market (VCM): a decentralized space where people and businesses can choose to buy credits to offset their emissions. The market for these offsets, which is largely unregulated, could hit [US]\$50 billion as soon as 2030 and grow 100-fold by 2050.”<sup>51</sup>

40. Id.

41. Jennifer O’Mahony, *Liberia’s New Land Rights Law Hailed as Victory, but Critics Say It’s Not Enough*, Mongabay (Mar. 22, 2019), <https://news.mongabay.com/2019/03/liberias-new-land-rights-law-hailed-as-victory-but-critics-say-its-not-enough/> [<https://perma.cc/W6DG-B2JJ>]; International Statement on the Carbon Deal Between Blue Carbon and the Liberian Government, Fern (July 20, 2023), [https://www.fern.org/fileadmin/uploads/fern/Documents/2023/International\\_Statement\\_on\\_the\\_Carbon\\_Deal\\_-\\_Carbon\\_Blue\\_and\\_Liberia.pdf](https://www.fern.org/fileadmin/uploads/fern/Documents/2023/International_Statement_on_the_Carbon_Deal_-_Carbon_Blue_and_Liberia.pdf) [<https://perma.cc/9MST-L8QG>].

42. Blue Carbon and the Government of Tanzania Join Forces to Accelerate Transition to Low-Carbon Economy, Gulf News (Feb. 7, 2023, 10:15 AM), <https://gulfnews.com/business/corporate-news/blue-carbon-and-the-government-of-tanzania-join-forces-to-accelerate-transition-to-low-carbon-economy-1.1675752836855> [<https://perma.cc/XH8S-7TSJ>]; Gloria Aradi, *Tanzania Signs Major Carbon Credit Deal Covering National Parks*, BBC (Dec. 1, 2023), <https://www.bbc.com/news/world-africa-67565784> [<https://perma.cc/F5SZ-M9UF>].

43. Blue Carbon and Government Zambia Sign MoU to Unlock the Potential of Carbon Removal Projects, Gulf News (Feb. 8, 2023, 2:04 PM), <https://gulfnews.com/business/corporate-news/blue-carbon-and-government-of-zambia-sign-mou-to-unlock-the-potential-of-carbon-removal-projects-1.1675850886963> [<https://perma.cc/6VVK-DTLH>].

44. The Agony of a Tree-Planting Project on Communities’ Land in Uganda, Wrm (Sept. 24, 2020), <https://www.wrm.org.uy/bulletin-articles/the-agony-of-a-tree-planting-project-on-communities-land-in-uganda> [<https://perma.cc/D322-K99G>]; Kristen Lyons et al., *The Darker Side of Green 7* (Oakland Institute 2014), [https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/Report\\_DarkerSideofGreen\\_hirez.pdf](https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/Report_DarkerSideofGreen_hirez.pdf) [<https://perma.cc/LWG6-WVET>].

45. Frédéric Mousseau & Elena Teare, *Evicted for Carbon Credits 12* (Oakland Institute 2019), [https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/evicted-carbon\\_0.pdf](https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/evicted-carbon_0.pdf) [<https://perma.cc/98VF-EAY3>].

46. U.S. Gov’t Accountability Off., GAO-11-345, *Climate Change Issues: Options for Addressing Challenges to Carbon Offset Quality 1* (2011).

47. As one analysis notes, carbon markets are effectively commodifying and commercializing pollution. See, e.g., *Carbon Markets Are Dodgy AF*, Continent (Dec. 6, 2023), <https://continent.substack.com/p/carbon-markets-are-dodgy-af> [<https://perma.cc/LN6G-CDPT>].

48. See Interview, *Forest Equity: What Indigenous People Want from Carbon Credits with Levi Sucre Romero*, Yale Env’t 360 2, 5 (Dec. 15, 2022), <https://e360.yale.edu/features/levi-sucre-romero-indigenous-lands-carbon-credits> [<https://perma.cc/P4AK-5AQT>].

49. 2 Special Report: *Global Warming of 1.5 °C*, IPCC, at 6, 313 (2018).

50. See Romm, *supra* note 24.

51. Angus Chapman & Desné Masie, *Are Carbon Offsets all They’re Cracked Up to Be? We Tracked One from Kenya to England to Find Out*, Vox (Aug. 3, 2023, 7:00 AM), <https://www.vox.com/23817575/carbon-offsets-credits-financialization-ecologi-solutions-scam> [<https://perma.cc/UT9P-LEW2>].

To further leverage this market, a new Africa Carbon Markets Initiative (ACMI) was launched at the 27th Conference of the Parties to the United Nations Framework Convention on Climate Change (COP27) in November 2022.<sup>52</sup> ACMI's goal is to expand Africa's participation in carbon credits so that it reaches 1.5 billion annual credits by 2050.<sup>53</sup> ACMI's entry into the African carbon credit market illustrates the global financial industry's fingerprints capitalizing on Africa's biodiversity for profit. ACMI also promotes and foregrounds climate solutions, such as carbon markets and carbon sequestration, which reflect the interests of developed economies and powerful corporate interests.<sup>54</sup> Such solutions allow the governments most responsible for the climate crisis to continue producing carbon dioxide by purchasing carbon credits or favoring technological solutions that displace Indigenous peoples and forest communities from their land. Further, commodifying the climate crisis, in effect, integrates Africa into the climate finance industry and introduces a new narrative that threatens to displace the historical ecological responsibility of the Global North countries most responsible for the climate crisis. In the meantime, Africa continues to suffer some of the climate crisis's worst consequences.

African leaders and entrepreneurs like ACMI, in my view, operate within a narrative that erases the Global North's historical ecological responsibility by claiming that Africa can be a global leader in carbon removal because of its "abundant sunlight, natural resources and undeveloped land."<sup>55</sup> What I want to emphasize here is that this new terra nullius narrative or trope is being advanced to legitimize using Africa's resources.<sup>56</sup> This narrative easily lines up with the 19th-century scramble for African territory and valuable ecosystems. But it also represents a more contemporary enclosure of millions of hectares of African land and other valuable ecosystems couched in the carbon demands and needs of developed economies and petroleum-producing states.<sup>57</sup> In its contemporary incarnation, this narrative of open lands emphasizing their underutilization and abundance constitutes the elements of the doctrine of terra nullius, which is now justifying and facilitating non-Africans' claims on African lands.<sup>58</sup> This continues a long legacy of extracting Africa's valuable ecosystems to benefit non-Africans' interests. Emerging evidence demonstrates how the global consulting firm McKinsey is "pushing carbon markets in Africa and processes designed to help governments develop long-term energy plans."<sup>59</sup> McKinsey's business model leverages its unprecedented access "to the highest levels of national governments [, which] helps to 'plug skill and knowledge gaps.'"<sup>60</sup>

52. U.N. Climate Champions, Africa Carbon Markets Initiative Launched to Dramatically Expand Africa's Participation in Voluntary Carbon Market, U.N. Framework Convention on Climate Change (Nov. 8, 2022), <https://climatechampions.unfccc.int/africa-carbon-markets-initiative/> [<https://perma.cc/LQM7-HA6B>].

53. Id. 5 ("ACMI's ambition is for the growth of African voluntary carbon markets to: Produce 300 million carbon credits annually by 2030, and 1.5 billion credits annually by 2050.").

54. See generally Letter from Comm. African Heads of State and Govt. on Climate Change, Chairperson, to President William Ruto, Real Africa Climate Summit 23 (2023), <https://www.realafricaclimatesummit.org/> [<https://perma.cc/32CM-45WY>].

55. David Gelles, Catalyzing Africa's Climate Potential, N.Y. Times (Sept. 7, 2023), <https://www.nytimes.com/2023/09/07/climate/catalyzing-africas-climate-potential.html> [<https://perma.cc/B8WR-NQ9Z>]; see H.E. Hon. William Ruto, President, Remarks on Behalf of Africa Group & Kenya at the 27th Conference of Parties (Nov. 7, 2022) (noting "Africa's vast tracts of land, deep treasures of diverse natural resources, tremendous untapped renewable energy potential, and a youthful, dynamic and skilled workforce constitute the continent's irresistible credentials.").

56. See Gelles, *supra* note 55.

57. Alexandra Benjamin, Control of Africa's Forests Must Not be Sold to Carbon Offset Companies, Mongabay (Nov. 17, 2023), <https://news.mongabay.com/2023/11/control-of-africas-forests-must-not-be-sold-to-carbon-offset-companies-commentary/> [<https://perma.cc/HYA6-NTL6>] (describing the 7.5 million hectares given over for producing carbon credits in Zimbabwe, and the 8 million hectares of land Blue Carbon is assuming control over in Tanzania and Zambia).

58. For a superbly important analysis analogous to my argument, see Charles Geisler, New Terra Nullius Narratives and the Gentrification of Africa's "Empty Lands," 18 J. World Sys. Rsch. 15–29 (2012) (exploring terra nullius with regard to Global North demands for African food, animal feed, and biofuels); id. at 20 (arguing that "[t]he water resources in Africa are underutilized. There's land available for production. Wouldn't it be a grand irony if the continent now receiving emergency food aid becomes a continent that is helping to feed the world?").

59. Chloé Farand, Leaks Reveal How McKinsey Drives African Climate Agenda, Climate Home News (Nov. 27, 2023, 10:21 AM), <https://www.climatechangenews.com/2023/11/27/leaks-reveal-how-mckinsey-drives-african-climate-agenda/> [<https://perma.cc/H32R-H5KK>].

60. Id. 13 ("McKinsey encountered hardly any competition and enjoyed 'almost unrestricted access to the highest levels of the UN and national governments.'").



It operates in “secrecy and with almost no public accountability.”<sup>61</sup> As evidence of its influence, McKinsey’s client list also includes the largest fossil fuel interests in the world.<sup>62</sup> McKinsey was also a central behind-the-scenes player not only in organizing but also in shaping the agendas of both the September 2023 Africa Climate Summit in Nairobi, where the firm pushed its carbon markets agenda,<sup>63</sup> and COP28 in Dubai, where it pushed “fossil fuel interests in its advisor role to [the COP28 host country,] the UAE.”<sup>64</sup>

One COP28 outcome was, therefore, an initiative to build credibility for carbon markets as a solution to the climate crisis, effectively pushing back against criticisms of their ineffectiveness in prior COPs.<sup>65</sup> The Africa Climate Summit gave carbon markets the imprimatur of African governments, and this validation was carried forward to COP28, which largely endorsed finance-focused climate interventions.<sup>66</sup> The carbon offset market in Africa is therefore tainted by big-business interests and the neoliberal imprint of the Bretton Woods institutions. These two realities “could end up greenwashing oil and gas operations without providing any meaningful emission reductions.”<sup>67</sup> Even worse, the displacement of forest communities and Indigenous peoples is a major consequence of these carbon offset schemes. Forest communities and Indigenous peoples lose doubly. They lose their homes and livelihoods and receive none of the resources that these schemes pay to African governments. These adverse consequences stand in sharp contrast to the promises these carbon investors make when they announce clinching yet another deal.<sup>68</sup>

61. Id.

62. Id. 23 (“The company’s client list includes some of the world’s biggest fossil fuel companies, including Saudi Aramco, Chevron, ExxonMobil, and Shell . . .”).

63. Id. 26, 28–29 (noting McKinsey worked with the Rockefeller Foundation to establish the Global Energy Alliance for People and Planet (GEAPP), which works to accelerate the energy transition and whose Vice-President for Africa, Joseph Nganga, was appointed by President William Ruto of Kenya to be the Chief Executive Officer of the inaugural Africa Climate Summit); id. 26 (“to hire McKinsey to develop the African Carbon Initiative for US\$1.5 million as part of its grant to the organisation.”); id. 34 (“McKinsey’s rapidly growing climate work in Africa has been facilitated by a close relationship between its African Sustainability Practice lead Adam Kendall and SEforAll’s CEO Ogunbiyi, who also serves as a UN special representative for sustainable energy.”); see also AFP, *Leaks Show McKinsey Pushed Fossil Fuel Agenda at Ruto Climate Meeting in Nairobi*, *Nation* (Dec. 15, 2023), <https://nation.africa/kenya/health/mckinsey-fossil-fuel-agenda-ruto-climate-meeting-4465558> [<https://perma.cc/JYZ3-9VDF>]. In April 2024, the *Financial Times* reported that advisers to former US climate envoy John Kerry lobbied the Science-Based Targets Initiative (SBTi), which is regarded as the world’s top corporate climate targets group—including on emissions reductions—to “reverse its opposition to the use of controversial carbon credits.”; see Kenza Bryan, *US Pushed Behind Scenes for Approval of Corporate Carbon Offset Plan*, *FIN. TIMES* (Apr. 20, 2024), <https://www.ft.com/content/b07edf26-1eae-425a-b284-5d48bcbee7e8> [<https://perma.cc/K4MQ-6UCC>].

64. See Farand, *supra* note 59, at 8; see, e.g., Press Release, *Itochu Announces Agreement with Koko Networks, a Climate Technology Company Operating in Kenya, to Support the Generation of High Quality Carbon Credits*, *Itochu* (July 28, 2023), [https://www.itochu.co.jp/en/news/press/2023/230728\\_2.html](https://www.itochu.co.jp/en/news/press/2023/230728_2.html) [<https://perma.cc/PW6Y-LTRX>].

65. Aruna Chandrasekhar et al., *COP28: Key Outcomes Agreed at the UN Climate Talks in Dubai*, *CarbonBrief* (Dec. 13, 2023, 6:53 PM), <https://www.carbonbrief.org/cop28-key-outcomes-agreed-at-the-un-climate-talks-in-dubai/> [<https://perma.cc/Q454-HJ5D>].

66. *COP28: New Deals and Evasive Tactics*, *Economist Impact* (Dec. 18, 2023), <https://impact.economist.com/sustainability/cop28-new-deals-and-evasive-tactics> [<https://perma.cc/G7ZA-U8T9>] (“Mr Al Jaber had sought to make climate finance a key focus of COP28 . . .”).

67. Matteo Civillini, *Meet the Italian Fugitive Advising Emirati Start-up Blue Carbon*, *Climate Home News* (Nov. 23, 2023, 4:32 PM), <https://www.climatechangenews.com/2023/11/23/meet-the-italian-fugitive-advising-emirati-start-up-blue-carbon/> [<https://perma.cc/A5JU-9BS2>]; see, e.g., Patrick Greenfield & Caroline Kimeu, *Shell Signals Retreat from Carbon Offsetting*, *Guardian* (Sept. 8, 2023, 6:12 AM), [https://www.theguardian.com/environment/2023/sep/08/shell-signals-retreat-from-carbon-offsetting?CMP=share\\_btn\\_tw](https://www.theguardian.com/environment/2023/sep/08/shell-signals-retreat-from-carbon-offsetting?CMP=share_btn_tw) [<https://perma.cc/K269-X6UC>].

68. For example, when Blue Carbon signed its deal with Zimbabwe, it noted the following: The project’s blueprint extends beyond the mere realm of environmental betterment, extending its reach to encompass the holistic welfare of local communities. One of the standout features of this collaboration is the establishment of the Community Welfare Programs, where the capital received from carbon credits will be used, among other things, to finance various social projects tailored to uplift the living standards of the communities residing in the project areas. These initiatives will encompass crucial sectors such as healthcare, education, capacity building, the creation of cottage industries, etc. Investments in education will open doors to new opportunities, equipping individuals with essential skills and knowledge to flourish in the changing world. Capacity building programs will be designed to empower the local workforce, enabling them to actively participate in carbon projects and benefit from sustainable livelihoods. Lesia Buinoza, *Blue Carbon Inks MoU with Zimbabwe to Develop Carbon Projects on 7.5M Ha of Forest Under Art. 6.2 of Paris Agreement*, *Newsfile Corp.* (Aug. 14, 2023), <https://www.newsfilecorp.com/release/177071/Blue-Carbon-Inks-MoU-with-Zimbabwe-to-Develop-Carbon-Projects-on-7.5M-Ha-of-Forest-Under-Art.-6.2-of-Paris-Agreement> [<https://perma.cc/H9UH-T7WQ>]. For an excellent analysis of the often-problematic promises of conservation of African biodiversity resources, see generally John Mbaria & Mordecai Ogada, *The Big Conservation Lie: The Untold Story of Wildlife Conservation in Kenya* (2016).



# The Forest Carbon Partnership





## a. The Forest Carbon Partnership

Another initiative that targets African, Asian, Latin American, and Caribbean forests for decarbonization is the World Bank's Forest Carbon Partnership Facility (FCPF).<sup>69</sup> The FCPF is designed to reduce emissions from deforestation, enhance forest carbon stock conservation, and ensure the sustainable management of forests in developing countries. It is also known as "Reducing emissions from deforestation and forest degradation" (REDD+).<sup>70</sup> The FCPF has set up funds to pay off countries that adopt programs to meet the foregoing objectives.<sup>71</sup> Millions of acres of forests in the Global South are under the FCPF's auspices.<sup>72</sup> The implementation of these programs has been accompanied by criticism about their failure to ensure the participation and consultation of Indigenous and forest-dependent communities.<sup>73</sup> In addition, projects are not required to comply with binding obligations concerning land and these communities' other rights.<sup>74</sup> The overall assessments of FCPF projects suggest that they have been ineffective in addressing the causes of deforestation and climate change and have instead subjected the land of forest communities to outsiders' external monitoring and control.<sup>75</sup> Therefore, like carbon offset projects, the World Bank's FCPF project enables private enterprises to continue to pollute while negatively impacting those who live in and depend on forests.<sup>76</sup> Assessments of projects such as the FCPF and other types of carbon offsets lead to the oversupply of emissions credits that analysts argue undermines funding for forest protection and Indigenous and forest communities' rights.<sup>77</sup>

69. See generally About the FCPF, Forest Carbon Partnership Facility [FCPF], <https://www.forestcarbonpartnership.org/> [<https://perma.cc/P242-8EN3>].
70. See generally id. (REDD is Reducing Emissions from Deforestation and Forest Degradation).
71. See Ghana Begins Receiving Payments for Reducing Carbon Emissions in Forest Landscapes, World Bank (Jan. 24, 2023), [https://www.worldbank.org/en/news/press-release/2023/01/24/ghana-begins-receiving-payments-for-reducing-carbon-emissions-in-forest-landscapes?cid=afw\\_tt\\_wbafrica\\_en\\_ext](https://www.worldbank.org/en/news/press-release/2023/01/24/ghana-begins-receiving-payments-for-reducing-carbon-emissions-in-forest-landscapes?cid=afw_tt_wbafrica_en_ext) [<https://perma.cc/U4UQ-LPWP>]; see Mozambique Becomes First Country to Receive Emission Reductions Payments from Forest Carbon Partnership Facility, World Bank (Oct. 15, 2023), <https://www.worldbank.org/en/news/press-release/2021/10/15/mozambique-becomes-first-country-to-receive-emission-reductions-payments-from-forest-carbon-partnership-facility#:~:text=Maputo%2C%20October%2015%2C%202021%2E%80%94,degradation%2E%80%94commonly%20known%20as%20REDD%2B> [<https://perma.cc/FMJ6-WNRQ>].
72. See generally FCPF Country Participants, <https://www.forestcarbonpartnership.org/countries> [<https://perma.cc/LKZ4-YCMM>].
73. See generally E-mail from various civil society organizations to the World Bank, Re: World Bank Safeguards Review – Phase 3 Consultations (May 22, 2015), [https://www.forestpeoples.org/sites/default/files/news/2015/05/05222015%20Letter%20re%20Phase%203%20consultations\\_FINAL%20updated%20signatures.pdf](https://www.forestpeoples.org/sites/default/files/news/2015/05/05222015%20Letter%20re%20Phase%203%20consultations_FINAL%20updated%20signatures.pdf) [<https://perma.cc/Q8C7-NY5B>].
74. See Kate Dooley et al., Smoke and Mirrors: A Critical Assessment of the Forest Carbon Partnership Facility, FERN & Forest Peoples Programme (Feb. 2011), <https://www.forestpeoples.org/sites/fpp/files/publication/2011/03/smokeandmirrorsinternet.pdf> [<https://perma.cc/A3LN-HYUK>].
75. See REDD+: A Scheme Rotten at the Core, World Rainforest Movement (Sept. 30, 2019), <https://www.wrm.org.uy/bulletin-articles/redd-a-scheme-rotten-at-the-core> [<https://perma.cc/HN5Y-N8UB>].
76. See id.
77. See New Analysis Finds Leading Global Carbon Offset Schemes are Failing Forests, People, and the Climate, Rainforest Found. UK (July 26, 2023), <https://www.rainforestfoundationuk.org/new-analysis-finds-leading-global-carbon-offset-schemes-are-failing-forests-people-and-the-climate/> [<https://perma.cc/CDX9-L38A>]; see also Lisa Song & Jaime Yaya Barry, Out of Balance, ProPublica (June 15, 2023, 5:00 AM), <https://www.propublica.org/article/biodiversity-offsets-guinea-world-bank-group-chimpanzees-outbreak> [<https://perma.cc/MUB9-GZGC>]; see Lisa Song & James Temple, A Nonprofit Promised to Preserve Wildlife. Then It Made Millions Claiming It Could Cut Down Trees, ProPublica (May 10, 2021, 5:00 AM), <https://www.propublica.org/article/a-nonprofit-promised-to-preserve-wildlife-then-it-made-millions-claiming-it-could-cut-down-trees> [<https://perma.cc/9YZG-7NKJ>]; see also Lisa Song, The Word Nobody Wanted to Say at the UN Climate Action Summit, ProPublica (Oct. 1, 2019, 1:50 PM), <https://www.propublica.org/article/offsets-un-climate-action-summit-the-word-nobody-wanted-to-say> [<https://perma.cc/2XHD-L5WT>].
- Similarly, the European Union's EU-FLEGT (Forest Law Enforcement Governance and Trade Action Plan) programs have been shown to undermine forest protection and the rights of Indigenous communities. See generally Fredy D. Polo Villanueva et al., Effects of EU Illegal Logging Policy on Timber-Supplying Countries: A Systematic Review, 1 J. Env't Mgmt. 327 (2023); see also Elke Verhaeghe, Recognition on Whose Terms? Indigenous Justice Struggles in the EU-Honduran FLEGT Voluntary Partnership Agreement, 141 Geoforum 4 (2023).





# The Bridgetown Initiative



## b. The Bridgetown Initiative

One final example of an initiative under consideration for filling the financing gap to address the climate crisis is Barbados Prime Minister Mia Mottley's Bridgetown Initiative.<sup>78</sup> In its current iteration, the Bridgetown Initiative proceeds from the view that the Global South's climate finance needs require US\$2 trillion a year.<sup>79</sup> This is now embodied in what is being called a Just Green Transition, Financing Investment Trust (JGT-FIT), to be run by the World Bank and IMF, working closely with the global financial industry.<sup>80</sup> Indonesia's recently released strategic blueprint for decarbonization (the Just Transition Plan)—cowritten with the Boston Consulting Group, the Climate Policy Initiative, the Global Green Growth Institute, and the Tony Blair Institute for Global Change—is another example of a channel through which countries in the Global South are being committed to offering ecosystem resources as investible projects for private capital.<sup>81</sup> In effect, the same creditors at the very center of the current global debt crisis are now offering new loans as solutions to the climate crisis.<sup>82</sup> As alluded to earlier, this could include instruments such as debt-for-nature swaps (DNSs), which so far have been shown to benefit creditors and do little or nothing to achieve a green transition or address the adverse consequences of climate change.<sup>83</sup> In fact, the same personalities and institutions that have been at the very center of the sovereign debt market in the last few decades are now at the forefront of innovations in the climate finance industry.<sup>84</sup> The finance industry is leveraging its capital to extract disproportionate profits by determining what instruments will be used in these financing deals that give the industry (which favors the use of bonds) the power to price the biodiversity assets of these indebted and climate-vulnerable countries.<sup>85</sup> Large-scale transformational projects to address debt-financed climate risks are often contracted without public disclosure.<sup>86</sup> This, in turn, continues the historical entrenchment and subordination of Global South economies to the current global debt and financial architecture, which is already woefully imbalanced against them.<sup>87</sup>

78. For an excellent analysis, see Chioneso Samantha Kanoyangwa, *Fiscal Sustainability and Sovereign Risk: The Feasibility of the Bridgetown Initiative for Africa, in Transforming Climate Finance in an Era of Sovereign Debt Distress 75* (James Thuo Gathii et al. eds., 2023).

79. See Michael Sheldrick & Global Citizen, *How To "Free The Funds" For Development: The Trillion Dollar Question Leaders Should Be Grappling With*, *Forbes* (Oct. 20, 2022, 1:34 PM), <https://www.forbes.com/sites/globalcitizen/2022/10/20/how-to-free-the-funds-for-development-the-trillion-dollar-question-leaders-should-be-grappling-with/?sh=343f52f36ce1> [<https://perma.cc/S2EC-TJYL>].

80. See Feminist Action Nexus, *Unpacking the Bridgetown Initiative: A Systemic Feminist Analysis & Critique* (June 2023), [https://wedo.org/wp-content/uploads/2023/06/ActionNexus\\_BridgetownBrief\\_EN\\_June2023.pdf](https://wedo.org/wp-content/uploads/2023/06/ActionNexus_BridgetownBrief_EN_June2023.pdf) [<https://perma.cc/H734-9T6G>].

81. See Daniela Gabor (@DanielaGabor), X (Nov. 13, 2023, 3:05 PM), <https://twitter.com/danielagabor/status/1724171689452306507?s=43> [<https://perma.cc/E5ZF-6JMR>]; see also Climate Investment Funds Endorses New Blueprints Unlocking \$1 Billion for Just Coal Transitions in South Africa and Indonesia, *Climate Investment Funds* (Oct. 27, 2022), <https://www.cif.org/news/climate-investment-funds-endorses-new-blueprints-unlocking-1-billion-just-coal-transitions> [<https://perma.cc/CV98-TGN8>] (noting that Climate Investment Funds, one of the world's largest multilateral funds for climate action in developing countries, had in 2022 endorsed an allocation of US\$1 billion for a just transition from coal to clean power in Indonesia and South Africa. Climate Investment Funds raises capital from multilateral development banks and the private sector); see also Joint Statement by the Government of the Republic of Indonesia and International Partners Group members on the Indonesia Just Energy Transition Plan, *Eur. Comm'n* (Nov. 15, 2022), [https://ec.europa.eu/commission/presscorner/detail/en/statement\\_22\\_6892](https://ec.europa.eu/commission/presscorner/detail/en/statement_22_6892) [<https://perma.cc/PR5F-TKLC>].

82. See Iolanda Fresnillo, *Miracle or Mirage: Are Debt Swaps Really a Silver Bullet?*, *Eurodad* (Dec. 4, 2023), [https://www.eurodad.org/miracle\\_or\\_mirage?utm\\_campaign=debt\\_swaps\\_report\\_out&utm\\_medium=email&utm\\_source=eurodad](https://www.eurodad.org/miracle_or_mirage?utm_campaign=debt_swaps_report_out&utm_medium=email&utm_source=eurodad) [<https://perma.cc/33CN-MU76>].

83. See generally John Antonio Brinceño & Jennifer Morris, *The Debt-for-Nature Lifeline*, *Nature Conservancy* (June 22, 2023), <https://www.nature.org/en-us/what-we-do/our-insights/perspectives/debt-for-nature-lifeline/> [<https://perma.cc/4LNL-3EDH>].

84. For example, Arend Kulenkampff, who was part of the sovereign advisory team at Citigroup and before that at BFA Global and Sovereign Ratings at Fitch Ratings, is currently the Director of the Nature Finance-convended Sustainability-linked Sovereign Debt Hub. See Arend Kulenkampff, *Sustainability-linked Sovereign Debt Hub*, <https://www.ssdh.net/secretariat/arend-kulenkampff> [<https://perma.cc/73RM-4Z9E>].

85. For a good example of how the US financial industry has done this within the US renewable energy market for the last couple of decades, see Sarah Knuth, *Rentiers of the Low-Carbon Economy? Renewable Energy's Extractive Fiscal Geographies*, 55 *Env't & Plan. A: Econ. & Space* 1548, 1559, 1560 (2021). For pushback against this type of commodifying nature in the United Kingdom, see generally Frederic Hache & Clive L. Spash, *Nature, Life & Relations – 'Optimised': A Policy Brief on the Dasgupta Review* (Apr. 2021), <https://greenfinanceobservatory.org/wp-content/uploads/2021/05/Nature-Life-relations-finales.pdf> [<https://perma.cc/PD83-5R42>].

86. See Olabisi D. Akinkugbe & Morris Kingsley Odeh, *Debt-for-Climate Swaps and Illicit Financial Flows: A Call for Caution in Designing Climate Finance Infrastructures*, *Afronomicslaw.org* (Dec. 1, 2023), <https://www.afronomicslaw.org/category/analysis/debt-climate-swaps-and-illicit-financial-flows-call-caution-designing-climate#:~:text=The%20terms%20of%20any%20debt,review%20the%20relevant%20transaction%20documents> [<https://perma.cc/QJE2-JCL9>].

87. See *How to Reform the Global Debt and Financial Architecture* (James Thuo Gathii ed. 2023); see also E.A. Morgan & Kristie Petrou, *Climate Justice Through Climate Finance? Lessons from Oceania*, 2023 *NPJ Climate action* 2, 24 (2023), <https://doi.org/10.1038/s44168-023-00061-6> [<https://perma.cc/9AQR-9599>] (arguing how carbon finance rules are determined by Western rule-makers consistently with their cultural norms and world views, which sit in strong tension with Pacific understandings of kin and connection).



# Critically Appraising Carbon Offset Projects





## C. Critically Appraising Carbon Offset Projects

Carbon offsets, the FCPF, and the huge variety of initiatives, such as those mentioned above, are examples of the many financial instruments that now dominate the climate solutions industry. The current global push for the financial industry to play a more significant role in funding climate action is backed by calls for more de-risking, including the removal of barriers to business to attract private capital.<sup>88</sup> In this context, de-risking involves subsidizing financiers of debt instruments, such as green bonds that turn public priorities for dealing with the climate crisis into investible assets.<sup>89</sup> As noted above, some of the instruments being used to commodify nature into investible assets include climate bonds; green, blue, and sustainability-linked bonds; and DNSs, which are now driven in large part by a growing global green finance industry.<sup>90</sup> One of the major rationales advanced for justifying these instruments is that they are solutions to the sovereign debt crisis for many heavily indebted countries in the Global South.<sup>91</sup> However, even the International Monetary Fund (IMF) has acknowledged that countries that already bear unsustainable debt “cannot restore solvency unless [a debt-for-nature swap] involves a sufficiently large share of a country’s debt relief,” and by September 2022, “no swap had come close to achieving this.”<sup>92</sup> Indebted sovereigns overwhelmingly use these swaps to secure new money to repay sovereign debt obligations when they fall due instead of defaulting.<sup>93</sup> For an indebted country, another risk of these swaps is that, by merely considering them, credit rating agencies could downgrade these countries, thereby raising borrowing costs—not to mention the potential adverse environmental costs that accompany these transaction types.<sup>94</sup> None of these options that the climate finance industry offers are good solutions to the climate crisis. Indeed, carbon offsets and swaps are unscalable, unjust, and unfixable, and they cannot be viable solutions to the climate crisis.<sup>95</sup> In fact, evidence well beyond the African context shows that carbon offset projects raise serious environmental integrity questions, and their impacts on local communities are almost always negative.<sup>96</sup>

88. See Climate Finance in Africa: African Development Bank Spearheading Innovative Mechanisms and Instruments, Afr. Dev. Bank Grp. (May 16, 2023), <https://www.afdb.org/en/news-and-events/climate-finance-africa-african-development-bank-spearheading-innovative-mechanisms-and-instruments-61174> [<https://perma.cc/J9Z5-S5TD>].

89. See generally Daniela Gabor & Ndongo Samba Sylla, Derisking Developmentalism: A Tale of Green Hydrogen, 54 Dev. & Change 1169 (2023).

90. For an analysis of many of these instruments, see Transforming Climate Finance in an Era of Sovereign Debt Distress (James Thuo Gathii et al. eds., 2023); see Frequently Asked Questions; Standard, Climate Bonds Initiative, <https://www.climatebonds.net/resources/understanding/faqs> [<https://perma.cc/W8GL-69KW>] (Green bonds “refers to bonds marketed by the issuer as ‘green’, where the proceeds are for climate/green assets or projects.”); see Understanding Climate Bonds, Climate Bonds Initiative, <https://www.climatebonds.net/resources/understanding> [<https://perma.cc/5CJE-ENQH>] (climate bonds “are fixed-income financial instruments linked to climate change solutions”); see Green Bond Principles, Int’l Cap. Mkts. Assoc., <https://www.icmagroup.org/sustainable-finance/the-principles-guidelines-and-handbooks/green-bond-principles-gbp/> [<https://perma.cc/JGB8-TGYA>] (green bonds “enable capital-raising investment for new and existing projects with environmental benefits.”). Sustainability-linked bonds “aim to further develop the key role that debt markets can play in funding and encouraging companies that contribute to sustainability.” Sustainability Linked Bonds Principles, Int’l Cap. Mkts. Assoc., <https://www.icmagroup.org/sustainable-finance/the-principles-guidelines-and-handbooks/sustainability-linked-bond-principles-slbp/> [<https://perma.cc/3R3H-J68Q>]; see also IMF, World Bank Begin Push to Swap Debt Relief for Green Projects, China Glob. Television Network (Apr. 11, 2021, 9:23 PM), <https://news.cgtn.com/news/2021-04-11/IMF-World-Bank-begin-push-to-swap-debt-relief-for-green-projects-ZnwVCFjhcI/index.html> [<https://perma.cc/N8TX-GKJW>]. The African Development Bank’s leadership in de-risking in Africa has ignored its adverse implications. See Climate Finance in Africa: African Development Bank Spearheading Innovative Mechanisms and Instruments, Afr. Dev. Bank (May 16, 2023), <https://www.afdb.org/en/news-and-events/climate-finance-africa-african-development-bank-spearheading-innovative-mechanisms-and-instruments-61174#:~:text=Climate%20finance%20in%20Africa%3A%20African%20Development%20Bank%20spearheading%20innovative%20mechanisms%20and%20instruments,-16%20May%202023&text=At%20its%20Annual%20Meetings%20in,climate%20action%20on%20the%20continent> [<https://perma.cc/T854-BPEZ>].

91. See A New Wave of Debt Swaps for Climate or Nature, U.N. Dev. Programme, <https://www.undp.org/future-development/signals-spotlight/new-wave-debt-swaps-climate-or-nature> [<https://perma.cc/2SQ6-LRZ4>] (“More than 50 of the poorest developing countries are in danger of defaulting on their debt and becoming effectively bankrupt, including 28 of the world’s top 50 most climate-vulnerable countries.”).

92. Kristalina Georgieva et al., Swapping Debt for Climate or Nature Pledges Can Help Fund Resilience, Int’l Monetary Fund (Dec. 14, 2022), <https://www.imf.org/en/Blogs/Articles/2022/12/14/swapping-debt-for-climate-or-nature-pledges-can-help-fund-resilience> [<https://perma.cc/9YFE-24ZM>].

93. See Oliver Gordon, Are Debt-for-Climate Swaps Finally Taking Off?, Energy Monitor (Mar. 1, 2023), <https://www.energymonitor.ai/finance/are-debt-for-climate-swaps-finally-taking-off?cf-view> [<https://perma.cc/7HUW-4L3M>] (“Debt-for-climate swaps are not without their problems . . . The instrument still struggles with complex governance and the ability to mobilise enough finance to make a meaningful dent in public debt to liberate funds for mitigation and adaptation.”).

94. See Jeremy Bulow & Kenneth S. Rogoff Rudiger Dornbusch, The Buyback Boondoggle, 2 Brookings Papers Econ. Activity 675, 689, 703–04 (1988).

95. See Chris Lang, Joe Romm: “Carbon Offsets are Unscalable, Unjust, and Unfixable – and a Threat to the Paris Agreement,” REDD-Monitor (June 29, 2023), <https://reddmonitor.substack.com/p/joe-romm-carbon-offsets-are-unscalable> [<https://perma.cc/VHW4-HYY8>].

96. Jonathan Crook, Huge Proposed Project to Prevent Deforestation in Papua New Guinea May Sell Hot Air Credits and Have Mised Locals, Carbon Mkt. Watch (Apr. 1, 2022), <https://carbonmarketwatch.org/2022/04/01/huge-proposed-project-to-prevent-deforestation-in-papua-new-guinea-may-sell-hot-air-credits-and-have-mised-locals/> [<https://perma.cc/6695-93EX>].

## 02 The Climate Crisis is Layered on Top of the Sovereign Debt Crisis

Many Global South countries that are adopting all sorts of climate finance ‘solutions,’ such as those described above, are already heavily in debt.<sup>97</sup> From this vantage point, the imperative to decarbonize their economies or the global commons comes at a time when many of these countries are financially strapped, and they can barely afford decarbonization, investments in climate-resilient infrastructure, or even protection for their biodiverse forests or reefs.<sup>98</sup> The financial reality these countries face is very bleak. For example, to satisfy their creditors, many highly indebted countries of the Global South are spending more than 50% of their budgets to service sovereign debt.<sup>99</sup> Because of the escalating costs of their debt servicing, which constitutes very large percentages of their revenue, these countries must borrow money to address their climate needs and often to service their outstanding debt obligations.<sup>100</sup> In other words, they are too indebted to afford their climate needs.<sup>101</sup> In 2023, African countries spent more on debt servicing than on their populations’ healthcare needs.<sup>102</sup> In another example, the Kenyan government announced that it was unable to pay civil servants, including members of Parliament, their March 2023 salaries because of financial challenges.<sup>103</sup> Kenya’s deputy president announced that the money the Kenya Revenue Authority had collected and set aside to pay salaries during the prior two weeks was instead used to repay government loans that had matured.<sup>104</sup>

97. Ivana Vasic-Lalovic et al., *The Growing Debt Burdens of Global South Countries: Standing in the Way of Climate and Development Goals*, Ctr. Econ. & Pol’y Rsch. (Oct. 12, 2023), <https://cepr.net/report/the-growing-debt-burdens-of-global-south-countries-standing-in-the-way-of-climate-and-development-goals/> [<https://perma.cc/38KY-DXSX>] (“Nearly 80 low- and middle- income countries are considered by international institutions as being in or at risk of debt distress. Three-fourths of these countries have also been flagged by environmental experts as particularly vulnerable to the effects of climate change.”).

98. Kevin Nance, *Financing Conservation: WWF’s Plan to Secure a Permanent Future for Some of the Highest-Priority Protected Areas on Earth*, World Wildlife Found., Spring 2016, <https://www.worldwildlife.org/magazine/issues/spring-2016/articles/financing-conservation> [<https://perma.cc/T7JZ-VPGD>] (“Despite a growing understanding of the power of protected areas to shelter biodiversity; store and sequester greenhouse gases . . . their protection is woefully underfunded. It is estimated that [US]\$2.5 billion is needed annually to properly manage existing protected areas within developing countries, but only [US]\$800 million is available.”).

99. See Bob Libert Muchabaiwa, UNICEF ESARO, *The Looming Debt Crisis in Eastern and Southern Africa: What it Means for Social Sector Investments and Children* (Sept. 2021), <https://www.unicef.org/esa/media/9636/file/UNICEF-ESARO-Looming-Debt-Crisis-2021.pdf> [<https://perma.cc/DP4J-UHJA>].

100. *Developing Countries Paid Record \$443.5 Billion on Public Debt in 2022*, World Bank (Dec. 13, 2023), <https://www.worldbank.org/en/news/press-release/2023/12/13/developing-countries-paid-record-443-5-billion-on-public-debt-in-2022> [<https://perma.cc/6L6P-R4ZM>] (“[D]eveloping countries spent a record \$443.5 billion to service their external public and publicly guaranteed debt in 2022.”).

101. Katie Surma, *How Developing Nations Battered by Climate Change Are Crushed by Debt from International Lenders*, Inside Climate News (Mar. 6, 2024), <https://insideclimatenews.org/news/06032024/developing-nations-battered-by-climate-change-crushed-by-debt/> [<https://perma.cc/WGJ6-J94A>] (stating that the United Nations Independent Expert on Foreign Debt and Other International Financial Obligations in a mission to Barbados in August 2023 noted how a series of hurricanes since 2012 had forced the climate-vulnerable country to take billions of dollars in reconstruction and as a result was unable to spend on programs like food assistance, business loans, and unemployment benefits); see Attiya Waris, *United Nations Independent Expert on Foreign Debt, Preliminary Observations on Other International Financial Obligations and Human Rights During her Visit to the Bahamas*, <https://digitallibrary.un.org/record/4037830?v=pdf> [<https://perma.cc/R4G2-NBKS>].

102. António Guterres, *Africa Spends More on Debt Servicing Than Health Care, Secretary-General Tells High-Level Policy Dialogue, Urging Financing, Investment in Continent*, United Nations (May 24, 2023), <https://press.un.org/en/2023/sgsm21809.doc.htm> [<https://perma.cc/5TSM-Y7L7>].

103. Victor Abuso, *Kenya: Ruto Administration ‘Broke’ and Unable to Pay Civil Servants*, Africa Rep. (Apr. 11, 2023, 09:58 AM), <https://www.theafricareport.com/299465/kenya-ruto-administration-broke-and-unable-to-pay-civil-servants/> [<https://perma.cc/5WM7-KFRG>].

104. Citizen TV Kenya, *The Government is Broke to Pay Salaries and Disburse Money to Counties, DP Gachagua Admits*, YouTube (Apr. 9, 2023), [https://www.youtube.com/watch?v=L\\_UmwFnA0jw](https://www.youtube.com/watch?v=L_UmwFnA0jw) [<https://perma.cc/C9ZP-TJE6>].

In 2022, the IMF noted that thirty-four of fifty-nine “developing economies most vulnerable to climate change are also at a high risk of fiscal crisis.”<sup>105</sup> The constraints that indebted countries of the Global South face are structured within a global financial system set up after World War II when some of these countries were still under colonial rule.<sup>106</sup> Today, this system is controlled by the Global North countries most responsible for the climate crisis.<sup>107</sup> This system now requires Global South countries to decarbonize and develop within the very restrictive confines of this global financial system. In its Trade and Development Report 2023, the United Nations Conference on Trade and Development (UNCTAD) found that “many developing countries face a deepening development crisis as soaring debt levels and higher servicing costs squeeze productive investment in both the public and private sectors. A shortfall of international liquidity has already turned unforeseen shocks into a vicious financial cycle in some countries.”<sup>108</sup> At the same time, many developing countries’ governments are prioritizing interest payments to creditors (multilateral, private, and public/private entities, such as those from China) over funding basic services, such as food, water, and education.<sup>109</sup>

There is a close relationship between rising food and energy prices in these countries and debt repayment.<sup>110</sup> The austerity measures the IMF imposed in thirteen of such Global South countries required them to strip away over US\$5 billion worth of state spending from critical goods and services.<sup>111</sup> Thus, in those countries, for every dollar the IMF encouraged them to spend on public goods, it required them to cut four dollars through austerity. In this sense, addressing the climate crisis within this framework consolidates the role of the Bretton Woods institutions over their economic governance and indeed over the global economy’s governance. This consolidation of the Bretton Woods institutions’ power is further postponing the kind of fundamental reforms of the global debt and financial architecture needed to tame the financial system’s extractive nature that profits from Global South countries’ sovereign debt crises. This global financial system is a colonial legacy established when the most debt- and climate-vulnerable countries were not represented. Africa’s fifty-five countries are represented by a meager 6% of the voting rights at the IMF.<sup>112</sup> The United States has over 17% of the voting rights and therefore has an effective veto over any fundamental IMF reforms.<sup>113</sup> This is because an 85% majority is required to change the quota system on which the IMF governing structure is based.<sup>114</sup>

105 See Georgieva, *supra* note 92.

106. Debt Just., *The Colonial Roots of Global South Debt: A Tale of Plunder, Exploitation and Resistance* 16, <https://debtjustice.org.uk/wp-content/uploads/2023/09/The-colonial-roots-of-global-south-debt.pdf> [<https://perma.cc/YQM8-RFJ3>] (noting that at the end of World War II, the IMF and World Bank were established as leading lending institutions to newly independent countries with colonial legacies).

107. Laura Paddison & Annette Choi, *As Climate Chaos Accelerates, Which Countries Are Polluting the Most?*, CNN (Jan. 2, 2024), <https://www.cnn.com/interactive/2023/12/us/countries-climate-change-emissions-cop28/> [<https://perma.cc/89EE-R7ZB>] (“Most of the world’s planet-heating pollution comes from just a few countries. The top 20 global climate polluters – dominated by China, India, the United States and the European Union – were responsible for 83% of emissions in 2022.”).

108. UNCTAD Calls for a Bold International Economic Agenda to Avert Another Lost Decade for Developing Countries, U.N. Conf. Trade & Dev. (Apr. 12, 2023), <https://unctad.org/news/unctad-calls-bold-international-economic-agenda-avert-another-lost-decade-developing-countries> [<https://perma.cc/VX3J-P8AK>].

109. Julien Chevalier, *The New Creditors of Developing Countries*, GoldBroker (Jan. 30, 2024), <https://goldbroker.com/news/new-creditors-developing-countries-3271> [<https://perma.cc/9AJG-9HSC>].

110. IPES Food, *Breaking the Cycle of Unsustainable Food Systems, Hunger and Debt* (Mar. 2023), <http://www.ipes-food.org/pages/debtfoodcrisis> [<https://perma.cc/4EH9-4AQ5>].

111. *For Every \$1 the IMF Encouraged a Set of Poor Countries to Spend on Public Goods, It has Told Them to Cut Four Times More Through Austerity Measures*, Oxfam Int’l (Apr. 13, 2023), <https://www.oxfam.org/en/press-releases/every-1-imf-encouraged-set-poor-countries-spend-public-goods-it-has-told-them-cut> [<https://perma.cc/6RA8-DSVP>].

112. IMF Executive Directors and Voting Power, Int’l Monetary Fund, <https://www.imf.org/en/About/executive-board/eds-voting-power> [<https://perma.cc/2P2M-BALW>].

113. See Gathii, *supra* note 87, at xi. Similarly, in the AfDB, the shareholding power of non-regional members like the United States, the United Kingdom, Canada, and France is evident in the policies these countries foist on African countries.

114. *Id.*



This means the IMF and the US Treasury as the largest shareholders have disproportionate influence over the IMF's affairs. The Paris Club's permanent members (which together with the IMF control the global sovereign debt system) own the bulk of the special drawing rights (SDRs) in the IMF, and their approval is necessary before the renegotiation of any debts.<sup>115</sup> This means that building climate financing on top of this system simply consolidates and reinforces the current inbuilt inequities in the current global order. While Chinese lending has become a significant share of sovereign lending, alongside lending from the IMF, World Bank, and commercial creditors, this has not changed the system's lopsidedness.<sup>116</sup> This is particularly so because all these lenders, including China, offload their business models' costs and risks to indebted governments and especially to vulnerable citizens who are the least responsible for initially creating those circumstances.<sup>117</sup> A common feature of both the climate and debt crises is that owners of capital from the Global North, the Middle East, and China, in conjunction with Global South elites, extract and exploit Global South countries' valuable ecosystems.<sup>118</sup> Thus, climate finance is becoming very much like sovereign debt's modalities of extraction and exploitation.

My analysis in Part I above demonstrated how the global financial industry has rushed to cash in on the climate crisis. Similarly, the extraction of exorbitant debt repayments from the Global South has long provided owners of capital with another mechanism to extract and exploit indebted countries' valuable ecosystems.<sup>119</sup> The kinds of extensive encroachments on the financial sovereignty of today's most heavily indebted economies are far from new or novel. Jamie Martin's 2022 book, *The Meddlers: Sovereignty, Empire and the Birth of Global Economic Governance*,<sup>120</sup> discusses a series of examples of such extensive encroachments in Europe in the early part of the 20th century. His book shows how the indebtedness of central and eastern European as well as Balkan states in that period involved an extensive legacy of external control of their assets and budgets in exchange for loans.<sup>121</sup> Although the League of Nations was established with limited authority over its members' economies, it created an economic committee to oversee the implementation of its ambiguous mandate to "ensure equitable treatment for commerce" among its members.<sup>122</sup> Subsequently, it established a financial committee.<sup>123</sup> The financial committee "developed powers to reach into the domestic economic realms of a select number of member states."<sup>124</sup> Jamie Martin calls the emergence of the league's powers to reach into some of its members' domestic policies "a truly radical innovation."<sup>125</sup>

115. Id.

116. Anna Gordon, *China Spent Years Lending to Low-Income Countries. That's Becoming a Problem*, Time (July 7, 2023, 4:00 AM), <https://time.com/6292470/sovereign-debt-china-belt-road/> [<https://perma.cc/S7FB-WE4L>] (explaining the rise of China as an international lender).

117. Sebastian Horn et al., *China as an International Lender of Last Resort* (World Bank, Policy Research Working Paper 10380, Mar. 2023), <https://documents1.worldbank.org/curated/en/099450403272313885/pdf/IDU046bbbd8d06cc0045a708397004cbf4d2118e.pdf> [<https://perma.cc/6BYG-WD85>].

118. See generally James Gathii & Olabisi Akinkugbe, *Corporate Structures and the Attribution Dilemma in Multinational Enterprises, in States, Firms and Their Legal Fictions 113* (Melissa J. Durkee ed. 2024) (discussing how post-colonial elites capture rents from their involvement in multinational corporate activity).

119. James Thuo Gathii, *The Color of Sovereign Debt*, YouTube (July 13, 2023), <https://www.youtube.com/watch?v=WXMFQZp-6Ak> [<https://perma.cc/Q5VU-ZUZG>].

120. Jamie Martin, *The Meddlers: Sovereignty, Empire, and the Birth of Global Economic Governance 1* (2022).

121. Id. at 66.

The Covenant of the League of Nations, United Nations, <https://www.ungeneva.org/en/about/league-of-nations/covenant> [<https://perma.cc/3M3M-S6SH>] (Article 23(e) - "will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League.")

122. [2] Main Organs of the League of Nations, United Nations, <https://www.ungeneva.org/en/about/league-of-nations/organs> [<https://perma.cc/4WEP-3W65>] ("In addition, the League of Nations established technical organizations to facilitate international cooperation in specific fields. Among these organizations were the Economic and Financial Organization . . .").

124. Martin, *supra* note 120, at 65.

125. Id. at 66.

That radical innovation laid a template for today's IMF supervisory powers over indebted Global South countries. Yet, the financial subordination of indebted countries by global capital interests predates the league period. Another lineage of the origins of the modern sovereign debt market can be found in US banking legislation at the beginning of the 20th century, which enabled North American financial institutions to consolidate their dominance in sovereign debt financing and the marketing of corporate bonds.<sup>126</sup> American institutions did this initially in the Caribbean and subsequently more broadly around the world.<sup>127</sup>

The imperial internationalization mood prevailed in the United States in the early 20th century, supporting the incorporation of the perpetually indebted Puerto Rico and the Philippines, accompanied by an "aggressive, entrepreneurial, and activist of expansion and growth."<sup>128</sup> This strategy, in turn, buoyed the emergence of a global finance industry in the United States that continues to this day.<sup>129</sup> From its beginnings, the global finance industry was justified by its creators as necessary to civilize the natives.<sup>130</sup> For example, so-called Haitian backwardness and stereotypes were mobilized to legitimize US intervention and the confiscation of Haitian gold to satisfy US creditors.<sup>131</sup> The invocation of Haitian backwardness and inferiority to justify the imposition of draconian policies to collect sovereign debt payments is a familiar experience for Global South countries.<sup>132</sup>

Today, the climate crisis exemplifies how capitalism constantly changes "by commodifying, appropriating and converting nature . . . into commercial assets."<sup>133</sup> In this instance, therefore, capitalism continues its long-standing colonial-era commodification, commercialization, and marketization of these valuable ecosystems. The colonial roots from which these practices stem included the often violent theft of land, labor, and lives of non-European peoples.<sup>134</sup>

In the contemporary period, Global South governments borrow against their natural assets or commercialize them as they have done in the carbon offset market to raise capital under severe conditions of foreign exchange shortages and sovereign indebtedness.<sup>135</sup> At the heart of this logic is Western control over nature in non-Western countries through extractive activities, such as carting away their ecosystems or appropriating their financial value. When a crisis like the climate crisis collides with a global pandemic like COVID-19, the opportunity for those owners of capital is to consolidate their control over it with a view of maximizing their personal and corporate gains.<sup>136</sup>

126. Peter James Hudson, *Bankers and Empire: How Wall Street Colonized the Caribbean* 4–5 (2018).

127. *Id.* at 7–8.

128. *Id.* at 5–6.

129. *Id.* at 7.

130. *See id.* at 16.

131. *Id.* at 15.

132. James Thuo Gathii, *Representations of Africa in Good Governance Discourse: Policing and Containing Dissidence to Neo-Liberalism*, 18 *Third World Legal Stud.* 65, 69–70 (1999).

133. James Thuo Gathii & Ntina Tzouvala, *Racial Capitalism and International Economic Law: Introduction*, 25 *J. Int'l Econ. L.* 199, 200 (2022); *see also* James Gathii & Sergio Puig, *The West and the Unraveling of the Economic World Order: Thoughts from a Global South Perspective*, in *Is the International Legal Order Unraveling?* 62, 64–65 (David Sloss ed., 2022).

134. Gathii & Puig, *supra* note 133.

135. Heidi Blake, *The Great Cash-for-Carbon Hustle*, *New Yorker* (Oct. 16, 2023), <https://www.newyorker.com/magazine/2023/10/23/the-great-cash-for-carbon-hustle> [<https://perma.cc/JHS8-LDGV>].

136. Palesa Shipalana & Cynthia Chigwenya, *S. Afr. Inst. Int'l Affs.*, *The Impact of COVID-19 on Climate Fin. and Green Development* (Apr. 1, 2021), <https://www.jstor.org/stable/resrep32593?seq=1> [<https://perma.cc/RJL9-2AZY>].

This is what is happening as the sovereign debt crisis and the climate crisis occur simultaneously. The discourse of crisis has, in turn, provided additional cover and justification for the owners of capital to extort and blackmail indebted Global South governments.<sup>137</sup> Notably, even conservation charities have joined the carbon offset market<sup>138</sup> in what seems like an eerie continuation of colonial-era conservationists of the discovery period.<sup>139</sup>

One of the central insights that arises from the foregoing—using a racial capitalism lens—is that sovereign debt is deeply implicated in how relationships of expropriation, exploitation, and race/ethnicity hierarchy are produced and the ways that some people subordinate others through processes of economic extraction and wealth acquisition. From this perspective, therefore, the economic subordination that sovereign debt imposes cannot be separated from relations of domination under which people’s opportunities to improve their quality of life are subordinated to those of others, often along the color line.<sup>140</sup> As the example of the Mau Forest illustrates, a key assumption of nature’s commodification and appropriation in the climate crisis context<sup>141</sup> is that the Indigenous peoples who have always lived in ecosystems like forests cannot take care of them. By playing on images of inferior peoples who need the modern state and its foreign investors to superintend the agenda of industries (including the fossil fuel industry) over forest conservation, takes priority over Indigenous peoples’ lives and livelihoods and their lands, forests, and resources.<sup>142</sup> This racialization is a key part of how the loan transactions and financial supervisory powers were designed not only in places like the Dominican Republic but also in Africa.<sup>143</sup>

This racialization is not restricted to the so-called Global South; it was projected through Europe’s racist idea of the Congo<sup>144</sup> to Bulgaria, North Macedonia, and other parts of geographic Europe.<sup>145</sup> This is where these discourses of inferiority formalized racially coded and unequal relationships between White capital and the US and European states and creditors, on the one hand, and the former parts of the Ottoman Empire on the other.<sup>146</sup> Hence, a key takeaway here is that we have to recognize that climate change and sovereign debt are a problem of racial injustice, not solely problems of economics, science, or mere inequality.

137. For a similar argument, see Lucí Cavallero & Verónica Gago, *A Feminist Reading of Debt* 33 (2021).
138. Stian Reklef, *Conservation Charity Lines Up Massive Project Pipeline for Biodiversity Market*, Carbon Pulse (June 12, 2023, 6:00 AM), [https://carbon-pulse.com/207297/?utm\\_source=CP+Daily&utm\\_campaign=63d5883b44-CPdaily12062023&utm\\_medium=email&utm\\_term=0\\_a9d8834f72-63d5883b44-110288569](https://carbon-pulse.com/207297/?utm_source=CP+Daily&utm_campaign=63d5883b44-CPdaily12062023&utm_medium=email&utm_term=0_a9d8834f72-63d5883b44-110288569) [https://perma.cc/J2ZX-SGZJ].
139. See Charles Geisler, *New Terra Nullius Narratives and the Gentrification of Africa’s “Empty Lands,”* 18 *J. World-Sys. Rsch.* 15 (2012).
140. See Gathii, *supra* note 132, at 106-08.
141. Chelsea Purvis, *Minority Rts. Grp. Int’l, State of the World’s Minorities and Indigenous Peoples 2013 – Case study: Ogiek in Kenya* (Sept. 24, 2013), <https://www.refworld.org/reference/annualreport/mrgi/2013/en/94837> [https://perma.cc/9AMP-VCEE] (“The Kenyan government has repeatedly and forcibly evicted the Ogiek from their ancestral land in the Mau Forest and around Mount Elgon.”).
142. For an account of racialization in international economic law, see James Thuo Gathii, *Beyond Color-Blind International Economic Law*, 117 *AJIL Unbound* 61, 61 (2023).
143. E. Tendayi Achiume, *Climate Justice Requires Racial Justice*, UCLA L. (Feb. 1, 2023), <https://law.ucla.edu/news/climate-justice-requires-racial-justice> [https://perma.cc/F7GA-PEVC].
144. Climate Justice, *Friends of the Congo*, <https://friendsofthecongo.org/climate-change/> [https://perma.cc/QK43-NZUT] (explaining how Congo has endured environmental racism since colonial rule).
145. Olumide Abimbola et al., *Racism and Climate (In)Justice* 17–18 (Mar. 2021), <https://us.boell.org/sites/default/files/2021-03/FINAL%20-%20Racism%20and%20Climate%20%28In%29Justice%20Framing%20Paper.pdf> [https://perma.cc/S253-DVZC] (describing how Indigenous peoples and other racialized communities are disproportionately impacted by climate change in the Global North and Global South).
146. Gathii, *supra* note 119.



At the heart of initiatives like carbon offsets is the continuation of a long history of exploration, extraction, and exploitation of raw materials or commodities in Global South countries with valuable ecosystems. Besides the demand for forest cover to satisfy the ever-growing market for carbon offsets, there is very high demand outside Africa for critical minerals like cobalt, lithium, and graphite.<sup>147</sup> As Godwin Dzah<sup>148</sup> has very persuasively shown, the richest countries' governments and their multinational corporations want no legal impediments to the exploration, extraction, and exploitation of these minerals in a scramble eerily similar to the so-called discovery period and its aftermath.<sup>149</sup>



147. Godwin Dzah, *Africa and the (New) Green Finance Rush*, in *Transforming Climate Finance in an Era of Sovereign Debt Distress* 199, 200 (James Thuo Gathii et al. eds., 2023).

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149. Dzah, *supra* note 147, at 200.



## 03 Conclusion

This quarterly report has made three claims. First, linking sovereign lending to address the disruptive consequences of climate change is a new and lucrative profit avenue for private lenders. Instead of Global North countries that bear the highest responsibility for the climate crisis, the peoples of the Global South are bearing both the worst consequences of the climate crisis as well as the short end of the stick in terms of offered solutions, such as carbon credits. It is the Global North's abdication of the legal and moral responsibility for the climate crisis that has provided private capital the opportunity to make the climate crisis its newest business opportunity. The climate crisis has therefore created an opportunity for capitalism to yet again reinvent itself in its long-standing agenda of commodifying, commercializing, and marketing nature.<sup>150</sup>

Under this model of addressing the climate crisis, the assumption seems to be that ESG<sup>151</sup>-focused portfolio managers will lead the way in addressing the kinds of massive changes needed to stop global warming; yet, even the most optimistic observers acknowledge that “capitalism won't deliver the energy transition fast enough.”<sup>152</sup> Global North governments have not only declined to accept their legal and moral responsibility for causing the climate crisis but they have also declined to accept their responsibility to provide climate reparations.<sup>153</sup> Further, Global North governments and private creditors have declined to pursue debt cancellations—even in the middle of the COVID-19 pandemic—for the most heavily indebted countries, demonstrating once again that within a capitalist system such obvious solutions are unavailable to the least well-off, especially if they are Brown and Black people from the Global South.<sup>154</sup>

The second claim I made in this quarterly report is that linking sovereign lending to address the adverse consequences of climate change consolidates the Bretton Woods institutions' role in the global economy's governance, as well as these institutions' power over the world's poorest countries. This linkage will further postpone the kind of fundamental reforms of the global debt and financial architecture needed to tame the extractive nature of the global financial system that profits from the sovereign debt crises of indebted countries in the Global South.

150. One strategy used to demonstrate the demand for financing climate needs such as adaption is to emphasize how flows of those finances fall well below what is needed. See U.N. Env't Programme, *Adaptation Gap Report 2022* (Nov. 1, 2022), <https://www.unep.org/resources/adaptation-gap-report-2022> [<https://perma.cc/YJ8D-BPTR>].

151. Environmental, Social, and Governance (ESG) is defined as “a framework that helps stakeholders understand how an organization is managing risks and opportunities related to environmental, social, and governance criteria. ESG takes the holistic view that sustainability extends beyond just environmental issues.” ESG (Environmental, Social, & Governance), Corp. Fin. Inst., <https://corporatefinanceinstitute.com/resources/esg/esg-environmental-social-governance/> [<https://perma.cc/QHD9-AN8A>].

152. Melanie Brusseler (@BrusselerMel), X (June 29, 2023, 6:55 AM), <https://twitter.com/brusselermel/status/1674386075123433473?s=43> [<https://perma.cc/WZC5-55UE>].

153. For an excellent analysis of how slavery, colonialism, and the climate crisis make the case for climate reparations, see Olúfẹmi O. Táíwò, *Reconsidering Reparations* (2022).

154. [Notably, after World War II, Germany had most of its debt wiped out, a fact that led to its impressive economy recovery. See Robin Jaspert et al., *Germany Had Its Debts Written Off. Today, We Should Do the Same for the Global South*, Jacobin (Feb. 27, 2023), <https://jacobin.com/2023/02/germany-debt-cancellation-wwii-global-south-neocolonialism-climate> [<https://perma.cc/3B9U-JH3P>].

Third, the linkage between sovereign lending and climate-induced natural disasters such as floods, droughts, and storms entrenches the global debt and financial architecture's racialized and extractive nature. Climate finance is not only commercializing and commodifying nature and biodiversity; it is also sidelining the importance of tighter environmental regulations while harming and expelling communities that dwell in rich biodiversity regions, like forests, which are being commodified.<sup>155</sup> Climate finance will therefore benefit the owners of capital while harming millions of communities in the Global South that depend on these valuable ecosystems for their livelihoods and survival.<sup>156</sup> From this perspective, then, racial capitalism is a good lens through which to think about this relationship between sovereign debt and climate justice because it helps to illustrate how the linkage between sovereign lending and climate change's disruptive consequences entrenches the global debt and financial architecture's racialized nature. It is through this lens that the systemic and historic oppression of the poor and vulnerable, primarily non-White populations within the global capitalist order of sovereign debt, becomes visible. Racial capitalism connects the present moment to the continuing afterlife of prior moments of subjugation—Indigenous genocide, slavery, and colonialism.

To overcome the limits of carbon offset projects, the countries most responsible for the climate crisis must take responsibility for causing it by providing the necessary finances to the most vulnerable countries. The current solutions, such as carbon offset markets and sovereign loans, must be replaced with better-quality financing, including grants, concessional loans, and debt cancellations. Further, it is important for communities that have entered into extractive relationships, such as those relating to carbon offset projects, to withdraw from them. In Kenya, one conservancy withdrew from the Northern Rangelands Trust, citing lack of transparency in financial matters, abandonment of the quest for sustainability, and interference with community affairs.<sup>157</sup> It is not enough to improve the integrity of carbon offset projects; instead, they must be abandoned as a solution to the climate crisis and their limitations acknowledged and exposed.

Unfortunately, solutions such as benefit sharing, tenure reform, and free, prior, and informed consent only serve to entrench regimes of climate governance that are inimical to the very interests and rights of those they are supposedly designed to help.<sup>158</sup> Ultimately, the communities whose carbon and forests are being extracted must exercise their shared sovereignty over those resources with their respective states, and their states must allow for meaningful exercise of this shared sovereignty.<sup>159</sup> This means abandoning the conversation myths<sup>160</sup> upon which regimes like carbon offset projects are predicated and coming to terms with the origins of the climate crisis and how to resolve it without further burdening those who have contributed the least to creating it.

155. Patrick Greenfield, Revealed: More Than 90% of Rainforest Carbon Offsets by Biggest Certifier are Worthless, Analysis Shows, *Guardian* (Jan. 18, 2023, 09:00 AM), <https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-biggest-provider-worthless-verra-aoe> [<https://perma.cc/HL2P-E8P6>] (noting the forced evictions, residents having their homes being cut down with chainsaws, and tensions with park authorities and police in Peru).

156. Nature Must be Protected from the "Nature Positive Economy" - Open Letter to the WWF, World Economic Forum, Convention on Biological Diversity & European Commission, *Green Fin. Observatory* (Nov. 2022), <https://greenfinanceobservatory.org/wp-content/uploads/2022/11/openletternaturepositive-final-3.pdf> [<https://perma.cc/K9T2-UMMB>].

157. Simon Counsell, Blood Carbon: How a Carbon Offset Scheme Makes Millions from Indigenous land in Northern Kenya," *Survival Int'l* (Mar. 2023), [https://assets.survivalinternational.org/documents/2466/Blood\\_Carbon\\_Report.pdf](https://assets.survivalinternational.org/documents/2466/Blood_Carbon_Report.pdf) [<https://perma.cc/6WC3-LE7B>].

158. Julia Dehm, *Reconsidering REDD+: Authority, Power and Law in the Green Economy* 295–355 (2021).

159. This argument is very persuasively made in Apitha Kodiveri, *Governing Forests* (2024).

160. An excellent account of these myths in one African country is found in John Mbaria & Mordecia Ogada, *The Big Conservation Lie: The Untold Story of Wildlife Conservation in Kenya* (2016).