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UK-African Partnerships and Just Energy Transitions: Finance and Investment Implications

This is a contribution by the researchers on the Climate Finance for Equitable Transitions (CLiFT) project to the All Party Parliamentary Group for Africa in response to the Call for Evidence for a policy inquiry on the 'UK-African Partnerships for Just Energy Transitions in Africa'.

CLIFT is a multi-institutional and multi-stakeholder initiative aimed at exploring the climate finance supply chain within the context of the multilateral climate change regime, international financial architecture and the multi-layered landscape of international economic law.

The NeF DeF network brings together research and policy thinking on how the shifting landscape of international development finance impacts on law, regulation and governance.

More information about CLiFT can be found on our website:
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It draws on the work of NeF DeF researchers which can be found here.

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Executive Summary

Finance is essential to achieving the decarbonisation goals set by the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement and for supporting countries' just and equitable transition to low-carbon and climate-resilient economies. The Just Energy Transition Partnership (JETP) has emerged as one of the key initiatives for supporting developing countries, including African countries, in energy transition away from fossil fuels while addressing the social and economic dislocations which may arise from such transition.

In this contribution, we identify four concerns in the current JETP financing approach that could undermine the aforementioned climate and sustainable development objectives and fiscal alignment, and that potentially give rise to legal, regulatory, policy and governance risks beyond individual country plans under the JETP. We believe that aspects of the JETP financing approach and proposed financial instruments may also generate social and economic transition risks and may have broader implications for governance and policymaking on climate action and sustainable development.

Our four main concerns with the JETP initiative as a mechanism for coordinating financing for just energy transition in Africa are as follows:

1. Reliance on debt instruments and private finance to fund decarbonisation and economic transition plans;
2. Legal risks emerging from private investments in energy transition projects;
3. Social and economic transition and governance risks; and
4. Compatibility with multilateral climate commitments

We submit that despite public commitments to country ownership, the JETP initiative remains premised on an aid framework rather than as part of the multilateral climate regime and this design means that its strategic priorities and operational architecture will continue to be driven by the interests of developed countries, multilateral development banks and private financial institutions that constitute the 'International Partners Group' (IPG) for each JETP. This can lead to a loss of policy space in developing countries and can undermine the core principles of the multilateral climate regime and weaken climate action globally.

UK-African Partnerships and Just Energy Transitions: Finance and Investment Implications

Submission by Celine Tan, Anil Yilmaz Vastardis and Gamze Erdem Türkelli
to the All Party Parliamentary Group for Africa in response to the Call for Evidence for a policy inquiry on the 'UK-African Partnerships for Just Energy Transitions in Africa'.

1. Just Energy Transition and Financing Partnerships

Finance is essential to achieving the decarbonisation goals set by the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement and for supporting countries' just and equitable transition to low-carbon and climate-resilient economies. The need for financing to meet climate action and transition measures in Africa is particularly acute given its historical circumstance and challenging ongoing structural financial and economic conditions. Africa's climate finance needs are estimated at US$250 billion per year until 2030, equivalent to more than 10 percent of their annual GDP[1]. Mitigation costs in the energy sector alone is estimated at US$158 billion) from 2020 - 2030.[2]

The Just Energy Transition Partnership (JETP), which the UK has played a leading role in establishing, has emerged as one of the key initiatives for supporting developing countries, including African countries, in energy transition away from fossil fuels while addressing the social and economic dislocations which may arise from such transition. Launched in 2021 at the COP 26 in Glasgow with South Africa as the first recipient country, the initiative has now been extended to Indonesia and Vietnam in 2022 and Senegal in 2023. It is likely that several other African countries will be in the pipeline for accessing finance under the JETP approach.

The JETP is a form of 'country platform', a multi-stakeholder partnership coordinated by national governments to generate financial resources to deliver a set of country priorities on sustainable development, climate action or other public goods objectives and to coordinate the policy, regulatory and institutional support needed to achieve them.[3] In the case of the JETP, the aim is to mobilise international public and private financing to support the national decarbonisation of energy sectors through country coordination with an International Partners Group (IPG) consisting of bilateral donors, including the UK, multilateral development banks (MDBs) and development finance institutions (DFIs) and private sector institutions, represented by the Glasgow Financial Alliance for Net Zero (GFANZ).

The 'programmatic approach' adopted by country platforms, such as the JETP, is viewed as a more effective means of supporting medium- to long-term sustainable development interventions – such as clean energy transition – than the piecemeal project approach to energy infrastructure development adopted by traditional MDB/ DFI financing.[4] It is also seen as a means of scaling up private sector investment in energy transition and climate action.[5]

Accordingly, the JETP goes beyond the transfer of financial resources and involves legal, regulatory and policy reforms in developing countries. The G7 views the JETP as forming a platform for global infrastructure development and investment that 'can contribute to the

[1] Guzmán, S et al (2022), 'The State of Climate Finance in Africa: Climate Finance Needs of African Countries', June 2022, Climate Policy Initiative, pp 6 – 8.
[2] Ibid, p 10.
[3] Hadley, S et al (2022), 'Country Platforms for Climate Action? Something Borrowed, Something New?'. ODI Emerging Analysis, June 0222, ODI; Semebene, D et al (2022), 'Country Platforms and Delivery of Global Public Goods', CGD Policy Paper 249, January 2022, Center for Global Development (CGD).
[4] Ibid.
[5] Ibid.

objectives of an open and inclusive climate club by supporting policy reforms and transforming the industry and related energy sector in line with multilateral and national commitments and processes'.[6] This means the JETP will have wider implications for developing countries beyond access to climate finance and can impact on local and national law and policymaking and their interactions in the broader global economy and international law.

2. Finance and Investment under the JETPs

As a novel mechanism, the JETP has been welcomed as a more expedient mode of accelerating climate action and channelling climate finance to developing countries outside the more protracted negotiations under the under the multilateral climate regime.[7] However, significant questions remain as to whether this financing model is appropriate for developing countries and what are the implications of this climate finance framework on domestic pathways for 'just transition'; and global efforts to address climate change in an equitable and sustainable way that does not undermine countries' social and economic development needs.

Although the JETP remains a nascent initiative and countries remain in various initial phases of developing their country platforms, we can draw some preliminary lessons from ongoing processes and substantive proposals from JETP countries. We identify four main concerns with the JETP financing approach that could undermine the aforementioned climate and sustainable development objectives and fiscal alignment, and that potentially give rise to legal, regulatory, policy and governance risks beyond individual country plans under the JETP.

We based our assessment on our analysis of South Africa's Just Energy Transition Investment Plan (JET-IP)[8] and information emerging on the JETP process in Indonesia and Vietnam.[9] We believe that these aspects of the JETP financing approach and proposed financial instruments may generate legal and regulatory risks as well as social and economic risks and may have broader implications for governance and policymaking on climate action and sustainable development.

2.1. Reliance on Debt Instruments and Private Finance

The JETP is heavily reliant on debt instruments and market-based mechanisms to finance decarbonisation and economic transition plans. For example, in the South African Just Energy Transition Investment Plan (JET-IP), the current IPG offer of USD 8.5 billion (funding only 12 percent of the total projected costs of the JET-IP) consists primarily of concessional loans and commercial loans and guarantees.[10] Meanwhile, a key feature of the JETP country platform is its focus on mobilising private sector finance with a significant bulk of official financing geared towards catalysing commercial sources of financing. Half of the projected USD15.5 billion of funds to be mobilised under Vietnam's JETP Resource Mobilisation Plan (JET-RMP), for

[6] Group of Seven (G7) (2022), 'G7 Chair's Summary: Joining Forces to Accelerate Clean and Just Transition towards Climate Neutrality'.
[7] Stone L (2023), 'JETPs 101: Helping Emerging Economies Go from Coal to Clean', RMI, 25 May 2023,
[8] Tan, C, Yilmaz Vastardis, A and Türkelli, G (2023), 'Evaluation of the Just Energy Transition Investment Plan (JET-IP)', contribution to the Institute for Economic Justice (IEJ) submission to the South Africa Presidential Climate Commission (PCC) Consultation on the Just Energy Transition Plan (JET-IP), 30 March 2023.
[9] See for example, Joint Statement by the Government of the Republic of Indonesia and International Partners Group members on the Indonesia Just Energy Transition Plan, 15 November 2022, Political Declaration on Establishing the Just Energy Transition Partnership with Viet Nam, 14 December 2022.
[10] South Africa (2022), 'South Africa's just Energy Transition Investment Plan (JET IP) for the Initial period 2023-2027', The Presidency of the Republic of South Africa, Section 6.

example, will depend on the mobilisation of private finance subject to the provision of 'catalytic public sector finance by the IPG members'.[11]

While significant financing needs for energy transition in JETP recipient countries require a broad range of financial instruments and investments, the reliance on debt instruments – official and commercial – and private investments generates significant financial, regulatory and legal risks for the host countries. The reliance on loans, even on concessional terms, to finance energy transition will have an impact on the fiscal position and exacerbate the already precarious sovereign debt profiles of African countries. Nine out of 11 countries in debt distress globally are from Africa and another 15 African countries are at a high risk of debt distress.[12] Reliance on debt instruments and on private capital markets will create greater exposure to shifts in global economic conditions and create new transmission nodes for financial instability. This will add to the pressures of financing other sustainable goals, including health, education, and increase the country's vulnerability to external financial dynamics and economic shocks.

Commercial financing instruments increase the state's debt risks in a number of ways: (1) they form contingent liabilities on the state if backed by state guarantees or funded through blended finance instruments (see discussion below); (2) the contractual terms of these arrangements may stipulate high financial exit costs for state parties (see section 2.2 below); and (3) they heighten the state's exposure to volatility in international financial markets. Existing systemic regulatory gaps in the global financial system mean that the turn to private debt instruments will increase African countries' vulnerability to the speculative and pro-cyclical nature of financial markets. Without systemic reform of the current international financial architecture, including changes to the fragmented sovereign debt regime, reliance on private finance and bond finance in particular, creates significant legal and regulatory risks on top of financial risks which can risk the viability of JETP projects and programmes.[13] Recent experience with developing country debt restructuring processes have demonstrated the reluctance and/or refusal of private creditors to engage in multilateral negotiations, prolonging access to financing and debt restructuring.[14]

An increased dependence on external private investors governed by regulatory frameworks (including corporate governance or financial conduct rules) in external jurisdictions mean that failures of regulation in these external jurisdictions (such as banking supervisory failures in the investors' home state) may create contagion and spill-over impacts on investments located in host states in Africa. Changes in the regulatory system in developed countries (such as pension fund, securities or capital requirements regulations) may also impact on investor behaviour and the value and security of investments abroad. At the same time, as more financial institutions seek to integrate climate risk assessments into investment decisions, developing countries, especially climate vulnerable countries, will likely face increase in

[11] Political Declaration on Establishing the Just Energy Transition Partnership with Viet Nam, 14 December 2022.
[12] IMF (2023), 'List of LICs for PRGT-Eligible Countries, As of June 30 2023'.
[13] Tan, C (2022), 'Private Investments, Public Goods: Regulating Markets for Sustainable Development', *European Business Organization Law Review*, Vol 23, No 1 and Tan, C (2022), 'Regulating Financial Markets for Sustainable Development Investments', 'Regulating Financial Markets for Sustainable Development Investments', NeF DeF Policy Brief Series No 3, September 2022.
[14] Connelly, S, Patricio Ferreira Lima, K and Tan, C (2022), 'Submission of Evidence to the House of Commons International Development Committee for the Inquiry into Debt Relief in Low-Income Countries, Examining the Impact of High Levels of Debt on Development and the Tools and Strategies Employed to Reduce the Debt Burden', 22 June 2022.

borrowing costs, thereby increasing debt burdens and impacting on countries ability to attract capital for energy transition.[15]

2.2. Legal Risks from Private Investments

The focus on catalysing private capital for decarbonisation and climate action necessitates consideration of how this may impact African countries' obligations elsewhere. There are potential areas of legal risks associated with transitions to a green economy, both in terms of transition away from existing investments in coal, oil and gas, and future deals with foreign investors in the renewable energy sector who hold the technology and know-how. The JETP approach emphasises plans to attract foreign investors in the renewable energy sector through incentives to foreign investments and providing guarantees and blended finance for public-private partnerships (PPPs) whilst phasing out domestic coal and other fossil fuel production in the host state.

International and domestic legal frameworks that promote and protect foreign investments run in parallel to national implementation of JETPs and may pose significant legal and regulatory risks including regulatory chill. Regulatory chill, in this context, describes situations where governments refrain from or postpone regulating due to potential or actual threats of investment disputes and exposure to significant financial burdens for breaches of investment protection standards.[16] Investment disputes span a whole litany of cases from a range of industries with a notable 42 percent of recorded cases up to date filed by investors in mining and energy sectors.[17] Such risks can increase the cost of energy transition for host states and cause delays where regulators refrain from or postpone introducing necessary reforms, in order to avoid liability for excessive damages awards rendered by arbitration tribunals.

Investment treaties and contracts typically guarantee economic rights of foreign investors and safeguard against deterioration of investment value due to regulatory reforms, even where such reforms are in furtherance of public interest, such as environmental regulations or climate action. As such, these legal instruments create protection bubbles for a privileged few while undermining public policy reforms.[18] When governments amend the terms of or cancel projects in the energy sector for public policy reasons, such as fossil fuel phase-out programs, this may give rise to investor-state disputes and excessive compensation burdens for host states.[19] Additionally, the issuance of thematic bonds, such as green or sustainability-linked sovereign bonds, to finance energy transition can also attract liability under investment law.[20]

International investment protections may act as a hindrance to green transition policies.[21] The risks are most acute for fossil fuel asset stranding, but a recent wave of at least 80 investment

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[15] Aren, M-L (2023), 'Climate Justice and Debt: Exploring Regulatory Complexities in the Global Climate Finance Architecture Inhibiting Finance Flows for Africa's Climate Action' in Gathii, J T, Majekolagbe, A and Tamala, N (eds), *Transforming Climate Finance in An Era of Sovereign Debt Distress*, Sheria House Publishing; Woolfenden, T (2023), 'The Debt-Fossil Fuel Trap: Why Debt is a Barrier to Fossil Fuel Phase-Out and What We Can Do About It', July 2023, Debt Justice et al.

[16] Tienhaara, K and Cotula, L (2020), 'Raising the Cost of Climate Action? Investor-State Dispute Settlement and Compensation for Stranded Fossil Fuel Assets', October 2020, Institute for Environment and Development (IIED) Land, Investment and Rights Series, London: IIED.

[17] ICSID (2023), 'The ICSID Caseload: Statistics', Issue 2023-12', Washington DC: International Centre for the Settlement of Investment Disputes (ICSID).

[18] Yilmaz Vastardis, A (2020), 'Investment Treaty Arbitration: A Justice Bubble for the Privileged' in T Schultz and F Ortino (eds) *The Oxford Handbook of International Arbitration*, Oxford: Oxford University Press.

[19] Boue, J C, (2023) 'The Investor-State Dispute Settlement Damages Playbook: To Infinity and Beyond' *Journal of World Investment and Trade* Vol 24 No 3, pp 372-397.

[20] *Abaclat and Others v Argentine Republic*, ICSID Case No. ARB/07/5.

[21] IPCC (2022), *Climate Change 2022: Impacts, Adaptation and Vulnerability*, chapter 14, pp.1505-1506.

treaty claims by renewable energy investors against Spain, Italy, the Czech Republic, Romania and Bulgaria act as a reminder that governments should carefully consider the impact of international investment treaty and contract commitments on future adjustments to just transition policies.[22] These European renewable energy disputes arose from respective governments taking the decision to reduce or eliminate the generous subsidies and incentives to existing renewable energy projects giving rise to a reduction in investor profits. The rollback of subsidies was triggered in various European countries as they became unaffordable for governments after the 2007 financial crisis.

2.3. Social and Economic Transition and Governance Risks

The JETP finance and investment approach can generate significant social and economic transition and governance risks that can compromise the climate objectives of the initiative while undermining African countries' other human rights and environmental obligations. There is a risk that a financing agenda that is oriented to private interests can subordinate countries' priorities to the interests and priorities of private investors without the necessary social, economic and environmental safeguards to facilitate a just and equitable energy transition for communities in Africa.

While the overarching objective of the JETP is to ensure that greening the economy does not undermine social and economic development needs of developing countries, there has been a greater emphasis on financing large-scale infrastructure and regulatory and policy reform to enable energy transition than on mitigating the social and economic dislocations to communities or on developing social and environmental safeguards. The focus on private financing and limited public, especially grant, financing, limits the capacity of host countries to support communities, such as workers and local businesses, impacted by clean energy transitions. Experience, such as during the COVID-19 pandemic, have demonstrated that private investors do not typically fund social programmes, essential services or social safety nets that have no prospect of commercial returns.[23]

Additionally, social and economic risks are narrowly defined in the JETP to communities, such as communities in coal-mining regions, directly impacted by energy transition, rather than broader macroeconomic and fiscal risks of energy transition that impact on the national economy. For example, declining public revenues from traditional energy production sources curtail countries' expenditure on public services, such as healthcare and education, exacerbating the structural economic challenges faced by many African countries today. Without a holistic, cross-sectoral approach to decarbonisation, finance and investment plans under the JETP may undermine rather than support 'just' energy transitions.

Further, reliance on private finance, mobilised primarily through DFIs and private capital markets, can exacerbate existing gaps in project finance safeguards and compromise limited recourse available to communities displaced or harmed by project operations. Accountability becomes more challenging in a financing landscape where multilateral and bilateral DFIs, commercial lenders and other private financiers are involved in a fragmented way. There is greater opacity surrounding private sector projects in development projects compared to those undertaken by the public sector through an official sector grant or loan (for example, through an MDB as opposed to a DFI). DFIs and PPPs tend to have weaker transparency and information disclosure policies than their public counterparts on grounds of commercial

[22] UNCTAD (2022), 'Treaty-based Investor-State Dispute Settlement Cases and Climate Action', IIA Issues Note, Issue 4, September 2022, pp5- 6.
[23] See for example, Lisinge-Fotabon, E (2022), note 3 above.

sensitivity or client confidentiality.[24] They also present unique challenges for community participation and access to information, both at the pre-project consent stage and at the later grievance/complaint stage.[25]

2.4. Compatibility with Multilateral Climate Commitments

The JETP initiative is viewed as part of a global effort to accelerate implementation of legal commitments under the UNFCCC and Paris Agreement. However, there are concerns that the JETP remains a donor-dominated initiative which sits outside the auspices of the UNFCCC, is not supervised by the Conference of Parties (COP) and may undermine objectives of the multilateral climate regime. Climate finance from the UK government is classed as official development assistance (ODA) and it is unclear whether the resources pledged by the UK to the JETP would represent additional resources committed by the UK for other sustainable development purposes. The diversion of ODA towards climate finance undermines the principle of 'additionality' under the multilateral climate regime and can have a material impact on countries' ability to mobilise resources to meet other sustainable development objectives.

At the same time, while the aim of the JETP is to enable countries to mobilise finance in support of their Nationally Determined Contributions (NDCs)[26], there are question marks over how much autonomy developing countries will have in aligning their domestic priorities with donor/ investor commitments and action. Experience with country platforms in other areas of development finance, such as budget support, has shown that it can be difficult to maintain political commitment from donors and to sustain donor coordination over time.[27]

This becomes more challenging as stakeholders increase and are driven by their own priorities.[28] Interventions to create enabling environments for private investments for climate action can accelerate the loss of policy and regulatory autonomy in developing countries, as legal and regulatory reforms, and the development of new market-based instruments can outpace government capacity to direct credit creation in their own economies while disconnecting investment projects from country development plans.[29] Moreover, the use of DFI financing can often bypass state agencies as DFIs contract directly with private actors within the host state.[30] Additionally, the dangers around the imposition of externally determined policy agendas on developing countries by powerful philanthropic actors and the subsequent shrinking of these countries' national policy space has been well documented in academic and policy literature.[31]

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[24] Vervynckt, M (2015), 'An Assessment of Transparency and Accountability Mechanisms at the European Investment Bank and the International Finance Corporation', Eurodad, 30 September 2015.
[25] Tan, C, Erdem Türkelli, G and Jebechii Sago, J (2023), 'Call for Input on 'Development Finance Institutions and Human Rights', Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, UN Human Rights Council: Submission by researchers on the New Frontiers in International Development Finance (NeF DeF) Project', 3 March 2023.
[26] An NDC is 'a climate action plan to cut emissions and adapt to climate impacts' that each state party to the Paris Agreement is required to establish and update every five years (see UN (undated), 'All About the NDCs').
[27] Hadley et al (2022), note 3, pp 9 – 10.
[28] Ibid.
[29] UNCTAD (2019), *Trade and Development Report 2019: Financing a Global Green New Deal*, UN Conference on Trade and Development (UNCTAD): New York and Geneva; UNCTAD (2019) *The Least Developed Countries Report 2019. The Present and Future of External Development Finance: Old Dependence, New Challenges*. UNCTAD: New York and Geneva.
[30] Ibid.
[31] See McGoey, L, Thiel, D and West, R (2018). 'Le philanthrocapitalisme et les « crimes des dominants', *Politix*, 121, and Martens, J and Seitz,K (2015), 'Philanthropic Power and Development: Who Shapes the Agenda?', MISEREOR, Global Policy Forum and Brot für die Welt.

As the JETP remains premised on an aid framework rather than as part of multilateral climate finance obligations, its strategic priorities will continue to be driven by the interests of the developed countries, multilateral institutions, and private financiers which constitute the IPG, leading to the disbursement of resources based on conditionality. These may include structural and policy conditionalities which may undermine rather than progress the objectives of decarbonisation and just energy transition and which undermine broader sustainable development objectives.

Regulatory and policy reforms undertaken as part of the JETP but which are not adequately financed by developed countries can also be considered as 'green conditionality' or mitigation 'through the back door'. This undermines two core principles of the multilateral climate regime – **equity** and **common but differentiated responsibilities and respective capabilities** (CBDR-RC) – which provide that developing countries' commitments to undertake mitigation measures is dependent on developed countries meeting their commitments to provide financial resources and technology transfer to developing countries, reflecting the historical responsibility of developed countries for carbon emissions.[32]

4. Conclusion

Climate finance is central to meeting international legal climate obligations and driving policy and operational change on climate action locally, transnationally, and globally. It is not possible to achieve meaningful climate action without significant commitment of financial resources to **mitigate** and **adapt** to and address **loss and damage** from climate change. Finance is also critical to ensuring that pathways to decarbonisation and climate resilience do not undermine sustainable development needs of countries while addressing the social and economic dislocations which may arise from such transitions. In this context, the JETP has been presented as an opportunity for developing countries to establish long-term partnerships with developed countries bilateral donors, multilateral organisations and private investors to support just energy transitions and provide a blueprint for transformation to low-carbon and climate resilient economies.

However, climate finance is guided by multilaterally agreed principles, including the CBDR-RC, additionality, predictability and country ownership, as well as by considerations of debt sustainability, cost effectiveness, harmonisation of climate action with social and economic impacts of low-carbon transition and establishment of governance and safeguards to manage risks of the transition programme. Ideally, climate finance should always be channelled through the mechanism established by and under the supervision of the COP so that progress on achieving commitments of state parties to the respective international climate agreements are appropriately monitored. Climate finance should not be fragmented across different platforms and entities, nor should it be premised on strategic interests of developed countries and commercial interests of private investors over and above global collective interests on climate action and local community social, economic, and other human rights.

[32] See Article 4 of the UNFCCC and Articles 2.2 and 9 of the Paris Agreement.