THE DAMAGED LEGACY OF THE WORLD BANK:

HOSTING THE HOPE OF MILLIONS

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Authors: María Paula Calvo, Angélica Cordero, Marie Fisher
Collaborations: Adrián Martínez,
Editorial: La Ruta del Clima
Graphic Design: María José Roldán, Jennifer Rojas
Pictures: La Ruta del Clima

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Contents

The Damaged Legacy of the World Bank: Hosting the Hope of Millions

1. Introduction

Our societies are experiencing a series of wide-ranging socioeconomic and environmental changes, that exacerbate the erosion of trust, democracy, social cohesion, and justice. International finance, trade, and debt management are now driven by neocolonialist agendas, reshaping the economic map amidst systemic crisis, and resulting in the emergence of excessive inequality.

The global south ecosystemic services are at the brink of collapse and our societies are still burdened by the drain of resources from the global north. Global South countries feel the pressure of multiple environmental crises, neocolonial wars and the slow disappearance of international law protection.

At multilateral spaces, there is a call for a new economic architecture that would respond to the current crises and repurpose old institutions. However, discussions on the economic architecture remain far away from transformative propositions through economic model change, enabling the ghost of the Bretton Woods institutions to reappear with new promises of prosperity. Just as in the past, Bretton Woods acolytes take advantage of the crisis of multilateralism and wars, to place in the center of the discussion international financial institutions, such as World Bank and IMF (International Monetary Fund).

The World Bank´s role in international finance has impacted every home in the global south and it has limited the development path that billions would have been able to enjoy. Debt and neocolonization have been trademarks of this financial assistance, that in many instances has been linked with human rights violations. As systemic crises are on the menu for international financial institutions, the World Bank has expanded its scope of action to address loss and damage by being the host of the Loss and Damage Fund. The Loss and Damage Fund has been constructed as another piece in the international financial architecture, inserted into the World Bank structure, through which provide financial services to vulnerable countries in need.

This article explores the legacy of the World Bank and its impact on the global south, while considering how this financial entity has captured the means to address loss and damage by vulnerable countries. The first section focuses on the creation and legacy of the bank, by analyzing the use of FIFs and debt by the World Bank to intervene in development crises. The third section looks into the human rights controversies that follow the World Bank reputation and possibilities to reform the bank's functioning. Finally, the article examines how the World Banks is absorbing this issue of loss and damage into the scope of its work.

2. The origins of the World Bank Group

In 1944, near the end of World War II representatives of the United Nations hosted a meeting in Bretton Woods, New Hampshire, with the objective of designing a new structure for international economic cooperation. The main purpose of this meeting was the creation of the International Bank for Reconstruction and Development (IBDR), that we now call part of the World Bank Group and the International Monetary Fund.

The IBDR was meant to provide economic aid to the countries affected by the world war in their reconstruction process.[1]

The focus of the world bank from its inception has been post war reconstruction funding, ensuring conditions for investments and providing loans to its member countries. While the International Monetary Fund purpose was focused on promoting cooperation on international monetary problems, trade growth, maintain high levels of employment, exchange stability, establish a multilateral system of payments, make the Fund´s resources available to member countries, and lessen the disequilibrium of international balances of payments of members.[3]

Figure 1 The Mount Washington Hotel in Bretton Woods, New Hampshire..2

1 "Articles of Agreement of the International Bank for Reconstruction and Development" [Artículos del Acuerdo del Banco Internacional de Reconstrucción y Fomento] (Naciones Unidas, 1945), <https://treaties.un.org/doc/Publication/UNTS/Volume%202/v2.pdf> consultado el 2 de abril de 2024, art. 1.

2 "Bretton Woods and the Birth of the World Bank" [Bretton Woods y el nacimiento del Banco Mundial] (Banco Mundial) <https://www.worldbank.org/en/archive/history/exhibits/Bretton-Woods-and-the-Birth-of-the-World-Bank> consultado el 2 de abril de 2024.

3 "Articles of Agreement International Monetary Fund" [Convenio Constitutivo: Fondo Monetario Internacional] (Naciones Unidas, 1946) <https://treaties.un.org/doc/Publication/UNTS/Volume%202/v2.pdf> art. 1.

Representatives of the organizing countries formulated a list of suggestions on how the bank should be constructed, including the solicitation of loans according to local currencies and loans for agricultural development. These recommendations were presented at the Bretton Woods meeting for the review of the committee, which supported most of the suggestions and modified the rest to end up with a final proposal of articles of Agreement. In these agreements the capital of the bank was established as $10.000 million, of which 80% would serve as a guarantee fund.[4] This $10.000 million were divided into 100.000 shares of $100.000 each to be subscribed by member countries [5]

From the start the countries with the majority of shares were in order United States, United Kingdom, China, France and India. The subscription to the capital of the bank were directly related to the voting power each country would have, this meant that for 1947 the United States already possessed 37,2% of the vote. These percentages set the tone for how the power has been divided throughout all these years of the bank functioning.[6] Currently, the United States holds 16.37% of the shares of the World Bank, which means that the US holds 15.49% of the voting power.[7]

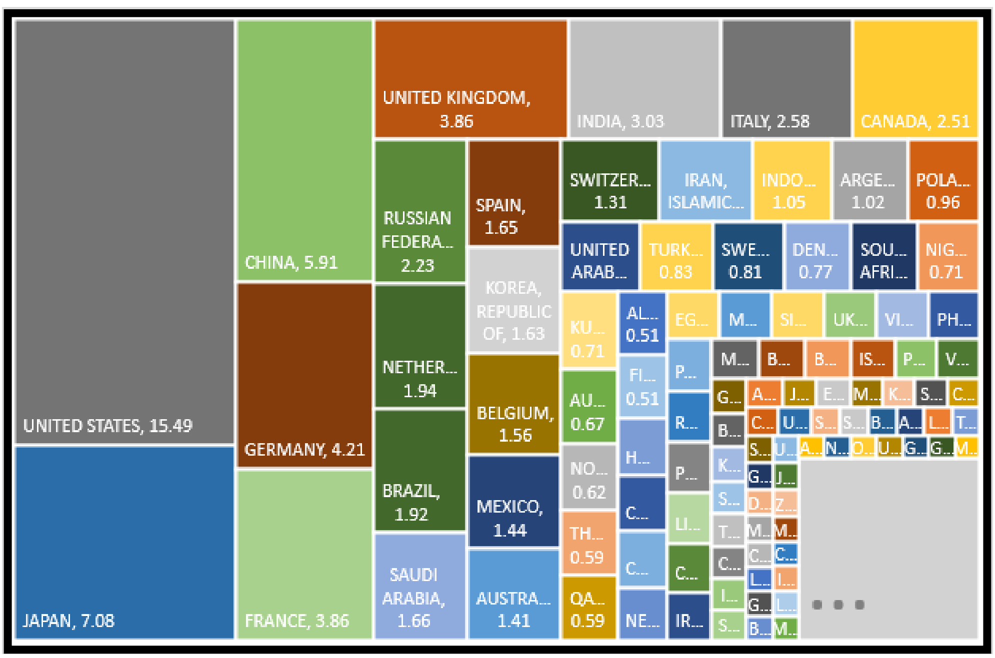

Figure 2 Country Member Voting Power 2024

4 Edward Sagendorph Mason and Robert E Asher, The World Bank since Bretton Woods: The Origins, Policies, Operations, and Impact of the International Bank for Reconstruction and Development and the Other Members of the World Bank Group: The International Finance Corporation, the International Development Association [and] the International Centre for Settlement of Investment Disputes (Brookings Institution 1973).

5 'Articles of Agreement of the International Bank for Reconstruction and Development' (n 1) Art. 2..

6 Mason y Asher (n 4).

7 'International Bank For Reconstruction And Development Subscriptions And Voting Power Of Member Countries' (World Bank 2024)

After the post-war reconstruction, the affected countries needed more funding to work on other purposes, such as buying fuel, raw materials, and others. The World Bank had to find a way of expanding its functions to be able to respond to these needs. These initial loans were only available for governments and public or private institutions with a government guarantee or repayment. Posterior to this era, the World Bank started to provide loans to developing countries for development investments in the construction of infrastructure on their territories, this was accompanied by the mobilization of funds and resources towards the developing of productive capacities.[8]

In 1953, the World Bank began to move from the post-war period to a new international pattern of trade, development, and global cooperation.[9] Following these changes the bank went through a large increase in personnel going from 589 people in the staff in the 1950´s to a total of 2500 employees by mid-1971.[10] This increase has followed up to the actual functioning of the bank that had around 12300 employees by 2020.[11]

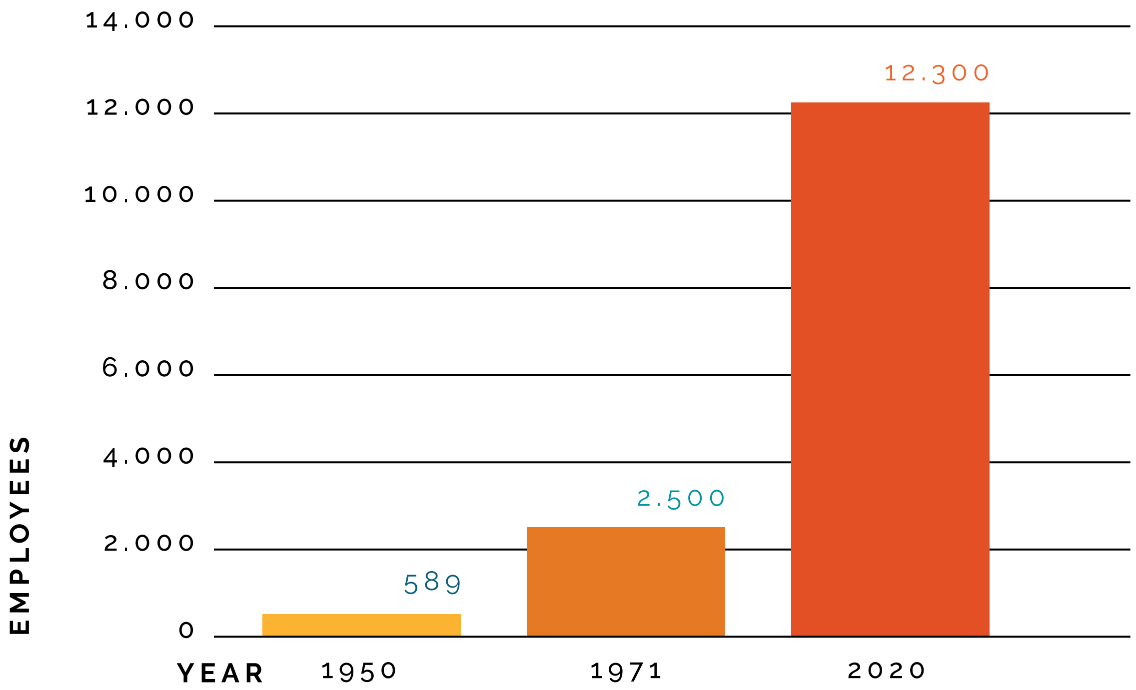

Figure 3 Increase of WB Employees 1950 -2020

8 Mason and Asher (n 4).

9 Adler(1953) The end of the postward period. https://documents.worldbank.org/en/publication/documents-reports/documentdetail/922551468206059249/the-end-of-the-postwar-period

10 ibídem.

11 'Informe Anual 2020 - Banco Mundial' <https://documents1.worldbank.org/curated/en/771501601574548878/pdf/Main-Report.pdf> accessed 17 March 2024.

The increase in employees was correlated to the creation of more constituent institutions, starting with the International Finance Corporation (IFC) which was created in 1956 to enhance the role of private business and capital in the economic development process. It was initially authorized to have a total capital of $100 million.[12] After that, in 1960 an agreement was signed related to the International Development Association (IDA), deciding that the IDA would provide financing for "purposes which in the opinion of the Association are of high developmental priority in the light of the needs of the area or areas concerned and, except in special circumstances, shall be for special projects" (Article V.1(b)). The agreement also stated that the president of the IBDR would also serve as president of IDA[13]. The main objective of this association was to give financial help to those countries that didn't meet the criteria to opt for loans from the IBDR. The eligible countries received credits with more favorable terms than conventional loans offered by the Bank.[14]

After that, in 1966 the International Centre for Settlement of Investment Disputes (ICSID) was created as an attempt to solve discussions or disputes between investors and governments through an impartial international tribunal. It provides settlements of disputes by the strategies of conciliation, mediation, arbitration, or fact-finding.[15]

The last component established in 1988 under the World Bank Group is the Multilateral Investment Guarantee Agency (MIGA), with the objective of creating an investment insurance affiliate with the mission: "to enhance the flow to developing countries of capital and technology for productive purposes under conditions consistent with their developmental needs, policies and objectives, on the basis of fair and stable standards to the treatment of foreign investment." Up until today the objective is the same, aiming to "promote foreign direct investment into developing countries to support economic growth, reduce poverty and improve people's lives".[16]

12 The World Bank Group, 'World Bank Group Timeline' (World Bank) <https://timeline.worldbank.org/en/timeline/home> accessed 17 March 2024.

13 ibid.

14 Mason and Asher (n 4).

15 The World Bank Group, 'International Centre for Settlement of Investment Disputes | ICSID' <https://icsid.worldbank.org/About/ICSID> accessed 17 March 2024.

16 The World Bank Group, 'Multilateral Investment Guarantee Agency | World Bank Group' <https://www.miga.org/history> accessed 17 March 2024.

2.1 World Bank and FIFs

The bank continued to grow and started to focus on different policies and structural changes, like launching the Global Environment Facility (GEF) in 1990 providing grants for activities to protect the global environment. The World Bank also started focusing on the Millennium Development Goals on the IDA14 replenishment of 2006 and included a new position of Special Envoy for Climate Change in 2010 to assure the representation of the World Bank Group in the international discussions around climate change. Also, in 2015 they endorsed the adoption of the Sustainable Development Goals (SDGs) recognizing urgent matters such as poverty reduction, climate change, health, gender, and jobs.[17]

There bank provides IBRD/IDA trust fund grants and trust-funded programs.[18] Recently, it has been reported that the World Bank manages around 364 trust funds, however, back in 2010 there were 1,075 active trust funds.[19]

UNFCCC financial mechanism such as the Global Environment Facility (GEF), the Global Partnership for Education (GPE), the Adaptation Fund (ADF) and the Global Infrastructure Facility (GIF) are subjected to this type of financial intermediation.[20]

The Financial Intermediary Funds (FIFs) which are financial arrangements to "leverage a variety of public and private resources in support of international initiatives-"[21] In summary, a FIF is a type of trust fund where the World Bank provides "tailored administrative, operational, legal and financial services. In a FIF, the Bank serves as limited trustee, and may also serve as secretariat and/or implementing entity."[22]

The model of a FIF can vary from the bank serving as a trustee and implementing or supervising agencies, transfering funds to these agencies upon instructions from the governing body or only serving as a trustee making direct transfers to recipient entities upon instructions from the governing body.[23] On 2023, the World Bank managed as a trustee a total of 45.714 million USD in assets through its FIFs.[24]

17 The World Bank Group, 'World Bank Group Timeline' (n 11).

18 The World Bank's Trust Fund Portfolio and Policy' (World Bank 2010) <https://ieg.worldbankgroup.org/sites/default/files/Data/reports/chapters/tf_chap2.pdf> accessed 3 April 2024.

19 ibid; Anna Gawel // 12 September 2023, 'Devex Newswire: Is the World Bank Going Trust Fund-Crazy?' (Devex, 12 September 2023) <https://www.devex.com/news/sponsored/devex-newswire-is-the-world-bank-going-trust-fund-crazy-106172> accessed 3 April 2024.

20 'A Closer Look into the TC5 Recommendations' (Asociación La Ruta del Clima 2023) <https://larutadelclima.org/wp-content/uploads/2024/03/LDF-TC5-3.pdf> accessed 3 April 2024.

21 'Financial Intermediary Funds (FIFs)' (World Bank) <https://fiftrustee.worldbank.org/en/about/unit/dfi/fiftrustee/overview> accessed 3 April 2024.

22 'Trust Fund Policy' (World Bank 2021) <https://documents1.worldbank.org/curated/en/987411611543659040/pdf/Trust-Fund-Policy.pdf> accessed 3 April 2024.

23 'Financial Intermediary Funds (FIFs)' (n 20).

24'Reporting and Analytics -- Find FIF Data and Reports by Fund' (World Bank) <https://fiftrustee.worldbank.org/en/about/unit/dfi/fiftrustee> accessed 3 April 2024.

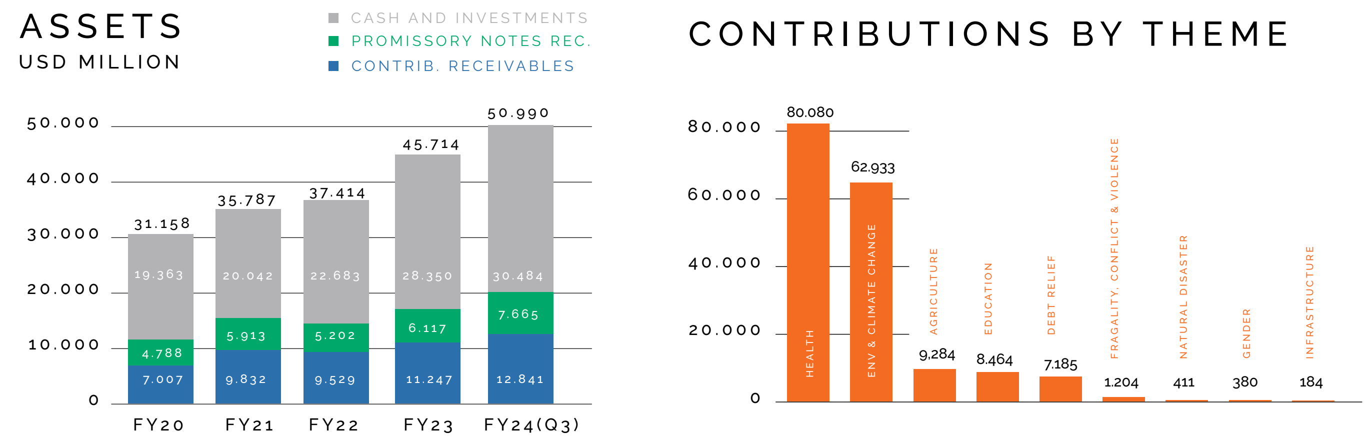

Figure 4 Reporting and Analytics -- Find FIF data and reports by Fund25

According to the World Bank revenues received for trustee services amounted to $14.5 million in 2017.[26]

However, the bank states that fees and charges linked to the operation of a Financial Intermediary Fund "are based on the principle of full cost recovery and are not meant to generate a profit for the World Bank".[27] The cost of managing a FIF include a Trustee Fee of around 0.5% of total contributions to the FIF and other additional costs, Secretariat hosting costs, and Implementing entity fees charges on average 5% of the total FIF financed projects cost for the portion of assistance that is implemented through the World Bank.[28]

Experiences from the Global Partnership for Education (GPE) have reported the high administrative fee for hosting their secretariat at the World Bank. This represented for the GPE a combined cost of 1.5% of annual income for having the World Bank as host of the Secretariat and trustee of the fund.[29]

25 Ibid.

26 "Overview of Financial Intermediary Funds" [Panorama de los fondos de intermediación financiera] (Banco Mundial, 2017), <https://documents1.worldbank.org/curated/en/428511521809720471/683696272_201803110085318/additional/124547-REVISED-PUBLIC-17045-TF-Annual-Report-web-Apr17.pdf> consultado el 3 de abril de 2024.

27 "Note on World Bank FIF Fees and Charges" [Nota sobre las comisiones y gastos de los FIF del Banco Mundial] (2023) <https://unfccc.int/sites/default/files/resource/WB%20FIF%20Fees%20and%20Charges.pdf> consultado el 3 de abril de 2024.

28 ibid.

29 David Archer, 'Avoid Our Mistake: Don't Let World Bank Host Loss and Damage Fund' (Climate Home News, 3 November 2023) <https://www.climatechangenews.com/2023/11/03/avoid-our-mistake-dont-let-world-bank-host-loss-and-damage-fund/> accessed 3 April 2024.

2.2 The Debt & Legacy of the World Bank

After the Second World War, the World Bank was meant to deal with the post war reconstruction. In fact, the bank´s first loan was to France and other loans then followed to European countries involved in the war.[30] However, the Marshall Plan a large-scale foreign aid program in 1947 took over the reconstruction of Europe through a cash transfer of 2% of the US GDP ($13 billion). This cash transfer along with existing European funds allowed the region´s Industrial production **"leapt from just 87 per cent of pre-World War II levels in 1947 to fully 135 per cent in 1951, a 55 per cent jump in just four years"**.[31]

The World Bank had to shift its focus to promote development funding to former colonies. Within the newly emerging international finance landscape, large loans were offered to help those ex-colonial economies grow.[32] Despite the good intentions, the legacy of the World Bank has been characterized by human rights violations, investments in polluting energy projects, leading the developing world into indebtedness and maintaining economic dependencies from the former colonies to the global north.

A general problem of the development export model of the World Bank is that it is deeply rooted in a colonial-capitalist system. This means economic welfare and progress as the supposed drivers of development are yielded by the exploitation of natural resources and cheap labor. Consequently, the modern development ideal endorses the exportation of raw materials (e.g. fossil fuels and metals) as income sources. Nevertheless, value creation continues to concentrate in the Global North. As a result, Global South economies entered international markets in a weaker position.[33] In the context of an enduring unequal economic and ecological exchange, lower- and middle-income countries are caught in a vicious cycle of overdependence on external debt. Oxfam International (2023) highlights that under current terms, entire countries risk bankruptcy since the total of lower and lower-middle-income countries face interest and debt repayments of half a billion dollars every day between now and 2029. [34]

30 'Explore History' (World Bank) <https://www.worldbank.org/en/archive/history> accessed 3 April 2024.

31 Barry Eichengreen, Lessons from the Marshall Plan (World Bank 2010) <http://elibrary.worldbank.org/doi/book/10.1596/27506> accessed 3 April 2024.

32 LLodigiani, I. (2020). From Colonialism to Globalisation: How History Has Shaped Unequal Power Relations Between Post-Colonial Countries. Glocalism: Journal of Culture, Politics and Innovation, 2020(2). https://doi.org/10.12893/gjcpi.2020.2.12

33 Bellamy Foster, J., & Holleman, H. (2014). La teoría del intercambio ecológico desigual: una dialéctica Marx-Odum. In Revista de Estudios Campesinos, (41) 199.

34 Thériault, A., & Grainger, M. (2023, October 9). World's poorest countries to slash public spending by more than $220 billion in face of crushing debt. Oxfam International. https://www.oxfam.org/en/press-releases/worlds-poorest-countries-slash-public-spending-more-220-billion-face-crushing-debt

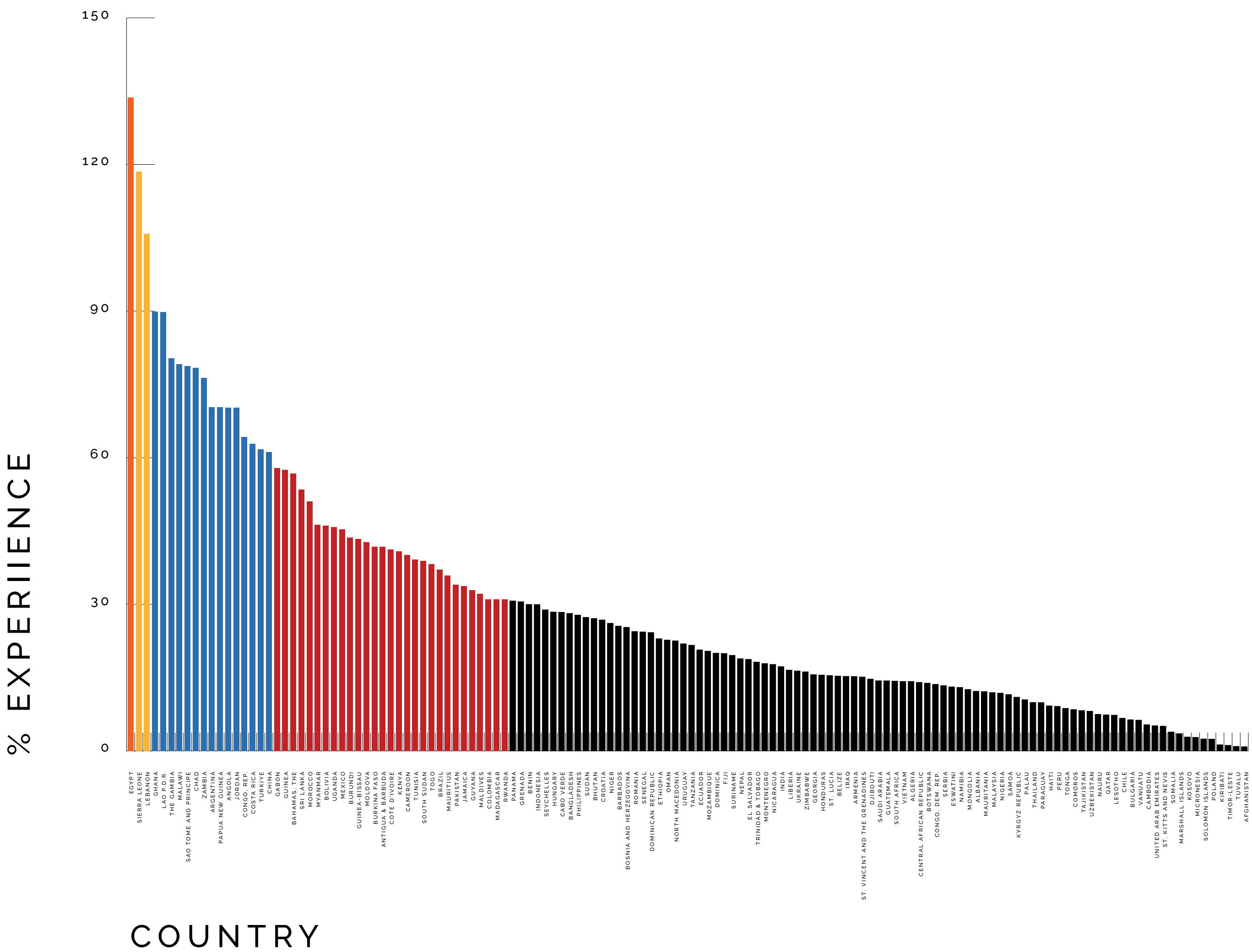

Figure 5 Debt Service as a % of Expenditure in Global South Countries[35]

35 'DEBT SERVICE WATCH DATABASE' (Development Finance International 2023) <https://www.development-finance.org/files/DSW_Data_Summary.pdf> accessed 3 April 2024.

The new president of the World Bank, Ajay Banga, assumed office with the mission "to create a world free from poverty on a livable planet".[36] Nonetheless, the initiatives rolled out by the World Bank to fight poverty, known as structural adjustment programs and their successors, pushed recipient countries to liberalize and privatize their economies.[37] Three of the five branches of the World Bank Group focus on private investment and thereby have helped facilitate corporate power to flourish worldwide.[38] The interventions of the bank are, therefore, another example of the fact that Global South economies have been pushed to neoliberalism by normalizing free-market logic as the only available design of a global economy.[39] Against this background, critics consider the bank as having been very successful – "just not for the poor it's claimed to serve".[40]

36 Kennard, M., & Provost, C. (2023, October 6). World Bank reform will remain elusive until this is understood. Al Jazeera. https://www.aljazeera.com/opinions/2023/10/6/world-bank-reform-will-remain-elusive-until-this-is-understood

37 Ibid.

38 Ibid.

39 Fisher, M. (2019). Realismo capitalista: ¿No hay alternativa?. Caja Negra Editora.

40 Kennard, M., & Provost, C. (2023, October 6). World Bank reform will remain elusive until this is understood. Al Jazeera. https://www.aljazeera.com/opinions/2023/10/6/world-bank-reform-will-remain-elusive-until-this-is-understood

3. Banking on Human Rights

The World Bank has faced several accusations that projects funded by the bank severely violated human rights. In a federal lawsuit filed by Earth Rights International (ERI), Honduran farmers held two World Bank entities, the International Finance Corporation (IFC) and the IFC Asset Management Corporation (IFC-AMC), accountable for abetting gross violations of human rights.[41]

The IFC and the IFC-AMC invested in Honduran palm oil companies, known as Dinant Corporation, which is accused of conducting a bloody land-grabbing campaign in the Bajo Aguán region of Honduras.[42] The plaintiffs call for justice for those farmers who have been terrorized and killed by Dinant and its security forces. Campesinos have reported that this conflict with the World Bank funded corporation has caused the death of more than 100 land defenders.[43]

"These farms are bathed in blood." Said Glenda Chávez, whose father was murdered during the conflicts with Dinant Corporation. The Honduran lawsuit is the first legal case against IFC for aiding and abetting crimes related to a World Bank-funded project and points to the financier's negligence in the past decade.[44] The problem identified by an ERI lawyer is that the IFC didn't consult with local communities and failed to identify the related risks of the investment in Dinant. One farmer in Bajo Aguán described the IFC's impact as follows: "The IFC is not "ending poverty"; it is "ending the lives of the poor.".[45] The World Bank Group entity agreed to a settlement with plaintiffs pending court approval, ending the case alleging that it is liable for financing a notorious palm oil company's violent land-grabbing campaign in Honduras.[46] This settlement included the family members of seven murdered campesino farmers.[47] **"Doe v. IFC shows us that communities have to sue the IFC to get remedy. It doesn't have to be this way,"** said Margaux Day, Policy Director at Accountability Counsel[48]

Even under the name of green projects human rights violations have surfaced. This is the case of the $150 million project, known by the acronym REGROW, were the World Bank indirectly financed human rights violations..[49] In the case of the expansion of Ruaha National Park in Tanzania, the World Band failed to hold authorities accountable for the extrajudicial killings and sexual assaults on Indigenous communities by park rangers.[50] Although the World Bank reassures that it has zero tolerance for violence related to funded projects, its safeguards and compliance mechanisms have failed to prevent harm to local communities.[51]

41 EarthRights International. (n.d.). Honduran Farmers Sue World Bank Group for Human Rights Violations. EarthRights International. Retrieved 5 March 2024, from https://earthrights.org/media_release/honduran-farmers-sue-world-bank-group-for-human-rights-violations/

42 Ibid.

43 'Banco Mundial Patrocinó a Empresa En Guerra Con Campesinos Hondureños' (Banco Mundial patrocinó a empresa en guerra con campesinos hondureños) <https://www.elfaro.net/es/201506/internacionales/17072/Banco-Mundial-patrocin%C3%B3-a-empresa-en-guerra-con-campesinos-hondure%C3%B1os.htm> accessed 3 April 2024.

44 Ibid.

45 Ibid.

46 'Juana Doe et al. v. IFC' (EarthRights International) <https://earthrights.org/case/juana-doe-et-al-v-ifc/> accessed 3 April 2024.

47 'World Bank Group Institution Agrees to Settle Case Alleging It Abetted Murder' (EarthRights International) <https://earthrights.org/media_release/world-bank-group-institution-agrees-to-settle-case-alleging-it-abetted-murder/> accessed 3 April 2024.

48 Ibid.

49 Muhumuza, R. (2023, September 28). Rights watchdog accuses the World Bank of complicity in rights abuses around Tanzanian national park. AP News. https://apnews.com/article/world-bank-tanzania-rights-abuses-national-park-88b64aac6dc64f4f8e3098d020ee094a

50 Ibid.

51 Ibid.

In the context of human rights violations by World Bank-financed projects, further examples that also highlight the bank's controversial involvement in polluting ventures should be presented. In 2008, the World Bank was tasked by the US, UK, Japan, and other industrialized countries to administer $6.7 billion in Climate Investment Funds (CIFs) to empower clean-energy investments to address climate change.[52] At this time, the World Bank was already managing the investment projects of the Global Environmental Facility.[53] Nonetheless, some GEF funds were used to finish carbon-intensive projects.[54] Simultaneously, the bank enabled loans of $6.75 billion for coal plants and associated infrastructure in the Philippines, Chile, Botswana, India, and South Africa.[55]

The financing also profited the 4150-megawatt Tata Mundra coal plant in India and the 4800-megawatt coal plant in South Africa. Besides the tremendous effects of climate change on human rights accelerated by such mega projects, Tata Mundra caused the contamination of drinking and irrigation water impacting the health conditions of local farm communities.[56]

Ironically, clean energy projects were already emerging in India and South Africa at that time.[57]

An assessment of the German NGO Urgewald uncovered that between 2014-2018, the World Bank Group approved over $12 billion for fossil fuel projects compared to a little over $5 billion for renewable energy (excluding large hydropower).[58] These investments in stranded assets represent high opportunity costs.[59]

At the World Bank and IMF Annual Meetings in October 2023, Ajay Banga emphasized "God forbid, coal, in the old days."[60] To accomplish the phase-out of fossil fuels, the World Bank needs to ensure that its financial intermediary clients stop investing in carbon-based energy.[61] Nonetheless, this section highlighted that the World Bank must learn from its mistakes in environmental, social, or anti-corruption areas in a radical transformation.

52 Rich, B. (2019, April 12). The World Bank's Legacy of Environmental Destruction: A Case Study. openDemocracy. https://www.opendemocracy.net/en/oureconomy/the-world-banks-legacy-of-environmental-destruction-a-case-study/

53 Ibid.

54 Ibid.

55 Ibid.

56 Ibid.

57 Ibid.

58 Mainhardt, H. (2019). World Bank Group Financial Flows Undermine the Paris Climate Agreement: The WBG contributes to higher profit margins for oil, gas, and coal. Urgewald e.V.

59 Rich, B. (2019, April 12). The World Bank's Legacy of Environmental Destruction: A Case Study. openDemocracy. https://www.opendemocracy.net/en/oureconomy/the-world-banks-legacy-of-environmental-destruction-a-case-study/

60 Willis, D., & Indri, N. (2023). Coal not yet confined to the "old days" by World Bank Group. Bretton Woods Project.

61 Ibid.

3.1 How to reform the World Bank

The World Bank still performs as a key player in shaping overall development thinking and has the power to encourage governments as well as other development actors to consider implementing human rights-based approaches in their policies and programs.[62] Furthermore, the bank's investment approval often encourages other donors or investors to participate.[63] Regarding the global environmental and social challenges humanity is facing, like climate change and increasing social inequality, large-scale public investment is needed. [64]

In the context of the World Bank legacy, the links to human rights violations and the push to global south into a debt crises, experts doubt that the bank as well as the international finance system in general are fit for purpose.[65] The debt burden that de global south faces constrains its development opportunities and curbs investments in climate action.[66] As an illustration, experts estimate that the debt service on the African continent now exceeds the investment needed to become climate resilient.[67] Consequently, the countries of the Global South lack the financial flexibility or fiscal space to cope with climate change.[68]

The United Nations Conference on Trade and Development (UNCTAD) report on "Tackling debt and climate challenges in tandem: A policy agenda" underlines the need to reform the global debt architecture, especially in the context of climate change causing loss and damage that once again add more pressure on restricted government budgets that at the same time should enable mitigation and adaptation finance.[69]

The report proposes a restructuring program to consider the exceptional challenges imposed by climate shocks in the international financial system. These recommendations include a multilateral legal framework for sovereign debt restructuring and relief, inter alia, proposing temporary stillstands to allow debtor countries to meet their social and human rights obligations after a climate disaster.[70]

Moreover, the report calls on developed countries to help close the development finance gap, especially by boosting adaptation finance and considering the Multi-Vulnerability Index as a criterion for concessional lending..[71] As a "key-standard-setter in many areas[72], there are growing calls that the World Bank must overcome its politics oriented

62 Alston, P. (2019). The World Bank as a Human Rights-Free Zone. In F. Lafontaine & F. Larocque (Eds.), Doing Peace the Rights Way: Essays in International Law and Relations in Honour of Louise Arbour (pp. 375–400). Intersentia. https://doi.org/10.1017/9781780688367.018

63 Ibid.

64 Ghosh, J. (2024, January 29). Can the IMF and the World Bank really be changed? [IPS Journal]. https://www.ips-journal.eu/topics/economy-and-ecology/can-the-imf-and-the-world-bank-really-be-changed-7277/

65 Ibid.

66 UNCTAD. (2023, March 1). Global debt and climate crises are intertwined: Here's how to tackle both. https://unctad.org/news/global-debt-and-climate-crises-are-intertwined-heres-how-tackle-both

67 Patrick, S. (2023, October 26). The World Bank Eyes an Overhaul Amid the Climate Crisis. Carnegie Endowment for International Peace. https://carnegieendowment.org/2023/10/26/world-bank-eyes-overhaul-amid-climate-crisis-pub-90855

68 Ibid.

69 UNCTAD. (2023, March 1). Global debt and climate crises are intertwined: Here's how to tackle both. https://unctad.org/news/global-debt-and-climate-crises-are-intertwined-heres-how-tackle-both

70 Ibid.

71 Ibid.

72 Alston, P. (2019). The World Bank as a Human Rights-Free Zone. In F. Lafontaine & F. Larocque (Eds.), Doing Peace the Rights Way: Essays in International Law and Relations in Honour of Louise Arbour (pp. 375–400). Intersentia. https://doi.org/10.1017/9781780688367.018

towards fiscal discipline'[73] to effectively mobilize resources to respond to climate change and the Sustainable Development Goals.[74]

The new president of the World Bank Ajay Banga is answering those calls by presenting his vision of "create[ing] a world free of poverty on a livable planet"[75] The underlying mission is to make the World Bank a bigger and better bank.

Part of that transformation is the launch of a set of Global Challenge Programs in the form of grants and concessional financing for scalable and replicable interventions that address climate change or global public goods.[76] Critical voices on the planned reformation program allude to the fact that local communities still face the risk of projects violating their human rights if the transformation is limited to increasing the financing volume and accelerating the financial disbursement.[77]

It is key to not only make the World Bank a bigger bank but rather focus on transforming the institution into a better bank by strengthening transparency and accountability to local communities.[78] Urgewald developed seven concrete recommendations for the bank's transformation: (1) addressing one's own mistakes, (2) incorporating the Paris Agreement and its 1.5-degree target, (3) a complete exit from financing fossil fuels, (4) increasing transparency and accountability through audits, (5) data collection and reporting on the dependence of fossil fuels by donor countries, (6) involving civil society in the reform process, and (7) applying gender just and feminist policies.[79]

In conclusion, Ghosh (2024) proposes a holistic approach to the reformation of the World Bank that addresses the underlying economic model.[80] Financing decisions are supposed to diverge from a profit-maximizing logic and rather be guided by demand-side factors such as the impact of specific policies on social and economic rights and climate change. **"For too long, both institutions [World Bank and IMF] have operated within a narrow and excessively market-oriented economic framework"**[81] that failed to address the needs of the developing world and address cross-cutting global challenges.

On a structural level, Ghosh (2024) proposes to design more democratic, open, and inclusive processes to designate leadership.

73 Ghosh, J. (2024, January 29). Can the IMF and the World Bank really be changed? [IPS Journal]. https://www.ips-journal.eu/topics/economy-and-ecology/can-the-imf-and-the-world-bank-really-be-changed-7277/

74 Kennard, M., & Provost, C. (2023, October 6). World Bank reform will remain elusive until this is understood. Al Jazeera. https://www.aljazeera.com/opinions/2023/10/6/world-bank-reform-will-remain-elusive-until-this-is-understood

75 Patrick, S. (2023, October 26). The World Bank Eyes an Overhaul Amid the Climate Crisis. Carnegie Endowment for International Peace. https://carnegieendowment.org/2023/10/26/world-bank-eyes-overhaul-amid-climate-crisis-pub-90855

76 Ibid.

77 Koczy, U., & Schäfer, D. (2023b). Enttäuschende Jahrestagung: Größere Bank statt bessere Bank [Urgewald e.V.]. https://www.urgewald.org/weltbank-jahrestagung-marrakesch

78 Ibid.

79 Koczy, U., & Schäfer, D. (2023a). Die Reform der Weltbank: Eine letzte Chance? Urgewald e.V. https://www.urgewald.org/reform-weltbank-letzte-chance

80 Ghosh, J. (2024, January 29). Can the IMF and the World Bank really be changed? [IPS Journal]. https://www.ips-journal.eu/topics/economy-and-ecology/can-the-imf-and-the-world-bank-really-be-changed-7277/

81 Ibid.

This is also reflected in one of the urgent changes needed to update these institutions which is to ensure more representation from global-majority countries on executive boards.[82] "The 'gentlemen's conventions' on the leadership of these institutions – an American at the head of the World Bank, a European at the head of the IMF – can no longer be justified at all." [83]

These fundamental modifications depend on the collective political will of the Bank's Board members.[84] However, the institution must assume responsibility for its negligence in the past and shift its attention first to the quality rather than to the quantity of lending.[85]

82 Ibid.

83 Ibid.

84 Rich, B. (2019, 12 de abril). The World Bank's Legacy of Environmental Destruction: A Case Study [El legado del Banco Mundial en la destrucción del medio ambiente: un estudio de caso]. openDemocracy. https://www.opendemocracy.net/en/oureconomy/the-world-banks-legacy-of-environmental-destruction-a-case-study

85 Ibid.

4. The Loss and Damage Fund & the World Bank

An example of how these structures remain unresponsive to needs is the discussion of the newly created Loss and Damage Fund (LDF). At the UNFCCC COP28 in Dubai, developing and developed countries grappled with the issue of locating a new Loss and Damage Fund (LDF) as a stand-alone institution or hosted by the World Bank.

The final text concludes as a non-negotiable text in which developing countries pushed for recognition of the historical financial responsibility of developed countries, while the latter remained in voluntary contributions and managed to keep the LDF under Article 51 and hosted by the World Bank despite the global south' concerns about the lack of commitment to a meaningful scale of the Fund and the World Bank.

4.1 Loss and Damage & Legal Obligations

The demand to address Loss and Damage is pursued based on the right to access justice due the legal obligations to repair loss and damage and prioritizing human dignity over greed and death. Principle 21 of the Charter of the United Nations obliges States to ensure that activities under their jurisdiction do not harm the environment of other States.[86] This principle has been reiterated by the International Court of Justice.[87] [88]

Countries in the Global North have exceeded their share of the carbon budget by 92 percent.[89] However, climate change disproportionately harms the countries and communities that have contributed the least to the climate crisis. As climate mitigation falls short of ambitious measures and average temperatures rise, loss and damage are expected to multiply. This leads to projections that emphasize that an annual sum of $400 billion will be needed to deal with damage and loss.[90] As a result, the countries of the North have destroyed the environment of other states, but also denied the right to development.

The small number of countries that make up the Global North have caused damage and should take responsibility for the negative externalities of the economic model that provided them with so much financial wealth. The countries of the Global North concentrate 69% of the private wealth and 74% of the wealth of the world's billionaires.[91] The North can afford to finance life and an equitable future while respecting law and justice.

Article 8 of the Paris Agreement recognizes the importance of addressing climate change-related damage and loss resulting from direct or indirect human activity. This article highlights the need for climate reparations and the legitimacy of the political and legal claim around the right to justice for loss and damage. It is a principle of international law, and even a general conception of law, "that any breach of an international obligation which has caused injury entails a duty to make adequate reparation".[92]

The Inter-American Court of Human Rights has mentioned that under the United Nations Framework Convention on Climate Change (UNFCCC) there are obligations of States for the damage caused by climate change.[93] And it is also the obligation of the parties to the UNFCCC and related instruments to implement mechanisms for restitution to the State prior to the damage, restoration, compensation or payment of an economic penalty, satisfaction, guarantees of non-repetition, attention to the affected persons and financial instruments to support reparation. Despite this, this article is subject to a COP decision that excludes liability

86 ONU, "Declaración de la Conferencia de las Naciones Unidas sobre el Medio Humano, A/CONF.48/14/Rev.1" (ONU, 1973) <https://undocs.org/A/CONF.48/14/Rev.1>

87 Roberto F Caldas y otros, "OPINIÓN CONSULTIVA OC-23/17 DE 15 DE NOVIEMBRE DE 2017 SOLICITADA POR LA REPÚBLICA DE COLOMBIA MEDIO AMBIENTE Y DERECHOS HUMANOS" Corte Interamericana de Derechos Humanos para 97 <https://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf

88 CIJ, Caso de las plantas de celulosa en el río Uruguay (Argentina c. Uruguay). Sentencia de 20 de abril de 2010, párr. 101 y 204, y CIJ, Ciertas actividades realizadas por Nicaragua en la zona fronteriza (Costa Rica c. Nicaragua), Construcción de una carretera en Costa Rica a lo largo del Río San Juan (Nicaragua c. Costa Rica). Sentencia de 16 de diciembre de 2015, párr. 104 y 118.

89 Hickel (n 10) 403.

90 Richards, J.-A., Schalatek, L., Achampong, L., & White, H. (2023). El panorama de la financiación de pérdidas y daños. Heinrich-Böll Stiftung Washington, DC; Colaboración en Pérdidas y Daños.

91 Rebecca Riddell y otros, "Inequality Inc.: How Corporate Power Divides Our World and the Need for a New Era of Public Action" [Desigualdad Inc.: Cómo el poder corporativo divide nuestro mundo y la necesidad de una nueva era de acción pública]

92 Caso Velásquez Rodríguez c. Honduras (Corte Interamericana de Derechos Humanos) [25].

93 Adrián Martínez Blanco, "Justicia Un Reclamo Radical: Financiación de Daños y Pérdidas".

and compensation arising from this provision by paragraph 51 which states that the parties "agree that Article 8 of the Paris Agreement does not imply or give rise to any form of legal liability or compensation"[94] The approved paragraph created an obstacle in international climate negotiations to address claims for reparation and liability. Even though climate change loss and damage causes serious human rights violations, paragraph 51 illustrates how historically polluting countries seek to shirk their responsibilities.[95]

At COP27, industrialized and developing countries agreed to establish "new financing arrangements" to help developing countries that are particularly vulnerable to the adverse effects of climate change to address loss and damage, and "a fund" to support the most vulnerable countries that are already suffering loss and damage.[96] From the outset, the proposal was subject to several caveats, one of the most relevant being that the agenda item would be "based on cooperation and facilitation and not on liability or compensation, relying on the infamous paragraph 51.[97] Thus, the LDF's position is defined in a framework of cooperation, ignoring the principle of common but differentiated responsibilities to restore what has been damaged and compensate for what has been lost.

94 Acuerdo de París-Art. 8. 51

95 La Ruta del Clima. (2023). Nuestro derecho a la reparación climática (Serie Justicia Climática en América Latina No. 19).

96 https://www.cambridge.org/core/journals/transnational-environmental-law/article/loss-and-damage-climate-victims-and-international-climate-law-looking-back-looking-forward/CB089646C303F95A4C630405E2F81E09#fn25

97 https://www.cambridge.org/core/journals/transnational-environmental-law/article/loss-and-damage-climate-victims-and-international-climate-law-looking-back-looking-forward/CB089646C303F95A4C630405E2F81E09#fn24

4.2 Financial contributions from developed countries

Financial institutions such as the World Bank and the IMF have gained enormous influence by providing global south states with large sums of money. Funds that they were conditioned to use under the neocolonial visions of dependency that the institutions and their key shareholders wanted to create. The Loss and Damage cannot have the same colonialist characteristics and put the human rights of millions of people at risk for the economic interests of a few.

The hosting of the LDF in the World Bank represents a risk for climate justice, due to the historical imbalance of power exercised by international financial institutions. The international economic system is made to favor the rich countries, excluding the interests of countries that need aid. In addition, international financial institutions are not representative of the needs of developing countries and the decision-making processes are structurally unfair to Global South.

The LDF seeks to promote and strengthen national responses to loss and damage, responding to countries' priorities and circumstances and applying country-led approaches. The LDF resources will come from loans, donations (public or private) and "innovative sources".[98] [99] [100]

COP28 defined the fund's governance structure and some rich countries pledged $792 million to take steps to operationalize it, equivalent to 0.2% of what is currently needed to address loss and damage. The LDF funds to accomplish its purpose will be dependent on a fund-raising strategy, which has not yet been worked out and that has left out until now, an obligation-based commitment by the global north to provide fundings to address the mess it has caused due to climate change.[101]

LDF can provide grants, concessional loans, guarantees, direct budget support and policy-based financing, capital, insurance mechanisms, risk-sharing mechanisms, pre-established financing, performance-based programmes and other financial products."[102] This financial scheme of the LDF, in the current debt crisis of developing countries, will most likely increase vulnerability and feed the continued unequal exchange of financial resources..[103]

Furthermore, the Financial Arrangements that accompany the LDF will be the ones responsible to address loss and damage while the LDF will only respond.[104] The financial arrangements that have been envisioned will bring forth the

98 Irene Lodigiani, «From Colonialism to Globalisation: How History Has Shaped Unequal Power Relations Between Post-Colonial Countries» [2020] Glocalism: Journal of Culture, Politics and Innovation <https://riviste.unimi.it/index.php/glocalism/article/view/20957> consultado el 31 de enero de 2024.

99 UNFCCC, 'Decision -/CP.28 -/CMA.5 Operationalization of the New Funding Arrangements, Including a Fund, for Responding to Loss and Damage Referred to in Paragraphs 2–3 of Decisions 2/CP.27 and 2/CMA.4' (n 55) 43–44 Annex 1.

100 Derek Harrison, "Preguntas y respuestas: El tipo de momento de "avance" se produjo en Dubái cuando las naciones del mundo acordaron abandonar los combustibles fósiles" (Dentro de las noticias climáticas, 16 de diciembre de 2023) <https://insideclimatenews.org/news/16122023/world-nations-agreed-transition-away-from-fossil-fuels-cop28/> consultado el 25 de enero de 2024; Nina Lakhani, "700 millones de dólares prometidos para el fondo de pérdidas y daños en la COP28 cubren menos del 0,2% necesario" El Guardián (6 de diciembre de 2023) <https://www.theguardian.com/environment/2023/dec/06/700m-pledged-to-loss-and-damage-fund-cop28-covers-less-than-02-percent-needed> consultado el 25 de enero de 2024; «COP28 Climate Funds Pledge Tracker» (24 de enero de 2024) <https://www.nrdc.org/bio/joe-thwaites/cop-28-climate-fund-pledge-tracker> consultado el 25 de enero de 2024.

101 Convención Marco de las Naciones Unidas sobre el Cambio Climático, «Decisión -/CP.28 -/CMA.5 Puesta en práctica de los nuevos acuerdos de financiación, incluido un fondo, para responder a las pérdidas y daños a que se hace referencia en los párrafos 2 y 3 de las decisiones 2/CP.27 y 2/CMA.4» (nota 52), párr. 56

102 Ibid 19

103 UNFCCC, 'Decision -/CP.28 -/CMA.5 Operationalization of the New Funding Arrangements, Including a Fund, for Responding to Loss and Damage Referred to in Paragraphs 2–3 of Decisions 2/CP.27 and 2/CMA.4' (n 55) 43–44 Annex 1.

104 Adrian Martinez Blanco and Adriana Vasquez, 'Un Fondo Post-Colonial de Daños y Pérdidas: Un Intercambio Desigual de Responsabilidades y Recursos' (Asociación La Ruta del Clima 2024) <https://larutadelclima.org/wp-content/uploads/2024/04/Un-Fondo-de-Danos-y-Perdidas-Post-coloniales-1.pdf>.

World Bank and other entities to provide financial services for impacted countries to address loss and damage. This approach mirrors the logic of dependency and intrusion that international financial entities had been implementing in the past 70 years with dire consequences to the global south.[105]

In any case, the Loss and Damage Fund remains only an empty shell with no funds to "respond" to loss and damage, which leaves us with the great question of who is really interested in its structure placed within an institution in which urgent restructuring is demanded because it no longer responds to the needs of the countries it "benefits".

Loss and damage financing shouldn't be that complicated, but despite this, it still feels distant and diffuse. The LDF has been provided with the structure to drive vulnerable countries to a loan and market-based approach in order to address loss and damage, while releasing from any burden those responsible in the global north.

105 La Ruta del Clima(2024) Un Fondo Post-colonial de Daños y Pérdidas: Un intercambio desigual de responsabilidades y recursos. https://larutadelclima.org/2024/04/04/un-fondo-post-colonial-de-danos-y-perdidas-un-intercambio-desigual-de-responsabilidades-y-recursos/

5. Conclusion

The legacy of the World Bank, and the economic and financial system that it promotes fails to meet the needs and ensure the right to development of the Global South. The status quo that is advocated is one of neocolonialism, where the Global South has less decision making power and greater indebtedness. Continuing to build financing structures, such as the Loss and Damage Fund, within the World Bank implies few guarantees of access to justice and promotes dependency despite being the global north the debtor due to transboundary environmental harm and undue use of the carbon budget. Regardless of the facts, international financial institutions addressing the climate crisis still promote further indebtedness, an unequal exchange of resources and responsibility to the detriment of the Global South.

Human rights are more relevant than ever, despite the continuous world conferences prioritizing these issues, the challenges continue to grow and disproportionately impact the Global South. International financial institutions require to be restructured in a manner that does not further reinforce the non-compliance of responsibilities and injustice. However, a reform has to have a goal that ensures our right to development. Bretton Woods institutions are not transformative but reinforce inequities of power. Before talking about reforming finance tools, we need to discuss changing the economic model to one that recognizes human dignity and purges neocolonialism. Let's make room for "common but differentiated responsibilities" where we are all treated as equals and not as vassals.

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