# Policy brief

## Gabon's Odious Debt-for-ocean Swap: The implications for ocean governance

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This article covers TNC's recent debt-for-ocean swap with Gabon, involving US$500 million worth of debt. In exchange, the Gabonese government has committed to protect up to 30% of the oceans. The author looks in detail at the deal (Part 1) and the conservation commitments (Part 2), explores the problems with this deal in terms of debt justice and of ocean governance, and develops its implications for coastal communities.

### Overview

In July 2023, Gabon made international news with two events. The first was that it had finalised a debt-for-ocean swap, facilitated by the US Conservation Organisation, The Nature Conservancy. According to many reports, the swap involved creditors exchanging US$500 million worth of debt as a quid pro quo for the government promising to enlarge marine protected areas to 30% of its oceans. An outcome of the swap, so it was reported, was to reduce Gabon's foreign debt obligations and provide an additional US$163 million for marine conservation in the country.

The second event, which happened a few weeks later, was the arrest of President Ali Bongo and his son and the instalment of a new government led by General Brice Nguema, Bongo's cousin. The catalyst of the arrest was election fraud, but it was also justified because the Bongo family, who have ruled Gabon since 1967, had criminally plundered the country, causing widespread poverty and a spiralling debt crisis. British-born Lee White, the Gabon Minister for Water, Forest, the Sea and

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Environment, the architect of Gabon's national carbon trading programme and a key negotiator for the debt-for-ocean swap, was also arrested on corruption charges.

Gabon was the fifth debt-for-ocean swap that US conservation organisations have concluded over the past few years, the others involving TNC being in Seychelles, Belize, and Barbados, with Pew concluding one in Ecuador. Gabon brings up the total debt refinanced by US conservation organisations to well over US$2.5 billion. These swaps are often considered an ingenious solution to the twin problems of unsustainable debt in poor countries and the alarming loss of marine biodiversity. However, as CFFA described for Belize,[2] there are many reasons why debt-for-ocean swaps are problematic. Gabon illustrates these problems: the swap is neither good for addressing the problem of unsustainable debt nor is it an attractive solution for advancing the sustainable management of marine resources, particularly from the perspective of small-scale fisheries. The presentation of this deal is also misleading: the debt swap in Gabon did not cause the government of Gabon to commit to protecting 30% of its oceans, nor did it produce US$163 million in additional money for ocean conservation. So, the question is, what exactly did it achieve?

## 1. On the origin of Gabon's debt

It is often remarked that Gabon should be a prosperous country, given its small population of 2.1 million people and its abundant natural resources. In Sub-Saharan Africa, Gabon is the fifth largest oil exporter, while it has the second largest deposit of manganese globally. However, the reason Gabon is not prosperous is the legacy of French imperialism that has produced an economy benefitting multinational companies and a small Gabonese elite. Consequently, Gabon has been described as a kleptocracy, with one estimate that 2% of the population owns 80% of the country's wealth.[3] Through corruption, the Bongo family became one of the richest in Africa. Gabon is also judged to have one of the highest historical rates of illicit capital flight in Africa, estimated at over US$25 billion between 1970 and 2010.[4]

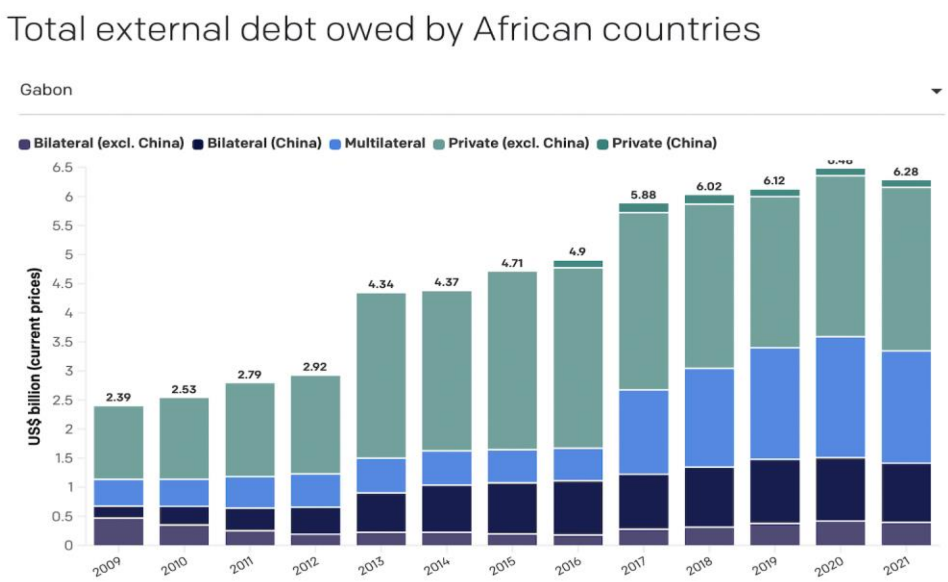
This is the origin of Gabon's unsustainable debt, which provides one of the clearest examples of what is known as odious debt: money acquired by rulers without the consent of citizens and used for their personal gain or those of foreign companies and governments. Being odious debt, it is something that the citizens of Gabon should have no obligation to repay. However, Gabon's recent struggles with foreign debts—those involved in the debt-for-ocean swap—can be traced to a series of dubious deals and economic policies in the last 15 years. A pivotal moment was in 2007, when members of the Paris Club, and primarily France, agreed to a debt-for-cash swap with Gabon. The details of that debt swap remain murky. However, it involved Paris Club donors allowing Gabon to pay cash to retire US$2.4 billion of debt owed to them. The deal gave Gabon a discount on the debt, although there is no public record of what it was. To finance this deal, Gabon used part of its foreign exchange reserves, and then

[2] STANDING, Andre, "Debt-for-nature swaps and the oceans: the Belize Blue Bond", CFFA-CAPE website, 15 March 2022. Available at: https://www.cffacape.org/publications-blog/debt-for-nature-swaps-and-the-oceans-the-belize-blue-bond
[3] TIETZ, Andrew, "Ce que reste: Legacies of decolonialisation in Guinea and Gabon", International area studies commons, Spring 2022. Available at : https://digitalcommons.iwu.edu/cgi/viewcontent.cgi?article=1025&context=intstu_honproj
[4] BOYCE, James K. and NDIKUMANA, Léonce, "Capital Flight from Sub-Saharan African Countries: Updated Estimates, 1970 – 2010", Political Economy Research Institute, University of Massachussets, Amherst, October 2012. Available at: https://peri.umass.edu/fileadmin/pdf/ADP/SSAfrica_capitalflight_Oct23_2012.pdf

it borrowed US$1 billion through a ten-year Eurobond, arranged by Citibank, which had been prosecuted before for aiding the Bongo family in money laundering. That was an expensive loan, with an annual interest rate of 8%. Despite being a risky loan—with a high probability of default—investors were willing to lend this money predominantly due to forecasts of the growth in Gabon's offshore oil and mining wealth.

In 2013, during the start of the global commodity price crash, Gabon realised that it could not repay the principal on the billion-dollar Eurobond by 2017, so it took advantage of the lower interest rates available at that time by issuing another Eurobond of US$1.5 billion at 6.75% interest. Most of this was used to finance a debt buyback scheme, which resulted in investors in the US$1 billion Eurobond being paid back the principal investment early but at a price slightly more than was due (1.8% more than the principal). The remainder was used to cover a growing deficit in the public accounts, although reports, including the government's anti-graft investigation, suggest much may have been embezzled, continuing a long-standing trend.

Over the next few years—in behaviour reminiscent of a failing gambler at a casino—Gabon returned to the Eurobond markets several times, borrowing more money to pay off the costs of servicing previous debts. In 2021, despite having a Eurobond of US$700 million due for repayment in 2025, it issued two more Eurobonds valued at US$1.8 billion with an interest rate of 7%. Between 2007 and 2022, Gabon's external debt skyrocketed, reaching over 70% of GDP, putting it on the IMF's list of being in debt distress. Not all of this was due to Eurobonds: Gabon also borrowed more heavily during this time from China and increased borrowing from multilateral banks. However, the Eurobond debt became the country's largest and most expensive source of public debt (illustrated in the table below).




*Source: one-data: https://data.one.org/topics/african-debt/*

## THE MYTH OF GABON'S GREEN AND BLUE GROWTH

While accumulating Eurobond debt, Gabon, under the Presidency of Omar Bongo's son from 2009, Ali Bongo, also enacted a range of policies to grow the economy and increase its ability to service debts. It was also set out in the "Emerging Gabon" vision that the country would move away from its reliance on fossil fuels and embark on a path of green and blue growth, including scaling up protected areas for nature and committing to a ban on deforestation. In 2017, as part of its blue growth plan (known as Gabon Bleu), Gabon declared 26% of its oceans marine protected areas.

In reality, Bongo chose policies that contradicted this pursuit of an environmentally friendly growth path. For example, after declaring a moratorium on deforestation, Ali Bongo signed a contract in 2011 with Singapore-based firm "Olam" to develop palm oil production in the rainforest, which created Africa's largest palm oil plantation and resulted in extensive deforestation and allegations of human rights abuses, including the loss of access to forest for indigenous communities.[5] In 2015, Gabon produced a new mining code, which paved the way for new mining concessions with Chinese, North American and European mining companies, including seven new concessions for gold mining. In 2019, Gabon revised its hydrocarbon regulation to stimulate foreign investment in offshore oil and gas. This involved a series of business-friendly policies, including reducing the stake of the Gabon government in mining operations from 20 to 10%, reducing state royalties from 15% to as low as 2% for new projects, and removing corporate tax of 35% for hydrocarbon companies.[6] This resulted in nine new exploration and production contracts. This, despite Ali Bongo's pledge to diversify the country away from fossil fuels, has cemented the oil and gas sector as the primary source of government wealth: an estimated 80% of government revenues come from oil and gas, while 98% of the country's exports are oil, timber, minerals, and metals.

In 2020, having received a damning report from the IMF over public debt management, Gabon's government agreed to a regime of austerity, starting with a controversial decision to declare US$360 million worth of debt it owed to domestic lenders as illegitimate and therefore cancelled, but continuing with deep cuts to government spending.[7] The austerity worked to reduce the share of public debt to GDP, but it led to deepening poverty in the country. Between 2019 and 2021, the national budget decreased by about 30%. By 2022, rural poverty rates in Gabon were increasing, access to healthcare and education was receding, and unemployment reached over 40%. An estimated 8% of the population living in rural areas are now classified as living in extreme poverty, without sufficient income to afford adequate food. By 2023, public discontent was rising, culminating in widespread allegations that the 2023 Presidential elections were rigged, as had every other election in Gabon's post-colonial era. This is the context not only for the debt-for-ocean swap, but also for the military coup.

[5] See the report produced by the World Rainforest Movement and Muissi Environment, "Communities facing zero deforestation pledges: the case of Olam in Gabon", 2020. Available at: https://www.wrm.org.uy//wp-content/uploads/2020/03/Communities-facing-Zero-Deforestation-pledges-case-Olam-Gabon.pdf
[6] LARSSON, Lars, "Gabon's New Hydrocarbons Code: A bold step into the future", News article, Energy & Capital Power, 12 April 2023. Available at: https://energycapitalpower.com/gabon-hydrocarbons-code-a-bold-step-into-the-future/
[7] See the Annual report for Gabon by the BTI-Transformational index. Available at: https://bti-project.org/en/reports/country-report/GAB

## 2. Making sense of the debt-for-ocean swap agreement

With this context in mind, we can now turn to what has been achieved in the debt-for-ocean swap. As with the other four debt-for-ocean swaps, this is complex, involving offshore companies and multiple loans between different parties. In addition to being complex, it is also opaque, as several elements of the deal remain obscured from public scrutiny. Public access to documents has been prevented across all five of the debt-for-ocean swaps concluded by US conservation groups. However, the author obtained a draft copy of the confidential "blue bond" prospectus for Gabon, which helps fill in specific gaps while leaving others still unclear.

To simplify, we can distinguish between two parts. The first relates to the financial transaction, which is designed to convert existing debt owed by Gabon to foreign creditors into cash that can be used for marine conservation. The second part relates to the commitments made by the government of Gabon for ocean conservation, including how the new money for ocean conservation will be spent.

### PART 1: THE DEBT SWAP

The name "Debt-for-ocean swap" is misleading. In these deals, debt is not swapped for protecting marine biodiversity: the government of Gabon did not offer foreign creditors nature in replacement for paying them cash, which would have required some effort to put a monetary value on nature. Instead, what happens in a debt-for-ocean swap is that a US Conservation group is offering to help debtor countries restructure their existing debt to create cash savings. They do this with an agreement that the savings are used to pay for marine conservation projects, and - additionally - the debtor country commits to implementing policies and laws that change how the oceans are regulated.

For a debt-for-ocean swap to be possible, existing creditors to a country must be willing to sell their debt at a discount. In Gabon, the creditors involved in the swap are those who lent the government money with interest through Eurobonds. An important element to understand is that bond notes are tradable assets. When they are issued, they have a face value, and then they have a market value, which is how much they are worth to other investors. Understanding what influences the market value of bond notes is quite complex. Still, one scenario is that it goes down when investors perceive the possibility of default increasing. In this case, owners of bond notes may decide that it is in their interest to sell their assets to someone else. However, the market value of bond notes tends to return to the face value when the Eurobonds are coming to their maturity (when the entire principal has to be repaid) – if there are no indications of a default.

Regarding the debt-for-ocean swap, a US Conservation organisation, therefore, identifies a country where Eurobonds have a market value less than the face value. Then, it lends money to the government to buy these notes from investors at a price slightly above the market value (but still less than the face value). Notes that are bought are then retired. The US Conservation Organisation acquires the money to lend to the debtor country – what they call a blue loan – by issuing what they call a blue bond. Essentially, that is just another Eurobond sold to investors, with a promise the money will be used to enhance marine biodiversity. In theory, the financial benefit for debtor countries is achieved because the amount of money they owe to the US Conservation Organisation is less than the amount they would have paid if the debt buyback had not occurred.

A vital component of this convoluted transaction is the ability of the US Conservation Organisation to borrow money from investors at a cheaper rate than the debtor is currently paying investors in its Eurobonds. For this to happen, the US Conservation Organisation pays for a political risk assurance from the US government for the Blue Bond.

Now, consider what happened in Gabon. Before the debt swap took place, Gabon had three outstanding Eurobonds, each with differing coupon rates. These coupon rates represent the annual dividend paid to investors based on a percentage of the principal:

I. A Eurobond with a principal amount of US$700 million that is maturing in 2025. That has a coupon rate of 6.95%.
II. A Eurobond with a principal amount of US$1 billion that is maturing in 2031. That has a coupon rate of 6.625%.
III. A Eurobond with a principal amount of US$800 million that is maturing in 2031. That has a coupon rate of 7%.

TNC, through collaboration with private asset management firm PK Harris and the New York Bank of Mellon, created a company registered in Delaware called the Gabon Blue Bond Master Trust. That was divided into two companies: “Series 1” and “Series 2”. Series 1 issued a blue bond arranged by the Bank of America that raised US$500 million with a credit guarantee provided by the US Government. The maturity date of that blue bond is 15 years, and it comes with a coupon rate of 6.097%. This US$500 million was then lent to the Gabon government by Series 2, which is what is called the “blue loan”.[8]

The blue loan terms are unknown: it may be for the same coupon rate as the blue bond or higher. In Belize, the blue loan came with an interest rate that was about 2% higher than the interest rate attached to the blue bond. In other words, TNC borrows money from investors in the blue bond at an interest rate lower than they apply to the blue loan with debtor countries. That is where TNC and various intermediaries derived additional revenues from the deal, part of which is needed to pay the US government for political risk assurance. In Gabon’s case, it is hard to see how the Gabon Blue Bond Master Trust could lend the country money at much more than 6.097%, but they may have done so.

The US$500 million transferred to Gabon’s government was then used to finance the debt buy-back on the three bonds. The original plan was to buy out all the bond notes of the 2025 Eurobond, which had a face value of US$700 million. However, a minority of bond noteholders accepted the offer – most preferred to keep their bonds and get the full-face value in 2025. One of the problems facing TNC and the government of Gabon is that the 2025 Eurobond was nearing its maturity date, so its market value was creeping up to its face value. A minority of investors thought it was in their interest to sell.

[8] Legally, the debt-for-ocean swap was entered into between the Gabon government and PK Harris, who are registered as the ultimate beneficial owners of the Gabon Blue Bond Master Trust. However, every international news story on the debt swap refers to it as TNC’s swap, which is untrue.

Therefore, the offer to buyback bond notes was extended to investors in the other two Eurobonds. Eventually, Gabon ended up with the following:

I. It bought US$95 million worth of bond notes of the 2025 Eurobond (6.95%) at 96.75% of the face value of the bond notes.
II. It bought US$105 million worth of bond notes of the first 2031 Eurobond (6.625%), at 85% of the face value of the bond notes.
III. It bought US$300 million worth of bond notes of the second 2031 Eurobond (7%), also at 85% of the face value of the bond notes.

If we add these sums up, it cost Gabon US$455 million to buy bond notes with a face value of US$500 million, a saving on the principal of Eurobond debts of roughly US$64 million. However, it borrowed US$500 million in total. The remaining US$45 million dollars of the blue bond has yet to be accounted for. From what is known from other debt-for-ocean swaps organised by TNC (such as Belize), this US$45 million will be spent on the following:

- Commission fees for legal and financial intermediaries, including TNC.
- A bonus for early bird investors in the new blue bond
- A lump sum payment to an endowment fund for ocean conservation managed by the Gabon Blue Bond Master Trust. The profits of this investment are held in trust, and will become available to be spent in Gabon for ocean conservation projects after the blue loan has been repaid, i.e. in 2038 (although see below for more details on this). This is likely to represent the largest sum of money from the US$45 million.

<u>**So how much debt was saved in the deal?**</u>

What is difficult in this deal is working out how and to what extent Gabon managed to lower its long-term debt and, therefore, what money has been created for new conservation spending. It would be fairly straightforward for anyone to work out the savings in this deal if they had complete information on the terms of the Eurobonds that were bought in the swap and the terms of the blue loan that Gabon has taken from the Gabon Blue Bond Master Trust. The problem, however, is that the terms of the blue loan are currently confidential.

In the introduction of the prospectus for the blue bond, it is stated that it is expected "*to generate, directly and indirectly, US$125 million for dedicated spending on biodiversity conservation*." The choice of words is ambiguous, as it is unclear what is meant by directly or indirectly. However, on TNC's website, the press release stated that the debt swap would generate an "*expected US$163 million in new funds for ocean conservation*."[9] The discrepancy of US$38 million is substantial and suggests there is a lack of certainty on exactly what the deal has achieved. Yet on closer reading, TNC describes that approximately US$4 million will be made available from the blue loan repayments for ocean conservation spending in Gabon every year for the next 15 years. This most likely represents the savings achieved in the deal. Therefore, the blue loan of US$500 million has lowered total debt repayments for the

[9] "The Nature Conservancy Announces Debt Conversion for Ocean Conservation in Gabon, First Ever in Mainland Africa", The Nature Conservancy website, Newsroom, 14 August 2023. Available at: https://www.nature.org/en-us/newsroom/tnc-announces-debt-conversion-for-ocean-conservation-in-gabon/

country by something like US$60 million, not US$163 million. That works out to US$4 million annually for the next 15 years.

So, where does the US$163 million figure come from? What seems likely is that a large part of this amount comes from counting the value of the endowment fund established by money paid from Gabon through the blue loan. This might correspond to an "indirect" savings caused by the blue bond. The Gabon Blue Master Trust (controlled by a private US asset management firm) is tasked with investing this money with a target of achieving 7% annual growth.

What this means is that just over US$100 million of the reported "new" funding for marine conservation – the majority of the new conservation finance – derives from Gabon borrowing money at (at least) 6.1% interest from a foreign asset management company, which it then gives back to the same company so it can invest it at 7% interest on its behalf. The resulting cash will be available to be administered in Gabon after 2038. Putting to one side the question of whether this is a good idea or not, any additional money that stems from this transaction has nothing to do with a debt swap: the endowment fund is not financed through savings in the debt refinancing deal, it is financed through an additional loan on top of what was needed to retire Eurobond debt.

## PART 2: THE CONSERVATION COMMITMENTS

Alongside the blue loan, the government of Gabon has entered into a conservation contract with TNC as a condition of the debt restructuring scheme. As with the blue loan contract, this contract has not been published. However, the basic framework of the agreement is described in the confidential blue bond prospectus, and this follows the structure of the conservation agreements found in other countries that have agreed to a debt-for-ocean swap.

To understand how this contract works, it is essential to know that in every debt-for-ocean swap, the US Conservation Organisation (TNC in this case) establishes a new conservation organisation to work in the debtor country. In Gabon's case, this organisation is called "Gabon Blue Conservation". TNC wholly owns this and, like the Gabon Blue Bond Master Trust, is registered in Delaware. The primary function of this new conservation organisation is to receive part of the money from the repayment of the blue loan that is then issued to other organisations working in Gabon for marine conservation projects. In other words, it redirects savings in the debt refinancing deal towards the work of others, including both NGO and government-run projects. As noted above, TNC describes that Gabon Blue Conservation will receive approximately US$4 million a year, although that figure needs to be confirmed. In addition to this annual revenue, Gabon Blue Conservation will also receive money from 2038 from the conservation endowment fund.

Gabon Blue Conservation is established as a multistakeholder entity, with a governing board comprising a minority of government representatives and a majority of non-government stakeholders. TNC has a permanent position on the board. This organisation can also accept funding from other sources. Of the revenues received from the blue loan prepayments, 20% can be used for administrative costs, and up to 40% can be issued as grants to government agencies, with the remainder being available for non-government organisations. Grants to government agencies are not allowed if they cover activities that public funds otherwise cover, thereby avoiding the fungibility of money from the conservation organisation (paying for things that the government would have otherwise done).

In addition to providing funding to Gabon Blue Conservation, the contract signed between TNC and the Gabon government commits the latter to several deliverables. These are divided between mandatory activities that, if not implemented, result in a financial penalty paid to Gabon Blue Conservation and targets that are requested but do not carry the threat of financial penalties for non-delivery.

The mandatory deliveries are as follows:

1. To legally gazette marine protected areas that cover 30% of Gabon's oceans by 2029. Half of the MPAs in Gabon must be designated as "High Biodiversity Protection Zones", which prohibit fishing activity.
2. Gabon must create a Marine Spatial Planning Committee by 2024, including representatives from fisheries, tourism, port authorities and the oil and gas sectors. This committee is required to ensure transparency and participation in completing the country's Marine Spatial Plan. A draft plan must be ready by the end of 2026.
3. Pass a regulation that requires 100% of industrial fishing vessels to operate electronic monitoring in October 2025, and then ensure this regulation is fully implemented by October 2028.
4. Produce a national plan of action to combat Illegal, Unregulated and Unreported fishing by October 2027. These are plans that have been requested by the UN's Food and Agriculture Organisation back in 2001, with many coastal and Island states having yet to produce one.

The commitments without financial penalties include:

5. Develop a National Plan of Action for Sustainable Fisheries
6. Implement climate change commitments, which include a wide range of potential activities, such as lowering carbon emissions and promoting blue carbon trading.
7. Create a Blue Economy Road Map that describes strategies to grow the blue economy, attract private investors and strengthen the governance of the blue economy.

There are no public details on what the fines for non-delivery are. However, in Belize, the fines for missing each key milestone amounted to about US$1 million each.

## 3. Why is the debt-for-ocean swap problematic?

### FROM A DEBT JUSTICE PERSPECTIVE

Much critical attention to debt-for-ocean swaps focuses on how these deals help Southern countries resolve the severe financial difficulties stemming from a debt crisis. From the perspective of those concerned about debt justice, these complex transactions are troubling for several reasons:

- As evident in Gabon, the debt-for-ocean swap is not designed to resolve debt problems. Instead, they are opportunistic deals whereby US conservation organisations exploit a situation where sovereign debt trades at a discount to finance a debt buyback scheme. This does result in a debt reduction for countries, although in Gabon, this reduction was inconsequential in alleviating debt distress. Creditors in these deals may gain the status of supporting marine conservation. However, these are purely financial transactions that are investor-friendly: bondholders are paid above-market rates for their bond notes.

- Sovereign debt restructuring deals usually produce money that benefits public wealth: money that would otherwise go to private creditors is freed up to reduce public debt. However, in a debt-for-ocean swap, the savings are transferred into private ownership. Gabon Blue Conservation, which is foreign-owned, receives these savings and charges 20% as an administration fee. This immediately reduces the savings for the country by a 1/5th. Of the remainder, 40% is ring-fenced for spending by non-government organisations, including foreign environmental organisations. The savings in debt-for-ocean swaps are, therefore, not returned directly to the public account of debtor countries.

- Debt-for-ocean swaps are accused of refinancing illegitimate debt. This is the case in Gabon, whereby the debt being bought by TNC originates in loans that have not been used for the benefit of Gabon's citizens, and parties to these loans were fully aware of this. The current spiralling debt crisis in Southern countries urgently requires international recognition of odious debts, their cancellation, and policies to be implemented that avoid their continuation. Debt-for-ocean swaps simply "greenwash" illegitimate debt and are therefore regressive for debt justice.

- Finally, in addition to lending countries money to refinance debt, the US conservation organisations add extra charges to the loans. These make debt swaps expensive debt restructuring deals. This extra money debtor countries are borrowing covers the expenses of intermediary organisations and the funding of "marine endowment funds".

## FROM OCEAN GOVERNANCE PERSPECTIVE

While these criticisms of debt-for-ocean swaps from the perspective of debt justice are important, what is often overlooked in these transactions is their implications for ocean governance. It can be assumed that debt-for-ocean swaps are beneficial from an environmental perspective. However, there are several reasons why this is misleading.

### 1. <u>The fallacy of the 30x30 target</u>

The public perception of a debt-for-ocean swap is that these deals save considerable parts of the ocean. This is a view encouraged by TNC in its press statements. However, in Gabon, it is clear that the debt swap cannot have a claim to enlarging the coverage of Marine Protected Areas to 30% of the country's oceans. One reason is that Gabon already declared 26% of its oceans as MPAs in 2017. Another reason is that

Gabon had already pledged to extend its MPA coverage to 30% by 2030, before the debt-for-ocean swap took place.

The case of Gabon also illustrates more serious flaws of the 30x30 pledge. While reaching this milestone is considered an environmental success, Gabon has simultaneously pursued policies for expanding offshore oil and gas production. Gabon, therefore, demonstrates how countries can nominally protect part of the ocean as a haven for biodiversity while allowing for destructive and polluting industries to expand in the remainder.

### 2. Transparency and participation

A defining feature of the debt-for-ocean swaps concluded by both TNC and PEW is their decision to keep important documents hidden from public scrutiny. This includes:

- The details of the blue loan issued from the US conservation organisations (or via asset management companies working on their behalf) and the debtor country.
- The prospectus of the blue bond issued to raise the money to finance the blue loan.
- The conservation contract, including information on the fines for missing mandatory targets.

Because of this, the debt-for-ocean swaps do not allow for public comment on the deals, and they fail to engage citizens in the affected countries, such as small-scale fishing communities. Civil society has no opportunity to contribute to debates on how the money produced through these deals is used. This lack of participation can help explain why the terms of the agreements are so poorly thought through. This also means debt-for-ocean swaps contradict decades of work that has tried to promote high levels of transparency and participation in ocean governance, including the International Guidelines for Securing Sustainable Small-Scale Fishing, as well as the International Guidelines for the Responsible Governance of Tenure.

### 3. The choice of mandatory conservation commitments

It is difficult to understand TNC's choices for the conservation contract. For example, the clause that Gabon must produce a national plan of action for combatting IUU fishing is of no great significance: many countries make them, and they tend to be fairly short documents produced by external consultants, and many are ignored. The request for all industrial vessels to have electronic monitoring devices installed might be seen as progress in better regulating the fisheries sector and detecting instances of illegal fishing. However, such devices are not a panacea as they do not prevent unlawful fishing from non-licensed vessels, nor do they overcome the considerable problems of corruption in the fisheries sector (which prevents prosecutions for illegal fishing) or the unsustainable and destructive practices of the legal fishing fleets.

Indeed, both of these clauses demonstrate that TNC adopts a limited understanding of the problems involved in the governance of distant water fishing in African countries, where everything bad in the sector is reduced to an issue of illegal fishing. Combatting illegal fishing is not usually the most pressing concern. Therefore, small-scale fishing organisations in Africa[10] stress other critical policy reforms regarding industrial fishing, including rejecting opaque foreign fishing agreements, protecting the coastal zone against destructive industrial fishing, and committing to high levels of government transparency and accountability. It is perhaps due to a lack of broader consultation that TNC chooses to insert mandatory clauses in its debt-for-ocean swaps limited to law enforcement.

In addition to combatting illegal fishing, the most significant mandatory clause relates to Gabon producing a national marine spatial plan. Such marine spatial plans are increasingly used worldwide to zone activities in the sea and develop an overarching policy framework to determine what activities are permitted and why. They are highly complex processes, requiring substantial data and analysis, that inevitably bring to the fore competing claims to the oceans and are therefore vulnerable to conflict and power imbalances.

TNC's condition that debtor countries enact marine spatial planning might be viewed as positive. However, TNC is open to the criticism that its approach is poorly thought through and will end up conforming to the very worst examples of how marine spatial planning works in reality. A top-down, tokenistic approach is likely in a country well known for its high levels of corruption and state capture by mining interests, in addition to a restrictive approach to freedom of speech. In this context, simply asking for fishers to be represented in a marine spatial planning committee, which also includes the government and mining companies, is unlikely, in itself, to empower them or enable them to challenge the status quo.[11] An acute risk for fishers in this process stems from inadequate data on their activities, including the activities of women in the artisanal fisheries value chains, which is essential to defend their rights from competing industries. However, the Gabon government, as with many others in Western Africa, has not collated statistics on the small-scale fisheries sector for years, being a population that has been neglected by a state that is focused on industrial extractivism.[12]

Marginalised groups require enormous support, including independent legal advice and access to data, to engage with these sorts of processes effectively. Without this (and even with it) marine spatial planning ends up being symbolic or simply a sham. Yet it is hard to see evidence that this sort of empowerment and support is factored into the debt swap. Furthermore, the conservation agreement in Gabon requires it to stick to a tight timeframe, with the spectre of getting fined for late delivery. Gabon has one year from signing its conservation contract to launch the marine spatial planning committee and two years for the committee to draft a zoning map of the oceans. It is an unrealistic timeframe that increases the likelihood that debates will be hurried and based on limited information, and therefore, decisions will be captured by those with more resources and political influence. This is the scenario

[10] See for example: "A Call to action from small-scale fisheries", Lisbon, 2022. This call was drafted by small-scale fishing organisations from 5 continents at the occasion of the United Nations Ocean Conference in Lisbon, in June 2022. The call identifies 5 priorities for action to guarantee and protect access to resources and markets for small-scale fisheries (Sustainable Development Goal 14b). Available at: https://www.cffacape.org/ssf-call-to-action
[11] For a discussion on the the marginalisation of small-scale fisheries in marine spatial planning and blue growth strategies, see COHEN, Philippa J., *et al*., "Securing a just space for small-scale fisheries in the blue economy", Frontiers of Marine Science, Volume 6, 2019. Available at: https://www.frontiersin.org/articles/10.3389/fmars.2019.00171/full
[12] CARDIEC, Floriane, *et al*., "'Too Big To Ignore': A feasibility analysis of detecting fishing events in Gabonese small-scale fisheries", 2020. Available at: https://doi.org/10.1371/journal.pone.0234091

many organisations working on the rights of indigenous peoples have warned will happen in the rush to reach the 30x30 target.[13]

**4. The conservation fund**

Beyond the conservation commitments, the most significant element of the deal in Gabon lies in the role of the new national conservation organisation. Primarily, this will operate as a grant-making facility, although it should be anticipated that it will also engage in other work that influences the management of coastal and marine spaces. The financial resources given to this new organisation are most likely larger than the budgets of national fisheries authorities. It will, therefore, have considerable political power.

The impact this new money will have in Gabon is hard to predict. We know 40% of this is earmarked for government-run projects and 40% for projects run by NGOs. Many worthwhile projects could be boosted by this money. However, there is no documentation produced by TNC on what the guidelines for this grant-making facility are. In all of the countries that TNC has concluded debt-for-ocean swaps, including Gabon, it has not produced any public analysis of what the underlying problems are that it intends to address, nor has it provided any written analysis on what it sees as priority actions. This lack of planning and analysis is quite remarkable for a grant-making body controlling US$60 million.

The remit for the conservation funds seems extremely wide. The funds appear to be eligible for projects that address sustainable fishing, the conservation of marine biodiversity, and the development or regulation of sectors spanning aquaculture, eco-tourism and carbon trading. Yet without transparent communication on the intended use of proceeds, there must be doubts over the accountability of these new conservation funds, problems of conflict of interests, and a risk that the funds will be divisive. In Belize, for example, a report commissioned by the BBC described that the first round of grants administered due to the debt-for-ocean swap included money for conservation groups working on coral reef rehabilitation and those working to strengthen community law enforcement against poaching. A grant application made by the country's national small-scale fishing federation—designed to help them compensate for a loss of income caused by the expansion of marine protected areas—was rejected.[14] Decisions are, therefore, vulnerable to the whims and wishes of the board and likely influenced by the presentation skills of those applying for grants and, possibly, their personal connections with the board. This could put groups such as small-scale fishers at a disadvantage.

## Concluding thoughts: what next?

In Gabon, there is little chance that the terms of the debt-for-ocean swap can be challenged. The legal contracts are signed, and any effort to reform them would likely

[13] See the statement by the Rainforest Foundation: "30x03: The good, the bad, and what needs to happen next", January 2023. Available at: https://www.rainforestfoundationuk.org/wp-content/uploads/2023/01/30x30_The-Good-the-Bad-and-What-needs-to-happen-next_EN.pdf

[14] This is detailed in a special report for BBC radio entitled "Can a financial deal with a US charity save Belize's economy". Presented and produced by Linda Pressly. Available until August 2024 here: https://www.bbc.co.uk/sounds/play/w3ct4m7f

require costly litigation in foreign law courts. Gabon will be tied to this debt swap for decades.

The question that arises from this situation is what can be done to improve the impact of the debt-for-ocean swap in the country? The question can be posed from the perspective of small-scale fisheries, who might be one of the groups most affected by this deal. The answer to this requires further debate; however, an obvious starting point is to demand increased transparency from TNC. All legal contracts associated with this deal must be published, and the information contained in these must be accessible to Gabon citizens. TNC should also provide documentation on the purpose of the debt-for-ocean swap, how success can be measured, and what the risks are for marginalised groups. The debt swap has resulted in a blank cheque worth US$4 million a year for the next 15 years handed from the people of Gabon to a new conservation fund owned by TNC and registered in the tax haven of Delaware. That transfer of public money must come with a responsibility for transparency, accountability, and participation. Will the money, for example, be used to help small-scale fishers, or will it be focused on protecting iconic marine species or, perhaps, spent on more money-making schemes such as blue carbon trading and biodiversity offsets?

Finally, there is an urgent task to support marginalised groups participating in the rushed marine spatial plan. Without careful actions, this is likely to end up as a sham, wherein the interests of powerful groups will trump those without voice and resources. That would be a fitting legacy to what is an odious debt swap.

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