

FINANCING CLIMATE CHANGE THROUGH A RACIAL CAPITALISM LENS

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ABSTRACT

In this Essay, 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 countries. In return, these Global South countries borrow capital to address the climate crisis and to 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. Further, through transactions such as carbon credits, the global finance industry in conjunction with Global South governments have created a new terra nullius narrative under which the ‘abundant’ and ‘valuable ecosystems’ of the Global South 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 peoples 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 sovereign debt servicing costs now constitutes a very large percentages of the revenues of these governments. In addition, these loans offload the costs and risks of the business model of the global

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finance industry to indebted and climate vulnerable governments and particularly to their citizens who are almost always invariably Black or Brown.

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INTRODUCTION

In November 2023, the Kenyan government evicted the Ogiek—an Indigenous community—from its ancestral land in the Mau Forest—the largest closed canopy forest ecosystem in the country.¹ The forest rangers used axes, hammers, and fire to bring and burn down over four hundred houses belonging to the Ogiek peoples.² The Ogiek are now living in “absolute fear” that the government is set to destroy their community.³ 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.⁴ The court held they had a right to live on

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).

their land and to be consulted if the government decided to undertake any projects in the forest.⁵

The Kenyan government has justified the ongoing evictions as necessary to prevent illegal logging and unlawful encroachment on the forest.⁶ 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.⁷ For government officials, then, the Mau Forest where Indigenous people 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.⁸ The forced eviction of the Ogiek community is just one example of African communities' dispossession of their lands to make way for carbon-credit investors.⁹ These evictions are also further evidence of the commodification and commercialization of nature on the false premise that this 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 the Climate Change (Amendment) Act, 2023.¹⁰ The law, already being lauded as a "bold step towards carbon markets" by industry players,¹¹

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 *The Matter of the African Commission on Human and Peoples' Rights v Peoples' Republic of Kenya*, Application No. 006/2012, Judgment (Reparations), 23 June 2022, the Commission held that the Ogiek peoples 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>].

⁷ *Id.*

⁸ *See id.*

⁹ Rosebell Kagumire, *Carbon Credits are Dispossession African Communities*, NEW INTERNATIONALIST (Nov. 20, 2023), <https://newint.org/story/sustainability/2023/11/23/carbon-credits-are-dispossession-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>].

puts in place a framework for the creation, participation, and regulation of carbon markets in Kenya.¹²

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 Essay is that the carbon-credit market illustrates how 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.¹³ In this case, the asset classes are valuable ecosystems such as forests. These ecosystem system resources are being used to procure new sovereign loans or as collateral against sovereign debt restructurings for unrepayable prior 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 debt¹⁴ and are typically unwilling to participate in debt-restructuring efforts or offer debt relief.¹⁵ It is in this context that African

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/fixed-income/fixed-income-bond-terms/> [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 incentivized 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].

countries are being harangued into issuing climate-related sovereign bonds such as green, blue, sustainable, and sustainability-linked bonds.¹⁶

To elaborate on these themes, this Essay 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, I show how the commodification of nature is further disenfranchising the lives and livelihoods of those who live within or near these biodiversity assets. This part of the Essay also shows the historical continuities of the current moment with other prior moments of racialized extraction.

I. 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.¹⁷ Kenyans widely view the use of 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.¹⁸ 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 emissions reductions in the countries or entities seeking them.¹⁹ Further, they are not a solution to the climate crisis

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-s-sustainable-investment-needs> [https://perma.cc/N4LM-QHCD].

¹⁷ 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 Ogiek Community of the Mau Forest Complex).

¹⁸ 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.’”).

¹⁹ 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

or getting to 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.²⁰ This is because carbon markets work by transferring a carbon emitters' obligation to reduce carbon emissions in exchange for carbon credits.²¹ In effect, a carbon emitter who has the financial wherewithal effectively commodifies its emissions.²² Beyond this moral stigma of commodifying emissions, carbon markets do not have credible, independent third-party verification of emissions reductions.²³ In effect, carbon offset markets merely appear to do something while they do not.²⁴ Some people have called them greenwashing.²⁵ Even more, carbon-offset markets are often regarded as a buyer's licenses to pollute.²⁶ Notably, there is evidence that renewable energy projects such as wind, hydro, or fossil fuel in the United Nations' Clean Development Mechanism would have occurred

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>].

²⁰ 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).

²¹ *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>].

²² *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.”).

²³ Jane E. Obbagg 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 inventorying and reporting GHG emissions are lacking. [A] single, uniform reporting standard may never exist.”).

²⁴ See generally Quinn Curtis et al., *Green Bonds, Empty Promises*, 102 N. CAL. L. REV. 132 (2023).

²⁵ 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://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>].

²⁶ 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 “but what did the atmosphere see? It saw an increase in emissions.” *Id.*

without the revenues from the offset sales.²⁷ So it is not entirely clear that carbon offset projects are driven by the desire to promote renewable energy projects.²⁸

Yet, many governments continue to sign carbon offset agreements.²⁹ 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 percent of the country's surface area.³⁰ Blue Carbon will likely use that forest cover to create and then sell carbon credits.³¹ Those credits could be sold to the United Arab Emirates, which has a huge carbon footprint because of its fossil fuel production.³² Blue Carbon was founded in 2022 and has no track record in forest management or carbon trading or management.³³ It is owned by a prominent UAE sheikh who is also a senior member of Dubai's royal family.³⁴

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

²⁷ 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].

²⁸ 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].

²⁹ 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].

³⁰ *Id.*

³¹ 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].

³² 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.").

³³ 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 31.

³⁴ *Id.*

of 10 percent of its territory to Blue Carbon for a period of thirty years.³⁵ This deal was shrouded in secrecy and under its terms Liberia conceded 6.7 million hectares of its forests. Even more, the deal was widely considered to have been rushed to enable government officials to “pocket the initial upfront payment of \$50 million.”³⁶ Observers have noted that this deal is inconsistent with a 2019 Liberian law that protects Indigenous and forest communities’ customary land rights.³⁷

In a similar transaction, Blue Carbon signed deals with Tanzania, which ceded 8 percent of its land,³⁸ and Zambia, which ceded 10 percent of its land.³⁹ Prior comparable or reforestation deals have been accompanied by violent removal of forest communities from their homes.⁴⁰ 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.⁴¹ As noted above, these certification and audit bodies have been demonstrated to lack credibility.

³⁵ 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].

³⁶ *Id.*

³⁷ 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://perma.cc/9MST-L8QG].

³⁸ *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://gulfnnews.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].

³⁹ *Blue Carbon and Government Zambia Sign MoU to Unlock the Potential of Carbon Removal Projects*, GULF NEWS (Feb. 8, 2023, 2:04 PM), <https://gulfnnews.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].

⁴⁰ *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://perma.cc/LWG6-WVET].

⁴¹ 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://perma.cc/98VF-EAY3].

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”⁴²—is very attractive to fossil fuel-producing states and entities that are high in carbon emissions.⁴³ African states’ forest cover underwrites these offsets, often at the expense of Indigenous and forest communities’ rights.⁴⁴ 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 degrees Celsius, which requires carbon dioxide emissions to become net zero.⁴⁵

As indicated above, the carbon-credit market is a fast-growing, multibillion-dollar industry. For example, the United Nations’ Clean Development Mechanism, launched in the mid-2000s, exploded to \$2 billion in 2021.⁴⁶ 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 \$50 billion as soon as 2030 and grow one hundred-fold by 2050.”⁴⁷

To further leverage this market, a new Africa Carbon Markets Initiative (ACMI) was launched at the 27th Conference of Parties of the United Nations Climate Change Conference (COP27) in November

⁴² U.S. GOV’T ACCOUNTABILITY OFF., GAO-11-345, CLIMATE CHANGE ISSUES: OPTIONS FOR ADDRESSING CHALLENGES TO CARBON OFFSET QUALITY 1 (2011).

⁴³ 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>].

⁴⁴ 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-sucere-romero-indigenous-lands-carbon-credits> [<https://perma.cc/P4AK-5AQT>].

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

⁴⁶ See ROMM, *supra* note 20.

⁴⁷ 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>].

2022.⁴⁸ ACMI's goal is to expand Africa's participation in carbon credits so that it reaches 1.5 billion annual credits by 2050.⁴⁹ 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, that reflect the interests of developed economies and powerful corporate interests.⁵⁰ 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 worst consequences of the climate crisis.

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."⁵¹ What I want to emphasize here is that this new *terra nullius* narrative or trope is being advanced to legitimize using Africa's resources.⁵² This narrative easily lines up with the nineteenth-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

⁴⁸ 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].

⁴⁹ *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.").

⁵⁰ *See generally* Letter from Comm. African Heads of State and Govts. on Climate Change, Chairperson, to President William Ruto, Real Africa Climate Summit 23 (2023), <https://www.realafricaclimatesummit.org/> [https://perma.cc/32CM-45WY].

⁵¹ 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.").

⁵² *See* Gelles, *supra* note 51.

needs of developed economies and petroleum-producing states.⁵³ In its contemporary incarnation, this narrative of open lands emphasizing their underutilization and abundance constitute the elements of the doctrine of *terra nullius* now justifying and facilitating non-Africans' claims on African lands.⁵⁴ This continues a long legacy of extraction of Africa's valuable ecosystems to benefit interests of non-Africans.

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."⁵⁵ McKinsey's business model leverages its unprecedented access "to the highest levels of national governments helps to 'plug skill and knowledge gaps.'"⁵⁶ It operates in "secrecy and with almost no public accountability."⁵⁷ As evidence of its influence, McKinsey's client list also includes the largest fossil fuel interests in the world.⁵⁸ It was also a central behind-the-scenes player in not only organizing but also shaping the agendas of both the September 2023 Africa Climate Summit in Nairobi, where it pushed its carbon

⁵³ 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).

⁵⁴ 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?").

⁵⁵ 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>].

⁵⁶ *Id.* ¶ 13 ("McKinsey encountered hardly any competition and enjoyed 'almost unrestricted access to the highest levels of the UN and national governments.'").

⁵⁷ *Id.*

⁵⁸ *Id.* ¶ 23 ("The company's client list includes some of the world's biggest fossil fuel companies, including Saudi Aramco, Chevron, ExxonMobil, and Shell . . .").

markets agenda,⁵⁹ and COP28 in Dubai, where it pushed “fossil fuel interests in its advisor role to [COP28 host country.] the UAE.”⁶⁰

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.⁶¹ The African 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.⁶² 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.”⁶³ Even worse, the displacement of forest communities and Indigenous peoples is a major

⁵⁹ *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 \$ 1.5 million as part of its grant to the organization.”); *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-b284-5d48bebee7e8> [<https://perma.cc/D7E2-3YC6>].

⁶⁰ See Farand, *supra* note 55, ¶ 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 (Jul. 28, 2023), https://www.itochu.co.jp/en/news/press/2023/230728_2.html [<https://perma.cc/PW6Y-LTRX>].

⁶¹ 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>].

⁶² *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 has sought to make climate finance a key focus of COP28 . . .”).

⁶³ 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://perma.cc/K269-X6UC>].

consequence of these carbon offset schemes. Forest communities and Indigenous peoples lose doubly. They lose their homes and livelihoods and get 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.⁶⁴

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 (FCPF).⁶⁵ 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+).⁶⁶ FCPF has set up funds to pay off countries that adopt programs to meet the foregoing objectives.⁶⁷ Millions of acres of forests in

⁶⁴ For example, when Blue Carbon signed its deal with Zimbabwe, it noted that:

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).

⁶⁵ See generally *About the FCPF*, FOREST CARBON P'SHIP FACILITY [FCPF], <https://www.forest-carbonpartnership.org/> [https://perma.cc/P242-8EN3].

⁶⁶ See generally *id.* (REDD is Reducing Emissions from Deforestation and Forest Degradation).

⁶⁷ 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://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->

the Global South are under the FCPF.⁶⁸ The implementation of these programs have been accompanied by criticism about their failure to ensure the participation and consultation of Indigenous and forest-dependent communities.⁶⁹ In addition, projects are not required to comply with binding obligations with respect to land and other rights of these communities.⁷⁰ The overall assessments of FCPF projects suggests that they have been ineffective in addressing the causes of deforestation and climate change and have instead subjected the land of forest communities to external monitoring and control by outsiders.⁷¹ Therefore, like carbon offset projects, the World Bank's FCPF project enables private enterprises to continue to pollute while having negative consequences for those who live in and depend on forests.⁷² Assessments of projects such as the FCPF and other types of carbon offsets leads to the oversupply of emissions credits that analysts argue undermines funding for forest protection and the rights of indigenous and forest communities.⁷³

from-forest-carbon-partnership-facility#:~:text=Maputo%2C%20October%2015%2C%202021%E2%80%94,degradation%E2%80%94commonly%20known%20as%20REDD%2B [https://perma.cc/FMJ6-WNRQ].

⁶⁸ See generally *FCPF Country Participants*, <https://www.forestcarbonpartnership.org/countries> [https://perma.cc/LKZ4-YCMM].

⁶⁹ 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://perma.cc/Q8C7-NY5B].

⁷⁰ 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].

⁷¹ 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].

⁷² See *id.*

⁷³ 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

B. THE BRIDGETOWN INITIATIVE

One final example of an initiative being considered to fill the financing gap to address the climate crisis is Barbados Prime Minister Mia Mottley's Bridgetown Initiative.⁷⁴ In its current iteration, the Bridgetown Initiative proceeds from the view that the climate finance needs of the Global South require \$2 trillion a year.⁷⁵ This is now embodied in what is being called a Just Green Transition, Financing Investment Trust, or a JGT-FIT, to be run by the World Bank and IMF working closely with the global financial industry.⁷⁶ 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 how countries in the Global South are being committed to offer ecosystem resources as investible projects for private capital.⁷⁷

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).

⁷⁴ 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).

⁷⁵ 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>].

⁷⁶ See FEMINIST ACTION NEXUS, UNPACKING THE BRIDGETOWN INITIATIVE: A SYSTEMIC FEMINIST ANALYSIS & CRITIQUE (June 2023), https://wedo.org/wp-content/uploads/2023/06/Action-Nexus_BridgetownBrief_EN_June2023.pdf [<https://perma.cc/H734-9T6G>].

⁷⁷ 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 \$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://perma.cc/PR5F-TKLC>].

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.⁷⁸ As alluded to earlier, this could include instruments such as debt-for-nature swaps, which, so far, have been shown to benefit creditors and do little or nothing in achieving a green transition or addressing the adverse consequences of climate change.⁷⁹ In fact, the same personalities and institutions that are at the very center of the sovereign debt market in the last few decades are now at the forefront of the innovations in the climate finance industry.⁸⁰ The finance industry is leveraging its capital to extract disproportionate profits by determining what instruments will be used in these financing deals—they favor bonds—that give them the power to price the biodiversity assets of these indebted and climate-vulnerable countries.⁸¹ Large-scale transformational projects to address climate risks financed by debt are often contracted without public disclosure.⁸² This in turn continues the historical entrenchment and subordination of economies of the Global South to the current global debt and financial architecture that is already woefully imbalanced against them.⁸³

⁷⁸ See Iolanda Fresnillo, *Miracle or Mirage: Are Debt Swaps Really a Silver Bullet?*, EUROAD (Dec. 4, 2023), https://www.eurodad.org/miracle_or_mirage?utm_campaign=debt_swaps_report_out&utm_medium=email&utm_source=eurodad [https://perma.cc/33CN-MU76].

⁷⁹ 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].

⁸⁰ 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 convened 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].

⁸¹ 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].

⁸² See Olabisi D. Akinkugbe & Morris Kingsley Odeh, *Debt-for-Climate Swaps and Illicit Financial Flows: A Call for Caution in Designing Climate Finance Infrastructures*, AFRONOMICS L. (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].

⁸³ 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).

C. CRITICALLY APPRAISING CARBON OFFSET PROJECTS

Carbon offsets, the FCPF, and the huge variety of initiatives such as the ones 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 derisking, including through removal of barriers to business to attract private capital.⁸⁴ In this context, derisking involves subsidizing financiers of debt instruments such as green bonds that turn public priorities for dealing with the climate crisis into investible assets.⁸⁵ 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 debt-for-nature swaps, which are now driven in large part by a growing global green finance industry.⁸⁶

⁸⁴ 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/J9ZS-S5TD].

⁸⁵ See generally Daniela Gabor & Ndongo Samba Sylla, *Derisking Developmentalism: A Tale of Green Hydrogen*, 54 DEV. & CHANGE 1169 (2023).

⁸⁶ 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-slb/> [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-ZnwVCFJhcl/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,->

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.⁸⁷ 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.”⁸⁸ Indebted sovereigns overwhelmingly use these swaps to get new money to repay sovereign debt obligations when they fall due instead of defaulting.⁸⁹

Another risk of these swaps for an indebted country is that, by merely considering taking them, credit-rating agencies could downgrade them, thereby raising borrowing costs—not to mention the potential adverse environmental costs that accompany these types of transactions.⁹⁰ None of these options offered by the climate finance industry 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.⁹¹ In fact, evidence well beyond the African context shows that carbon offset projects raise serious environmental integrity questions, and their impacts on local communities is almost always negative.⁹²

16%2DMay%2D2023&text=At%20its%20Annual%20Meetings%20in,climate%20action%20on%20the%20continent[https://perma.cc/T854-BPEZ].

⁸⁷ 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.”).

⁸⁸ 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].

⁸⁹ 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.”).

⁹⁰ See Jeremy Bulow & Kenneth S. Rogoff Rudiger Dornbusch, *The Buyback Boondoggle*, 2 BROOKINGS PAPERS ECON. ACTIVITY 675, 689, 703–04 (1988).

⁹¹ 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].

⁹² Jonathan Crook, *Huge Proposed Project to Prevent Deforestation in Papua New Guinea May Sell Hot Air Credits and Have Misled 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-misled-locals/> [https://perma.cc/6695-93EX].

II. THE CLIMATE CRISIS IS LAYERED ON TOP OF THE SOVEREIGN DEBT CRISIS

Many countries in the Global South that are adopting all sorts of climate finance “solutions,” such as the ones described above, are already heavily in debt.⁹³ From this vantage point, the imperative to decarbonize their economies or the global commons comes at a time when many of these economies are financially strapped, such that they can barely afford decarbonization, investments in climate-resilient infrastructure, or even protection for their own biodiverse forests or reefs.⁹⁴

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 percent of their budgets to service sovereign debt.⁹⁵ Because of the escalating costs of their debt servicing, which constitutes very large percentages of their revenues, these countries have to borrow money to address their climate needs and often even to service their outstanding debt obligations.⁹⁶ In other words, they are too indebted to afford their climate needs.⁹⁷

⁹³ 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.”).

⁹⁴ 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 \$2.5 billion is needed annually to properly manage existing protected areas within developing countries, but only \$800 million is available.”).

⁹⁵ 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>].

⁹⁶ *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.”).

⁹⁷ Katie Surma, *How Developing Nations Battered by Climate Change Are Crushed by Debt From International Lenders*, INSIDE CLIMATE NEWS (Mar. 6, 2024), <https://insideclimate-news.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

In 2023, African countries spent more on debt servicing than on their population's healthcare needs.⁹⁸ 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.⁹⁹ Kenya's deputy president announced that the money collected in the prior two weeks by the Kenya Revenue Authority that had been set aside to pay salaries was instead used to repay government loans that had matured.¹⁰⁰ 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."¹⁰¹ The constraints that indebted countries of the Global South face are structured within a global financial system set up after the Second World War when some of these countries were still under colonial rule.¹⁰² Today, this system is controlled by the Global North countries most responsible for the climate crisis.¹⁰³ This system now requires Global South countries to decarbonize and develop within its very restrictive confines.

In its 2023 Trade and Development Report, the UN Conference on Trade and Development (UNCTAD) found that "many developing countries face a deepening development crisis as soaring debt levels and

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).

⁹⁸ 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>].

⁹⁹ 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>].

¹⁰⁰ 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_Um-wFnA0jw [<https://perma.cc/C9ZP-TJE6>].

¹⁰¹ See Georgieva, *supra* note 88.

¹⁰² 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).

¹⁰³ 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.").

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.”¹⁰⁴ 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 of basic services such as food, water, and education.¹⁰⁵ There is a close relationship between rising food and energy prices in these countries and debt repayment.¹⁰⁶ The austerity measures imposed by the IMF in thirteen of such Global South countries required them to strip away over \$5 billion worth of state spending from critical goods and services.¹⁰⁷ 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 governance of the global economy. This consolidation of the power of the Bretton Woods institutions 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 percent of the voting rights at the IMF.¹⁰⁸ The United States has over 17 percent of the voting rights and therefore has an effective veto over any fundamental

¹⁰⁴ 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].

¹⁰⁵ 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].

¹⁰⁶ 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].

¹⁰⁷ *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].

¹⁰⁸ *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].

reforms of the IMF.¹⁰⁹ This is because an 85 percent majority is required to change the quota system on which the IMF governing structure is based.¹¹⁰ This means the IMF and the US Treasury, as the largest shareholders, have disproportionate influence over the affairs of the IMF. The permanent members of the Paris Club (that, together with the IMF, control the global sovereign debt system) own the bulk of the special drawing rights in the IMF, and their approval is necessary before renegotiation of any debts.¹¹¹ This, therefore, 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 lopsidedness of this system.¹¹² This is particularly so because all these lenders, including China, offload the costs and risks of their business model to indebted governments and particularly to vulnerable citizens who are least culpable in creating those circumstances in the first place.¹¹³

A common feature of both the climate and debt crisis is the extraction and exploitation of the valuable ecosystems of countries in the Global South by owners of capital from the Global North, the Middle East, and China in conjunction with elites in the Global South.¹¹⁴ Thus, climate finance is becoming very much like sovereign debt, 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. In a similar way, the extraction of exorbitant debt repayments from the Global South has long provided owners of capital with another mechanism of

¹⁰⁹ See Gathii, *supra* note 83, 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.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² 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).

¹¹³ 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>].

¹¹⁴ 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).

extraction and exploitation of the valuable ecosystems of indebted countries.¹¹⁵

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 book, *The Meddlers: Sovereignty, Empire and the Birth of Global Economic Governance*,¹¹⁶ discusses a series of examples of such extensive encroachments in Europe in the early part of the twentieth 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.¹¹⁷ Although the League of Nations was established with limited authority over its members' economies, it established an economic committee to oversee the implementation of its ambiguous mandate to "ensure equitable treatment for commerce" among its members.¹¹⁸ Subsequently, it established a financial committee.¹¹⁹ The financial committee "developed powers to reach into the domestic economic realms of a select number of member states."¹²⁰ Jamie Martin calls the emergence of the league's powers to reach into the domestic policies of some of its members "a truly radical innovation."¹²¹ That radical innovation laid a template for today's supervisory powers of the IMF over indebted countries of the Global South.

Yet, the financial subordination of indebted countries by interests of global capital predates the league period. Another lineage of the origins of the modern sovereign debt market can be found in the banking legislation in the United States at the beginning of the twentieth century, which enabled North American financial institutions to consolidate their dominance in sovereign debt financing and in the marketing of corporate

¹¹⁵ 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>].

¹¹⁶ JAMIE MARTIN, *THE MEDDLERS: SOVEREIGNTY, EMPIRE, AND THE BIRTH OF GLOBAL ECONOMIC GOVERNANCE* 1 (2022).

¹¹⁷ *Id.* at 66.

¹¹⁸ *The Covenant of the League of Nations*, UNITED NATIONS, <https://www.unge-neva.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.").

¹¹⁹ *Main Organs of the League of Nations*, UNITED NATIONS, <https://www.unge-neva.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 . . .").

¹²⁰ MARTIN, *supra* note 116, at 65.

¹²¹ *Id.* at 66.

bonds.¹²² American institutions did this initially in the Caribbean and subsequently more broadly around the world.¹²³ The imperial internationalization mood prevailed in the early twentieth-century United States, supporting the incorporation of the perpetually indebted Puerto Rico and the Philippines, accompanied by an “aggressive, entrepreneurial, and activist of expansion and growth.”¹²⁴ This strategy in turn buoyed the emergence of a global finance industry in the United States that continues to this day.¹²⁵

From its beginnings, the global finance industry was justified by its creators as necessary to civilize the natives.¹²⁶ For example, so-called Haitian backwardness and stereotypes were mobilized to legitimize US intervention and confiscation of Haitian gold to satisfy US creditors.¹²⁷ The invocation of Haitian backwardness and inferiority to justify imposition of draconian policies to collect sovereign debt payments is a familiar experience for Global South countries.¹²⁸

Today, the climate crisis exemplifies how capitalism constantly changes “by commodifying, appropriating and converting nature . . . into commercial assets.”¹²⁹ In this instance, therefore, capitalism continues its longstanding, 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.¹³⁰ In the contemporary period, governments of the Global South 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 shortage and sovereign indebtedness.¹³¹ At the heart of this logic is Western control over nature in

¹²² PETER JAMES HUDSON, *BANKERS AND EMPIRE: HOW WALL STREET COLONIZED THE CARIBBEAN* 4–5 (2018).

¹²³ *Id.* at 7–8.

¹²⁴ *Id.* at 5–6.

¹²⁵ *Id.* at 7.

¹²⁶ *See id.* at 16.

¹²⁷ *Id.* at 15.

¹²⁸ 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).

¹²⁹ 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).

¹³⁰ Gathii & Puig, *supra* note 129.

¹³¹ 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>].

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 opportunities for those owners of capital is to consolidate their control over it with a view of maximizing their personal and corporate gains.¹³² 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 extortion and blackmail of indebted governments of the Global South by owners of capital.¹³³ Notably, even conservation charities have joined the carbon offset market¹³⁴ in what seems like an eerie continuation of colonial-era conservationists of the discovery period.¹³⁵

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 along race/ethnicity hierarchy are produced and in the ways in which some people subordinate others through processes of economic extraction and wealth acquisition. From this perspective, therefore, the economic subordination imposed by sovereign debt cannot be separated from relations of domination under which the opportunities people have to improve the quality of their life are subordinated to those of others, often along the color line.¹³⁶

A key assumption of the commodification and appropriation of nature in the climate-crisis context, as the example of the Mau Forest illustrates,¹³⁷ is that the Indigenous people who have always lived in ecosystems like forests cannot take care of them. By playing on images of

¹³² 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>].

¹³³ For a similar argument, see LUCÍ CAVALLERO & VERÓNICA GAGO, A FEMINIST READING OF DEBT 33 (2021).

¹³⁴ 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://perma.cc/J2ZX-SGZJ>].

¹³⁵ See Charles Geisler, *New Terra Nullius Narratives and the Gentrification of Africa's "Empty Lands"*, 18 J. WORLD-SYS. RSCH. 15 (2012).

¹³⁶ See Gathii, *supra* note 128, at 106–08.

¹³⁷ 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.ref-world.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.”).

inferior peoples who need the modern state and its foreign investors to superintend over the conservation of forests, the agenda of industries, including the fossil fuel industry, takes priority over the lives and livelihoods of Indigenous peoples over their lands, their forests, and their resources.¹³⁸ This racialization is a key part of how the loan transactions and financial supervisory powers were designed in places not only like the Dominican Republic, but also in Africa.¹³⁹

This racialization is not restricted to the so-called Global South—it was projected through Europe’s racist idea of the Congo¹⁴⁰ to Bulgaria, North Macedonia, and other parts of geographic Europe.¹⁴¹ This is where these discourses of inferiority formalized racially coded and unequal relationships between the White capital and the United States and European states and creditors, on the one hand, and the former parts of the Ottoman Empire, on the other.¹⁴² 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 or of science or of mere inequality.

At the heart of initiatives like carbon offsets is the continuation of a long history of extraction, exploitation, and exploration of raw materials or commodities from 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.¹⁴³ As Godwin Dzah¹⁴⁴ has very

¹³⁸ 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).

¹³⁹ 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>].

¹⁴⁰ *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).

¹⁴¹ 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).

¹⁴² Gathii, *supra* note 115.

¹⁴³ 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).

¹⁴⁴ Godwin Dzah, BA, LLB, QCL, LLM, PhD is an Assistant Professor of at the Faculty of Law, University of Alberta. He holds a BA (Political Science) and an LLB (post-first degree law) from the University of Ghana, a Qualifying Certificate in Law from the Ghana School of Law, a Master of Laws degree from the Harvard Law School, and a doctorate in law from the University of British Columbia. *Godwin Dzah*, UNIV. ALTA. <https://apps.ualberta.ca/directory/person/gdzah> [<https://perma.cc/94EX-G5NW>].

persuasively shown, governments of the richest countries and their multinational corporations want no legal impediments to extraction, exploitation, and exploration of these minerals in a scramble eerily similar to the so-called discovery period and its aftermath.¹⁴⁵

III. CONCLUSION

This Essay has made three claims. First, that linking sovereign lending to address the disruptive consequences of climate change is a new, 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 short end of the stick in solutions being offered, 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.¹⁴⁶ Under this model of addressing the climate crisis, the assumption seems to be that ESG¹⁴⁷-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 market.”¹⁴⁸ Governments of the Global North 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.¹⁴⁹ Further, governments of the Global North and

¹⁴⁵ Dzah, *supra* note 143, at 200.

¹⁴⁶ 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].

¹⁴⁷ 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].

¹⁴⁸ Melanie Brusseler (@BrusselerMel), X (June 29, 2023, 6:55 AM), <https://twitter.com/brusseler-mel/status/1674386075123433473?s=43> [https://perma.cc/WZC5-55UE].

¹⁴⁹ For an excellent analysis of how slavery, colonialism and the climate crisis make the case for climate reparations, see OLUFEMI O. TÁIWÒ, RECONSIDERING REPARATIONS (2022).

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 off, especially if they are Brown and Black people from the Global South.¹⁵⁰

The second claim I made in this Essay is that linking sovereign lending to address the adverse consequences of climate change consolidates the role of the Bretton Woods institutions in the governance of the global economy as well as the power of these institutions over the poorest countries of the world. 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 crisis of indebted countries in the Global South.

Third, the linkage between sovereign lending and climate induced natural disasters such as floods, droughts, and storms entrenches the racialized and extractive nature of the global debt and financial architecture. Climate finance is not only commercializing and commodifying nature and biodiversity, but it is also sidelining the importance of tighter environmental regulations while harming and expelling communities that dwell in rich biodiversity regions, like forests, that are being commodified.¹⁵¹ Climate finance will therefore benefit the owners of capital while harming millions of communities in the Global South who depend on these valuable ecosystems for their livelihoods and survival.¹⁵² From this perspective then, racial capitalism is a good lens to think about this relationship between sovereign debt and climate justice because it helps to illustrate how the linkage between sovereign lending and the disruptive consequences of climate change entrenches the racialized nature of the global debt and financial architecture. It is through this lens that the systemic and historic

¹⁵⁰ Notably, after the Second World War, 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>].

¹⁵¹ 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).

¹⁵² *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>].

oppression of 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, like Indigenous genocide, slavery, and colonialism.