NeF DeF New Frontiers in International Development Finance

Submission of Inputs for an Elements Paper on Financing for Development

Submission by researchers on the New Frontiers in International Development Finance (NeFDeF) project

15 October 2024

We welcome the initiative of the Co-Facilitators of the Outcome Document to various stakeholders including the member states individually or as groups and non-state actors to call for substantive inputs in preparation of the Fourth International Conference on Financing for Development (FfD 4) taking place in Seville, Spain from 30 June – 3 July 2025. We commend the Co-Facilitators of the Conference for providing stakeholders an opportunity to contribute to the preparation of the elements paper that will significantly inform the deliberations of the Conference Preparatory Committee Meeting in New York from 3-6 December 2024 and the contents of the subsequent draft of the Outcome Document of the FfD 4 Conference.

Noting the broader objectives of the FfD 4 that includes assessment of the previous FfD Conferences' Outcome Documents and identifying the impediments to achievement of their objectives global and recommendations thereto, the members of the New Frontiers in Development Finance (NeFDeF) project would like to share their insights drawn from their international research expertise on the legal and policy architecture of broader sustainable development, development and climate finance and the growing trend towards increased private sector engagements with sustainable development objectives.

Our submission focuses specifically on various elements falling in the broader action areas including, domestic and international private business and finance, international development cooperation, international trade as an engine for development and Debt and debt sustainability.

1. Domestic and international private business and finance

The Outcomes Documents of the previous FfD Conferences have emphasized the importance of the private sector in the development and the need to promote private sectors involvement in the development agenda. The Addis Ababa Action Agenda 2015 notes that businesses, investments and innovation are "…major drivers of productivity, inclusive economic growth and job creation" (Para 35). Among the ways of promoting the private sector as a driver of development include, firstly, promoting "an enabling environment" particularly in states considered least developed countries (LDCs) and small and island states (SIS) through legal and regulatory reforms to incentivize private sector. Some of these incentives include tax reliefs, removal of formal restrictions on foreign business operations and export of profits, access in land and natural resource-based investments that often have adverse impacts including arbitrary displacement on the human rights of the local communities. Market-oriented motivations to regulatory reforms risk focusing on the private investors' interests, thus limiting the developing countries'

national policy and legal space in relation to nationally determined priority focus areas in, for example sectoral development and human rights issues.[1]

Secondly, we have been witnessing an increasing shift towards the use of innovative mechanisms and tools to promote private sector involvement in sustainable development. Notably, financial institutions such as multilateral development banks, bilateral development finance institutions and other investors have increasingly employed mechanisms and tools that include public-private partnerships, blended financing and de-risking instruments including loans (concessional and non-concessional), equity, grants and guarantees to attract additional private finance through de-risking and promote domestic and international private business activities including foreign direct investments and infrastructure financing. While these mechanisms and tools are considered innovative in unlocking the private sector financing, there is risk of the impacts of power-imbalance with powerful investors shaping the domestic financial markets and creating potential further indebtedness of already highly indebted countries" and ultimate "(Foreign) capital" domination "in the state–capital relationship."[2]

With the growing trend towards infrastructure financing coupled with green transition initiatives, the wealthy donor countries as groups or individually have developed initiatives geared towards clean energy infrastructure and technologies with private sector actors being at the center of these initiatives. The G7's Partnership for Global Infrastructure and Investment (PGII) (2022) and the European Union's Global Gateway (2021) are examples of initiatives that aims at promoting public and private sector investments in infrastructure development and financing. While the objectives of these initiatives include filling the infrastructure financing gap and ensure "universal access to affordable, reliable modern and sustainable energy services for all by 2030" in line with the Addis Ababa Action Agenda (para. 49), the initial implementation of these initiatives points towards renewed South to North extractivism in investments on critical mineral resources.[3]

We urge the Co-facilitators to emphasize the key role of public financing for developing states in achieving sustainable development and the importance of an internationally enabling environment and to ensure that human rights and environmental considerations form an integral part of private sector investments. Market-based approach prioritizing return on investments without concrete commitments

[1] Gamze Erdem Türkelli and Janet Jebichii Sego, 'European Green Deal, EU's Global Gateway, and Financing for (Un)Just Green Transitions' (2023) 5 <https://www.afronomicslaw.org/category/analysis/european-green-deal-eus-global-gateway-and-financing-unjust-green-transitions> accessed 12 October 2024.

[2] Daniela Gabor and Ndongo Samba Sylla, 'Derisking Developmentalism: A Tale of Green Hydrogen' (2023) 54 Development and Change 1169, 1172–1173 <https://onlinelibrary.wiley.com/doi/10.1111/dech.12779> accessed 12 October 2024.

[3] Alexandra Gerasimcikova and Farwa Sial, 'Who Profits from the Global Gateway? The EU's New Strategy for Development Cooperation' (Eurodad, Counter Balance, and Oxfam 2024) 37 <https://www.eurodad.org/who_profits_from_the_global_gateway_the_eu_s_new_strategy_for_development_cooperation> accessed 11 October 2024; Alexander Dunlap, 'The Structures of Conquest: Debating Extractivism(s), Infrastructures and Environmental Justice for Advancing Post-Development Pathways' [2023] International Development Policy s 3 <http://journals.openedition.org/poldev/5355> accessed 12 October 2024.

to respect human rights of the people and the environmental protections in the host countries needs to be reassessed. We urge the Co-Facilitators to re-calibrate approach taken in relation to private business, investments and development financing, to ensure respect for human rights and the environment in context of the core human rights and environmental law instruments as opposed to voluntary non-binding schemes and the require the private actors to comply with human rights and environmental standards as opposed the permissive language that include providing "…incentives for compliance" (Para 37 Addis Ababa Action Agenda).

2. International development cooperation

a. Use of Public Finance to catalyse, mobilise and de-risk additional private finance

The crucial role of international development cooperation cannot be overemphasized noting the ever-increasing global inequality, the adverse impacts of the climate change, the conflicts and wars around the globe (Chapter IIIC, Financing for Sustainable Development Report 2024). Official Development Assistance (ODA) has been an important source of development aid to the least developed and developing countries for the provision of public goods.[4] Although ODA flows have been increasing, there is notable shortfall on ODA commitments when compared to the United Nations ODA target of 0.7 per cent of gross national income (GNI) by the OECD Development Assistance Committee donor members. Due to increasing demand for development aid, the Addis Ababa Action Agenda called for a shift towards the use of public finance including ODA to catalyse additional finance from both public and private sources through mechanisms including blended finance and de-risking of private investments (para 54).

Overall, ODA aims to promote economic development and welfare of target developing countries in public sectors including health, water, education, housing among others. The shift towards the use of ODA in blended financing and de-risking instruments to attract private sector engagement means that private financing, majorly in form loans and equity becomes a major source of funding for public goods and services in the target countries.[5] Additionally, blending of public and private finance has implications on the regulatory framework whereupon both public and private institutions are subjected to regimes originally designed for commercial and corporate transactions, and public development finance is subjected to private sector regulation with potential negative impacts on transparency and accountability in the use of public funds.[6]

Although the aim of tools like blended finance is to generate additional financing to the LDCs, that has

[4] Gamze Erdem Türkelli, 'Official Development Assistance (ODA), Aid Dynamics and Sustainable Development', *Partnership for the Goals* (Springer 2020) <https://doi.org/10.1007/978-3-319-71067-9_98-1> accessed 11 October 2024.

[5] Celine Tan, 'Private Investments, Public Goods: Regulating Markets for Sustainable Development' (2022) 23 *European Business Organization Law Review* 241, 246 <https://link.springer.com/10.1007/s40804-021-00236-w> accessed 12 October 2024.

[6] ibid 265.

not been the case as limited private finance is invested in the LDCs.[7] The OECD Report of 2020 shows that between 2012 and 2018, USD 13.4 billion of private finance was mobilized in the LDCs, which amount represents only 6% of the total private finance mobilised with guarantees mobilising the highest amount.[8] In 2022 alone, USD 61.5 billion of private finance was mobilized by bilateral and multilateral financing institutions with the larger percentage being mobilized in sectors such as energy and banking and the lowest in social sectors.[9] The low flows of private investments to both to LDCs and the social sectors is because of lack of bankable and commercially viable projects.[10] We welcome the Inter-agency Task Force on Financing for Development's proposal for "a switch from a search for bankability to a search for quality and impact" of projects in LDCs particularly where the public funds are used to mobilizes private sector.[11]

We request that the Co-facilitators consider the evidence of trends of the blended finance flows to social sectors in LDCs. Although the motivation behind these innovative financial instruments is to provide financial additionality, the objective is not being met as private finance has been demonstrated to flow away from where it is most needed. We urge the Co-facilitators to emphasize upscaling of public finance towards the public sector for social sectors such as education, health and water and sanitation. We also submit that international development cooperation should aim at developing local capacity of the public institutions to provide social services instead of a move that seemingly seeks to replace the public sector with private sector actors, creating accountability risks.

b. Climate Finance and debt for nature swaps

Energy transition in developing countries through Just Energy Transition Partnerships (JETPs) is another important frontier within Financing for Development, that attests to the prioritization of private financing through de-risking, more specifically in the climate finance sphere. Currently rolled out in South Africa, Indonesia and Vietnam, our research highlights that the JETP approach relies on voluntary commitments from donor countries to attract foreign investors in the renewable energy sector through incentives, such as guarantees, public-private partnerships (PPPs) and blended finance, while phasing out domestic coal and other fossil fuel production in the host state.[12] There is a risk that ODA will be diverted and re-labeled as 'cllimate finance', which would undermine the principle of 'additionality' of climate finance as

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[7] OECD and United Nations Capital Development Fund, 'Blended Finance in the Least Developed Countries: Supporting a Resilient COVID-19 Recovery' (OECD 2020) 20 <https://www.oecd-ilibrary.org/development/blended-finance-in-the-least-developed-countries_57620d04-en> accessed 12 October 2024.

[8] ibid 2021.

[9] United Nations Department of Economic and Social Affairs, 'Report of the Inter-Agency Task Force on Financing for Development: Financing for Sustainable Development Report 2021' (United Nations 2021) 108 <https://www.un-ilibrary.org/content/books/9789216040031> accessed 12 October 2024.

[10] ibid 108–110.

[11] ibid 110.

[12] Celine Tan, Gamze Erdem Türkelli and Anil Yilmaz-Vastardis, 'Financing Sustainable Just Energy Transitions: Challenges and Ways Forward', T20 Brief Series: T2, 2024 <https://t20brasil.org/media/documentos/arquivos/TF02_ST_01_FINANCING_SUSTAINAB66ccde474f756.pdf> accessed 14 October 2024.

embedded in the UN Framework Convention on Climate Change (UNFCCC) and the Paris Agreement and may negatively affect the mobilization of financial resources in meeting other sustainable development objectives.

We urge the Co-facilitators to put an accent on the legal commitments around climate finance, ensuring that climate finance is guided by the multilaterally-agreed principles of equity and common but differentiated responsibilities and respective capabilities (CBDR-RC), additionality, predictability and country ownership. In addition, climate finance should not divert existing financing from other Sustainable Development Goals (SDGs). Climate change adaptation and mitigation programmes and projects funded by climate finance should be designed and rolled-out in an inclusive and participatory manner taking into account the sustainable development needs and human rights of peoples who ought to be the ultimate beneficiaries of sustainable development.[13]

The climate finance landscape also marks a recent surge of debt swaps through which the savings are repurposed to support SDGs, and more specifically, climate goals. Although such a model aims to create some fiscal space –though often quite limited[14]- among developing countries, the negotiation processes are highly sensitive to financial speculation, undermining the commitment to 'democratic and transparent institutions responsive to the needs of the people.'[15] Likewise, strict conditionalities and financial liabilities that are tied to environmental milestones in exchange for debt reduction endangers national ownership and limits the policy space, particularly in times of loss and damage suffered from extreme weather events.[16] As concluded by, among others, the International Monetary Fund, debt swaps do not represent a solution to the debt crisis among the developing nations so long as they are often unsuccessful lowering debt to GDP ratio to sustainable levels.[17]

3. International trade as an engine for development

a. Regional economic integration and international trade.

Regional integration is recognized as an important initiative to promote free trade and movement of goods across the various regional economic communities. The Addis Ababa Action urges the international community to support initiatives, projects and cooperation frameworks "…that foster regional and subregional integration, with special attention to Africa" (Para 87). States can also conclude trade and

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[13] Ibid.
[14] Marcos Chamon et al., 'An Economic Analysis of Debt-for-Climate Swaps' [2023] IMF Economic Review <https://link.springer.com/10.1057/s41308-023-00202-1> accessed 1 March 2024.
[15] 'Addis Ababa Action Agenda' 10.
[16] Arınç Onat Kılıç, 'Beyond Bluewashing: A Critical Examination of Labeling Blue Bonds' (2024) 163 Marine Policy 106152; Arınç Onat Kılıç, 'Blue Bonds: Shifting the Responsibility Innovatively' (*EADI*, 21 June 2023) <https://www.developmentresearch.eu/?p=1544> accessed 22 June 2023.
[17] Chamon et al. (n 14); Daniel Munevar, 'Making Sense of Belize's Blue Bond Proposal' (*Eurodad*, 4 November 2021) <https://www.eurodad.org/making_sense_of_belizes_blue_bond_proposal> accessed 1 September 2022; Iolanda Fresnillo and Ilaria Crotti, 'Riders on the Storm: How Debt and Climate Change Are Threatening the Future of Small Island Developing States' (Eurodad 2022) <https://www.eurodad.org/debt_in_sids> accessed 21 June 2023.

investment agreements (bilateral and regional) compatible with WTO rules which have a great potential to link the developing countries' enterprises into the global value chains (Para 87).

We submit that although partnerships agreements like Economic Partnership Agreements (EPA) concluded bilaterally or sub-regionally, for example African Growth and Opportunity Act (AGOA) between the United States and some African Countries and the Samoa Agreement between the EU and its Member States with the Organisation of African, Caribbean and Pacific States (OACPS) aim at promoting trade between and among member states involved, such agreements have the potential of slowing down if not hindering regional integration in Africa.[18] We encourage the Co-Facilitators to urge the international community to focus on strengthening and deepening the existing regional integration initiatives led by African states like the African Continental Free Trade Area that seeks to create one African Market.

4. **Debt and debt sustainability-**Unsustainable debts in the least developed and island states

Work by Connely, Patricio Ferreira Lima and Tan underscores that 'the absence of appropriate mechanisms to deal with the burgeoning debt owed by sovereigns to private creditors and what has been classed as 'non-traditional' or non-Paris Club bilateral creditors' is an important legal and regulatory impediment, which creates further difficulties in collective coordinated action in tackling sovereign debt issues as they arise.[19] Consequently, developing countries faced with debt distress encounter difficulties in restructuring their debt using existing frameworks given the 'diversified creditor base'.[20] We urge the Co-Facilitators to draw attention within the FfD 4 of the need for legal and regulatory reforms to enable developing countries to access effective debt restructuring mechanisms that do not create additional long-term financial burdens on countries and that do not undermine the ability of countries facing debt distress to address sustainable development needs of their populations.

In addition, new development and climate finance initiatives such as JETPs are heavily reliant on debt instruments and market-based mechanisms – including loans, guarantees and sovereign bonds – to finance decarbonisation and economic transition plans, with official finance geared towards catalysing commercial sources of financing.[21] Reliance on loans, even official loans on concessional terms, will impact

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[18] Donald Peter Chimanikire, 'EU-Africa and Economic Partnership Agreements (EPAs) – Revisited': (2019) n° 388 L'Europe en Formation 51, 57 <https://www.cairn.info/revue-l-europe-en-formation-2019-1-page-51.htm?ref=doi> accessed 13 October 2024.

[19] Stephen Connely, Karina Patricio Ferreira Lima and Celine Tan, "UK Parliament Responses to Deal with Sovereign Debt Crises: Proposals for Legislative Reform", GLOBE Centre and CBLP Briefing Paper, February 2024; Celine Tan, "Private Investments, Public Goods: Regulating Markets for Sustainable Development", *European Business Organization Law Review*, 23 (1), 2022.

[20] Connely, Patricio Ferreira Lima and Tan.

[21] Celine Tan, Gamze Erdem Türkelli and Anil Yilmaz-Vastardis, 'Financing Sustainable Just Energy Transitions: Challenges and Ways Forward', T20 Brief Series: T2, 2024 <https://t20brasil.org/media/documentos/arquivos/TF02_ST_01_FINANCING_SUSTAINAB66ccde474f756.pdf> accessed 14 October 2024.

on developing countries' fiscal position and debt sustainability while reliance on commercial finance can increase contingent liabilities on the state (for state-guaranteed loans) and expose countries to volatility in international financial markets and legal risks of disorderly sovereign debt defaults in the absence of appropriate mechanism to deal with private creditors.[22]

The ongoing debt crisis and lack of appropriate mechanisms for restructuring thereof also exacerbate the vulnerabilities caused by climate change among the least developed and island nations. Although international environmental law and the sustainable development agenda has recognized the specific circumstances of the LDCs and SIDS in terms of technology transfer and financial assistance, unfulfilled commitments hinder the application of such a principle.[23] The fact that market-based instruments consist of debt-based climate finance raises concerns regarding their potential negative impacts on the progressive realization of economic, social and cultural rights, as well as the SDGs.[24] Indeed, the previous UN Special Rapporteur on human rights and the environment, David R. Boyd, had concluded that 'market-based solutions alone are not an adequate or just solution to the climate finance woes facing SIDS.'[25] As expressed by the Office of the High Commissioner for Human Rights, a human rights-based approach to financing climate change mitigation and adaptation of ocean ecosystems is an obligation rather than an option.[26]

The input is submitted by the following members of the New Frontiers in International Development Finance (NeF DeF) Project:

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[22] Connely, Patricio Ferreira Lima and Tan, "UK Parliament Responses to Deal with Sovereign Debt Crises: Proposals for Legislative Reform".

[23] United Nations Framework Convention on Climate Change, Art. 4(7) (1992), https://unfccc.int/resource/docs/convkp/conveng.pdf (last visited Jun 2, 2023); Convention on Biological Diversity, Art. 20(4), https://www.cbd.int/doc/legal/cbd-en.pdf (last visited Jun 2, 2023); Paris Agreement, Art. 4, https://unfccc.int/sites/default/files/english_paris_agreement.pdf (last visited Jun 2, 2023).

[24] Fresnillo and Crotti (n 17); Kılıç, 'Beyond Bluewashing' (n 16); Kılıç, 'Blue Bonds: Shifting the Responsibility Innovatively' (n 16); Julia Dehm, 'Climate Change, "Slow Violence" and the Indefinite Deferral of Responsibility for "Loss and Damage"' (2020) 29 Griffith Law Review 220.

[25] David R Boyd and Stephanie Keene, 'Mobilizing Trillions for the Global South: The Imperative of Human Rights-Based Climate Finance' (Special Rapporteur on human rights and the environment 2023) 11.

[26] ibid 10.

New Frontiers in International Development Finance (NeF DeF)

The New Frontiers in International Development Finance (NeF DeF) project brings together research and policy thinking on the law, regulation and governance impacts of the shifting landscape of international development finance. The NeF DeF project seeks to engage in an interdisciplinary examination of these changes in international development finance policy and practice, drawing from insights from a range of disciplines including law, politics, economics and finance, sociology and geography. Our focus is to map, assess and critique this evolving architecture and what this means for international development cooperation and global economic governance.

https://warwick.ac.uk/fac/soc/law/research/projects/nefdef/