THE CLIMATE MIGRANT FINANCING FACILITY: FLEXIBLE CONTRACTING AND STRICT TRANSPARENCY FOR THE LOOMING CLIMATE MIGRATION CRISIS

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ABSTRACT

With the climate crisis wreaking havoc worldwide, millions of people have been forced to leave their homes, increasingly often to other countries. These people are called climate migrants. Climate migrants commonly originate from developing countries that carry unsustainable debt burdens, which prevent the financing of disaster reconstruction, climate adaptation, but more importantly, direct aid and response measures for climate migrants who need assistance while moving. Unfortunately, the biggest obstacle for climate migrant assistance is adequate financing. Thus, this paper proposes a small-scale solution that can be adapted into bilateral or multilateral contracts among sovereigns and private investors: The Climate Migrant Financing Facility, readapted from The Nature Conservancy's Blue Bond Program and the Bridgetown Initiative. While providing a public good, the CMFF provides countries the opportunity to adopt high Environmental, Social, and Governance standards for investment (ESG), supplement their labor markets, and invest in climate resilient projects that are sustainable in the long term. This solution could ease a country's debt burden through insured bond buybacks and flexible contracting, which will revitalize labor economies, improve climate resiliency, and most importantly, accommodate climate migrants. Inspired by environmental debt mechanisms such as the Bridgetown Initiative, the TNC's Blue Bonds, and Climate-Debt Swaps, the CMFF goes further by directly protecting the people of highly-indebted developing countries through strict ESG commitments and explicit contracting.

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INTRODUCTION

Migrants? Refugees? Climate refugees? Climate migrants? Regardless of the semantics the international community has difficulty settling on, one thing is clear: The climate crisis is displacing people, and it will continue to do so at higher rates. The climate crisis is a topic that comes up more with every passing day, and rightly so. It is only getting worse.[1] As the dangers of climate change progress, the world will begin to see more permanent and increasing population movements. However, these displacements will be different in scope than what countries have seen previously, and unfortunately, many countries are not financially equipped to handle them.

From devastating earthquakes in Turkey and floods in Pakistan, to stronger hurricanes in South Asia and Latin America, extreme weather events are spurring worldwide population displacement. Further, these diasporas will create new financial burdens both for the countries razed by climate effects and the resulting host countries of new migrants. Although all countries are

1. Press Release, World Meteorological Org., *United in Science: We are Heading in the Wrong Direction*, (Sept. 13, 2022) *reprinted in* U.N. Framework Convention on Climate Change, https://perma.cc/L8L8-H6FA.

susceptible to the dangers of climate change, highly-indebted, developing countries tend to be the most vulnerable to climate threats,[2] which can spur even more emigration than in other climate resilient countries. As a result, with severe debt burdens and smaller economies, these countries need options to finance the accommodations of their threatened people while also improving their climate resiliency.

Countries face a multitude of problems when their populations are harmed by weather events. First, they face the obvious and sudden repercussions of people being forced out of their homes and towns.[3] Second, they face political difficulties if their populations flood into neighboring countries.[4] Third, there are sudden and severe strains on these impacted countries' economies, especially when citizens and migrants draw on aid programs while impacted countries spend money to repair damaged infrastructure. Lastly, many of these countries lose existing resources through "brain drain," business shutdowns in affected areas, and moving labor workers. As a result, these problems will worsen and deprive countries of the ability to adapt more climate resilient infrastructure, particularly when they need to carry their debt burdens. Consequently, climate resiliency is an important goal for many of these countries, but it is near impossible to achieve this goal while simultaneously managing large debts, paying for existing crises, and preventing looming threats.

Often, default risk and emigration are tied together, increasing a country's borrowing costs, but there is a slow emergence of climate-focused funding mechanisms that will assist countries in preventing a default. These solutions can range from bond buybacks to drawing funds from internationally established organizations and more. However, the source of all these problems, climate change, will continue to grow. Consequently, there must be a sustainable funding mechanism that will help countries accommodate their people before and during climate events, while also preventing the need to move in the first place. On top of scarce international resources that specifically finance climate migration, other existing infrastructures barely recognize climate migration as a problem and would need to be seriously adapted to meet these challenges.[5]

Further, many of these financing schemes are either large scale without much to offer in the long term, or they handle these problems on a much

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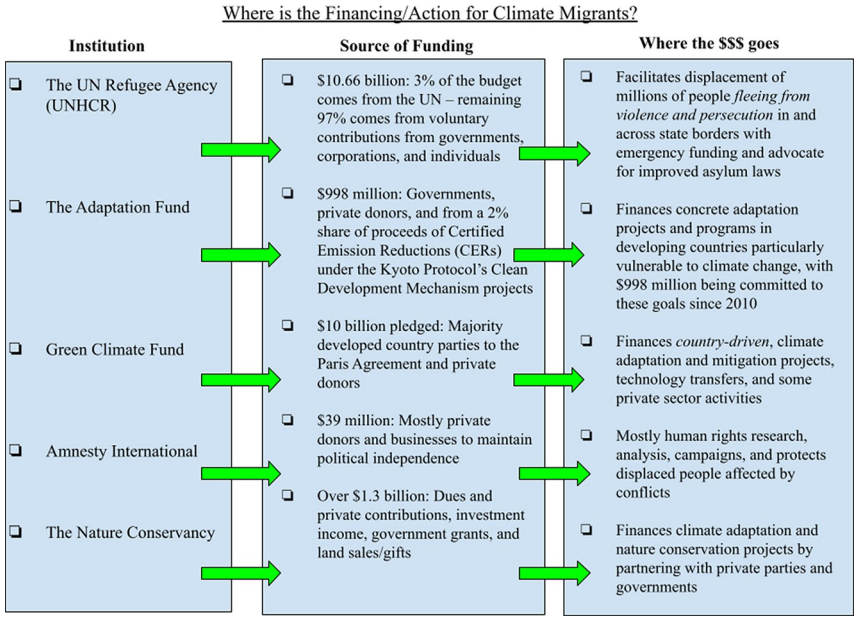
2. Mengdi Yue & Christoph Nedopil Wang, *Bridgetown Initiative: a transformation of development finance stem for improved climate adaptation and resilience in emerging economies?*, GREEN FIN. DEV. CTR. (Dec. 18, 2022), https://perma.cc/6UN2-F4LB.

3. Maurie Backman, *What Are Climate Migrants and Where Are They Moving?,* U.S. NEWS & WORLD REP. (Aug. 31, 2022), https://perma.cc/6P4Z-6D2N.

4. Claire Klobucista, Amelia Cheatham & Diana Roy, *The US Immigration Debate*, COUNCIL ON FOREIGN RELS. (last updated June 6, 2023) https://perma.cc/MZY5-TPFH; Tesfaye A. Gebremedhin & Astghik Maviskalyan, *Immigration and Political Stability*, OECD (2011).

5. *See generally* Christine Gibb & James Ford, *Should the United Nations Framework Convention on Climate Change Recognize Climate Migrants?,* 7 ENV'T. RSCH. LETTER 1 (2012); Lawrence Huang, Commentary, *Why Financing Responses to Climate Migration Remains a Challenge*, MIGRATION POL'Y INST. (Oct. 2022), https://perma.cc/4EZZ-9G92.

smaller scale without fixing the root issue of unsustainable financing. Moreover, many smaller countries suffering from these climate threats are reluctant to be pulled into binding, multilateral agreements that will force them to pay into an international funding program. As a result, the international community is left without a means to focus on financing climate migration, and no international body has been equipped to handle the crisis. The following diagram exhibits some of the largest international migration and climate change bodies that provide financing to people and governments:



As shown above, it does not take one long to notice that there is a worldwide absence of climate migrant financing. Thus, this paper proposes a smaller scale solution that can be adapted into a bilateral or multilateral contract among sovereigns: The Climate Migrant Financing Facility (CMFF), which has been readapted from The Nature Conservancy's (TNC) Blue Bond Program and the Bridgetown Initiative.[6] While providing a public good, the CMFF provides countries the opportunity to adopt high Environmental, Social, and Governance standards for investment (ESG), supplement their labor markets, and invest in climate resilient projects that are secured and sustainable in the long term. Through insured bond buybacks and flexible contracting, this solution could ease a country's debt burden by revitalizing labor economies, improving climate resiliency, and most importantly, accommodating

6. Yue & Wang, *supra* note 2; THE NATURE CONSERVANCY, CASE STUDY: BELIZE DEBT CONVERSION FOR MARINE CONSERVATION (2022), https://perma.cc/W5U7-2SMV.

climate migrants. Combining the aspects of environmental debt mechanisms such as the Bridgetown Initiative, the TNC's Blue Bonds, and Climate-Debt Swaps, the CMFF goes further by directly protecting the people of highly-indebted developing countries.

This note will be approached in three parts in order to explain the background of the climate migration crisis, as well as the intricacies of this possible solution. Part I will cover the significance of the climate migration crisis and the threats it poses to sovereign debt burdens and economies. Part II will elaborate on some existing problems with the international community's funding responses to climate threats; why there is a noticeable lack of funding for climate migration; and how contracting with narrowly defined standards, ESG or otherwise, is most important in green investments like the CMFF. Lastly, Part III will run through the Climate Migrant Financing Facility, how it should be negotiated and supported by meticulous contracting, and its potential to protect millions of lives while strengthening a country's climate resilience.

I. THE CLIMATE MIGRATION CRISIS, AND WHO IS SUPPOSED TO TAKE CARE OF IT

Climate change, a significant variation in average weather conditions worldwide, poses numerous threats to every country—from undermining peoples' food and water supply to economic security and even a sovereign's existence.[7] Climate change has also been responsible for the rise in severe weather events that have killed and harmed people around the world, spurring many to leave their home countries.[8] Although the climate migration crisis has become more pertinent in the past decade due to more coverage, research, and increasing climate changes, climate migration itself is not a new phenomenon. Climate migration (or displacement) means the movement of people, "in part due to climate-related disasters, both sudden and slow-onset disasters, that are either temporary or permanent, within countries or across borders.'"[9] In short, people have been forced out of their homes by severe weather events throughout history, and they move either to new areas within their home country, or in extraordinary circumstances, to a neighboring country.[10]

According to the UN Refugee Agency (UNHCR), there is an annual average of 21.5 million people forcibly displaced by weather as of 2023, and that number is projected to jump to 1.2 billion by 2050.[11] Additionally, the

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7. Jeff Turrentine & Melissa Denchak, *What is Climate Change?*, NAT'L RES. DEF. COUNCIL (Sept. 1, 2021), https://perma.cc/5WNA-QENG.

8. THE WHITE HOUSE, REPORT ON THE IMPACT OF CLIMATE CHANGE ON MIGRATION (2021).

9. Nicole Greenfield, *Climate Migration and Equity*, NAT'L RES. DEF. COUNCIL (May 9, 2022), https://perma.cc/JVU4-UDB7.

10. Todd M. Richardson, *A Look Back at Hurricane Katrina,* U.S. DEP'T HOUS. URB. DEV., (Sept. 21, 2021), https://perma.cc/38DL; Mia Prange, *Climate Change is Fueling Migration. Do Climate Migrants have Legal Protections?,* COUNCIL ON FOREIGN RELS. (Dec. 19, 2022), https://perma.cc/5TGE-LX2S.

11. UNHCR, *Frequently asked questions on climate change and disaster displacement* (Nov. 6, 2016), https://perma.cc/7RUB-TDTL.6, 2016).

number of people jeopardized by rising sea levels has increased from 160 million to 260 million within 30 years.[12] The Intergovernmental Panel on Climate Change also claims that by 2050, more than a billion people in "low-lying coastal cities and settlements" will face climate hazards.[13] Although an annual average of 21.5 million displaced people is already a large amount, it is clear these numbers will grow.[14] As these numbers increase, the scale and nature of the financing needed by developing countries to adequately respond will be more significant than anticipated.

In many countries, climate migration tends to be intranational—people moving from rural, threatened areas into urban areas within their home country or vice versa. However, with the backdrop of a more severe crisis, cross-border climate migration will continue to become more common.[15] The largest migration patterns are likely to be from countries with low climate resiliency, or countries which stand to face the most damage from severe weather events. In turn, the more climate-resilient countries tend to have fewer people leaving their borders because of weather events. Moreover, climate-vulnerable countries often have more pressure on their borrowing capacities and their abilities to maintain sustainable debt, which can contribute to emigration.[16] Thus, if climate-vulnerable countries are unable to build more resilient infrastructure due to unsustainable borrowing costs, their people will continue to face worsening climate hazards, forcing many to leave.

The migration and sovereign default risk relationship is highly relevant when looking at the subject of climate migration. Professors at the University of Rochester, George Alessandria, Yan Bai, and Minjie Deng, reported on migration's effect on default risk and the cyclical relationship that debt and default risk carry, which results in debt overhang for countries who could benefit from some sort of relief:

> "Default risk increases a country's borrowing cost. Facing a high borrowing cost, the government borrows less, increases taxes and reduces transfers, which in turn lowers resident welfare and increases their incentive to migrate from the country. On the other hand, emigration decreases future capital returns reducing investment eroding the country's repayment capacity. Higher default risk ensues. During a recession, more workers choose to leave the country, further increasing the debt burden on the remaining workers. Incentives to migrate are further intensified. Meanwhile, the increased debt burden depresses investment, leading to an even deeper and longer recession."[17]

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12. Sean McAllister, *There could be 1.2 billion climate refugees by 2050. Here's what you need to know*, ZURICH INS. GROUP LTD. (Sept. 19, 2023), https://perma.cc/UU9H-P6DK.

13. Jeff Turrentine, *IPCC: We Cannot Look Away–Climate Risks are Cascading*, NAT'L RES. DEF. COUNCIL (Feb. 28, 2022), https://perma.cc/8XNE-VGLD.

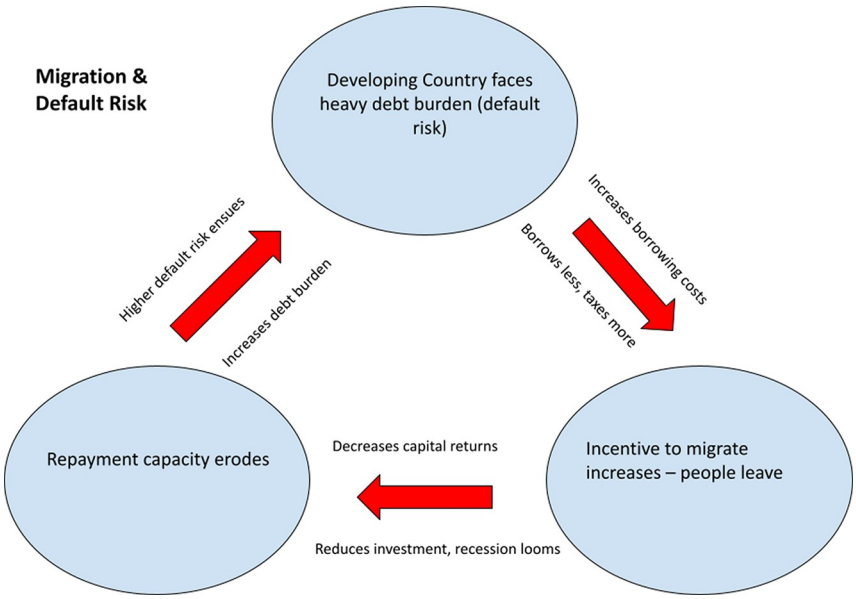
14. UNHCR, *supra* note 11.

15. THE WHITE HOUSE REPORT, *supra* note 8, at 4.

16. George Alessandria, Yan Bai & Minjie Deng, *Migration and Sovereign Default Risk*, 113 J. MONETARY ECON., 1–2 (2020).

17. *Id.*

The following diagram displays this cycle:



In this direct relationship, one can see that the higher the default risk, the more people emigrate from a country. Moreover, if more people emigrate from the country, the country's ability to carry debt worsens. Therefore, if climate crises drive people to leave their home countries, many countries' debt sustainability will be strained as those numbers increase. The capacity to pay will be especially harmed if certain debt burdens were not so stable at the start. An additional layer to this dilemma is if people are unable to leave their countries in the first place, many countries will not be able to adequately address a response to these climate hazards and where they can safely relocate their people. This cycle is a vicious one, and many lives will be in peril if countries cannot afford to provide direct aid and other crisis costs, especially if the country's financing terms do not provide for these people explicitly.

A. *Additional Problems: Climate Migrants or Climate Refugees?*

A circulating proposition that many believe will unlock financing for the protection of climate migrants is through international refugee law and the theory of non-refoulement. Under this theory, climate migrants are refugees who have a right not to be forced back to whatever country they came from if they would face danger. However, refugee law requires persecution that must be based on one of the established immutable characteristics, which are race,

religion, nationality, and membership of a social group or political opinion.[18] Lastly, refugees must lack the possibility of benefitting from the protection of their country's government.[19] Thus, although under terrible conditions, the question of whether climate migrants are refugees becomes hazy under current structures.

Unfortunately, climate migrants do not fall under this category because they do not face persecution, and they usually benefit from government protection, even if it is woefully unequipped to mitigate disasters. Regardless, the inability to take advantage of government protection is moot if there is no persecution in the first place.[20] Moreover, unless the international community agrees to change the definition of a refugee, which would take years, climate migrants cannot avail themselves of refugee protection. It is important to note that classifying climate migrants as refugees would unlock significant financing; however, the following explains why this route would be much harder to accomplish. The scope of this Note will not focus on every argument and facet of the definition of "refugee," but instead focuses on a solution that would not need to rely on this classification for climate migrants.

There are other regional arrangements that provide broader definitions for refugees, and if adopted, there could be more international funding and protection available for climate migrants.[21] However, many governments are likely to disagree with this drastic approach and argue that the majority of these migrants tend to remain within their country borders, excluding them from refugee classification.[22] Even with revised non-refoulement principles, the root of the problem remains: countries' climate vulnerability and its threat to the population. Unfortunately, there have not been many substantial efforts that focus on climate migrants.[23] As a result, a solution must preemptively assist countries affected by climate hazards by actually assisting people's temporary displacement to safer areas and the incidental costs from the move. To do so, these initiatives need adequate funding. Then, after utilizing the funding directly for their people, countries should focus on climate resiliency development in the threatened areas, which can be funded through other international mechanisms. In confronting this solution, the international community must first decide on who qualifies as a climate migrant.

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18. Convention and Protocol Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137.
19. UNHCR, WHAT IS A REFUGEE? (Mar. 10, 2023), https://perma.cc/LE8E-T9FP.
20. *Id.*
21. Convention Governing the Specific Aspects of Refugee Problems in Africa, ORG. OF AFRICAN UNITY (1969); Cartagena Declaration on Refugees, COLLOQUIUM ON THE INT'L PROT. OF REFUGEES IN LATIN AMERICA, MEXICO, AND PANAMA (1984).
22. Frank Biermann & Ingrid Boas, *Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees,* 10 GLOB. EVTL. POL. 60 (2010); Katrina Miriam Wyman, *Responses to Climate Migration*, 37 HARV. ENVTL. L. REV. 1 (2013).
23. Huang, *supra* note 5.

B. *Where Will There be Climate Migrants, and Who Qualifies?*

It is easy to identify climate migrants when they must cross borders immediately because of a disaster like a hurricane. Yet, to address the gravity of the problem, countries must discover where potential climate migrants reside. This examination will highlight climate change's long-term threats, such as the slow degradation of a population's safety and standard of living while destabilizing economies and countries' finances. For the purposes of this Note, a broad definition of "climate migrant" and "potential climate migrant" will be created and integrated for use in calculations of any CMFF negotiations: A climate migrant is anyone who has been, is currently, or will likely be forced out of their home area due to any disaster strongly linked to severe weather, environmental disruption, or the effects of climate change.

This definition considers how many people are actually at risk of environmental displacement, which is necessary to adequately devise financing agreements. The broadness of the definition is helpful because it considers the unpredictability of climate change. Then, States will be able to address the humanitarian concerns and the degree of assistance needed on a case-by-case basis, taking into consideration the severity of a hurricane, drought, earthquake, or other disaster. Keeping in mind that millions of people are at risk, can the international community not hold the greatest contributors to climate change wholly responsible for their protection? Naturally, a popular answer for this question is to bind the wrongdoers to an international system that finances developing countries, but approaching the solution in this manner is unlikely to succeed for a few reasons.

C. *Holding the 'Wrongdoer' Responsible*

Many climate activists believe industrialized and developed countries must foot the whole bill for the current climate change crisis. Principles such as common but differentiated responsibilities, corrective justice, or redistributive wealth justify this argument. Although these arguments are noble, international law is not so black and white. Blaming a select few for climate change is subject to an immediate rebuttal of responsibility by those accused. In order to hold a country responsible for a wrong to the international community, there must be a clear link from the wrong to the problem, which is difficult in the climate context.[24] Is emitting any greenhouse gas wrongful? Is there a quantity that is wrongful? Did the US's emissions cause the floods in Pakistan in 2022, or were China's emissions the cause? What if there were more than one cause of a weather event? What if there were seven? In addition, many developing countries are becoming significant emissions polluters as they continue to industrialize and lack the resources

24. Wyman, *supra* note 22, at 193.

for cleaner development.[25] As science develops, it may become easier to identify what the exact causes are of significant climate events, but in the meantime, the developed world will not be held responsible with ready compliance.

This Note's contract approach is useful because it may happen that a country was more adaptable to a crisis than anticipated, or a country that was perceived as resilient was not actually so. Predicting where and when abnormal weather events will happen or their exact severity is a difficult endeavor.[26] Thus, instead of paying into a binding, international mechanism that may or may not help establish climate resiliency where it is uncertain to be needed, contracting with private investors and the CMFF are more effective. When governments are assessing how to implement a CMFF, they must figure out where and how their numbers of migrants will likely grow, then resolve those problems that exacerbate that likelihood. In this approach, a useful metric to look at is a country's climate vulnerability.

D. *Climate Vulnerability*

When discussing climate change hazards for countries and their people, there are two important characteristics to look at to determine their severity: climate vulnerability and climate resilience. Climate vulnerability is a country's exposure, sensitivity, and capacity to adapt and respond to the impacts of climate change.[27] Climate resilience is a country's capacity to invest in adaptation actions for climate change.[28] Factors for gauging climate resilience are related to economics, governance, and social readiness.[29] Some indicators that help determine a country's climate vulnerability are its supplies of food, water, health, ecosystem services, and adequate human habitat and infrastructure.[30] To illustrate, the more climate vulnerable a country is, the more at risk its people are to scourges like famine, epidemics, or more abrupt events like flooding and drought.

To demonstrate the effects of climate vulnerability and resilience, economists Serhan Cevik and João Tovar Jalles conducted a study of over 98 developed and developing countries and found the effect that climate shocks have on sovereign borrowing: "higher exposure to climate vulnerability results in a higher cost of borrowing in a group of 20 low-income countries, which may

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25. *Id.*; *Who's causing climate change now* (chart), CTR. FOR GLOBAL DEVELOPMENT (Mar. 20, 2023), https://perma.cc/R9ZU-XQY8 (last visited Jan. 25, 2024). Developing Countries Are Responsible for 63 Percent of Current Carbon Emissions.

26. Josie Garthwaite, *Climate of chaos: Stanford researchers show why heat may make weather less predictable*, STANFORD NEWS (Dec. 14, 2021), https://perma.cc/Q66D-G2UN; Hannah Waters, *Why Didn't the First earth Day's Predictions Come True? It's Complicated*, SMITHSONIAN MAG. (Apr. 22, 2016), https://perma.cc/S5QE-QGNL.

27. Serhan Cevik and João Tovar Jalles, *This Changes Everything: Climate Shocks and Sovereign Bonds*, IMF Working Paper, IMF 1, 6 (2020).

28. *Id.*

29. *Id.*

30. *Id.*

yield irregular estimates due to the idiosyncrasy of sovereign debt in low-income countries."[31] Conversely, countries that are more climate resilient tend to have a lower cost of borrowing. Despite this conclusion, the relationship is different in the context of advanced economies versus developing countries. Unfortunately, the cause of the problem between borrowing costs and resilience resembles the chicken-and-egg question,[32] but the underlying problem remains the same: Climate vulnerability and resilience have much stronger impacts on sovereign borrowing costs in the context of developing countries and nearly insignificant impacts on those of advanced economies.[33]

Taking both studies into account, these findings provide evidence that climate vulnerability adversely affects sovereign borrowing costs, noticeably in developing countries which are already most at risk of climate hazards. Concurrently, many of these countries already have significant debt burdens, and without help, they cannot invest in climate resilience to protect their populations from climate threats. In turn, many of the people at risk of serious climate hazards are going to want to emigrate from their home countries, especially when specific weather events inevitably displace them. As previously noted, this problem increases the risk of mass emigration, which creates a higher risk of sovereign default.[34] In other words, more people will leave these countries either in anticipation of or during more climate hazards, and this movement will leave countries at risk of higher borrowing costs while increasing their default risk, causing even more people to leave.

Although this pattern sounds like a Doomsday prophecy, it is not far off from the truth. Even though countries like the United States, the United Kingdom, or Chile have strong climate resilience, many others do not. Tuvalu's capital district is 40% underwater at high tide.[35] The number of people going hungry in Central America has more than quadrupled from 2018 to 2021.[36] Chad's largest lake, Lake Chad, has shrunk in size by 90%.[37] Many countries are facing Doomsday without any financing options to assist their people's displacement, while others have the economic capacity to cope in the long run. This economic disparity demands that

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31. *Id*. at 5.

32. "What came first, the chicken or the egg?" In the context of this Note, did high borrowing costs trigger the lack of resilient infrastructure or vice versa?

33. Cevik & Tovar Jalles, *supra* note 27, at 13. (The study looked at government bond spreads and yields as marks for the effects that resilience and vulnerability have on countries' borrowing. When separating the sample groups between advanced and developing economies, this difference became apparent).

34. Kristalina Georgieva, Marcos Chamon, & Vimal Thakoor, *Swapping Debt for Climate or Nature Pledges Can Help Fund Resilience*, IMF (Dev. 14, 2022), https://perma.cc/2EWT-D3LR.

35. Kirsty Needham, *Tuvalu, sinking in the Pacific, fears becoming a superpower 'pawn'*, REUTERS (May 13, 2022), https://perma.cc/83DS-FXE8.

36. Paul J. Angelo, *Climate Change and Regional Instability in Central America*, COUNCIL ON FOREIGN RELS. (Sept. 2022), https://perma.cc/FLP5-ZWRT.

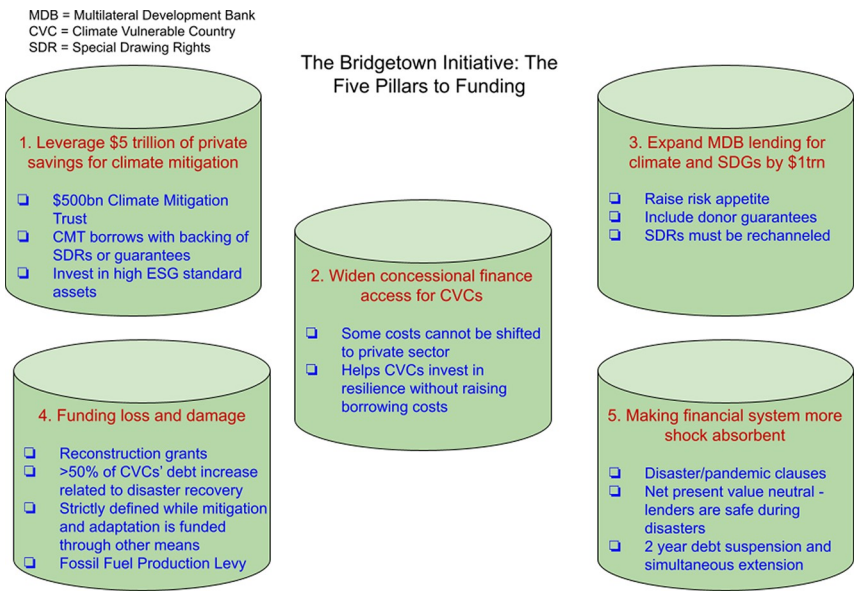
37. Leon Usigbe, *Drying Lake Chad Basin gives rise to crisis*, UN AFRICA RENEWAL (Dec. 2019), https://perma.cc/3LAZ-X56Y.

developed countries respond to climate-vulnerable countries' initiatives for a debt restructuring to ease their debt burdens. In the face of these predictions and devising a grand solution, the Bridgetown Initiative comprises five pillars that are aimed at the biggest obstacle to all climate-related problems, from resilient infrastructure to climate migrants themselves: funding.

II. PROSPECTS FOR INTERNATIONAL CLIMATE MIGRANT INFRASTRUCTURE

For the aforementioned reasons, there is a noticeable gap in the infrastructure for direct assistance to climate migrants, but there are financial mechanisms for supporting developing countries' climate resiliency, and by extension their populations. Thus, the best, long-term route to help climate migrants is to help their countries improve their climate resiliency, reducing their need to move altogether. However, the short-term solutions to climate crises are just as important, from assisting settlement in another location and new housing to lost salary compensation and continued employment. Although easier said than done, there are ways to help governments reduce their borrowing costs, relieve a portion of their debt servicing, and improve their climate resiliency all at once. For example, the pillars laid out by the Bridgetown Initiative and the structure of the TNC's Blue Bonds are a promising blueprint for climate migrants in the future.

A. *The Bridgetown Initiative*



The above pillars provide a comprehensive approach devised during discussions initially hosted in Bridgetown, Barbados.[38] This Initiative, and subsequently this paper, all point to one conclusion: The biggest obstacle in tackling climate change and assisting climate migrants *is* adequate financing, and while the development of a Global Climate Mitigation Trust will be revolutionary if achieved, it is a massive effort that looks bleak in the current international economy. Countries who retain SDRs for MDB reserve access will be reluctant to re-channel them to spur more concessional financing to climate-vulnerable countries. Further, determining equally applied, exacting, international ESG standards in some developing countries will be a large haul due to political volatility and potential domestic law issues. However, with the CMFF contract option, developing countries and international financial institutions can work together at a lower level to achieve investment safety with their own financing along with assistance from private investors and ally governments.

Fortunately, many of the concepts in each pillar are still transferable into climate transactions without attaching every single facet of the Initiative. Important concepts for environmental investing in climate-vulnerable countries will be leveraging private savings, concessional finance and guarantees, and disaster/pandemic clauses with net present value neutral attachments. This designation for the disaster clauses would leave lenders in no worse position after a disaster hits, such as when COVID-19 stalled many loan transactions worldwide. Then, the loan transaction would be stalled for 2 years and simultaneously extended by two years. With specified terms on how a ravaged country must spend its money in the recovery, this extension period would give it time to recover from a climate event. These concepts and more were integrated into The Nature Conservancy (TNC) Blue Bonds transaction with the Belizean Government.

B. *The Belize Blue Bonds*

TNC's Blue Bonds are a debt conversion transaction that allows a country to improve its climate resiliency and economy while relieving its debt burden.[39] Principally, the transaction is a bond buyback at a significant discount, financed by "Blue Bonds" issued to private investors worldwide. The Blue Bonds have shown to be successful so far, and they provide a promising framework for the CMFF. For Belize, this conversion led to a debt reduction of almost $200 million and savings of $200 million in debt servicing.[40] During the COVID-19 pandemic, Belize's economy was struggling under its debt burden to make payments while lacking climate mitigation infrastructure.

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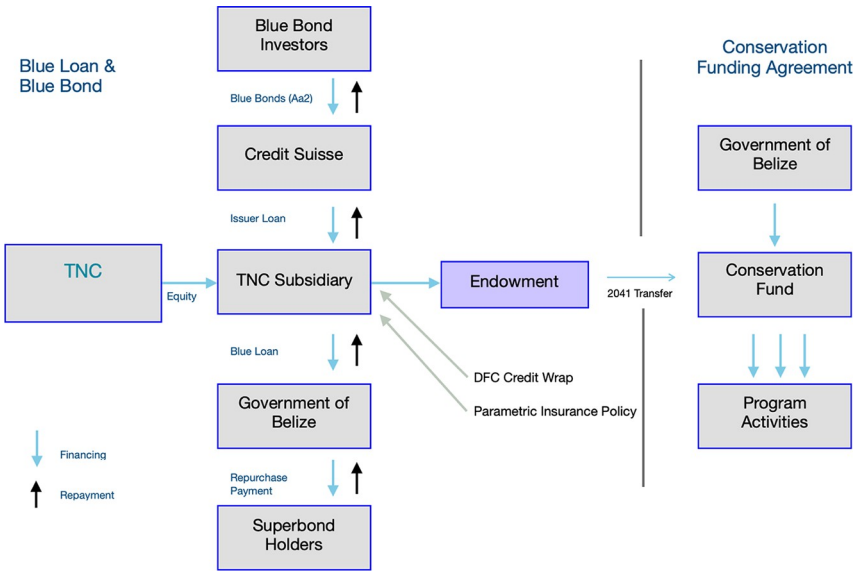
38. Avinash Persaud, *Breaking the Deadlock on Climate: The Bridgetown Initiative,* 3 GEOPOLITICAL STUDIES GRP. 99, 99–103 (Jan. 2023), https://perma.cc/URV6-3UCP.

39. *Blue Bonds: An Audacious Plan to Save the World's Ocean*, THE NATURE CONSERVANCY (last updated Jul. 27, 2023), https://perma.cc/9SBE-RRMT.

40. *Id.*; *supra* note 6 at 3–4 .

Consequently, the Government of Belize joined forces with TNC to come up with a restructuring plan for its debt.

To start, Belize carried its external commercial debt stock in the form of a $553 million Eurobond, which was facing devaluation due to investors' lack of confidence in Belize's repayment capacity. For the transaction, Belize bought back the $553 million bond at a discounted price of 55 cents per dollar. To finance this effort, TNC issued $364 million in bonds to private investors, and the U.S. International Development Finance Institution (DFC) granted the bonds risk insurance. With critical security backing the bonds, they received an Aa2 rating from Moody's, a catalyst for mobilizing private investment. With Credit Suisse as the syndicate,[41] TNC and Belize galvanized major private financing and even oversubscribed in the bonds' syndication. These bonds funded a new, discounted loan to Belize, and the investors agreed to a low interest rate for the government and a 10-year grace period during which no principal is paid. This type of swap was also successful in Seychelles' restructuring to put capital towards conservation efforts as well.[42] The following diagram provides a detailed representation of the transaction:[43]



41. As of the writing of this Note, the Credit Suisse collapse has shown not to have affected the transaction so far. The instrument exists and runs independently of Credit Suisse. Whether Credit Suisse owns any bonds is unclear. *See Credit Suisse gone; 'Blue Bond' safe!*, THE REPORTER (Mar. 24, 2023), https://perma.cc/MJY3-H2CX .

42. Analisa R. Bala, Adam Behsudi & Nichola Owen, MEETING THE FUTURE (2002), https://perma.cc/VW53-QUYD.

43. CASE STUDY, *supra* note 6 at 2.

Over the past three years, the transaction has shown to be successful. Because of defined contract terms, the Belizean Government's political will, TNC's expert guidance, and investors worldwide, this approach lowered Belize's borrowing costs, ensured high ESG standards for the funds, and created secure financing between the creditors and debtor. Belize's commitments have allowed the government to protect its ocean and coastal areas, improve the quality of life for its people, reduce the chances of massive reef damage and lack of food resources.[44]

C. *The Key to Climate Financing: Environmental, Social, and Governance Requirements (ESG)*

For many, investing in developing countries is risky because of the lack of ESG commitments such as reporting, transparency, and a lack of defined terms that outline transactions with integrity.[45] Naturally, opening the door to private financing warrants significant ESG commitments, necessary insurance, and transaction transparency. ESG is especially important in humanitarian funding, and to bolster investor confidence, the assurance of the highest standards must be manifested in the Conservation Fund Agreement part of this transaction.

For example, Belize agreed to spend an annual $4 million into an independent conservation fund until 2041, allowing it to increase its marine protection areas from 15.9% to 30%. There is also an endowment fund of $23.5 million that will finance the conservation after 2040.[46] Most importantly, the Fund finances private projects, and heavily reviews each project's effects on climate resilience with input from the Belizean population and businesses, who are additional stakeholders. Evidently, all the elements of this deal resulted from heavy political overhaul, a sacrifice for stringent ESG commitments, and a will to operate with private investors' desire for stable investments. Moreover, funding for conservation projects that support and protect the lives of its people will continue for years to come.

For any new financial mechanism to work, investors and creditors need to see where their money is going and that it is being used legally, equitably, and efficiently. Accordingly, the Blue Bonds' transparency and the Conservation Fund allows investors to monitor their investment to see if it is being implemented seriously, and the projects are headed by private entities who have disclosure requirements in turn. With this scrutiny, along with input from stakeholder communities who live where the adaptation measures are being taken, the government has little room to use the money for a less than noble purpose. In a pivotal move, Belize joined the New York Convention on the

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44. *Id.*

45. *ESG Investing: How to increase ESG investing in developing countries,* COLUMBIA UNIVERSITY SCHOOL OF INT'L & PUBLIC AFFAIRS, CAPSTONE EXECUTIVE SUMMARY FOR UNITED NATIONS DEVELOPMENT PROGRAMME 1, 5 (2018), https://perma.cc/D2DY-79SB.

46. CASE STUDY, *supra* note 6 at 6.

Recognition and Enforcement of Foreign Arbitral Awards, which partially waives Belize's sovereign immunity from arbitral claim enforcement for investors who are worried about the debtor's reneging.

Although it seems private investors now have a partial claim on a nation's sovereignty, it is a minimal sacrifice for such a large payoff. The Blue Bonds are proof that these environmental transactions are not simply grants, even if they do have grant elements. In Belize, these bonds "provided the 'grant' in the form of a discount price."[47] However, Belize's debt was already trading at a discount. Further, the critical factor for getting the deal off the ground was the DFC insurance, and by extension, the mobilization of private creditors.[48] With repayment essentially guaranteed and a strong investment-grade credit rating, it follows that the desire for investment in these Bonds increased. Thus, the agreeable terms were not purely a charitable endeavor, otherwise there would be little incentive for investment.

In addition, The Adaptation Fund has helped Belize implement a five-year Marine Conservation and Climate Adaptation Project, and Belize has submitted another proposal for more funding.[49] The Adaptation Fund is another financing project established by the Kyoto Protocol that funds developing countries' climate adaptation and climate resiliency.[50] Currently, Belize's new proposal for the Fund is for $4 million in assistance, which will assist its government in auxiliary climate resiliency efforts.[51] This additional measure demonstrates that countries can take advantage of other funding sources while undergoing a debt restructuring. As a result, these transparency and accountability efforts encourage investment in tools like the Blue Bonds because investors want to see a country's every move to support their investment.

Unsurprisingly, the Blue Bonds, the Adaptation Fund, and other financial solutions do not involve affirmative financing for the organized displacement of people.[52] An initial explanation for this gap is that these measures indirectly solve the problems that produce more climate migrants, so there is no need to move them in the meantime. A second explanation is that Belize's population is small,[53] and the government likely does not want its people to leave its borders and endanger its economy. Either way, the people who would potentially become climate migrants are the key, and keeping them safe is in every party's best interest.

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47. *Id.*

48. *See id.*

49. ADAPTATION FUND, ENHANCING THE RESILIENCE OF BELIZE'S COASTAL COMMUNITIES TO CLIMATE CHANGE IMPACTS (Jan. 27, 2023), https://perma.cc/XP84-ZZKW; ADAPTATION FUND, BELIZE MARINE CONSERVATION AND CLIMATE ADAPTATION INITIATIVE (Jan 3, 2022) https://perma.cc/S6J4-GHLV.

50. UNFCCC, ADAPTATION FUND BACKGROUND, https://perma.cc/U8LE-DAHZ (last visited Jan. 17, 2024).

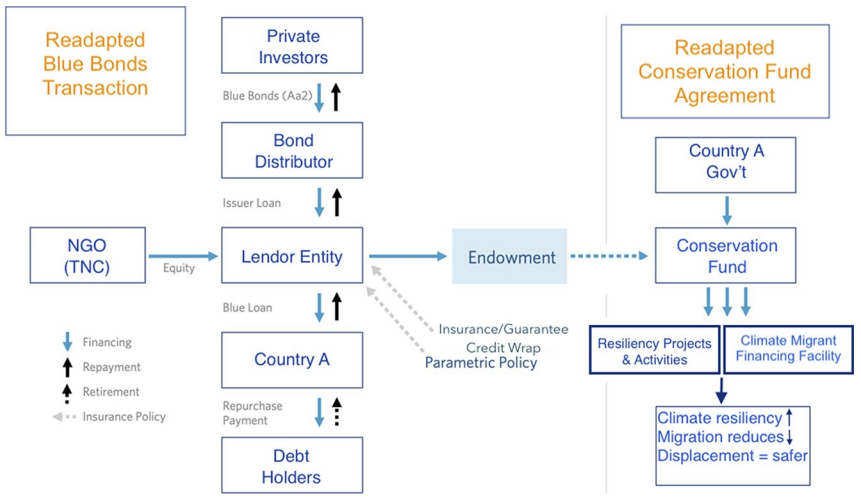
51. ADAPTATION FUND, ADAPTATION FUND BOARD SECRETARIAT TECHNICAL REVIEW OF PROJECT/PROGRAMME PROPOSAL (Jan. 27, 2023), https://perma.cc/4P52-ZRFW.

52. UNFCCC, *supra* note 50.

53. WORLD POPULATION REV, BELIZE POPULATION (2024), https://perma.cc/9RRF-2YA6 (last visited Jan. 26, 2024).

Furthermore, there is a disaster clause that extends the maturity of the transaction, releasing vital liquidity for mitigation.[54] The transaction contains a Parametric Insurance Policy that provides coverage for Belize's debt payments following a defined, eligible climate event, which could potentially be a useful tool to move capital towards displacement costs instead of only disaster repair.[55] This contention remains to be seen in action. Thus, with more defined terms and affirmative financing for climate migrants, the Conservation Fund part of the Blue Bond transaction can provide a platform to definitively aid people's safety in their displacement. These defined terms are essential for promoting ESG, so anytime a disaster occurs, investors will have confidence that the country will not spiral downward and go back on the deal. Thus, this situation is where the CMFF will prove useful.

III. FINALLY, THE CLIMATE MIGRANT FINANCING FACILITY



A. *The Proposed Structure, Its New Features, and Its Holdups*

Looking at the above diagram, an obvious question looms—is this transaction essentially the same as the Blue Bonds? The answer is yes and no. The first half of the transaction (the left of the diagram) remains essentially the same in idea. However, this area may take different forms in practice because many countries hold their external debts in different forms than that of Belize. Instead of a Eurobond, there may be many private parties who hold a

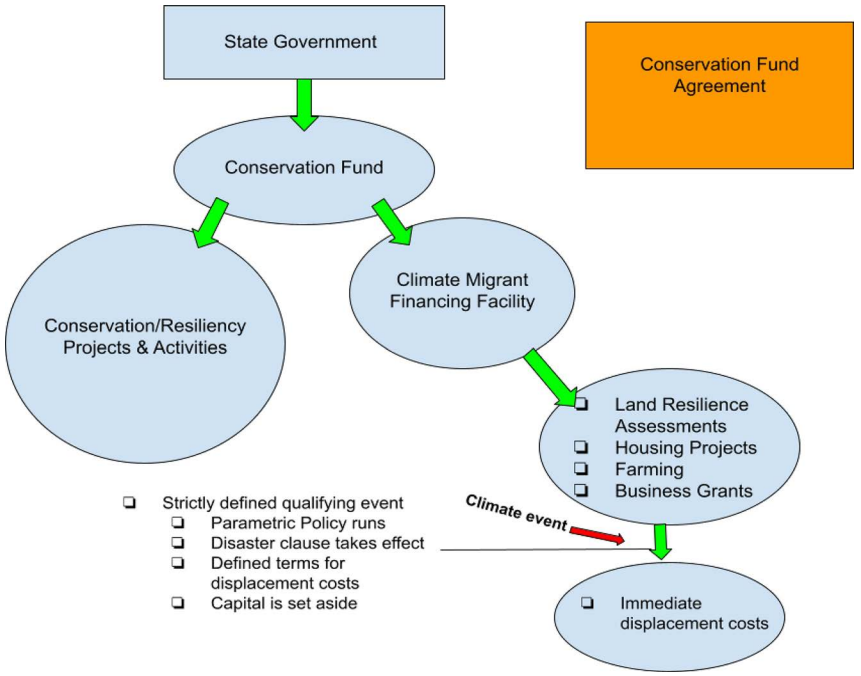
54. TNC Case Study, *supra* note 39, at 5–8.
55. *Id.* at 7.

country's debt, like in the case of Sri Lanka or Ecuador.[56] Still, the key to realizing the benefit of a discount in a debt buyback is that a country's debt must be trading at a lower price on the international market. For many developing and low-income countries whose repayment capacity lacks faith on the international markets, that is the case. Regarding the need for private creditors to agree to a negotiated restructuring in this form, they must keep in mind that if a country cannot pay under the current transaction structure, the creditor will realize a loss either way. Thus, agreeing to a restructuring with more defined crisis management terms in place will result in a win for both sides of the transaction instead of continuing down the path of the current, unsustainable transaction.

With vague standards that are not spelled out, it can be difficult to hold a country to an expectation that was not explicitly defined. Thus, this proposal for a CMFF will work similarly to the Belize Blue Bond but will take a step further to affirmatively facilitate and finance the settlement of displaced people in the second half of the transaction. The CMFF blends the Bridgetown Initiative and the Blue Bonds by using high ESG standards that validate investor confidence, especially with defined accountability and transparency terms such as using parametric catastrophic insurance, acquiring risk insurance, making financial systems more shock absorbent, and investing in assets. Lastly, the usage of disaster clauses that extend loan maturity and guarantee net present value neutrality will be vital and more persuadable for the investors if the terms are defined.

As a result, when a country suffers a climate hit, it will be able to mitigate the mass displacement because it has already directed funding for it in the Conservation Fund. In the aftermath, all that will be left for the country to do will be to redirect the funding to the migrants and auxiliary disbursement for immediate needs such as food, water, and other needs. As discussed above, these factors will be achieved by first determining whether a country has unsustainable debt, who the largest holders of their debt are, and if any of their debt is being traded at a lower cost. Then, they must assess where the most climate vulnerable areas in the country are located, and they must determine which populations stand to take the most damage from a weather disaster. The diagram below shows the specifics of the Conservation Fund Agreement and where the specific contract terms will direct the funds.

56. Bram Nicholas & Shiran Illanperuma, *The Real Cause of Sri Lanka's Debt Trap*, THE DIPLOMAT (Mar. 2, 2023), https://perma.cc/AVQ6-Q5TC.



First, a developing country can realize the benefit of what is essentially a debt reduction in a discount buyback by galvanizing private investment in a Blue Bonds type transaction and ensuring high ESG standards. Countries that have used significant international sovereign bonds will be eligible.[57] Next, the government should direct the resulting savings into a Conservation Fund with eyes toward private projects, with a detailed structure of deadlines and how much cash must flow into them. Then, in addition to directing funding to high transparency adaptation projects, it must also set aside funding for climate migrant assistance in the CMFF—this assistance may include private housing projects in more climate resilient areas of the country, a partial salary compensation fund, and business grants for companies willing to hire the migrants. These projects, perhaps with the exception of a partial salary compensation, could then be listed as assets for the investments as opposed to liabilities.

Subsequently, in order to gather financing to facilitate a debt buyback, these countries need to confront the elephant in the room—critical ESG standards. The desire for investing in ESG projects is here, and it is rising.[58] Thus, it follows that these projects need to be backed by integrity, with their

57. *Involving the Private Sector in the Resolution of Financial Crises—Restructuring International Sovereign Bonds*, POL'Y DEV. AND REV. AND LEGAL DEP'T 27 (2001).

58. Jessica Ground, *ESG Global Study 2022*, CASE LEGAL HARV. L. SCH. F. CORP. GOV. (Jun. 17, 2022), https://perma.cc/LVU4-LMDY.

many cogs all turning in sync. The level of standards' stringency can be negotiated, but if a country is more willing to hold itself accountable, the more likely it is to pique the willingness of an insurer, like the DFC, to back up a new bond issue.[59] As discussed above, that insurance will help earn the transaction a high credit rating, and by extension more investors.[60] Accordingly, the closer a transaction can get to a donor guarantee on investment, the more private savings it will attract. Thus, meeting investors' desires and needs will ensure that these types of climate adaptation projects and migrant financing are done respectably and efficiently.

Luckily, the IMF has established an international instrument that a country using a CMFF can take advantage of in case of a lack of investor confidence. The Resilience and Sustainability Trust can help low-income and vulnerable middle-income countries build their climate resilience.[61] This Trust might be the holy grail in assisting a country's search for risk insurance and a guarantee for the bonds.[62] In this scenario, a country can request additional support from the Trust by demonstrating its efforts to fund its climate infrastructure reform and financial management. Then, the Trust's support would build investor confidence that their investment does not risk a return of zero. With risk insurance and a floor guarantee, it would be an enticing and stable investment that will benefit both sides of the transaction, lessening the threat of default.

B. *Back to Reality: Challenges to the CMF*

This contract option to create a CMFF will present political challenges, which is precisely why private investing is needed. Although, this is a big step to overcome. Some countries, like Sri Lanka, have faced difficulty in dealing with private investors who will not agree to such a buyback due to collective action clauses and other contract mechanisms.[63] In the face of this problem, it will take expert negotiations to convince many lenders to commence this type of transaction. To show a serious commitment towards a better deal, debtor countries will need to make sacrifices in the form of defined ESG terms and give private investors what looks like a claim on the former's sovereignty. Allowing private investors to bring claims against a government is an option that some countries do not want to hand out, but there is a strong incentive in making these deals: They will prevent an unorganized, sudden influx of climate migrants fleeing their home country into another. To drive the point further, emptying out one's economy is in no government's interest.

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59. CASE STUDY, *supra* note 6 at 6.
60. *Id*.
61. *IMF Managing Director Kristalina Georgieva announces Operationalization of the Resilience and Sustainability Trust (RST) to Help Vulnerable Countries Meet Long-Term Challenges*, IMF (Oct. 12, 2022), https://perma.cc/2VXG-F8PP.
62. *Id*.
63. Nicholas & Illanperuma, *supra* note 56.

This proposal sounds simple, but there is still a lack of political will from many governments to hold themselves to such high standards and for private investors to admit a loss. In addition, credit enhancement availability is difficult to sniff out, dissuading developed governments from participating in these transactions. However, it is important to remember for every $1 invested in adaptation, $4 of benefit can be realized in the future when these climate disasters hit.[64] If these developed countries do not assist the developing ones, they will be paying more money later when the climate migration crisis reaches its tipping point. When that tipping point will arrive is not entirely clear, but it is not that far off in the future. Consequently, these transactions may initially hurt both the creditor and debtor, but they are worth the payoff. It is important to remember that any type of debt restructure, reprofile, buyback, or other process entails an initial loss, but the gains in not only the long run but the near future are massive.

CONCLUSION

While a massive haul, the CMFF is a promising tool that countries can adapt to fit the needs of their circumstances in climate crises and displacement. The more unstable the environment becomes, the more threatening it is to governments' spending and their ability to support their people and their debt. This multifaceted solution requires creating more contract flexibility and specificity, buying back a country's external debt that is trading at a lower cost, funding an organized displacement of people, maintaining the main goal of climate resilience development, and trust and accountability to support the whole deal.

This immense effort will increase countries' climate resiliency and financial stability—an incentive for all governments worldwide. The international mechanisms already in place for resilience development are useful and will help countries establish their own CMFFs because it is difficult to depend only on a highly indebted country's financing or lack thereof. However, with risk insurance measures in place and additional adaptation funding from international institutions, the CMFF demonstrates the political will to contract flexibly and commitment to ESG can protect millions of people. All it takes is the initiative of a sovereign to hold itself to higher accountability standards. More importantly, creditors need to make the crucial decision of whether keeping their current deals, which are already on shaky ground, is lucrative enough to disregard millions of lives or whether they want to take the step to create a safer future for everyone.

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64. *$4.2 Trillion Can Be Saved by Investing in More Resilient Infrastructure, New World Bank Report Finds*, THE WORLD BANK (Jun. 19, 2019), https://perma.cc/8MVE-AKXF.